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**PROCEEDINGS OF A MILITARY COMMISSION**

The military judge called the R.M.C. 803 session to order at Guantanamo Bay, Cuba, at 0909 hours, 7 May 2008, pursuant to the following orders:

Military Commission Convening Order Number 07-01, dated 1 March 2007. That order was amended by MCCO Number 07-05, dated 29 May 2007.

**[END OF PAGE]**

1 [The R.M.C. 803 session was called to order at 0909, 7 May 2008.]

2 MJ [COL BROWNBACK]: The military commission is called to order.

3 TC [MAJ COWHIG]: This military commission is appointed by  
4 Convening Order number 07-01, dated 1 March 2007, is amended by  
5 Convening Order number 07-05, dated 29 May 2007, copies of which have  
6 been furnished to the military judge, counsel and the accused and  
7 which have been marked as Appellate Exhibit 1, pardon me, Appellate  
8 Exhibit 2 and attached to the record. The charges have been marked  
9 as Appellate Exhibit 1 and have been properly approved by the  
10 Convening Authority and referred to this commission for trial.

11 The prosecution caused a copy of the charges to be served  
12 on the accused on 26 February 2008. The prosecution's ready to  
13 proceed in the arraignment of the *United States versus Ali Hamza*  
14 *Ahmad Suliman al Bahlul also known as Abu Anas al Makki; Ali Hamza*  
15 *Ismael; Abu Anas al Yemeni; Muhammad Anis Abdullah Khalidi.*

16 The accused and the following personnel detailed to this  
17 commission are present:

18 **COLONEL PETER E. BROWNBACK, III, MILITARY JUDGE;**

19 **MAJOR DAN COWHIG, PROSECUTOR; and**

20 **CHUCK ZELNIS, ASSISTANT PROSECUTOR; and**

21 **MAJOR DAVID FRAKT, DETAILED DEFENSE COUNSEL.**

22 All the members are absent.

1           A court reporter has been detailed reporter for this  
2 commission and has been previously sworn.

3           MJ [COL BROWNBACK]: I have been detailed to this case by the  
4 Chief Trial Judge of the Military Commissions, look at AE 14 and AE  
5 3, and I was sworn in accordance with R.M.C. 807 on the 24th of April  
6 2007. I am certified and qualified in accordance with Article 26 of  
7 the Uniform Code of Military Justice.

8           Trial, please state by whom you have been detailed and your  
9 qualifications.

10          TC [MAJ COWHIG]: Sir, all members of the prosecution have been  
11 detailed to Military Commission by the Chief Prosecutor. All members  
12 of the prosecution are qualified under Rule of Military Commission  
13 503 and we've been previously sworn in accordance with R.M.C. 807.  
14 No member of the prosecution has acted in any manner, which might  
15 tend to disqualify us in this proceeding. The detailing documents  
16 have been marked as Appellate Exhibit 6.

17          The Prosecution also has sitting at the Prosecution table  
18 an assistant, who will assist the Prosecution but will not represent  
19 the government.

20          MJ [COL BROWNBACK]: Defense, would you announce your detailing  
21 and qualifications, please?

22          DC [MAJ FRAKT]: I have been detailed to this military  
23 commission by the Chief Defense Counsel. I am qualified under R.M.C.

1 503 and I have previously been sworn in accordance with R.C.M.--or  
2 R.M.C., perhaps, 807. I have not acted in any manner that might tend  
3 to disqualify me in this proceeding. The document detailing me as  
4 counsel has been marked as Appellate Exhibit 12.

5 I have with me, my defense assigned paralegal and defense  
6 linguist.

7 MJ [COL BROWNBACK]: Okay, Trial, the commission translators, I  
8 am not talking about the person sitting next to Major Frakt, but have  
9 the commission translators been sworn?

10 TC [MAJ COWHIG]: Yes, sir; they have been sworn.

11 MJ [COL BROWNBACK]: And will you, after the trial, attach a  
12 copy of their curriculum vitae as an Appellate Exhibit?

13 TC [MAJ COWHIG]: Yes, sir. We will.

14 MJ [COL BROWNBACK]: Okay, that's going to be Appellate Exhibit  
15 18.

16 TC [MAJ COWHIG]: Yes, sir.

17 MJ [COL BROWNBACK]: And make sure you give a copy of that to  
18 the defense.

19 TC [MAJ COWHIG]: Yes, sir.

20 MJ [COL BROWNBACK]: Okay, and those curriculum vitae will be  
21 sealed.

22 MJ [COL BROWNBACK]: Mr. al Bahlul, good morning. Can you hear  
23 me?

1 **[The accused held up a pencil.]**

2 MJ [COL BROWNBACK]: Okay, let the record reflect that Mr. al  
3 Bahlul is holding a pencil up. I am not quite sure what that means.

4 I--translator----

5 DC [MAJ FRAKT]: I believe his pen is not working, sir; he would  
6 like another pen.

7 MJ [COL BROWNBACK]: We'll wait for headphones.

8 **[Court security looked for another pen for the accused and informed  
9 the military judge accordingly.]**

10 DC [MAJ FRAKT]: Your Honor, Mr. al Bahlul has requested a red  
11 pen.

12 **[Court security looked for another pen for the accused.]**

13 MJ [COL BROWNBACK]: Mr. al Bahlul is now making another  
14 indication to me and I don't know what it means. Are you ready to  
15 proceed Mr. al Bahlul? You need another pen; do you need a different  
16 color this time?

17 Just one pen.

18 **[Court security looked for another pen for the accused and informed  
19 the military judge accordingly.]**

20 MJ [COL BROWNBACK]: The various personnel wandering around  
21 trying to fulfill Mr. al Bahlul's requirements keep uttering things  
22 to the air, sotto voce or in a very quiet voice. We'll wait and see  
23 what--whether we find Mr. al Bahlul a pen or not.

1 **[Court security looked for another pen for the accused.]**

2 MJ [COL BROWNBACK]: The commission is in recess, in place.

3 **[The R.M.C. 803 session recessed in place at 0919, 7 May 2008.]**

4 **[The R.M.C. 803 session was called to order at 0926, 7 May 2008.]**

5 MJ [COL BROWNBACK]: Let the record reflect that the parties  
6 previously present when we recess in place are once again present.

7 During the last recess we had an indication that the  
8 gallery audio-visual was failing, although I think their visual is  
9 eyeball on me, so I don't know if they had any visual problems but  
10 their audio was failing; apparently it is working now. We also  
11 managed to find Mr. al Bahlul some writing implements.

12 Mr. al Bahlul just gave the bailiff to hand to me, three  
13 spiral notebook pages with writing on them in Arabic.

14 Do we, court reporters, have a Xerox machine in this  
15 building?

16 **[The court reporter indicated a negative response.]**

17 MJ [COL BROWNBACK]: Okay, Mr. al Bahlul, I'm going to have the  
18 court reporter Xerox what will be marked Appellate Exhibit 19 and I  
19 will have the court reporter return it to Major Frakt to return to  
20 you.

21 Okay, are you not speaking today, Mr. al Bahlul? Are you  
22 going to stand mute?

23 **[The accused did not respond to the military judge's question.]**

1 MJ [COL BROWNBACK]: Okay, you can stand mute. We will continue  
2 on.

3 Mr. al Bahlul, before we proceed, I got to know if you  
4 understand what I am saying.

5 Do you understand and speak English?

6 **[The accused did not respond to the military judge's question.]**

7 MJ [COL BROWNBACK]: Let the record reflect that Mr. al Bahlul  
8 is not--does not have his headphones on and is not answering.

9 Interpreters, can you broadcast, in Arabic, what I say in  
10 English? Just tell me yes or no.

11 CT INT: Yes.

12 MJ [COL BROWNBACK]: I want you to translate what I say in  
13 English into Arabic and if Mr. al Bahlul, if I say, "Mr. al Bahlul  
14 has said nothing," then just wait for the next stuff I say okay?

15 CT INT: Yes.

16 MJ [COL BROWNBACK]: I'm going to put on the record before we go  
17 on--go on tri--go on interpreter.

18 CT INT: Yes, Your Honor; I am going.

19 MJ [COL BROWNBACK]: I am going to put on the record before we  
20 continue that Mr. al Bahlul and I had seen each other at least four  
21 times before. In August of 2004, Mr. al Bahlul was at a session in  
22 the old courtroom with a panel of seven officers.

1 I had an extensive discussion with Mr. al Bahlul at that  
2 time, on the record. The session terminated when Mr. al Bahlul asked  
3 to represent himself and I directed the counsel to brief the matter.  
4 Those charges were eventually withdrawn.

5 In January of 2006, new charges were preferred against Mr.  
6 al Bahlul. Mr. al Bahlul and I had a very extensive discussion on  
7 the record at that time. Mr. al Bahlul once again asked to represent  
8 himself. My--I initially denied the request. Mr. al Bahlul decided  
9 to boycott the proceedings and provided the commission assigned the  
10 issue of going--of representing him was briefed eventually by the  
11 counsel.

12 To my recollection, no final ruling was made. I abated the  
13 proceedings on the 29th of June 2006, when the Supreme Court issued  
14 their ruling in *Hamdan v. United--v. Rumsfeld*.

15 I note, for the record and I will take--I will take no  
16 further action on this *sua sponte* that the specification referred  
17 against Mr. al Bahlul on the--in the January 2006 time frame, was one  
18 of conspiracy. I further note that the current charges referred  
19 against Mr. al Bahlul include a specification of conspiracy. I  
20 further note that Mr. al Bahlul was in fact, called upon to plead in  
21 January 2006.

22 Okay; Mr. al Bahlul, do you understand and speak English?



1 ACC [MR. AL BAHLUL]: I would like you to ask the judge to read  
2 out loud the documents that I wrote to him.

3 MJ [COL BROWNBACK]: There's a small problem with that right  
4 now, Mr. al Bahlul; however, Trial; Defense, does either side object  
5 to me asking the Defense translator to write out a translation of  
6 these three pages that Mr. al Bahlul has given me?

7 TC [MAJ COWHIG]: No objection from the government, Your Honor.

8 ACC [MR. AL BAHLUL]: I would--I want the interpreter of the  
9 court to be the one who translate the documents.

10 MJ [COL BROWNBACK]: Okay; translator, who's talking to me,  
11 where are you physically located?

12 CT INT: We're in the building next to the courtroom, Your  
13 Honor.

14 MJ [COL BROWNBACK]: Okay, this is three small pages, I'm going  
15 take a recess for--how long do you think it will take you to  
16 translate three small pages?

17 CT INT: I'll say about an hour--an hour and a half, Your Honor.

18 **[The accused appeared to be amused by the interpreter's answer. The**  
19 **accused made a comment to the interpreter in Arabic which the**  
20 **interpreter did not translate. The comment was: "It seems that you**  
21 **don't have a good command of Arabic. You don't need an hour or half**  
22 **an hour, you hear me really good."]**

1 CT INT: Your Honor, I don't know how much writing is in the  
2 documents, it's difficult for me to tell from here.

3 MJ [COL BROWNBACK]: Okay; yes, Trial?

4 TC [MAJ COWHIG]: I'm sorry, Your Honor, if I can just asked the  
5 translator to translate Mr. al Bahlul's comment that he just made.

6 MJ [COL BROWNBACK]: Okay.

7 Mr. al Bahlul just made a comment, did you hear him?

8 CT INT: No, Your Honor, I was talking to you.

9 MJ [COL BROWNBACK]: Please repeat what you said Mr. al Bahlul.

10 ACC [MR. AL BAHLUL]: Can the translator of the court translate  
11 the three documents that I just wrote. If the judge doesn't want me  
12 to and give it to you, he can give it back to me.

13 MJ [COL BROWNBACK]: Okay, I'm going to take a recess for 10  
14 minutes--I hadn't said it yet; translator, come over here, most tick,  
15 and see the court reporter and come back and tell me, in my chambers,  
16 how long you think it's going to take to give a translation.

17 CT INT: Very well, Your Honor.

18 MJ [COL BROWNBACK]: Court is in recess.

19 **[The R.M.C. 803 session recessed at 0937, 7 May 2008.]**

20 **[The R.M.C. 803 session was called to order at 1027, 7 May 2008.]**

21 MJ [COL BROWNBACK]: You all with me back there in the gallery?

22 **[The gallery personnel gave thumbs up.]**

23 MJ [COL BROWNBACK]: Yes. Okay; for how long, we don't know.

1           Let the record reflect that the parties present when the  
2 court recessed are once again present.

3           We had another audio feed down.

4           During the interim, I had Appellate Exhibit 19, which is  
5 Mr. al Bahlul's writing that he handed to me, translated. I will now  
6 read it.

7           Page 1, A Declaration of Rejection of the Court; page 2, A  
8 Declaration of the Continuation of the Boycott; page 3, a Declaration  
9 of Renewal of the Allegiance to Usama Bin Laden, Awad Bin Laden.

10           During the recess, the commission retrieved from files a  
11 what was then called Review Exhibit 135, the commission asked if  
12 either side had the objection to the commission to taking judicial  
13 notice of this; it was a sign made by Mr. al Bahlul in January on the  
14 11th of January 2006 and publish to the court, I believe it will help  
15 explain part of the writing.

16           Do you have any objection of me taking judicial notice of  
17 this?

18           TC [MAJ COWHIG]: Not from the government, Your Honor.

19           DC [MAJ FRAKT]: Your Honor, Mr. al Bahlul has asked me not to  
20 represent him or make any statements on his behalf and also not to go  
21 into your chambers for any further conferences.

1 MJ [COL BROWNBACK]: Okay. Well, Mr. al Bahlul, then in that  
2 case, I will take judicial notice of this and this will be Appellate  
3 Exhibit 20.

4 TC [MAJ COWHIG]: Your Honor, my apologies, did you intend for  
5 the translations to be broadcasts out loud in the courtroom?

6 MJ [COL BROWNBACK]: You're quite correct. Okay, translator,  
7 we're going to start all over again.

8 CT INT: Okay, Judge.

9 MJ [COL BROWNBACK]: I called the commission to order.

10 I read the writing by Mr. al Bahlul in a translation. I  
11 attached to the record of trial as Appellate Exhibit 20, a document  
12 that Mr. al Bahlul wrote on 1--on 11 January 2006, I asked counsel if  
13 they have any objection. Trial counsel had no objection; defense  
14 counsel stated that Mr. al Bahlul said that he, defense counsel, is  
15 not to represent him and asked defense counsel not to speak for him  
16 and not to go back in my chambers.

17 Okay, continuing on.

18 Mr. al Bahlul, do you understand and speak English?

19 **[The accused did not respond.]**

20 MJ [COL BROWNBACK]: Let the record reflect that----

21 **[The accused spoke in Arabic.]**

22 MJ [COL BROWNBACK]: Just a sec, Mr. al Bahlul, I am going to  
23 describe it for the record, let the record reflect that Mr. al Bahlul

1 held his hand, what the commission would describe as a cross and then  
2 moved his hands out to the side several times indicating to the  
3 commission that he doesn't intend to say anything.

4           Consequently, the commission will direct that a translator  
5 be made available for him. The commission notes that the translator,  
6 whose name I will not put on the record, is sitting at a defense  
7 table one removed from Mr. al Bahlul, and is prepared to provide his  
8 translating services to Mr. al Bahlul.

9           Is that correct, sir?

10          DEF INT: Yes, Your Honor.

11          MJ [COL BROWNBACK]: Sir, do you speak the same language as Mr.  
12 al Bahlul?

13          DEF INT: Yes, I do. I speak tradi----

14          MJ [COL BROWNBACK]: Stop; okay, the translator--the  
15 interpreter's translating.

16           Do you speak the same language as Mr. al Bahlul?

17          DEF INT: Yes, I do.

18          MJ [COL BROWNBACK]: Thank you, please have a seat. Just answer  
19 from your space, were you sworn to perform your duties faithfully  
20 yesterday, Mr. Translator?

21          DEF INT: Yes, Your Honor, I did.

22          MJ [COL BROWNBACK]: Thank you.

1           Mr. al Bahlul, pursuant to the Military Commissions Act,  
2 you are represented right now by Major Frakt, your detailed defense  
3 counsel. You may request a different lawyer, military lawyer to  
4 represent you. If the person you request is reasonably available, he  
5 would be appointed to represent you. If you are represented by  
6 someone of your own choice, you would normally lose the services of  
7 Major Frakt. However, you may, request that Major Frakt remain on  
8 the case.

9           Do you understand this?

10 **[The accused did not respond to the question.]**

11           MJ [COL BROWNBACK]: Let the record reflect that Mr. al Bahlul  
12 is not responding, however he did give me a smile.

13           Major Frakt is provided to you at no--charge.

14           Do you understand this?

15 **[The accused did not respond to the question.]**

16           MJ [COL BROWNBACK]: Once again no answer, but no smile this  
17 time.

18           In addition to Major Frakt, you may be represented by a  
19 qualified civilian lawyer. This would be at no expense to the  
20 government. This civilian lawyer must be a U.S. citizen, admitted to  
21 the practice of law in a competent jurisdiction, be eligible for a  
22 Secret clearance, and agree in writing to comply with the rules of  
23 this commission.

1           If a civilian lawyer represents you, Major Frakt would  
2 serve as associate counsel.

3           Do you understand what I just told you?

4 **[The accused did not respond to the question.]**

5           MJ [COL BROWNBACK]: Once again, no answer from Mr. al Bahlul.

6           Do you have any questions about your right to counsel  
7 before this commission?

8 **[The accused did not respond to the question.]**

9           MJ [COL BROWNBACK]: No answer from Mr. al Bahlul.

10           Before we continue, I'm going to note that Mr. al Bahlul  
11 and I are looking at each other approximately 70 percent of the time,  
12 I'm reading some stuff here, and based on my observation of Mr. al  
13 Bahlul, I find I that he in fact does understand what is being  
14 translated for him; in fact, no, I take that back.

15           Do you want to be represented by Major Frakt?

16 **[The accused was writing on his papers.]**

17           MJ [COL BROWNBACK]: Mr. al Bahlul, is that a new writing?

18 **[The accused held up another piece of paper, a sign, with Arabic  
19 writing on it.]**

20           MJ [COL BROWNBACK]: Okay, if you don't----

21           DC [MAJ FRAKT]: ----Your Honor, I believe this is the old  
22 boycott sign.

1 MJ [COL BROWNBACK]: Okay, Mr. al Bahlul, hold it up again,  
2 please.

3 **[The accused did as directed.]**

4 MJ [COL BROWNBACK]: Bailiff, would you please retrieve that  
5 from Mr. al Bahlul just for a second, so I can make sure what it is?

6 **[The bailiff did as directed.]**

7 MJ [COL BROWNBACK]: Just hold it and let me look at it. Okay,  
8 thank you.

9 What Mr. al Bahlul is holding up was the--AE 20, the  
10 boycott sign. The court interpreted that to say that he intends to  
11 boycott. However, I'm going to continue asking these questions.

12 Mr. al Bahlul, I told you your choices for counsel. If you  
13 do not tell me how you want to be represented, you will be  
14 represented by Major Frakt.

15 Do you understand that?

16 **[The accused did not respond to the question.]**

17 MJ [COL BROWNBACK]: No response from Mr. al Bahlul.

18 The commission finds that Mr. al Bahlul has been advised of  
19 and understands his rights to counsel. The commission finds that by  
20 displaying the boycott sign that Mr. al Bahlul has sufficiently  
21 informed the commission that he does not intend to participate in  
22 these proceedings, not even to the extent of advising the military  
23 judge of his statutory choices. The commission does not find that



1 standing mute is unacceptable. Mr. al Bahlul is well within his  
2 rights to say nothing, however the commission will proceed.

3 Mr. al Bahlul during certain prior times, meaning in the  
4 last 10 minutes, I noted that you made hand gestures and silencing  
5 signals to Major Frakt; that is not a choice. If you want to tell me  
6 by whom you wish to be represented, then you will be represented by  
7 that person, as long as they meet the qualifications required.  
8 However, if you choose to stand mute, Major Frakt will in fact,  
9 represent you and you will not be allowed to make shushing--okay, not  
10 shushing, silencing gestures or sit-down motions or things like that.

11 Do you understand that?

12 **[The accused did not respond to the question.]**

13 MJ [COL BROWNBACK]: Once again, no answer from Mr. al Bahlul.

14 Counsel for either side have any disagreement with what I  
15 just stated and the position that I took, Trial?

16 TC [MAJ COWHIG]: Nothing from the government, Your Honor.

17 MJ [COL BROWNBACK]: Defense?

18 DC [MAJ FRAKT]: Your Honor, I request that Mr. al Bahlul be  
19 advised of his rights to self-representation.

20 MJ [COL BROWNBACK]: I will so do.

21 As I stated earlier, in August of 2004 and in January  
22 through May of 2006, Mr. al Bahlul wanted to represent himself. The  
23 regulations governing commissions at that time did not permit that.

1           The Military Commissions Act of 2006 changed that, Mr. al  
2 Bahlul. Section 949(a)(b)(1)(d); got that translator? States, "The  
3 accused shall be permitted to represent himself as provided for by  
4 paragraph 3." Paragraph 3 states, "The accused in a military  
5 commission under this chapter who exercises the right to self-  
6 representation, shall conform his deportment," I'll just say,  
7 "behavior, to the decorum and procedure applicable to trials by  
8 military commission." Subsection B says, "Failure of the accused to  
9 conform to the rules," I just mentioned, "may result in a partial or  
10 total revocation of the right of self-representation." Paragraph--  
11 well, Rule 506(c) of the Rules for Military Commissions states, "The  
12 accused may expressly waive the right to be represented by counsel  
13 and made thereafter conduct the defense personally."

14           In other words, Mr. al Bahlul, what you asked for in August  
15 of 2004 and January through May of 2006, you now have a right to  
16 have.

17           Do you understand that?

18           ACC [MR. AL BAHLUL]: Thank you, I understand. Do you want me  
19 to repeat?

20           MJ [COL BROWNBACK]: Do I want you to repeat what, Mr. al  
21 Bahlul?

22           ACC [MR. AL BAHLUL]: The answer to your question.

1 MJ [COL BROWNBACK]: Yes, I do want you to repeat the answer to  
2 my question.

3 Do you understand your rights to self-representation?

4 ACC [MR. AL BAHLUL]: I understand from your words that I do  
5 have that right, now.

6 MJ [COL BROWNBACK]: Do you wish to represent yourself?

7 ACC [MR. AL BAHLUL]: Yes, a little earlier you said that the  
8 law allows me and now you're asking me. And I said to you that since  
9 2004 until now, it didn't say in the law that the accused can  
10 represent himself; and after few tries by me, I now can, to get that  
11 right.

12 And now I asked the judge to give me only five minutes so I  
13 would explain to him and to everybody that is listening, especially  
14 the government representatives, the prosecution's lawyers, and also  
15 the prosecution attorneys and the rule be.

16 I make no distinction between those people sitting over  
17 there or here for----

18 **[The accused pointed to other personnel in the courtroom.]**

19 MJ [COL BROWNBACK]: Let the record reflect----

20 **[The accused continued to speak in Arabic.]**

21 MJ [COL BROWNBACK]: Excuse me, excuse me----

22 ACC [MR. AL BAHLUL]: Please give me a chance. This law is not  
23 from you. I obtained this right, please don't interrupt me. You, in

1 the west, claim that you have freedom; let me speak. I am not  
2 subject to the 2004 law. I don't want you to lose your temper. Be  
3 calm. I am not trying to make the battle between me and you. I only  
4 want to say that I want from all to understand what it means to  
5 represent myself.

6           When the United States wanted to attack Afghanistan, it  
7 obtained a resolution from the United Nations stating that self-  
8 defense is a legitimate right for all members of the United Nations.  
9 The right to defend, the right to defend is a legitimate right  
10 afforded to all members of the United Nations. And based on this  
11 resolution, it attacked Afghanistan and invaded it. Please, I don't  
12 want anyone to interrupt; I am speaking with the judge. You want to  
13 cut off the media; I don't want to say anything to the media. I want  
14 to judge to understand me, please.

15           MJ [COL BROWNBACK]: Mr. al Bahlul, stop; stop.

16 **[The accused continued to speak in Arabic.]**

17           MJ [COL BROWNBACK]: Stop for a second. The translators have  
18 got to translate, you speak Arabic, and I think you may speak some  
19 English, but we won't go into that, I don't understand what you are  
20 saying unless they repeat it. So you are going to have to speak as I  
21 do, in short sentences, you know that I will let you speak as much as  
22 you want. But it has to be so I can understand it.

23           Okay, please continue, Mr. al Bahlul.

1 ACC [MR. AL BAHLUL]: Thank you, Thank you.

2 You took the opportunity now to cut off the media from the  
3 audio and video broadcast of the closed television circuit. I don't  
4 care about that, cut off or not, I don't care about the media. I  
5 want to say that I was able to obtain the right to defend myself by  
6 the grace of Allah only. I will now explain in five minutes only,  
7 and I will not be lengthy.

8 What is the understanding of self-representation, to me?  
9 The understanding of self-representation is not that I'm going to say  
10 I'm not a member of al Qaeda or I did not do anything. And I know  
11 that this is kind of an advance, because it was suppose to be coming  
12 there on, because we're only in an audio or listening session only.  
13 But I came out with this decision in 2006, which is the detainee has  
14 the right to represent himself.

15 To tell you and to tell the entire world, that we were  
16 defending ourselves and the al Qaeda organization and the  
17 Confederated Jihadi Movement. And that is not what the American media  
18 is representing, that we are the attackers and you are the defenders,  
19 therefore--that is why I am saying that I will continue to boycott;  
20 to let my other associate Mujahideen in Afghanistan and in Iraq, and  
21 anywhere in the Islamic world, to continue the war against America  
22 and its Allies.

1           And I say, and the Press can hear me, and the Government  
2 lawyers also can hear me, and the judge also can hear me, that I  
3 announce from this place that I am, and the Saudi Regime as well, to  
4 withdrawal the political and national citizenship from Sheikh Usama  
5 Bin Laden, and the Kuwaiti Regime, withdrawal the citizenship from  
6 the official spokesperson from--of al Qaeda organization. Sheikh  
7 Sulayman Abu-al-Ghayth, from this location, I announce that I am  
8 giving up the Yemeni citizenship to the Regime that allied with  
9 America, and its war against Islam and the Muslims, and when the  
10 judge informed me that he has the right--that the judge had told me  
11 that they can find for me a Yemeni American lawyer, who has a dual  
12 citizenship, to represent me instead of the Major that we have here,  
13 I told him and this is documented in the court hearings, that I will  
14 not take advantage.

15           The secretary and the religious relationship of the  
16 American-Yemeni lawyer, I have to be fair, I always rejected the  
17 American lawyer, who is 100 percent American citizen, and I will also  
18 reject if they bring me a Yemeni-American lawyer.

19           Today, the whole world knows, that the political system in  
20 Yemen is a political system that represents itself, and because they  
21 allied with America against the Islam and the Muslims and its war.  
22 Therefore, I announce that I give up my Yemeni citizenship to become,  
23 just like Sheikh Usama Bin Laden, Sheikh Sulayman Abu-al-Ghayth.

1 Muslim people, their regimes that used to control their people, there  
2 are regimes--regimes--this kind of regimes are allied and followers  
3 of American and America's masters, the Jews. Therefore, the whole  
4 world should know that America have entered in the legislative and  
5 cold fears and political also.

6           With the grace of Allah, we have succeeded, I mean the al  
7 Qaeda organization, that we are forcing America to put on the side,  
8 the meaningless American laws, the United Nations, not the American  
9 laws, the United--the world codes, the international law and what  
10 branches out of it and the international war laws and the Geneva  
11 Conventions and the internal American law--military law, and the  
12 civil law--American civil law. They started to legislate for the  
13 planet Earth because they are the only regime that rules the Earth.

14           They legislated new laws and this military commission and since  
15 2004 until this moment where I am speaking with you now, and they are  
16 just going in an empty circle of laws. Your sources, to legislate  
17 are the facts and the events, the historic facts and events, which  
18 why you do measure the futuristic events and I say that the military  
19 commissions that are being in tried today is a game--is a game to the  
20 Islamic law, which you have destroyed its nation in Afghanistan.

21           I remember that Mullah Mohammed Omar, the commander of the  
22 faithful, when he was heavily pressured to hand Sheikh Usama Bin  
23 Laden to America, he had proposed an international Islamic court in

1 an impartial country, where they would bring Islamic lawmen and  
2 America would remove--the Americans and those who were harmed by Bin  
3 Laden's acts, their allegations against al Qaeda organization.

4 If America would have gave up, meaning to accept this  
5 proposal, of course this is impossible, because the United Nations  
6 members--country members are being governed by an international law.

7 The only country that was out of what is called the  
8 international laws was only the Muslim country in Afghanistan. So  
9 when you have put aside, after the events of 9/11, all the laws of  
10 the West--all the laws of the West, civil and military and  
11 established a new law in the land, for me and for any person that  
12 stands in front of you or before you in the war in the entire world;  
13 but specifically, the Islamic world, and specifically also, the  
14 Mujahideen Regime. Today I say to, I would never deny that I have  
15 done any act, that I have participated in with Bin Laden in fighting  
16 you or your allies, the Jews because I'm looking for a greater day  
17 than today and all of you can hear the Court of Allah.

18 We perceive that the law that should be in the land, we  
19 also believe that no one has the right in the land to set laws for  
20 the people, the right of legislating laws, is absolutely to Allah,  
21 the All Mighty, and you are fighting with Allah and his right, the  
22 All Mighty is able to

23 CT INT: Your Honor, I am going to ask him to repeat.



1 ACC [MR. AL BAHLUL]: He is able to sink the entire continent of  
2 America. But he is made us exist in this land to worship him, and to  
3 be no dispute between us. We are to be a dispute for you, to be a  
4 test for you and you are to be a test for us.

5 Tomorrow, the balance have changed, and you will be in an  
6 Islamic court, if you were in an Islamic court, it wouldn't be like  
7 you since 2004 and until now, and getting confused between laws and  
8 going in an empty circle. Why? Because today, you set a law that  
9 would impact with you tomorrow, and then you will change it, or  
10 adjust it, or add to it, or any of the amended of the law, then  
11 afterwards, new events will renew itself.

12 Why weren't there any martial-courts when you were  
13 confronting with Japan? Why were there no--any of these courts when  
14 you were in confrontation with Germany?

15 The truth is that you are set laws because you perceive  
16 yourselves as the Gods in the land and we believe that there are only  
17 on God in Heaven. He is also a God on earth, in spite of the  
18 existence of false gods. Who do not fight Allah and his right of  
19 setting laws? We have fought the Arabic Regimes because they  
20 replaced the law of Allah, and we will also fight America, who are  
21 oppressing people in the land, you have oppressed the people of the  
22 land many times, and if the 9/11 event was the result of your  
23 actions, why since 2004, until now, and I have told you previously,

1 and you told me not to hurt myself, I know very well what hurts me  
2 and what benefits me; because our understandings and our measures as  
3 far as advantages and disadvantages are different.

4 We see it from one point of view and you see it from a  
5 different one. Then, what delays you? You have been delaying these  
6 courts since 2004 until now, to tell the world that you are as if you  
7 have won and from the perspective of force, and you want to also win  
8 in the perspective of values and principles and ethics.

9 And Tony Blair has said, "We have to prove to the world,"  
10 he means the West, that their values and principles and ethics are  
11 the best and the highest and the supreme. 4 years, 4 years and I  
12 have been saying to you, I am responsible for my action in this  
13 existing world and in the afterworld. I am responsible for that,  
14 meaning I don't care if you kill me or imprison me for life.

15 Sheikh Abdul Al Rahman have given a fatwa, the killing of a  
16 president of a nation Anwar al Sadat, the allied of the Jews, and in  
17 a country which is Egypt. The American investigators here use their  
18 bad reputation in getting information by force from the Mujahideen  
19 and they say that we will be taking you to Egypt. Why? Because they  
20 don't have any criteria regarding the human rights and they use the  
21 torture.

22 I'll tell you from my experience, that the Arab regimes  
23 that used the torturing procedure to get the information from the

1 Mujahideen who are fighting them, they are torturing them in order to  
2 get the information.

3           But America for 4 years, I'm sorry, I'm sorry I made a  
4 mistake with the numbers, since 2002 until now, practice the  
5 torturing but in a more civil way and smart and tortures for the  
6 calls of torturing, not only tortures to extract information believe  
7 me the war between you and us is not a war of human rights, but in  
8 fact it is a struggle between two curriculumms in the land.

9           The course that I would accept that the laws are to be done  
10 by Allah and the other one perceive that they have to set the law for  
11 the people in the land.

12           I am not here giving a lecture, and I am not trying to  
13 teach you, I'm trying to just explain to you and the Arabic Regimes  
14 that we will continue in the War of Jihad. And nothing is going to  
15 stop us. No matter how many youth you kill. Or even you imprison  
16 them, even if the entire nation of Cuba became apostate, I'm not  
17 saying the nation, I'm saying the detainees, in Cuba, even if they  
18 abandon their religion, and they allied with America, that's not  
19 going to stop, I say that the struggle will continue.

20           So you must, not to oppress the people in the land, your  
21 oppression against us and your support to your strategic allies in  
22 the region is what made me leave my house.

1           And today, I'm telling you and you are a man of the law, if  
2 you sentence me to life, if you imprison me in America or in this  
3 island or even in--on the moon, even though I believe that traveling  
4 to the moon was only a media thing, a propaganda in English, however,  
5 I'll tell you if you sentence me, me and the others will be the  
6 reason for the continuation of the war against America.

7           We are in the Islamic faith, if one person was detained  
8 within the enemy, the entire nation of Islam must work on getting him  
9 out. And today, more than a thousand men were in Cuba, and the  
10 Regimes that claim that they rule by the Islamic laws and the Islamic  
11 world abandoned their citizens and the nations and those countries  
12 can not get their people out.

13           I'll tell you before;--whoever started the war against you  
14 was just one man. His name was Ramzi, Ramzi Yousef. Then after him  
15 came Usama Bin Laden, that was a man and that's an organization.  
16 Tomorrow will be a nation. I'll tell you, you are the losers, if you  
17 kept us in this island----

18           MJ [COL BROWNBACK]: ----Just a second, just a second.  
19 Interpreter, can you jack up the volume coming into the courtroom  
20 please.

21           CT INT: Yes, Your Honor.

22           MJ [COL BROWNBACK]: Okay, give me a test.

23           CT INT: One, two, three, test, one two----

1 MJ [COL BROWNBACK]: Good, stop. Continue.

2 I'm sorry, Mr. al Bahlul.

3 ACC [MR. AL BAHLUL]: I don't care that you interrupt the media  
4 from listening, trust me, I am a media man myself, I know the effect  
5 of the media, but I really don't care; that my words, you will get  
6 nothing out of it.

7 Just like that woman there, she's short-handing and writing  
8 whatever is being said in the court and all the video equipments  
9 around here, audio and video is recording. I'll tell you there is  
10 another recording from God of man-kind.

11 Your Honor, I'll tell you, there is no reason for you to  
12 make the court sessions too lengthy, in my case, only me, why?  
13 Because if you do make them lengthy, you want to tell the entire  
14 world that I am a criminal. Fine, I told you that the measures of  
15 innocence or incriminations are different.

16 In your opinion, Bin Laden is a criminal. And Bush and the  
17 American government, in Bin Laden's opinions, are criminals. When we  
18 have our differences and the measures of innocence and criminality,  
19 we will not go ask the rulings of your perception or our perception.

20 We will not seek to rule. If our perception varies then,  
21 then we will not ask the ruling to an impartial thing. Allah, the  
22 All Mighty, has sent a law and you will never go by that law. We  
23 also shall never rule by your laws.

1           Then stop oppressing us, so we can stop fighting you. I  
2 say again, I am totally responsible of my actions and I am awaiting,  
3 to announce to the world your evidence, I'm not challenging you, I'm  
4 not challenging your evidence or the laws.

5           They say that confession is the best way of a--the best  
6 evidence. Confession is the master of evidence; I am telling you  
7 don't just be satisfied with a master of evidence. Come and present  
8 your evidence, I remember that Sheikh Usama Bin Laden had instructed  
9 me to leak a tape to America, it's length is 49 minutes and 39  
10 seconds, no, no, 40--39 or 40 minutes. My picture is in it; my  
11 picture is in it with Bin Laden. I'll tell you all the evidence that  
12 you have and the witnesses; start by exposing to the world, I--I have  
13 no problem with that. Take your legal actions we are--we don't care  
14 how we shine yourselves. War shall continue and it shall continue.

15           My name is Ali Hamza, I'm saying the name Ali Hamza is not  
16 my name became in your legal documents, is a historic event in court,  
17 legal that you can measure by it in the future, just like any  
18 historic events. I don't care how you behave about; I'll tell you  
19 I'm just waiting for your sentence. Whether you show that you are  
20 impartial or partial, I don't care. What I care about is that I am  
21 responsible for my own actions. I am responsible for my own actions  
22 in this world and in the afterworld I will not deny my actions  
23 because I don't consider it to be a crime.

1           If you consider me to be a criminal that is up to you; I  
2 don't care. It's not that I don't care because I don't understand,  
3 no, but you are--you have your own belief and principles and  
4 understandings and your situations. Same thing to us, we are  
5 different than you, go ahead start, what are you waiting for, if you  
6 sentence me.

7           Today I said, "I give up my Yemeni citizenship"; yes I say  
8 that I give up the citizenship of a political regime, but I did not  
9 give up my geographical citizenship. There is geographical  
10 citizenship and a political citizenship and the regimes can just  
11 create them as they want.

12           I don't care--I don't have a problem if you keep me in this  
13 island or in America or even with your allies, Ali Abdulla Salih. I  
14 say to you and to the whole world that I, Ali Abdulla Salih had  
15 cooperated with the Mujahideen Regime and when--and when he was  
16 embarrassed by Bush when he said "whoever is not with us would be  
17 considered against us". He decided that he would be with America;  
18 good. Fine; we will not stop from our fight and against America and  
19 its strategic allied, the Jews. But the followers such as Ali  
20 Abdulla Salih and King Abdullah and the presidents of the Arab  
21 Regimes who are being hypocrite with the nations that they are  
22 ruling; by ruling the Muslims.

1           They have double-face, a face with America and face with  
2 one face with the mujahideen, one face with the Muslims and the  
3 America as well, also has two faces; the face of the hypocrisy and  
4 the face of democracy. At all cases, we are--when Bin Laden was  
5 asked about the Arab regimes, he said that these regimes do not  
6 belong to Islam anyway, but he neutralized it and fought America and  
7 he made that entire world join and enter a big historical event;  
8 changed the balances of the Earth.

9           Show me enough bravery by sentencing me; leave me, I will  
10 not be upset with anything you judge against me. Doesn't matter to  
11 me; if you kill me, if you take me to kill me, I believe in your  
12 martial-court--commission, there is a law that says the president has  
13 the right to change the law or to make it less or even ban it for  
14 political reasons.

15           Trust me, Omar Abdel Rahman was a mature man, but he had no  
16 room in Islamic world because he was a scholar. You arrested him in  
17 America; for you to keep him there was a reason for us to go out, and  
18 for you to keep me and people who are like me, would be a reason for  
19 other Muslims to come out. You choose the way of war, you're the  
20 ones who want it to continue. We fight to stop the oppression  
21 against us. Why do you oppress us? Then, one by one, and whoever is  
22 tired is the loser, an eye for an eye.



1           Your--judge wait, I mention the name of Judge Brownback,  
2 yes, I say, "I am waiting until you start the trials to the media and  
3 to the world. I will be here." I would say, "Yes, this is a correct  
4 evidence." Present it and let the whole world see it. You have a  
5 screen there and I will say that this evidence is not right.

6           I told you Omar Abdel Rahman went out to kill a president  
7 of a country, he gave fatwa. He gave a ruling to kill a president of  
8 a country and a dictator regime like Egypt, even though he was--he  
9 came out of this case. Then what is the difference between the  
10 military regimes and their presidents, who wear the civilian clothes  
11 and say that we are civilian authority, and between America, who say  
12 that we are civilian authority and the military regime does not  
13 control the civilian authority and today they are wearing uniform,  
14 the military uniform.

15           And this court, where I am being tried now, is a military  
16 commission. Trust me; don't tell me that I do not understand about  
17 politics. I know your principles more than you are. The entire case  
18 of Cuba, if it has a political wing and a legal angle, then the  
19 angle, the military angle controlled the politics and the law.

20           Today, when you started with this trick--me not him--when I  
21 started the trick, I told the military counsel to sit far from me, so  
22 that a judge can give you the order. But the judge was smart; he did  
23 not use the military order to empty the seat. I remember last time,

1 he brought me a lawyer by the rank of Lieutenant, not here but when I  
2 met him, I told him to stay at the far end of the table, you are not  
3 my lawyer. He said, "Yes, I will respect your principles", his  
4 principles and if Judge Brownback had asked me, to give a military  
5 order to sit next to you as a military lawyer for you, guess what the  
6 answer was? He said he can't and he pointed up to his military rank,  
7 he said we are with the same rank and he can not give me an order and  
8 today he brought me a Major.

9           The process is not going to go by the military orders,  
10 usually the military people who use the force remind me of the horses  
11 that they have a plastic piece that covers their eyes, so they can  
12 only look straight ahead. Go ahead and accomplish and then complain.

13           Today I'm happy because the Arabic regime, the military  
14 Arabic regimes that comes in with a tank and leave with a tank, comes  
15 with a coup and leaves with a coup and the Consecutive American  
16 regimes comes with a coup and leaves with a coup, or comes with  
17 action and when then the--then another party will take over. This is  
18 the political freedom today in this military court; it became  
19 nothing, why; because you are the West, especially America.

20           You couldn't confront us unless you had to use the military  
21 force and we--when you used the military force against the Muslims,  
22 regardless to the political cover, you suggested after 9/11 you come  
23 back and to wear the uniform of democracy, so this way you don't lose

1 the gains of the democracy in the Islamic region; who have achieved  
2 gains, especially the secretary and the secular parties.

3           The continuation of this military court, its rule over the  
4 world and its marginalization of all international military laws is a  
5 gain we have achieved. Not because we want you to rule the world  
6 with this logic, but because we have revealed the masks. Thus I am  
7 waiting for you to hearings, present evidence to the world, and when  
8 to issue the verdict. I am ready.

9           I think I have explained my understanding of self-  
10 representation and my attendance in the upcoming trials, when you  
11 start presenting evidence and witnesses. I am ready.

12           MJ [COL BROWNBACK]: Okay. Mr. al Bahlul, I have listened to  
13 you quite faithfully for over an hour.

14           ACC [MR. AL BAHLUL]: Thank you.

15           MJ [COL BROWNBACK]: My question to you is; do you want to  
16 represent yourself?

17           ACC [MR. AL BAHLUL]: I just explained to you my understanding  
18 of self-representation; meaning that I am waiting for you to show the  
19 world your evidence. I am not going to challenge that. I am not  
20 guilty; I am not a criminal and I have carried out actions against  
21 America. That is it, you are a person of law, you are a judge, and  
22 you now have the government's evidence in your possession. I am not  
23 speaking from my point of view, but from your point of view, whether

1 I am innocent or guilty. Review the issues you have and decide. I  
2 am awaiting your decision.

3 MJ [COL BROWNBACK]: I've listened to your discussion, I've  
4 listened especially to your description of innocence and criminality  
5 and how it depends on one's viewpoint. I am not here today to  
6 determine whether you are guilty, not guilty or anything else.

7 **[The accused spoke in Arabic.]**

8 MJ [COL BROWNBACK]: What did he just say?

9 ACC [MR. AL BAHLUL]: I know that.

10 MJ [COL BROWNBACK]: What I am here for today is to determine  
11 certain matters that I have to find out. Among them is, do you want  
12 to represent yourself? Now, I have--Trial, do you object to me  
13 taking notice of Mr. al Bahlul's statements and other interactions  
14 that are revealed by the transcripts of August 2004 and January 2006?

15 TC [MAJ COWHIG]: No, Your Honor.

16 MJ [COL BROWNBACK]: The--I have listened to you and talked with  
17 you for quite a while and I am convinced that you understand that for  
18 this military commission, Major Frakt knows more about the rules and  
19 procedures and--and how things are done here. I am convinced that  
20 you understand that, do you?

21 ACC [MR. AL BAHLUL]: You understand the laws more than I do.

22 MJ [COL BROWNBACK]: Yes, thank you. Now and therefore I find  
23 that you're competent to make decisions to represent yourself and

1 that no one is forcing you to do it and that you understand what you  
2 are losing when you do it, is that correct?

3 ACC [MR. AL BAHLUL]: Yes it's true, but do I have to wait  
4 another four or five years? This is the fourth year for this hearing  
5 I have. Have you ever seen in your court, in your life as a judge, a  
6 hearing that lasts 4 years?

7 MJ [COL BROWNBACK]: Mr. al Bahlul, I have been with you here  
8 for these 4 years so I know how long you have been here. Once we  
9 decide who is going to represent you, I will then proceed with  
10 setting some dates. But I am just a--I must--I have my own need to  
11 get what I need done, therefore I ask you again,

12 Do you want to represent yourself?

13 ACC [MR. AL BAHLUL]: My final answer you will get from me. Are  
14 you going to order a termination of the--of the connection to the  
15 media? Listen to the answer.

16 MJ [COL BROWNBACK]: Just a second. You all, back in the  
17 Gallery, can you'll hear me?

18 **[The observers in the gallery indicated that they are able to hear.]**

19 MJ [COL BROWNBACK]: Yeah, raise you hand. They can hear me.

20 ACC [MR. AL BAHLUL]: Yes, listen carefully. Ask them, did they  
21 hear my whole statement?

22 MJ [COL BROWNBACK]: Did you all hear Mr. al Bahlul speaking  
23 before; he was talking for about an hour?

1 [The observers in the gallery indicated that they heard the accused's  
2 statement.]

3 MJ [COL BROWNBACK]: Mr. al Bahlul, let me put this on the  
4 record. Yes, they all just raised their hand to say they've heard.

5 Go on.

6 ACC [MR. AL BAHLUL]: I saw them. Listen to me; I am not ready  
7 to continue this court in this manner. Thus, I declare my rejection  
8 to this court, my continuation of the boycott, and renew my pledge of  
9 allegiance to Sheikh Usama bin Laden in his fight against America.  
10 Also, the boycott I wrote on 11 January 2006, and it which  
11 corresponds to 11-12-1426 of the Muslim calendar, I wrote the boycott  
12 in English and Arabic. Then, for your information, I want you all to  
13 know that there are two lines, the judge may look at them in the  
14 paper he has, and I will say exactly what they are. I said this in  
15 2006, and at the time, I said this boycott is the result of an  
16 objection, followed by renunciation. It is a result to an objection,  
17 and it follows an expression--annunciation, repeat it, can you repeat  
18 it.

19 You the interpreter can say in English, say it, go ahead,  
20 renunciation, to the end ruling and final; therefore I will continue  
21 with the boycott and I explained my opinion to the defense in the  
22 past hour.

1           Do whatever you wish, do whatever you wish, do what you  
2 wish. Thank you.

3           MJ [COL BROWNBACK]: Mr. al Bahlul, I will now ask you one more  
4 time, do you want to represent yourself?

5 **[The accused held up an Arabic sign.]**

6           MJ [COL BROWNBACK]: Let the record reflect that Mr. al Bahlul  
7 is holding up AE 20, the boycott sign. And while he is looking at  
8 me, he is not saying a word. The court continues in its finding that  
9 Mr. al Bahlul understands the point of boycotting. However, the  
10 court also finds that by boycotting he can not represent himself. The  
11 commission at the point, direct the bailiff to take these three  
12 signs--come here, and hold them up one at a time so that the Gallery  
13 can see them. I'm going to give you 30 seconds to do it and hold the  
14 sign too--I'm talking about AE 19 and 20; then we will continue on.

15           Go on. Make sure they are in sequential order. There's  
16 1, 2, 3 of them.

17 **[The bailiff did as directed.]**

18           MJ [COL BROWNBACK]: Did you show the boycott sign too, that was  
19 from 2006?

20 **[The bailiff nodded in response.]**

21           MJ [COL BROWNBACK]: Okay, bring them back.

22 **[The bailiff did as directed.]**

1 MJ [COL BROWNBACK]: Consequently, Major Frakt, you are by  
2 default representing Mr. al Bahlul, do you understand that?

3 DC [MAJ FRAKT]: Your Honor, my interpretation of what Mr. al  
4 Bahlul said, was that he understands the consequences of self-  
5 representation and he was objecting to representation by counsel. He  
6 is prepared to proceed to trial, but not putting on a defense. I  
7 believe that it is the defendant's right to represent himself and to  
8 not put on a defense.

9 So I prefer to honor Mr. al Bahlul's wish in that regard.

10 CT INT: Judge, the interpreter did not hear that.

11 MJ [COL BROWNBACK]: What do you say, Trial?

12 TC [MAJ COWHIG]: Sorry, Your Honor, the interpreter asked for  
13 Mr.--Major Frakt to repeat his last answer.

14 MJ [COL BROWNBACK]: Please, you have got to speak up or speak  
15 into the microphone.

16 TC [MAJ COWHIG]: Sir, the interpreter asked Major Frakt to  
17 repeat his last statement because she was unable to--feedback----

18 MJ [COL BROWNBACK]: Okay, Go on----

19 TC [MAJ COWHIG]: ----translate.

20 DC [MAJ FRAKT]: I would prefer to res--respect Mr. al Bahlul's  
21 wishes.

22 MJ [COL BROWNBACK]: Now, what do you say?



1 TC [MAJ COWHIG]: Sir, I'm certain the role of the Military  
2 Commissions Act requires defense counsel to fulfill on behalf of the  
3 accused where the accused chooses to simply boycott proceedings. I  
4 don't know that I can give you coherent synopses of here today, sir.  
5 But I think it would be helpful for defense counsel and the accused  
6 to find co-representation.

7 MJ [COL BROWNBACK]: You all stand in place; I'll be back in 5  
8 minutes. I'm going to think.

9 The court is in recess.

10 **[The R.M.C. 803 session recessed at 1157, 7 May 2008.]**

11 **[The R.M.C. 803 session was called to order at 1159, 7 May 2008.]**

12 MJ [COL BROWNBACK]: Let the record reflect that all the parties  
13 present when the court last recessed are once again present. Okay.

14 Trial, can you point me to anything in the M.C.A. or the  
15 M.M.C. that said that Mr. al Bahlul can not stand mute as his  
16 defense?

17 TC [MAJ COWHIG]: No, sir. There is nothing that indicates that  
18 he does not have that right.

19 MJ [COL BROWNBACK]: Fur--don't sit down--further, assuming that  
20 Mr. al Bahlul sits as he is doing now and doesn't disturb the  
21 courtroom, do you believe that standing mute is actions which will  
22 depart from the decorum that requires?

23 TC [MAJ COWHIG]: No, sir.

1 MJ [COL BROWNBACK]: The commission continues in its finding  
2 that Mr. al Bahlul understands the perils of representing himself.  
3 The commission finds that there is nothing which forbids standing  
4 mute. The commission is quite willing, if it's wrong to have its  
5 mistake pointed out to him at a later time----

6 CT INT: Could the judge repeat what he just said for the  
7 interpreter?

8 MJ [COL BROWNBACK]: The commission is quite willing if it's  
9 wrong, to have the mistake pointed out to him at a later time. The  
10 commission directs that Major Frakt act as standby counsel prepared  
11 to take the defense role if it becomes so necessary.

12 Okay, Trial, do you have voir dire for the military judge?

13 TC [MAJ COWHIG]: No, Your Honor.

14 MJ [COL BROWNBACK]: Mr. al Bahlul, do you want to ask me any  
15 questions that I should--why I could not sit in this case.

16 CT INT: Judge, the interpreter can not hear this, there must be  
17 a problem with the equipment going in and out.

18 MJ [COL BROWNBACK]: Mr. al Bahlul, do you want to ask me any  
19 questions, which might show why I should not be the judge?

20 **[The accused did not answer the question.]**

21 MJ [COL BROWNBACK]: Apparently, Mr. al Bahlul is refusing to  
22 answer. I've considered my dealing with Mr. al Bahlul since 2004 to  
23 2006 and I find nothing in there that would cause any reasonable

1 person to think that I am biased for or against Mr. al Bahlul. I find  
2 that I am qualified to serve as the military judge in this  
3 commission.

4 Counsel for both sides, Trial, do you understand your  
5 responsibilities for safeguarding and securing classified  
6 information?

7 TC [MAJ COWHIG]: Sorry, Your Honor. I was waiting for the  
8 translation.

9 CT INT: Judge, the interpreters are trying to take care of the  
10 equipment problems. We can't hear you very well.

11 MJ [COL BROWNBACK]: Okay, how about now?

12 CT INT: Much better.

13 MJ [COL BROWNBACK]: Okay. Trial, do you understand your  
14 responsibilities about safeguarding classified information?

15 CT INT: Judge, we can not hear that. It's--the voice is  
16 cutting out.

17 MJ [COL BROWNBACK]: I'm not yelling at you, Translator--doing--  
18 just wait a second.

19 Bailiff, see that mike there? Turn it on. Is it turned  
20 on? Speak into it; see if you can hear it.

21 BAILIFF: Test, 1, 2, 3, 4.

22 MJ [COL BROWNBACK]: Can you hear that, Interpreter?

23 CT INT: We can hear from that microphone, Judge.

1 MJ [COL BROWNBACK]: Fine.

2 **[The military judge moved to a different seat in the courtroom**  
3 **located at the same table as the accused but on the opposite end.]**

4 MJ [COL BROWNBACK]: Let the record reflect that the military  
5 judge has moved because the AV equipment in here is not working.

6 Trial, if you have any questions about safety of witnesses,  
7 you will notify me as soon as possible, right?

8 TC [MAJ COWHIG]: Yes, Your Honor.

9 MJ [COL BROWNBACK]: Protective Orders number 1, 2 and 3 issued  
10 in January 2006. After the President's Executive Order of 14  
11 February 2007, there are some questions concerning their continuing  
12 validity.

13 Trial, you prepare a replacement and bring it to me and if  
14 I determine they're correct, I'll sign them.

15 TC [MAJ COWHIG]: Will do, Your Honor.

16 MJ [COL BROWNBACK]: Trial, have you updated and reviewed the  
17 filings inventory?

18 TC [MAJ COWHIG]: Yes, Your Honor.

19 MJ [COL BROWNBACK]: Any problems with it?

20 TC [MAJ COWHIG]: No problem, Your Honor.

21 MJ [COL BROWNBACK]: The accused will now be arraigned.

1 MJ [COL BROWNBACK]: All personnel appear to have the requisite  
2 qualifications, and all personnel required to be sworn have been  
3 sworn.

4 Mr. al Bahlul, have you received a copy of the charges in  
5 this case?

6 **[The accused did not respond to the question.]**

7 MJ [COL BROWNBACK]: Let the record reflect that Mr. al Bahlul  
8 is not answering.

9 You got a copy of the charges there?

10 CT INT: Your Honor, from the interpreter, can you bring the  
11 microphone closer, thank you?

12 **[The military judge did as requested.]**

13 MJ [COL BROWNBACK]: Okay trial, do you have a copy of the  
14 charges that was served on Mr. al Bahlul?

15 TC [MAJ COWHIG]: Not present here in court, Your Honor, I do  
16 have a copy of the translated charge sheet.

17 MJ [COL BROWNBACK]: You have it in Arabic?

18 TC [MAJ COWHIG]: Yes, Your Honor.

19 MJ [COL BROWNBACK]: Do you have anything that you don't want  
20 Mr. al Bahlul to see in there?

21 TC [MAJ COWHIG]: No, Your Honor.

22 MJ [COL BROWNBACK]: Hand it to Mr. al Bahlul.

23 **[The trial counsel did as directed.]**

1 DC [MAJ FRAKT]: Your Honor, I have a copy that contains both  
2 the English and the Arabic records.

3 MJ [COL BROWNBACK]: Let the record reflect that the bailiff is  
4 now handing or placing in front of Mr. al Bahlul a copy of the  
5 charges in English and Arabic.

6 Announce the general nature of the charges, please.

7 TC [MAJ COWHIG]: The general nature of the charges in this case  
8 is one Specification of conspiracy, to murder protected persons,  
9 attack civilians, attack civilian objects, commit murder in violation  
10 of the law of war, to destroy property in violation of the law of  
11 war, to commit terrorism, and to provide material support for  
12 terrorism. And one Specification of material support to terrorism.

13 MJ [COL BROWNBACK]: Does the accused desire the charges be  
14 read?

15 **[The accused did not answer the question.]**

16 MJ [COL BROWNBACK]: Mr. al Bahlul is not answering.

17 Trial, please read the charges in English.

18 TC [MAJ COWHIG]: Yes, Your Honor.

19 **[The charges were read in English in the courtroom. During the**  
20 **reading of the charges, the power in the courtroom went-out, causing**  
21 **lights in the courtroom to go out and the alarm to sound. Because**  
22 **the courtroom is a Sensitive Compartmented Information Facility,**  
23 **there are no exterior windows. The courtroom went dark. Emergency**

1 lighting in the gallery as well as exit lights near some of the doors  
2 to the courtroom came on, providing minimal illumination. Courtroom  
3 security personnel responded to the alarm and the darkness by moving  
4 closer to the accused. Three of the courtroom security personnel  
5 moved to positions within an arm's reach of the accused. The  
6 commission recessed in place for one minute at 12:30 and was called  
7 back to order at 12:31. The military judge ordered for the  
8 continuation of the reading of the charges.]

9 [During the reading of the charges, trial counsel corrected his  
10 earlier misstatement of the general nature of the charges, announcing  
11 the solicitation specification. The recording equipment functioned  
12 properly throughout the power failure.]

13 [THE CHARGE SHEET FOLLOWS AND IS NOT A NUMBERED PAGE.]

14 [END OF PAGE]

1 MJ [COL BROWNBACK]: The Accused and Counsel, please rise.

2 **[The defense counsel did as directed; the accused did not.]**

3 MJ [COL BROWNBACK]: Let the record reflect that Mr. al Bahlul  
4 has not arisen. Mr. al Bahlul, I now ask you how do you plead but I  
5 advise you that any motion addressed under R.M.C. 905(b) must be made  
6 prior to the answer of pleas.

7 Do you desire to enter a plea?

8 **[The accused did not respond.]**

9 MJ [COL BROWNBACK]: Apparently not.

10 The commission could enter a plea of guilty at this time.  
11 Entering such a plea would cut off certain motions the commission has  
12 hopes that Mr. al Bahlul--let the record reflect that the lights just  
13 came back on--the commission has hopes that Mr. al Bahlul will  
14 sometime accept the assistance of counsel so it will not enter pleas  
15 at this time. There have been two meetings of counsel and the  
16 military judge and these have been attached to the record as AE 15  
17 and 17. And both sides--well, prior to today, both sides have agreed  
18 to those descriptions.

19 Once again, I am taking note that Mr. al Bahlul was  
20 arraigned on 11 January 2006, on a specification of conspiracy. The  
21 commission will take--not take any further action *sua sponte* on that  
22 matter.

23 Trial schedule, I want to put the following on the record:



1 Major Frakt was detailed to this case on 28 April 2008. He  
2 was detailed to another case on the same day. He's had no assistant  
3 detailed counsel. The paralegal is also the paralegal on another  
4 case and one of the HVD cases.

5 **[The defense paralegal corrected the military judge.]**

6 MJ [COL BROWNBACK]: I've just been corrected, but she's the  
7 paralegal on another case at least. The commission has considered  
8 those matters; the commission has also considered Mr. al Bahlul's  
9 wishes to get going. If Mr. al Bahlul requests that any motions be  
10 briefed to the commission, those motions will be due on the 9th of  
11 June.

12 The commission had initially determined that 27 May would  
13 be a good day. Given the matters that arose this morning--**[speaking**  
14 **to the interpreter]** go on--the commission has decided that in the  
15 interest of justice and the interests of the parties and the public,  
16 a delay be entered in the record that Mr. al Bahlul might decide to  
17 accept some form of legal assistance. I am setting the next session  
18 of this case for the 26th and 27th of June 2008. I am setting it  
19 there once again, because I am hopeful that Mr. al Bahlul will decide  
20 to accept some offer of assistance.

21 The commission has been advised of prior meetings, it was  
22 stated there were some problems involved in passing messages from  
23 Major Frakt to Mr. al Bahlul.

1           Trial, you will determine if there is a problem and if  
2 there is, you clear it up. If you can't clear it then you know where  
3 I am.

4           TC [MAJ COWHIG]: Yes, sir.

5           MJ [COL BROWNBACK]: Trial, I want you to get with your higher  
6 ups and provide me with your best shot at how discovery should be  
7 given to Mr. al Bahlul.

8           TC [MAJ COWHIG]: Yes, sir, and that's one of the areas we  
9 anticipate the greatest difficulty because of the requirement to----

10          MJ [COL BROWNBACK]: You have to speak up because they can't  
11 hear you, come on up to the podium.

12 **[The trial counsel did as directed.]**

13          TC [MAJ COWHIG]: Yes, sir, and that's one of the areas we  
14 anticipate the greatest technical difficulty because of the  
15 requirement to both protect information and make it available to the  
16 defense.

17          MJ [COL BROWNBACK]: Which is why I am the military judge, but  
18 that problem is on your back to tell me how you're going to do it.

19          TC [MAJ COWHIG]: Yes, Your Honor.

20          MJ [COL BROWNBACK]: Mr. al Bahlul, when I asked you how do you  
21 plead, you were arraigned. If at any future session of this court,  
22 you are not present and the military judge determines that your

1 absence is voluntary, the commission can and will proceed without  
2 you.

3 Do you understand that?

4 **[The accused did not respond.]**

5 MJ [COL BROWNBACK]: Mr. al Bahlul, once again, is saying  
6 nothing. However, the court continues in its finding that he  
7 understands what the court said.

8 Anything further before I recess?

9 TC [MAJ COWHIG]: Yes, Your Honor.

10 The government would ask that you take judicial notice of  
11 five items. These are the--essentially the historical record of the  
12 United States law of land warfare since the Civil War.

13 The items, sir, are first, the General Order 100, more  
14 commonly referred to as a "Lieber Code" from 1863;

15 The Rules of Land Warfare from the Department Documents  
16 number 467, from 1914;

17 The third item, a portion of the War Department Basic Field  
18 Manual, specifically Volume 7, Military Law, Part II, titled "The  
19 Rules of Land Warfare", from 1934;

20 The fourth item, War Department Field Manual 27-10, Rules  
21 of Land Warfare, 1940;

22 The fifth item, Department of the Army FM 27-10, The Law of  
23 Land Warfare from 1956 with Change 1, 1973.

1           We've provided these in digital format to the defense and  
2 to the Clerk, Your Honor, and they've been translated into Arabic and  
3 we could provide that the Arabic version to the Defense.

4           MJ [COL BROWNBACK]: After you provide me with your dissertation  
5 on how you intend to provide discovery to Mr. al Bahlul, I'll  
6 consider your judicial notice.

7           TC [MAJ COWHIG]: Yes, sir.

8           MJ [COL BROWNBACK]: Anything further? Okay, here is another  
9 further coming up?

10          TC [MAJ COWHIG]: Nothing further, Your Honor.

11          MJ [COL BROWNBACK]: Mr. al Bahlul, before I recess, do you want  
12 to say anything?

13 **[The accused did not respond.]**

14          MJ [COL BROWNBACK]: Apparently not, the commission will meet on  
15 further--future call.

16           The court is in recess.

17 **[The R.M.C. 803 session recessed at 1250, 7 May 2008.]**

18                               **[END OF PAGE]**

1 [The R.M.C. 803 session was called to order at 0945, 15 August 2008.]

2 MJ [COL GREGORY]: Good morning.

3 TC [MAJ COWHIG]: Good Morning.

4 DC [MAJ FRAKT]: Good morning.

5 MJ [COL GREGORY]: Before we proceed, let me just summarize  
6 where we are. To the best of my understanding, we are continuing  
7 today a hearing that was conducted back on the 7th of May of 2008 by  
8 Judge Brownback. I am obviously not Judge Brownback. At that  
9 hearing, Judge Brownback determined that Mr. Bahlul had elected to  
10 represent himself. He proceeded through arraignment and set a  
11 motions due date of 9 June. Mr. Bahlul did not enter a plea at that  
12 time based on my reading of an unofficial transcript because, as  
13 Judge Brownback stated, he hoped that Mr. Bahlul would, at some time,  
14 accept the assistance of counsel.

15 In the interim, the government has requested that the  
16 commission revisit the issue of whether Mr. Bahlul may proceed pro  
17 se, and I'll return to that issue after we take care of some  
18 preliminary matters.

19 So first, let me turn to trial counsel, Major Cowhig, are  
20 there any changes to the convening orders in this case that you need  
21 to announce?

1 TC [MAJ COWHIG]: There are no changes to the convening  
2 authority, Your Honor, but there are some changes to the parties in  
3 addition to the Judge.

4 MJ [COL GREGORY]: Right, getting to that in the next line. As  
5 I said, Judge Brownback began this hearing back in May--May the 7th,  
6 I believe. He has left active duty and resumed his retirement, and I  
7 want to--I'm sure everyone would join me in commending his diligence  
8 and hard work as a commission's judge.

9 I was detailed to this case----

10 TC [MAJ COWHIG]: I'm sorry, Your Honor. I just noticed that  
11 Mr. Al Bahlul is not wearing his headphones, so he may not be able to  
12 understand the proceedings----

13 MJ [COL GREGORY]: Mr. Bahlul you're not getting--well, he's not  
14 wearing his headset.

15 Are you acting as a translator here?

16 DEF INT: Yes, sir.

17 DC [MAJ FRAKT]: Your Honor, there is--Ali is the assigned or  
18 detailed defense interpreter; however, there's a court interpreter  
19 who interprets into the headphones----

20 MJ [COL GREGORY]: Right.

21 DC [MAJ FRAKT]: If Mr. Al Bahlul--what has happened in the  
22 past, if Mr. Al Bahlul chooses not to wear the headphones, they have

1 simply broadcast the interpretation into the courtroom. You can  
2 order that if you so desire.

3 MJ [COL GREGORY]: Would the--would your interpreter there  
4 seated with you, ask Mr. Bahlul if he wants to wear the headphones or  
5 if he wants it broadcast through the speakers.

6 DEF INT: Yes, sir. **[The accused starts to speak in Arabic.]**

7 I can answer that question.

8 MJ [COL GREGORY]: Good.

9 DEF INT: He would rather have the court's translator to do the  
10 translation, sir.

11 MJ [COL GREGORY]: Through the speakers?

12 DEF INT: Yes, sir.

13 MJ [COL GREGORY]: Okay.

14 ACC [MR. AL BAHLUL]: I can only hear without the headphones and  
15 I would like to thank the Judge for this notice of motions, sir.

16 MJ [COL GREGORY]: Well, okay. We'll do it. We'll broadcast  
17 through the speakers. In fact, I believe the translators have  
18 already started doing that.

19 And, translators, wherever you are, if you'll just let me  
20 know if there's a problem with doing that.

21 CT INT: We're fine, Your Honor.

1 MJ [COL GREGORY]: Good. Can everyone in the gallery hear  
2 through the speakers? Everyone? **[The military judge received a**  
3 **positive response.]** Okay, good.

4 DC [MAJ FRAKT]: Your Honor, one--there was a document that Mr.  
5 Al Bahlul had requested earlier this morning, I've been provided the  
6 relevant transcript pages and would like to give that to Mr. Al  
7 Bahlul at this time.

8 MJ [COL GREGORY]: Can we wait until we introduce the new people  
9 who are here?

10 DC [MAJ FRAKT]: Yes, Your Honor.

11 MJ [COL GREGORY]: And then I'll get right to that after we  
12 introduce these new people first. I thought you had an--there we go;  
13 I couldn't see you behind the mandatory courtroom pillars.

14 Well, let's see, we were at the part where we're going to  
15 account for some new people who are here. Obviously, as I've said,  
16 I'm not Judge Brownback. I've been detailed to this case by the  
17 Chief Judge of the Military Commissions Trial Judiciary, and I have  
18 been previously sworn under R.M.C. 807. I am certified and qualified  
19 in accordance with Articles 26(b) and (c), and 42(a) of the Uniform  
20 Code of Military Justice, as well as R.M.C. 503, and I'll include a  
21 copy of the letter detailing me as Appellate Exhibit 24.

22 Turning to the trial counsel table, I recognize Major Hale  
23 as being a new person. Would you like to introduce yourself?



1           ATC [MAJ HALE]: Good morning, Your Honor. I'm Major Charles  
2 Hale. I've been detailed to this case and replaced Mr. Zelnis, who  
3 has been--a copy of the detailing and withdrawal letter have been  
4 provided to the commission for attachment as the--as an appellate  
5 exhibit in an earlier filing. I've been sworn in accordance with the  
6 applicable Rules for Military Commission.

7           MJ [COL GREGORY]: And what appellate numbers should we give  
8 that? 27, I believe.

9           ATC [MAJ HALE]: We were informed just next in order. At this  
10 time, I do not have those numbers.

11          MJ [COL GREGORY]: Okay, that's fine.

12          ATC [MAJ HALE]: For purposes of the record, Your Honor and I  
13 had a prior billet. I was a military judge and noticed the Court.  
14 You may recall where we had professional interactions as military  
15 judges. At least one conference, in which I was a group leader,  
16 sponsored by the National Judicial College involved in handling  
17 capital cases. I was a group leader for that conference group.

18                 Thank you.

19          MJ [COL GREGORY]: Thank you. Let's see. Over to defense  
20 table, I recognize that--I hope I get this right, I've practiced it;  
21 Lieutenant Commander Doxakis?

22          ADC [LCDR DOXAKIS]: Yes, sir.

23          MJ [COL GREGORY]: Go ahead, either of you.

1 DC [MAJ FRAKT]: Lieutenant Commander Catherine Doxakis has been  
2 detailed as assistant defense counsel. She is qualified, certified,  
3 and sworn under the relevant provisions of the Rules for Military  
4 Commission.

5 Lieutenant Commander Doxakis has not had the opportunity to  
6 meet with Mr. al Bahlul and, at this point, does not have attorney-  
7 client relationship with Mr. al Bahlul.

8 Also at the defense table, Staff Sergeant Joshua Runkles,  
9 detailed defense paralegal.

10 MJ [COL GREGORY]: I can see.

11 DC [MAJ FRAKT]: That's R-U-N-K-L-E-S.

12 MJ [COL GREGORY]: Is there any type of detailing document that  
13 we need to put in the record?

14 DC [MAJ FRAKT]: I don't believe that's required under the  
15 rules.

16 Commander Doxakis' detailing is Appellate Exhibit 25.

17 MJ [COL GREGORY]: All right. Thank you.

18 I assume, Trial Counsel, that the translators have been  
19 previously sworn and their CVs marked as appellate exhibits and  
20 sealed, is that correct?

21 TC [MAJ COWHIG]: Sir, they have been previously sworn. Their  
22 CVs will be marked as appellate exhibits and sealed.

23 MJ [COL GREGORY]: They have been sworn?

1 TC [MAJ COWHIG]: Have been sworn, but their CVs will be  
2 provided to the court for preparing the record, sir.

3 DC [MAJ FRAKT]: I believe they have--already had, as Appellate  
4 Exhibit 18, Your Honor.

5 MJ [COL GREGORY]: I thought I saw a reference to it.

6 TC [MAJ COWHIG]: They've--we have one translator, who is the  
7 same from the last session, two different, so we will have additional  
8 CVs to attach and seal.

9 MJ [COL GREGORY]: That's fine. You can just make them the next  
10 appellate exhibit.

11 Let's see. Major Frakt, the gentleman sitting next to you,  
12 you're acting--he's acting as Defense translator. Is that correct?

13 DC [MAJ FRAKT]: That's correct, and he's going by the first  
14 name of Ali only in these proceedings.

15 MJ [COL GREGORY]: I thought I saw something in the previous  
16 hearing from the transcript that Judge Brownback provided an oath or  
17 not?

18 DC [MAJ FRAKT]: I'm sorry, provided what?

19 MJ [COL GREGORY]: An oath.

20 DC [MAJ FRAKT]: He has previously been sworn, yes, sir.

21 MJ [COL GREGORY]: Okay, good. I just want to make sure of  
22 that.

1 CT INT: I wanted to know the answer, and the accused said that  
2 he did not swear. There is a misunderstanding because his first name  
3 is Ali as well, so he thought we were referring to him. There was a  
4 confusion, that's all.

5 MJ [COL GREGORY]: Can you straighten that out, Major Frakt, or  
6 Miss----

7 DEF INT: ----excuse me, Your Honor.

8 MJ [COL GREGORY]: Ali, sure.

9 DEF INT: The accused was confused. Once my first name was  
10 mentioned, he thought that we were talking about him.

11 MJ [COL GREGORY]: Oh, oh, no, no.

12 DEF INT: You see the--his first name is also the same.

13 CT INT: Thank you.

14 MJ [COL GREGORY]: Does that clear it up?

15 DEF INT: Yes, sir.

16 ACC [MR. AL BAHLUL]: Yes, Your Honor. It's clear.

17 MJ [COL GREGORY]: One other administrative matter. Let's mark  
18 the most recent addition of the filings inventory as Appellate 28.

19 And then let me ask, does anybody have any other appellate  
20 exhibits you'd like to account for at this time?

21 TC [MAJ COWHIG]: Your Honor, we probably should number the CVs  
22 for the trans--court interpreters as Appellate Exhibit 29.

23 MJ [COL GREGORY]: We'll do that.

1 DC [MAJ FRAKT]: The--there's a portion of the record of trial,  
2 referring to nine points that Mr. Al Bahlul has made in the past.  
3 They're marked "page 55 through 61," and they're from a January 11,  
4 2006 session of the previous military commissions.

5 MJ [COL GREGORY]: Judge Brownback was the judge there, as well?

6 DC [MAJ FRAKT]: Yes.

7 MJ [COL GREGORY]: Okay.

8 DC [MAJ FRAKT]: So I would like--this is the document that I  
9 would like to provide to Mr. Al Bahlul for his reference and then  
10 make a copy of it as an Appellate Exhibit, 30.

11 MJ [COL GREGORY]: All right. We'll make that 30.

12 Mr. Al Bahlul, before we get to that document, is that  
13 certified?

14 TC [MAJ COWHIG]: No, Your Honor. My recollection is that that  
15 transcript has never been certified because the decision of US v.--  
16 excuse me, *Hamdan v. Rumsfeld*.

17 MJ [COL GREGORY]: Okay.

18 Yes, Mr. Bahlul?

19 ACC [MR. AL BAHLUL]: If you please, before I come in this  
20 morning, here, I asked, Your Honor, through attorney of the court--I  
21 would like you to say this term--I mean "friend of the court". I  
22 heard this term from Judge Brownback in 2004, when there was an issue  
23 between me and Judge Brownback about the lawyer. For Judge Brownback

1 to solve this issue, he said there was a Latin term "friend of the  
2 court", I don't consider them lawyers. I asked them through the  
3 Judge today--an Arabic copy of the original record by hand and now I  
4 have a translated--I rather have the Arabic version--copy because  
5 that copy only make it easier for the Judge and for myself to explain  
6 my position and to do some kind of settlement today, especially after  
7 the sentence to Salim Hamdan. I hope that the Judge would ask them  
8 to give me the Arabic--or the copy of the Arabic version.

9           So I--to facilitate finding or searching for the paper;  
10 it's a two-sided page, has nine political and legal reasons for the  
11 boycott that took place in 2006. And today, there was a new judge  
12 that has been appointed. Even Judge Brownback, when he was on the  
13 case from 2004 until 2006--I'm sorry 2008--now, there is a new judge,  
14 I don't want to repeat the conflict or dialogue that went on with  
15 Judge Brownback again with the new, not because Salim Hamdan was  
16 convicted and because I am in a rush for my trial.

17 **[The accused engaged the court interpreter in a brief exchange in**  
18 **Arabic that was not directly translated into English.]**

19           CT INT: **[Addressing the court]** He wanted to know if I mentioned  
20 the word "rush".

21           ACC [MR. AL BAHLUL]: Because today I will like to comment on  
22 the boycott of the 2006, and I asked the Judge to give me a copy of  
23 the Arabic version.

1 MJ [COL GREGORY]: They told me that you did want that.

2 ACC [MR. AL BAHLUL]: Thank you.

3 MJ [COL GREGORY]: And I asked them to find that. And I gave  
4 them at least an half an hour, and the translation, I believe, was  
5 all they can come up with.

6 So let me turn to trial counsel, is it correct that you  
7 don't have the original Arabic?

8 TC [MAJ COWHIG]: We were not able to locate it in the 30  
9 minutes, sir. If I could address--if I could address the accused to  
10 ask if he recalls what happened to the original because I believe it  
11 was given back to him.

12 MJ [COL GREGORY]: I don't know.

13 Mr. Bahlul, do you have the original or do you know where  
14 it is?

15 ACC [MR. AL BAHLUL]: That's a very good question and the answer  
16 is: when I'm returned from that proceeding, when I wrote that paper,  
17 it was taken from me, and it's not in my advantage to accuse those  
18 who took it from me of any wrongdoing.

19 MJ [COL GREGORY]: I understand.

20 ACC [MR. AL BAHLUL]: But it's supposed--there shouldn't be any  
21 of the administrative routine in the court, and they should find the  
22 paper.

1 TC [MAJ COWHIG]: It's possible, Your Honor, we might be able to  
2 locate that under those circumstances, but it may take us a day or  
3 two to locate it.

4 MJ [COL GREGORY]: What I'm hearing is that we're not going to  
5 have the original today; they can't find it, but may be able to find  
6 it in a few days. So we don't have it today.

7 ACC [MR. AL BAHLUL]: Okay that's good. And for that reason, I  
8 asked the Judge to allow me to leave until you find that original  
9 version. And you can continue as you wish because this paper has  
10 points in it that will make it easy for the Judge to understand my  
11 case and to have a second today with--my--the Judge and myself in  
12 this case. And I believe that it is my right to attend this  
13 proceeding or not, and I really thank you for this right and I'm not  
14 ready to give--make any statement before I receive that paper.

15 Although I have that paper in my memory, and I have  
16 summarized it by codes, which points out that our way of  
17 administration is better than you, our managing is much better than  
18 yours.

19 Can I leave? I'm asking the Judge if I can leave.

20 MJ [COL GREGORY]: Well, not just yet. Let me just say that in  
21 preparing for this today, Mr. Bahlul, I did read the statement that  
22 you made in here, I believe, to Judge Brownback on the 7th of May,  
23 and if you would like, I know you just have the translated copy



1 there, but I would read that, if you wish me to read that, before we  
2 continue.

3 ACC [MR. AL BAHLUL]: You are a judge and legal, I--please  
4 understand that the translated copy is not considered a legal  
5 document, like the document written by my own handwriting, and I find  
6 it----

7 MJ [COL GREGORY]: ----Sure, if you think that the translation  
8 is not accurate, that's understandable----

9 ACC [MR. AL BAHLUL]: ----I don't consider this accurate. I  
10 don't consider this a legal document unless it is in my own  
11 handwriting and my signature. So I don't accuse the prosecution that  
12 they have mistranslated; it is just being fair on my part, and I want  
13 what I have written in my own hands. And my response today to the  
14 Honor's--Judge's questions depends on this document. If the Judge  
15 will not allow me to leave, you can continue as you wish with this  
16 proceeding, but you would have to consider me not present. But just  
17 to be polite and to respect the court, I will not do anything that is  
18 inappropriate because I am representing my religion actually.

19 MJ [COL GREGORY]: Do you wish to remain?

20 ACC [MR. AL BAHLUL]: I would rather leave.

21 MJ [COL GREGORY]: I'm sorry, I didn't hear.

22 CT INT: I would rather leave----

1 ACC [MR. AL BAHLUL]: ----I rather leave until you find the  
2 document.

3 MJ [COL GREGORY]: There are other matters I need to cover today  
4 with you and with counsel. And I would like to continue and do that;  
5 however, I can tell you that you obviously have to be present during  
6 all sessions of the commission, you know that. And that if you do  
7 want to be voluntarily absent, then that is a waiver of your right to  
8 be present for that session. I want to make sure that you understand  
9 that.

10 ACC [MR. AL BAHLUL]: Are you done?

11 MJ [COL GREGORY]: For that part, I thought you wanted to  
12 comment on that.

13 ACC [MR. AL BAHLUL]: I'm afraid to interrupt you. I don't want  
14 to interrupt you.

15 MJ [COL GREGORY]: No, no, that's fine. I thought maybe you  
16 have a question. I have more advice.

17 ACC [MR. AL BAHLUL]: If you don't want to bring that to me, a  
18 legal document, and it's available here and you said that it will be  
19 available in 2 days----

20 MJ [COL GREGORY]: ----perhaps, perhaps.

21 ACC [MR. AL BAHLUL]: And I say perhaps as well. If that's the  
22 case, you have the court continue with your program the way you  
23 choose; only when it's the final proceeding or sentencing, I will be

1 present to hear my sentence. But between now until the final  
2 verdict, I don't consider this my attorney, although the military law  
3 orders him to be my lawyer or--even if I refuse. I do not wish to  
4 repeat with the new judge the same thing I did with Brownback. Not  
5 because I am in a hurry for the trial, no. The reason for that,  
6 repetition is not good, therefore, I say, do whatever you wish and I  
7 excuse you to leave right now, without answering any questions to  
8 Your Honor until you find the legal document.

9           If such a legal document like this is lost, what kind of  
10 court is this? There's going to be a lot of exhibits and objections.  
11 If such legal document is missing--I hope that you don't consider me--  
12 -this kind of sarcasm and disrespect to Your Honor.

13           MJ [COL GREGORY]: Oh no, no, I don't.

14           ACC [MR. AL BAHLUL]: It's just that I feel I know--it's just a  
15 comment about all of these confused management. I just want one  
16 document. How do you ask me to accept a lawyer when we have so many  
17 contradictions in this court?

18           You are the judge and I, the accused. At the same time,  
19 you are my enemy. How could you be the enemy and also the--even if  
20 your concept for justice and law allows this concept, we don't really  
21 admit to this concept and logic. I asked the Judge's pardon, let me  
22 leave, and if he wants to appoint him as a lawyer that's something up  
23 to him, it's a court thing.

1 Thank you.

2 MJ [COL GREGORY]: All right. Well, first, let me say, Mr.  
3 Bahlul, I think we could all agree in this room that any  
4 administrative organization has administrative problems. I wish it  
5 were not so, but it is, and we can only try to do our best.

6 ACC [MR. AL BAHLUL]: But sometimes the political and military  
7 issues interfere to strike the nature.

8 MJ [COL GREGORY]: Well, based on my experience, I doubt there's  
9 any type of deliberate obstruction here. It's probably just missing,  
10 and they--it will be found in some file stuck in some drawer  
11 someplace, but on any rate, we don't have it.

12 ACC [MR. AL BAHLUL]: If that's the case, I will wait until this  
13 weekend, this legal document shows up, and I will have a settlement  
14 with the Judge. Believe me, it would be a settlement to facilitate  
15 things.

16 MJ [COL GREGORY]: I understand. **[Accused interrupts**  
17 **translation.]** I'm sorry; I didn't get the last part.

18 CT INT: I didn't get it either. I will ask the question.

19 **[The court interpreter engaged the accused in a brief exchange in**  
20 **Arabic that was not directly translated into English.]**

21 MJ [COL GREGORY]: All right.

22 ACC [MR. AL BAHLUL]: I say, if that legal document is here--is  
23 present, the Arabic version with my handwriting, with my signature,

1 and it has the boycott, and it has the nine other reasons, it would  
2 facilitate the settlement that will take place with the Judge to  
3 conduct a fast trial for me.

4           You are free, if you want to do it the way it is or you  
5 want to take the same route as Brownback, but every judge has his own  
6 personality.

7           MJ [COL GREGORY]: Well, first, let me just direct trial counsel  
8 to make all efforts to find this document as soon as possible, and I  
9 know you're trying.

10          TC [MAJ COWHIG]: We will do, sir. If I could ask the accused  
11 to give us a little bit of guidance on the appearance of the  
12 document. I did not see it at that session.

13                 Is it in an 8 1/2 by 11 sheet of paper?

14          MJ [COL GREGORY]: Can--Mr. Bahlul, can you just describe what  
15 it might look like to help him?

16          ACC [MR. AL BAHLUL]: I will describe it.

17                 Give me the paper you have, the copies, and the rest of the  
18 copies; all the copies you have.

19          TC [MAJ COWHIG]: And was there a title at the top of the  
20 document?

21          MJ [COL GREGORY]: So you've seen it----

1 ACC [MR. AL BAHLUL]: ----In the previous session, this is a  
2 copy of it. The face that says boycott in Arabic and in English, and  
3 here there was two lines, then my signature.

4 But in the past proceeding, Judge Brownback, when he  
5 announced that I boycott the court in 2006, exactly it was 2006, but  
6 it is the same paper, the other side, the nine points for the  
7 boycott.

8 TC [MAJ COWHIG]: So I understand, the nine points are on the  
9 other side of your original sign?

10 ACC [MR. AL BAHLUL]: The same paper.

11 TC [MAJ COWHIG]: Thank you. Thank you, Your Honor.

12 MJ [COL GREGORY]: Does that help you to try to find this thing?  
13 I guess what I was asking, did that trigger some memory that, "Oh my  
14 gosh, I've got it in my briefcase"?

15 TC [MAJ COWHIG]: It does not, sir, but that would help us  
16 locate it. I believe I know where it might be. Typically material  
17 that is taken from a detainee in the detention facility is stored in  
18 a particular area, and that's where we'll begin a search for them.

19 MJ [COL GREGORY]: All right.

20 DC [MAJ FRAKT]: Standby counsel has only ever seen the front  
21 side of the document.

22 MJ [COL GREGORY]: Well, do what you can.

23 Well, Mr. Bahlul, back to your----

1 TC [MAJ COWHIG]: ----I'm sorry, another question, Your Honor.

2 MJ [COL GREGORY]: Yes.

3 TC [MAJ COWHIG]: I just wanted to ask if this was considered a  
4 privilege document because we would have to handle it differently.  
5 We would not be able to do the search if it is a privileged document.

6 MJ [COL GREGORY]: Privileged in what way, what privilege? It's  
7 something he read in open court, as I understand it, so it wouldn't  
8 be privileged.

9 TC [MAJ COWHIG]: That was my understanding, sir.

10 MJ [COL GREGORY]: Is that correct?

11 ACC [MR. AL BAHLUL]: I have a question for him **[pointing to the**  
12 **trial counsel]**.

13 The nine points on the back--the inside, I believe it is  
14 not to the prosecution's benefit to have it escape from you.

15 MJ [COL GREGORY]: Well, that may help.

16 CT INT: Excuse me. I correct. It's not to his advantage to  
17 show it. I believe that's what he's trying to say.

18 MJ [COL GREGORY]: Well, I've told him to go find it, so----

19 ACC [MR. AL BAHLUL]: I asked him why--why did they hide it last  
20 time?

21 MJ [COL GREGORY]: Well, I don't know--I don't know that anybody  
22 hid it. I have no idea what happened to it, so----

1 ACC [MR. AL BAHLUL]: Because it's to the prosecution's benefit  
2 to hide these nine points.

3 MJ [COL GREGORY]: Well, I told him to go get it, and if they  
4 don't get it, then they'll have some explaining to do.

5 ACC [MR. AL BAHLUL]: Until they bring it, I ask to leave.

6 MJ [COL GREGORY]: Let me get to that. I need to give you this  
7 advice if you're going to leave, so----

8 ACC [MR. AL BAHLUL]: ----and I had to listen.

9 MJ [COL GREGORY]: If you please.

10 ACC [MR. AL BAHLUL]: There's a difference between listening and  
11 hearing.

12 MJ [COL GREGORY]: Well, I'm going to read it, and I would  
13 encourage you to listen and hear.

14 ACC [MR. AL BAHLUL]: Good.

15 MJ [COL GREGORY]: All right. As I said, you've got a right to  
16 be present at all the sessions of this commission. And if you are  
17 voluntarily absent from any session, that's a waiver of the right to  
18 be present for that session. And obviously if you choose to leave,  
19 your absence is voluntary and of your own free will.

20 ACC [MR. AL BAHLUL]: Good.

21 MJ [COL GREGORY]: And if you're absent from a session, then  
22 that could negatively impact the presentation of your case.



1 ACC [MR. AL BAHLUL]: Good. I would be absent all proceedings  
2 or sessions, especially the ones where the evidence is being  
3 presented, I mean the trial sessions. Only the last session, I will  
4 be present to hear the sentence, and I will leave at this point, if  
5 the Judge allows me, and he said it's my right and I can do it. And  
6 I don't really care how you are going to exercise this legal--  
7 **[addressing court interpreter]** please translate, it is a legal farce.  
8 And please allow me to leave.

9 And if they come to me in the future and said that I have  
10 session/proceeding, it will be authenticated to the Judge that I  
11 voluntarily chosen to be absent. They can bring a camera, and they  
12 can asked me to the official of the detention camp, I will certify  
13 for every session that I don't want to be present, and they can do  
14 it--show it to the audience, that I have voluntarily chosen to be  
15 absent because I do not have any trust in this legal farce.

16 So you can continue this trial. In the Arab countries,  
17 they sometimes do trials by absentia, and you can do the same trial  
18 by absentia, and this is law here, and it is not going to affect me,  
19 and I ask that I leave.

20 MJ [COL GREGORY]: Just a few more items. I don't know if we'll  
21 have to do the TV thing, but I will give you the opportunity to be  
22 present. And if you choose not to, that's okay too. But let me  
23 finish with this advice; it is not much longer.

1 ACC [MR. AL BAHLUL]: You will start what you have put in place  
2 for your session today. If you want me to hear what you're going to  
3 say, and I know it clearly, you don't need to prove to the people  
4 that I am boycotting. I am actually boycotting, and this is a copy  
5 of the boycott.

6 MJ [COL GREGORY]: I did see the sign.

7 ACC [MR. AL BAHLUL]: You bring the nine points of the boycott,  
8 you will be fair. But since you're not fair to give me the nine  
9 points for the boycott, I know it by heart and it's in my head, but I  
10 want to say it is a document that is--that exists since 2006.

11 Your Honor, I don't want to do the same trick I did with  
12 Judge Brownback with you.

13 MJ [COL GREGORY]: I understand.

14 ACC [MR. AL BAHLUL]: Please allow me to leave.

15 MJ [COL GREGORY]: I will let you leave as soon as I finish this  
16 advice.

17 ACC [MR. AL BAHLUL]: This is an administrative matter that is  
18 present here.

19 MJ [COL GREGORY]: If you do leave, then the trial can continue  
20 in your absence. I want you to understand that, and I believe you  
21 know that.

22 ACC [MR. AL BAHLUL]: I know. I don't care.

1 MJ [COL GREGORY]: Okay. And that your choice to be absent from  
2 the proceedings would certainly be inconsistent with representing  
3 yourself, going pro se; you understand that?

4 ACC [MR. AL BAHLUL]: Okay.

5 MJ [COL GREGORY]: And you understand that if you don't show up,  
6 then that will provide a basis to terminate being pro se?

7 ACC [MR. AL BAHLUL]: Okay. I tell him in the final proceeding,  
8 just let me know that this is a proceeding where the verdict and  
9 sentence will be announced, and I will be present.

10 MJ [COL GREGORY]: I will do that.

11 ACC [MR. AL BAHLUL]: I will be present at that session. But  
12 the ones that are in between, I don't want to be present. I will not  
13 be present. Continue this legal play in anyway you wish.

14 MJ [COL GREGORY]: I understand, and I will certainly make sure  
15 that you know about the final session whatever that is, and I'll go  
16 one step further, and I'll make sure you know about all the other  
17 sessions, just in case you change your mind.

18 ACC [MR. AL BAHLUL]: Well, just put in your consideration that  
19 politicians have really interfered to prevent these points.

20 MJ [COL GREGORY]: I'm sorry. I didn't get the first word.

21 ACC [MR. AL BAHLUL]: Politicians have interfered, to block  
22 these points. Now, you have the clear picture, and it's clear to the

1 prosecution of the government, and by the--what is called a "friend  
2 of the court" and not my lawyer, and the audience.

3           The other day, you have reached a verdict with--in Salim  
4 Hamdan's case, and, now, you can stop making excuse. I am only  
5 waiting for the final sentence. And I'm going to take the chance of  
6 me being here in this case to say that it's not proper or ethical and  
7 not civilize--for civil attorneys--despite me--to file an American in  
8 my name. I, from this place, asked to cancel this file that is  
9 pertinent to me personally. I have nothing to do with the other  
10 detainees, and I tell the Military Judge and all the audience and  
11 everyone who is hearing outside that I demand from my cousin, Abd al  
12 Ahmad Hammad al Bahlul, to cancel the proxy----

13           MJ [COL GREGORY]: ---I'm sorry, I didn't get that word.

14           ACC [MR. AL BAHLUL]: To cancel the prox--to cancel, please  
15 don't interrupt me. I absolutely-----

16           MJ [COL GREGORY]: Please, excuse me, I didn't hear the word.

17           ACC [MR AL BAHLUL]: I asked my cousin to cancel the proxy in  
18 the civil courts.

19           MJ [COL GREGORY]: Major Frakt, Mr. Bahlul, please don't engage  
20 in a conversation while I'm trying to hear because I don't know what  
21 is being said.

22           DC [MAJ FRAKT]: I'm trying to confer with my client.

1 MJ [COL GREGORY]: What I'm going to do, since I've essentially  
2 completed my **[the accused starts speaking in Arabic, which is not**  
3 **directly translated into English]** one second, since I've essentially  
4 completed my advice to Mr. Bahlul, so he can choose to leave if he  
5 desires.

6 What I'm going to do is, take a recess, and give Mr. Bahlul  
7 an opportunity, if you like, to consult with Major Frakt before you  
8 leave.

9 ACC [MR. AL BAHLUL]: I am not going to talk to Major Frakt. I  
10 am waiting for the final session where you sentence me. I am waiting  
11 for your sentence. But I asked from this place, of course it's not  
12 in your hand--this decision is not in your hand, but for all to know  
13 that this is the case that is before, in the American court and in my  
14 name, I am not satisfied with it, and I don't want it. And I am  
15 waiting for your judgment and please allow me to leave.

16 MJ [COL GREGORY]: I understand, and I've completed my advice,  
17 and I'm going to take a recess at this point. And again, if you want  
18 to take the opportunity to consult with Major Frakt you may, and if  
19 you don't want to do that, that's your choice as well.

20 So let's take a----

21 ACC [MR. AL BAHLUL]: ----Please give them an order to send me  
22 back to the cell.

1 MJ [COL GREGORY]: Well, I'm going to let you go if that is your  
2 choice.

3 Oh, we have Major Hale standing.

4 ATC [MAJ HALE]: Your Honor, the government would object to that  
5 request. We ask that the accused remain in the area, in the holding  
6 cell, until the proceeding for the day is completed. And we make----

7 MJ [COL GREGORY]: ----Well, I'm going to take a recess at this  
8 point, and I'll consider that. So let me just ask, I don't know how  
9 this works around here, let me ask.

10 **[The military judge consults with the bailiff regarding accused**  
11 **holding areas.]**

12 MJ [COL GREGORY]: We'll take a recess, and Mr. Bahlul, should  
13 you change your mind and decide you want to be here, all you have to  
14 do is let us know.

15 ACC [MR. AL BAHLUL]: This is my final decision, and it's  
16 voluntarily and I've chosen that.

17 And you have started the first session now; I don't want  
18 more conflict than this.

19 It's enough, 4 years with Brownback; you can continue your  
20 legal play.

21 MJ [COL GREGORY]: I won't comment on 4 years with Judge  
22 Brownback.

23 All right, we'll be in recess.

1 [The R.M.C. 803 session recessed at 1035, 15 August 2008.]

2 [The R.M.C. 803 session was called to order at 1051, 15 August 2008.]

3 ATC [MAJ HALE]: All parties present at the last session are  
4 again present with the exception of the accused, who is absent.

5 MJ [COL GREGORY]: All right. Yes, that's everybody.

6 I heard Mr. Bahlul has, quite clearly, voluntarily elected  
7 not to be here. This was after I gave him advice concerning the  
8 consequences of not being here, particularly to include the major  
9 issue that I thought we were going to deal with today, which is the  
10 pro se issue, and I did advise him that being absent is certainly  
11 inconsistent with going pro se, representing himself, and that would  
12 provide a basis for me to terminate the right to proceed pro se.

13 The government, as I think I mentioned earlier, has asked  
14 me to, shall I say, revisit, the issue of pro se status that Judge  
15 Brownback had determined, and I was prepared to do a rather extensive  
16 inquiry with Mr. Bahlul to flesh out his desire regarding counsel and  
17 whether he met the criteria for properly going pro se.

18 But again, he's elected not to be here and having advised  
19 him of that, choosing not to be here would forfeit or certainly serve  
20 as a basis to terminate the pro se status. I have no one to do an  
21 inquiry with, and I did give him the opportunity to let me know if he  
22 wanted to come back. That's one reason I took the recess, so he  
23 could think about it, perhaps speak with Major Frakt about his

1 decision. And I understand, Major Frakt, there was no discussion, is  
2 that correct?

3 DC [MAJ FRAKT]: That's correct, Your Honor. Mr. Al Bahlul--I  
4 did have an opportunity to speak to Mr. Al Bahlul prior to the  
5 session this morning and had--did advise him that the commission  
6 would be revisiting the issue of his pro se representation, that if  
7 he chose to voluntarily absent himself, most likely I would be  
8 appointed to serve as detailed defense counsel.

9 He was well aware, understood that possibility, and I  
10 informed him that I would, if appointed in that role, would attempt  
11 to defend him in the manner in which he desired to be defended. And  
12 we discussed a little bit about his desires, and during this session,  
13 he indicated to us, through the detention personnel, his very strong  
14 desire to return to the detention facility and to have no further  
15 communication with counsel of any kind. And he certainly knows how  
16 to make his desires known if he changes his mind.

17 So from a defense standpoint, we would request that he be  
18 released to return to the camp facility.

19 ATC [MAJ HALE]: Your Honor, as noted, the courtroom here does  
20 not have piping capabilities as far as audio into----

21 MJ [COL GREGORY]: One second, I have a hard time hearing  
22 because of this blower thing behind me, I don't know if I can--we can



1 work on that another day, but you'll have to speak up a little bit,  
2 sorry.

3 ATC [MAJ HALE]: All right, sir.

4 As noted, the audio is not able to be pipe----

5 **[Bailiff adjusts an air conditioner blower near the judge's bench.]**

6 MJ [COL GREGORY]: ----Oh, thanks. You've turned it off, I  
7 should have asked.

8 Go ahead.

9 ATC [MAJ HALE]: ----able to be piped back into the holding cell  
10 in this courtroom. However, in Courtroom 2, the capability to pipe  
11 both audio and video is available, if the court or the commission  
12 would so desire to move down to that site for the remaining matters  
13 that needed to be addressed today, so that Mr. Al Bahlul can hear the  
14 proceedings and, if deemed appropriate, participate or like to rejoin  
15 the proceedings.

16 MJ [COL GREGORY]: Did you say the audio's going?

17 ATC [MAJ HALE]: It's not here.

18 MJ [COL GREGORY]: Not here.

19 ATC [MAJ HALE]: Not capable at this time.

20 MJ [COL GREGORY]: I'll wait.

21 I'll pause while the defense counsel rummages through the  
22 trial counsel's folders.

23 **[Courtroom filled with laughter.]**

1 TC [MAJ COWHIG]: With the authorization of the trial counsel,  
2 Your Honor.

3 MJ [COL GREGORY]: I'm glad to see that type of free and open  
4 exchange. It's refreshing.

5 Thanks for turning that thing off, I should've asked you  
6 earlier, couldn't hear anything. If it gets hot, fire it back up.

7 DC [MAJ FRAKT]: Thank you, Your Honor.

8 ATC [MAJ HALE]: Thank you, Your Honor, for allowing the  
9 detailed defense counsel to consult with the lead trial counsel with  
10 regard to matters that hopefully facilitate the process, but with  
11 regards to the government's position, we will be making as much  
12 information available to the accused; Courtroom 2 would provide that  
13 opportunity.

14 The government recognizes that at another session, the  
15 procedures determining his voluntarily absenting himself might be  
16 different, and he may not be on this side of the island where that  
17 resource will be available to him, however he is here today.

18 MJ [COL GREGORY]: I'm sorry, I didn't quite follow that last--  
19 what other side of the island? I don't get it.

20 ATC [MAJ HALE]: His detention facility is located on the other  
21 side of the island, so it's minimum, at least drive-time, of a half-  
22 hour or more, as well as the logistics of bringing someone out of  
23 facility.

1 MJ [COL GREGORY]: Right.

2 ATC [MAJ HALE]: He's here today, and we're able to provide him  
3 the audio and visual of the proceedings. If he would absent himself  
4 in any future proceedings, obviously much like you did today, Your  
5 Honor, the government, through the detention facility, would inform  
6 him of the hearing has--been ordered by the court and go through the--  
7 -similarly your line of inquiry with him as to whether or not he was  
8 voluntarily absenting himself from that day's proceedings, and--but  
9 today he's here, and the resource, if it's appropriate, for judicial  
10 economy as well taking that into account, could be made available to  
11 him so he can hear the proceedings.

12 MJ [COL GREGORY]: If we were going to do a lot, I might go to  
13 the trouble of moving it, so if he wanted to watch and listen, he  
14 could. But I'm not sure we have that much left to do.

15 ATC [MAJ HALE]: Sir, I offered the judicial economy option to  
16 do so.

17 MJ [COL GREGORY]: Yes. Now, in the future, sure, that might be  
18 an option, I don't know, if he happens to be over here. I know you  
19 don't have that capability over where he lives, but I'm not sure  
20 we're going to do that much more today.

21 Let me just ask you all--I was going to deal with the  
22 counsel question, that's an easy one because--why don't I just go  
23 ahead and do that now.

1           Clearly, Major Frakt, as you say, you've advised him of  
2 this, this morning, and I advised him here in court that if he  
3 chooses to be voluntarily absent, then that's certainly inconsistent  
4 with representing himself and would certainly be a basis to terminate  
5 any pro se status that might exist. I looked him right in the eye  
6 when I was telling him that, and he appeared to fully understand  
7 that, and, in fact, seemed to desire that he leave with that  
8 consequence.

9           So given that Mr. Bahlul has elected to voluntarily absent  
10 himself from the proceedings and that as I told him that that is  
11 inconsistent with going pro se, we can't proceed with no counsel. I  
12 think then, by default, Major Frakt, as the detailed counsel, you are  
13 back as detailed counsel; would you agree with that? Do you have any  
14 comment on that?

15           DC [MAJ FRAKT]: Yes, Your Honor. I concur that I am detailed  
16 defense counsel and prepared to serve in that role.

17           MJ [COL GREGORY]: All right then, Lieutenant--is it Lieutenant  
18 Commander, right? Got that right?

19           Are you also--what's your status?

20           ADC [LCDR DOXAKIS]: Sir, I've never talked to Mr. Al Bahlul,  
21 but I have been detailed to this case as the assistant detailed  
22 defense counsel, and I can assist Major Frakt in that role, if the  
23 court desires.

1 MJ [COL GREGORY]: Sure. I'm aware of--that the rule saying  
2 that a detainee has a right to one detailed defense counsel, and I'm  
3 certainly not going to tell--is it Colonel David, who is the chief---  
4 -

5 DC [MAJ FRAKT]: ----Right, yes, Your Honor.

6 MJ [COL GREGORY]: I'm certainly not going to tell him how many  
7 people to put on the case, but he's obviously, in this case, chosen  
8 to put two. Until he changes his mind, then you can assist--Major  
9 Frakt, you're the lead; you're the primary.

10 DC [MAJ FRAKT]: Well, thank you, Your Honor. In accordance  
11 with Mr. Al Bahlul's wishes, defense demands, under Rule for Military  
12 Commission 707, a speedy trial. The defense waives all pretrial  
13 motions of any kind and is prepared to go to trial at the soonest  
14 possible date.

15 MJ [COL GREGORY]: Waiving all pretrial motions of any kind; I  
16 want to make sure I heard that correctly.

17 DC [MAJ FRAKT]: That's correct, Your Honor.

18 MJ [COL GREGORY]: All right.

19 Well, let's see; were there any other matters other than  
20 counsel?

21 TC [MAJ COWHIG]: Your Honor, we would just like to clarify, is  
22 that also waiver of discovery motions?

1 DC [MAJ FRAKT]: The government should provide the discovery  
2 that they're required to do--provide, but it is a waiver of any  
3 further discovery motions.

4 MJ [COL GREGORY]: I think, the way that I would understand that  
5 is, they're waiving motions for additional discovery, but you're  
6 still obligated to provide what the rule says you've got to give  
7 them.

8 TC [MAJ COWHIG]: Yes, sir, we would also understand it that  
9 way.

10 MJ [COL GREGORY]: Is that on track----

11 DC [MAJ FRAKT]: ----Yes, Your Honor.

12 MJ [COL GREGORY]: Okay. Anything else, Trial Counsel?

13 TC [MAJ COWHIG]: Sir, we have Prosecution 3 and Prosecution 4  
14 before the court. Those were filed within the seven day, but one of  
15 them was made verbally on the record at our last session, the request  
16 for judicial notice of the Law of War, five items there, General  
17 Order number 100 from 1863 and, essentially, the various editions of  
18 Field Manual 27-10, The Law of Land Warfare to the current edition.

19 MJ [COL GREGORY]: I did see those, took a look at them, and as  
20 of yesterday evening, my plan was to defer action on those until I  
21 determine who was actually going to be the counsel in this case for  
22 Mr. Bahlul, Major Frakt.

1           Now that we've resolved that, Major Frakt, would you desire  
2 any time to respond, now that you're the counsel on the judicial  
3 notice request?

4           DC [MAJ FRAKT]: No, Your Honor. To the extent that those--you  
5 consider those documents to be relevant for any issue before the  
6 court, you're welcome to consult those. We can see that they are  
7 what they purport to be.

8           MJ [COL GREGORY]: Then I will take judicial notice of those  
9 documents as Prosecution----

10          TC [MAJ COWHIG]: ----Prosecution 3, sir.

11          MJ [COL GREGORY]: Prosecution 3.

12          TC [MAJ COWHIG]: Prosecution 4 is also a request for judicial  
13 notice in this case. It's a Certificate of Nonexistence of Records  
14 from the--pardon me, I'm not up on the new names of agencies,  
15 Department of Homeland Security, indicating that there is no record  
16 that Mr. Bahlul possesses U.S. citizenship or has any other contact  
17 with the United States, essentially establishing----

18          MJ [COL GREGORY]: That's the old INS?

19          TC [MAJ COWHIG]: Yes, sir.

20          MJ [COL GREGORY]: Okay.

21          TC [MAJ COWHIG]: Essentially establishing----

22          DC [MAJ FRAKT]: ----No objection. The defense stipulates that  
23 Mr. Al Bahlul is an alien.

1 MJ [COL GREGORY]: All right. I'll accept that through judicial  
2 notice.

3 TC [MAJ COWHIG]: Thank you, Your Honor.

4 MJ [COL GREGORY]: Anything else from this table? Trial  
5 Counsel, anything? While you're perusing your notes, I will peruse  
6 mine.

7 TC [MAJ COWHIG]: Your Honor, did you want to take up the matter  
8 of the correction of the translation in the transcript from the last  
9 session?

10 MJ [COL GREGORY]: I did have a question about that and that was  
11 going to come later, but now that later is here.

12 I got the e-mail yesterday afternoon, some type of motion  
13 regarding a transcript and errata, thought that it was mighty  
14 strange, since I had been--to my knowledge, dealing with a draft  
15 transcript that had been provided to me of Colonel Brownback's  
16 hearing. So I got with the court reporter this morning and got the  
17 quick brief on how transcripts are certified/authenticated. My  
18 understanding is at this point, Judge Brownback has not been asked to  
19 certify the accuracy of the transcription and that if called upon to  
20 do so, he would very likely act. So, I know if he cannot or does not  
21 certify, then plan B is, Trial Counsel----

22 TC [MAJ COWHIG]: ----Yes, sir.



1 MJ [COL GREGORY]: As I understand it, but--so first, shouldn't  
2 we let Judge Brownback have an opportunity to look at that, if that's  
3 proper? I know he's retired now, but I know other retired judges  
4 have looked at records, and since he was here that would be my strong  
5 preference. But if he cannot do that, then since you are the next  
6 person who would authenticate, I couldn't understand quite why you  
7 would be objecting to your own authentication and what role I would  
8 have in that.

9 TC [MAJ COWHIG]: Sir, under the prior process, there was a  
10 mechanism--because we were dealing with the mechanism of translation,  
11 which is not common at courts-martial and common to our practice,  
12 where either party could object to the translation that was provided  
13 in the session of court within a certain period and provide an  
14 alternative that they believed to be more accurate. That mechanism  
15 was not built into the new system, so we weren't sure which route to  
16 follow. I guess we also want to provide defense the opportunity to  
17 review this suggested translation and provide their input as to  
18 whether they believe it was correct or accurate.

19 MJ [COL GREGORY]: All right. The norm--well, in--if this were  
20 a trial by court-martial, the norm would be DC gives input, TC gives  
21 input, goes to court reporter, court reporter types, go to judge,  
22 judge reviews and says yay or nay.

1 TC [MAJ COWHIG]: The difficulty with the translation, sir, was  
2 that there was a reluctance on the part of the office that holds the  
3 actual audio recording of the Arabic track, to release that prior to  
4 releasing the entire record. So we weren't able to obtain the Arab  
5 track--Arabic track--and provide it also to the defense translator.  
6 So there is a little bit of awkwardness in how that--in how that  
7 transpired.

8 My understanding, sir, is what you would like us to do,  
9 though, is to take, perhaps, this government input on the revised  
10 translation, seek input from the defense and then approach Judge  
11 Brownback and ask that he certify his portion of the record.

12 MJ [COL GREGORY]: After that goes through our court reporters  
13 so they can incorporate your suggested changes or not, and then send  
14 it to Judge Brownback to see if--if that's a possibility. I'm sure  
15 he would be happy to take a look at it.

16 TC [MAJ COWHIG]: Yes, sir.

17 MJ [COL GREGORY]: I did kick that around this morning, and I  
18 found nothing that says he can't do it and since he's the logical  
19 person to do it----

20 If the audio is an issue, is the audio an issue?

21 DC [MAJ FRAKT]: No, Your Honor. The defense has reviewed the  
22 suggested corrections to the draft transcript provided by trial  
23 counsel, reviewed those with the assistance of our defense linguists,

1 and we concur with all of the suggested corrections and prepared for  
2 the judge to authenticate that transcript.

3 MJ [COL GREGORY]: Very well. My suggestion then, rather than  
4 deal with this as a motion, I'll let you withdraw the motion if you  
5 want to pursue this route, is to go ahead put those corrections  
6 together, and if Judge Brownback is available and willing, let him  
7 take a look at it, and if not, then I think the default goes to you,  
8 and then I'll allow you, Major Frakt, an opportunity to review what  
9 they authenticate, if Judge Brownback doesn't do it.

10 If you have an objection or see something that looks messed  
11 up----

12 DC [MAJ FRAKT]: ----yes, sir

13 MJ [COL GREGORY]: Or concern, you can bring that to our  
14 attention because we want an accurate transcript, that's the most  
15 important thing; as accurate as it can be.

16 TC [MAJ COWHIG]: Yes, sir.

17 MJ [COL GREGORY]: Substantially, I concur with what the rule  
18 says. All right.

19 Are you okay with trying that option, that motion's no  
20 longer before me?

21 TC [MAJ COWHIG]: Yes, Your Honor, absolutely. We were looking  
22 for a mechanism to accomplish those acts.

1 MJ [COL GREGORY]: Let's do that. See how it works out, and if  
2 it doesn't work out, and you need more guidance, let me know.

3 That takes care of that judicial notice record.

4 Anything else from the government table?

5 TC [MAJ COWHIG]: Nothing more from the government other than,  
6 perhaps, a need for a scheduling session afterward.

7 MJ [COL GREGORY]: Yeah, I think now that Major Frakt is fully  
8 on board as counsel by default, he can participate in 802 scheduling  
9 conferences, would that be agreeable?

10 DC [MAJ FRAKT]: Yes, Your Honor.

11 MJ [COL GREGORY]: Because there is no need to have a court  
12 reporter type all of our calendaring and watch computations, you guys  
13 get together and talk, and then we can have an 802 to discuss when we  
14 might get together again. I think that would be the best.

15 DC [MAJ FRAKT]: Yes, Your Honor.

16 TC [MAJ COWHIG]: Yes, sir.

17 MJ [COL GREGORY]: Major Frakt, anything from your table? I  
18 think the government's done.

19 DC [MAJ FRAKT]: Did you order the release--or authorize the  
20 release of Mr. Al Bahlul?

21 MJ [COL GREGORY]: No, because I thought we were going to finish  
22 real soon anyway, and I was going to do it all at one time.

23 DC [MAJ FRAKT]: All right.

1 MJ [COL GREGORY]: Because if we're not in session, they take  
2 him back, right?

3 DC [MAJ FRAKT]: Nothing further from the defense.

4 MJ [COL GREGORY]: That's why I did check. I have a little  
5 schedule up here. I wanted to make sure I wasn't interfering with  
6 the prayer time, and I guess this won't interfere with his lunchtime  
7 either, so he can get back in plenty of time.

8 Well, if neither side has anything else, I will adjourn  
9 this particular session--this case, and let me know when you're ready  
10 to talk schedule.

11 All right?

12 TC [MAJ COWHIG]: Will do, sir.

13 MJ [COL GREGORY]: We're adjourned.

14 **[The R.M.C. 803 session recessed at 1112, 15 August 2008.]**

15 **[END OF PAGE]**

1 [The R.M.C. 803 session was called to order at 0927,  
2 24 September 2008.]

3 MJ [COL GREGORY]: This commission is called to order; and it  
4 looks likes everyone who is present, with the exception of a lawyer  
5 or two, is present again. Mr. Bahlul is with us.

6 Let me deal with the missing--the missing lawyer. As I  
7 recall, there was a Navy JAG who was----

8 CT INT: Your Honor, this is the court interpreter. Would you  
9 please advise the accused to put the headphone on?

10 MJ [COL GREGORY]: Mr. Bahlul, would you like to wear the  
11 headphone thing?

12 DC [MAJ FRAKT]: I think he would prefer to have the audio live.

13 MJ [COL GREGORY]: Oh, like we did last time. Can we do that?

14 CT INT: Sure, Your Honor.

15 MJ [COL GREGORY]: Just go ahead and pipe it into the courtroom.  
16 Just let me know when you are ready.

17 CT INT: We are ready, Your Honor. Go ahead.

18 MJ [COL GREGORY]: All right. As I said, the first thing I  
19 would like to cover is the missing counsel from last time. In a  
20 brief conference that we had last night, I was informed that the Navy  
21 JAG and Marine JAG who had been detailed would not be participating  
22 in the case at the request of Mr. Bahlul. And I asked Major Frakt to  
23 check with his supervisor to determine whether they could be

1 undetailed since I was told they had not entered into an  
2 attorney/client relationship with Mr. Bahlul.

3           So, Major Frakt, did you get a chance to speak with your  
4 people about this?

5           DC [MAJ FRAKT]: Yes, Your Honor. I spoke with Deputy Chief  
6 Defense Counsel, Mr. Berrigan; and he concurred with the absence of  
7 Major Montalvo and Lieutenant Commander Doxakis, and  
8 recommended--indicated that he would recommend to the Chief Defense  
9 Counsel that they be undetailed, and that it was likely to happen  
10 once we reach the Chief Defense Counsel.

11           I would like to add that although I am detailed defense  
12 counsel and court-appointed defense counsel, Mr. al Bahlul has not  
13 authorized me to speak on his behalf or to represent him in any way,  
14 other than on these procedural issues before the court.

15           Thank you.

16           MJ [COL GREGORY]: Let me just confirm with Mr. Bahlul: You do  
17 not want Lieutenant Commander--Doxakis?

18           DC [MAJ FRAKT]: ----Doxakis.

19           MJ [COL GREGORY]: And the Marine?

20           DC [MAJ FRAKT]: Major Montalvo.

21           MJ [COL GREGORY]: Major Montalvo to participate in this case on  
22 your behalf in any way?

23           ACC [MR. AL BAHLUL]: Can you please repeat the question?

1 MJ [COL GREGORY]: You do not want the two lawyers, Lieutenant  
2 Commander Doxakis and Major Montalvo, to represent you or participate  
3 in this case in any way. Is that correct?

4 ACC [MR. AL BAHLUL]: I will answer the question, but you  
5 consider my presence here in your capacity as a judge. Do you think  
6 that my presence here is a break to the boycott that I talked about  
7 previously?

8 MJ [COL GREGORY]: I didn't catch the word before "boycott."  
9 What to the boycott?

10 CT INT: Breaking the boycott.

11 MJ [COL GREGORY]: Oh, no. I understand that you still do not  
12 recognize the legitimacy and/or lawfulness of these proceedings; and  
13 the fact of your presence here does not change that, unless you tell  
14 me that it does.

15 ACC [MR. AL BAHLUL]: Of course, I'm going to answer his  
16 question; but also I'm sorry for asking you a question. I was  
17 supposed to answer your question before I start asking you.

18 MJ [COL GREGORY]: That's fine.

19 ACC [MR. AL BAHLUL]: But my answer has to have a base that it  
20 relies on. Let's agree on the base, and then we can do that from  
21 there.

22 My question to the prosecution: Do you consider my  
23 presence here as a break to the boycott?



1 MJ [COL GREGORY]: I will ask them if they agree with me, that  
2 it is not. I suspect they will agree with me; but I will see.

3 Major Cowhig, do you agree with my interpretation of Mr.  
4 Bahlul's status that while he may be present here in court, that that  
5 does not change his expressed opposition to the proceedings?

6 ACC [MR. AL BAHLUL]: Boycott.

7 MJ [COL GREGORY]: Boycott of the proceedings. And by  
8 "boycott," I interpret that as not recognizing the legitimacy and  
9 lawfulness of the proceedings.

10 TC [MAJ COWHIG]: Yes, sir. We understand that to be the  
11 accused's position.

12 MJ [COL GREGORY]: And his presence does not change that.

13 TC [MAJ COWHIG]: And his presence does not change that; and we  
14 agree with your interpretation, Your Honor.

15 ACC [MR. AL BAHLUL]: Why don't Frakt, who was supposed to be my  
16 attorney and I really do not approve of him?

17 MJ [COL GREGORY]: Is that a question?

18 ACC [MR. AL BAHLUL]: Yes, the same question. I'm addressing  
19 him as well. I would like to hear his opinion.

20 MJ [COL GREGORY]: On the question of whether Mr. Bahlul's  
21 presence in any way changes his express opposition to the  
22 proceedings.

23 DC [MAJ FRAKT]: Mr. al Bahlul has made it very clear that he is

1 boycotting and that he does not recognize this commission. He is  
2 here voluntarily this morning to present some comments to the Court.  
3 I am not aware of his plans because I am not representing his views  
4 here today.

5 MJ [COL GREGORY]: Just one more point on this. Your boycott  
6 seems similar to a motion that is sometimes made in courts; and that  
7 would be a motion to dismiss a charge for lack of jurisdiction. And  
8 if someone makes such a motion--I think the mike just went out.

9 **[The military judge adjusted his voice-activated courtroom**  
10 **amplification microphone, which restored amplification.]**

11 If someone makes such a motion and loses it, their  
12 continued presence at the trial does not waive the motion for appeal.  
13 It's not exactly the same, but it is close.

14 Does that make sense?

15 ACC [MR. AL BAHLUL]: I understood it, but I would like an  
16 explanation in another way.

17 MJ [COL GREGORY]: That's the best I can come up with. It's the  
18 closest motion----

19 ACC [MR. AL BAHLUL]: I would like to know your ability to  
20 discuss the subject from other aspects.

21 MJ [COL GREGORY]: Well, as I said, the closest motion would be  
22 a motion to dismiss the charge, whatever it may be, because the  
23 court, for whatever reason, lacks jurisdiction. Some of those

1 reasons can be that the court was not lawfully created. Others  
2 reasons can be that the charge itself does not state a crime. Those  
3 are two common examples that I have seen in motions to dismiss for  
4 lack of jurisdiction; and it seems similar to your position that you  
5 do not recognize the lawfulness of the proceedings.

6           Primarily, it seems to me, that you view the law which  
7 created the proceedings as unlawful; and also perhaps in your case, I  
8 don't know this, but perhaps you also view the charge as unlawful  
9 because perhaps, from your perspective, it does not state an offense.  
10 So it could be either or both; but for either or both reasons you  
11 elect to boycott and not recognize the legitimacy and lawfulness of  
12 the proceedings. That's the way I interpret your view.

13           ACC [MR. AL BAHLUL]: But may I also ask to you--I'm sorry.  
14 It's not a question to you; it's a question that needs to be directed  
15 through you. I would like for the press to answer the same question  
16 that you have answered and the prosecution and the defense.

17           MJ [COL GREGORY]: Well, I'm not going to let the press testify.  
18 They probably don't want to. Do we have press?

19           Are you guys press? No. No press. No press.

20           ACC [MR. AL BAHLUL]: And I am a media man, and I understand  
21 from that this is shutting someone off, but in an American way, or  
22 silencing someone.

23           DC [MAJ FRAKT]: Your Honor, I believe the press are viewing

1 from a remote location.

2 MJ [COL GREGORY]: Oh, I didn't know that. That's fine.

3 Well, press, if you are viewing this, which I now hear that  
4 you are, wherever you are, please consider Mr. Bahlul's question and  
5 my response to it; and consider silently to yourselves; and you may,  
6 yourselves; and, of course, you may report whatever you like.

7 ACC [MR. AL BAHLUL]: But for this civilized way and  
8 communication in the closed court but with the existence of  
9 communication, we cannot hear a press person say that?

10 MJ [COL GREGORY]: No. I don't know.

11 ACC [MR. AL BAHLUL]: I understand. I understand your  
12 situation, Your Honor. I do understand your situation very much. I  
13 understand that this is beyond your decision or your jurisdiction.

14 MJ [COL GREGORY]: And I don't make the arrangements for the  
15 press. It is an open trial, and I'm told they are watching. So--we  
16 have something from Major Cowhig?

17 TC [MAJ COWHIG]: Your Honor, if I may?

18 MJ [COL GREGORY]: Sure.

19 TC [MAJ COWHIG]: The press has another facility that they use  
20 to listen to the proceedings on closed circuit. They are not barred  
21 from this courtroom.

22 MJ [COL GREGORY]: Right. I haven't barred them, so they can be  
23 here if they want.

1 TC [MAJ COWHIG]: My understanding is that many of the press  
2 prefer to use the press room because they are able to move about,  
3 file their stories, and talk on the phones to their headquarters  
4 where they file their stories.

5 And I cannot think of--off the top of my head--any way,  
6 other than appearing as a witness, that a member of the press would  
7 speak to----

8 MJ [COL GREGORY]: Oh, no. I'm not going to bring the press in;  
9 but they are--I'm satisfied that they are watching someplace, and I  
10 have asked them to consider Mr. Bahlul's position and my responses,  
11 and to use their editorial discretion in reporting whatever they wish  
12 to report.

13 ACC [MR. AL BAHLUL]: Are you saying that you want them to  
14 consider your opinion, or you are asking them?

15 MJ [COL GREGORY]: No, I'm asking them. Asking them.

16 ACC [MR. AL BAHLUL]: Are you--are you saying that you are  
17 dictating your opinion to them?

18 MJ [COL GREGORY]: No. I just stated an opinion here, and they  
19 heard it; so----

20 ACC [MR. AL BAHLUL]: But I'm a media man, and I want you to  
21 know that you are prosecuting a media man and--as a comparison; and  
22 unless you--I'm not a--you are prosecuting a media member of al  
23 Qaeda, and you are not prosecuting an al Qaeda member who is about to

1 do an operation. And I believe that there are open sessions, but  
2 they are--but they don't have any oversight. They are being watched.  
3 They are being censured.

4           When Abd al Rahman was prosecuted in Egypt in the '80s and-  
5 -the mujahedeen guy--they were in the courtroom and they were in a  
6 cell inside the courtroom; and the defense team and the press; and  
7 the comparison between the American system and the Egyptian system,  
8 the pictures of the guys who were in inside the cells in the court  
9 and the logos that they are written with blood and red ink on their  
10 clothes, and they hung it is available in the Middle East, and the  
11 books testified to it and the movies testified to it.

12           And a media man from outside that was able to prove to the  
13 world the way of silencing people and the freedom of the press in  
14 this country. This is an ideological success that we achieved. This  
15 is--this is a cultural success that we can succeed.

16           MJ [COL GREGORY]: Well, let me say that I'm not aware of any  
17 such censorship; and, if any member of the press listening out there  
18 has awareness of any, you need to let me know immediately, and I will  
19 direct the trial counsel and the defense to do the same.

20           Whatever is said here, whatever is seen here is seen by the  
21 press. The only time that is not the case I'm told, because it  
22 hasn't happened since I have been here, is when one of the classified  
23 people says that we have to have a closed session. But that has not

1 happened since I have been here.

2 ACC [MR. AL BAHLUL]: This is an open session?

3 MJ [COL GREGORY]: This is open.

4 ACC [MR. AL BAHLUL]: And I know that, in the West, the culture  
5 and the legal ideology provides protection in courts. One open court  
6 without censorship; second, defense attorneys that have been selected  
7 not--they are not to be put forth by a military order. Excuse me, I  
8 would like to go back to the first point we talked about.

9 Like I said, to have open sessions without censorship;  
10 second, and to have selected attorney, not an appointed one; and  
11 third, a scale to approve that the evidence a hundred percent true  
12 and there is no doubt in it--not a hundred percent, but like a  
13 high--high--high standard, that is--there is no room for that in any  
14 way.

15 I was told at the beginning of the session that the  
16 prosecution is going to start by reading the charges list with some  
17 addendum, and then you are going to ask me, because my trial will  
18 start on the 26th of October.

19 MJ [COL GREGORY]: 27th, I believe.

20 ACC [MR. AL BAHLUL]: 27th? Or, 27th. And last time I said I'm  
21 not going to be attending these sessions, and I boycott them; and  
22 today I'm here. I will explain why I came and the reason, but that  
23 is after we listen to the new revised accusations.

1 I have one question to the Judge. It's a legal  
2 question--legal.

3 MJ [COL GREGORY]: I will take one more, and then you have to  
4 answer mine.

5 ACC [MR. AL BAHLUL]: Is the law here by you stems from the  
6 action, before action, or post action? Before action, during action,  
7 post action?

8 MJ [COL GREGORY]: Which action does he refer to?

9 ACC [MR. AL BAHLUL]: Any action, any action.

10 MJ [COL GREGORY]: Well, the law that we use is this book  
11 **[indicating]**; and that is the Manual for Military Commissions of the  
12 United States 2007.

13 ACC [MR. AL BAHLUL]: Is this the military law?

14 MJ [COL GREGORY]: Yes.

15 ACC [MR. AL BAHLUL]: Of 2006?

16 MJ [COL GREGORY]: Seven.

17 ACC [MR. AL BAHLUL]: My question is the law, if it becomes more  
18 than--more than it applies to our situation here. Does the law here  
19 start from before, during, or after? Answering this question is  
20 going to define, because the prosecution in 2004, they presented a  
21 list of charges, then they added or they took from afterwards.

22 There was another list and--and I heard this today that  
23 they have an addendum to the list in the description of al Qaeda.



1 This is outside the subject----

2 MJ [COL GREGORY]: Actually, today what I'm told by them is that  
3 they are not adding anything. In fact, they are deleting some  
4 things, striking through.

5 ACC [MR. AL BAHLUL]: I heard that it's--it's an addendum to the  
6 description.

7 MJ [COL GREGORY]: An addendum in the sense that they are going  
8 to be deleting things. But I will tell you what, I'm going to have  
9 them announce in front of everyone what they are changing.

10 ACC [MR. AL BAHLUL]: Good, I want to answer your question.  
11 Your question is to?

12 MJ [COL GREGORY]: The question about the other two lawyers, the  
13 Navy and the Marine lawyer. You do not want them?

14 ACC [MR. AL BAHLUL]: My answer is it's not the technicalities  
15 to accept two and to--to refuse two and accept one. It's originally  
16 I refused to have anyone defending me.

17 MJ [COL GREGORY]: I understand.

18 ACC [MR. AL BAHLUL]: Even the one sitting right here. And  
19 today the prosecution wanted me to meet him here in the courtroom  
20 before you came, and he sat here; and the interpreter sat here, also,  
21 for a propaganda reason. Usually, I meet them outside; but  
22 regardless of my explanation----

23 MJ [COL GREGORY]: I'm sorry, who were you meeting?

1 ACC [MR. AL BAHLUL]: Major Frakt and the interpreter.

2 DC [MAJ FRAKT]: Your Honor, I had asked to meet briefly in the  
3 holding cell, but the--the guards had other--had other orders to move  
4 Mr. al Bahlul in here. So we were compelled to have our meeting here  
5 at the end of the table.

6 MJ [COL GREGORY]: Did you have privacy?

7 DC [MAJ FRAKT]: Well, there--I--I asked if the guards could  
8 move away; and I was told they would not. So I would not  
9 characterize it as a private consultation.

10 MJ [COL GREGORY]: When you meet in the holding cells, is that  
11 private?

12 DC [MAJ FRAKT]: Yes. They put----

13 MJ [COL GREGORY]: Well, that is the first I have heard of that.  
14 So in the future I would ask that when Mr. Bahlul and Major Frakt  
15 need to confer, that they be given the opportunity to confer  
16 privately in the holding cell.

17 ACC [MR. AL BAHLUL]: The technicality is not whether we meet in  
18 open or in private. This is not a problem.

19 MJ [COL GREGORY]: But still, you deserve a private meeting, and  
20 I want to make sure that happens.

21 ACC [MR. AL BAHLUL]: I'm talking about the particular thing  
22 that this attorney is an attorney who is representing me, it is said,  
23 that is; and I refuse. And just the fact that he is a military

1 officer, he might be--even he has a lower rank than him or higher  
2 than him--because a lower rank cannot order a higher rank. The--the  
3 military supervisor here had prevented him from meeting with me, and  
4 he forced him to meet with me at the place he chose. It was a really  
5 huge contradiction here.

6 MJ [COL GREGORY]: Well, now that it has been brought to my  
7 attention, as the referee, I direct that he be allowed to meet with  
8 you in private. And if there is a problem with that, let me know as  
9 soon as possible.

10 ACC [MR. AL BAHLUL]: The problem is not in the private place,  
11 whether someone is listening to us or not. There are no secrets  
12 between us. I mean, there are no secrets in my case between me and  
13 my lawyer; and now when they--when they read the revised--you are the  
14 one who is going to manage this court. I am a detainee, and you are  
15 the one who is in charge of this session.

16 To simplify things, I came today to ease or simplify the  
17 particular case that I am in. Facilitating I hope that you do not  
18 understand it the way that you do according to what I am going to  
19 explain after I listen to them.

20 MJ [COL GREGORY]: All right. So for now we will proceed with  
21 me, I suppose, formally excusing the two defense counsel, Lieutenant  
22 Commander Doxakis and Major Montalvo.

23 DC [MAJ FRAKT]: Yes, Your Honor.

1 MJ [COL GREGORY]: And then we will await the direction from  
2 Colonel David. And then, later, you can make your statement.

3 DC [MAJ FRAKT]: Yes, sir.

4 MJ [COL GREGORY]: I just have to take care of a couple of  
5 exhibits.

6 Appellate Exhibit 31 will be an order I signed regarding  
7 some classified information that is not relevant to this case.

8 I will let the trial counsel articulate your appellate  
9 exhibits when we get to that point, but I believe the next thing is  
10 for you to announce these amendments or deletions in the charges. Is  
11 that correct?

12 TC [MAJ COWHIG]: Yes, sir. But before we move on to that, I  
13 would just like to state for the record that the prosecution does not  
14 control the movement of detainees. That is a Joint Task Force  
15 function.

16 MJ [COL GREGORY]: Well, we will look into that issue. I just  
17 want to make sure that Mr. Bahlul and Major Frakt have an opportunity  
18 to confer privately; but I don't know the facts of that at this point  
19 other than that apparently there has been a problem.

20 TC [MAJ COWHIG]: Nor do we, sir.

21 MJ [COL GREGORY]: So let's look into that.

22 TC [MAJ COWHIG]: Yes, sir.

23 MJ [COL GREGORY]: Okay.

1 TC [MAJ COWHIG]: But it wasn't brought to my attention that it  
2 was a problem while it was occurring.

3 MJ [COL GREGORY]: Well, now it has. Now it has, and I want it  
4 fixed.

5 TC [MAJ COWHIG]: Will do, sir.

6 MJ [COL GREGORY]: Enough said. Okay.

7 All right. Before you start reading this--and I understand  
8 this will be translated while you are reading it.

9 TC [MAJ COWHIG]: Yes, sir.

10 MJ [COL GREGORY]: But is there a written translation of the  
11 changes in Mr. Bahlul's language for him to see?

12 TC [MAJ COWHIG]: There is not a written translation prepared at  
13 this point, sir. What we will do is modify the Arabic, with the  
14 assistance of a linguist--I'm not an Arabic speaker--and provide that  
15 modified charge sheet to the accused.

16 MJ [COL GREGORY]: All right. Well, make sure Mr. Bahlul gets  
17 this in writing just as soon as it is translated, your changed  
18 version.

19 TC [MAJ COWHIG]: Will do, sir.

20 MJ [COL GREGORY]: But for now, please announce in open court  
21 the changes so that everyone can hear in both English and in Mr.  
22 Bahlul's language.

23 TC [MAJ COWHIG]: Sir, the government moves to amend Charge I

1 and its Specification by striking the language beginning on the third  
2 line of this specification.

3 MJ [COL GREGORY]: Wait one second. Do we have the Arabic  
4 translation of the original charge for Mr. Bahlul to see, if he would  
5 like, at this point?

6 **[The accused commented briefly in Arabic, but his comment was not**  
7 **directly translated into English.]**

8 TC [MAJ COWHIG]: Your Honor, if we could ask the translator to  
9 translate the statement of the accused.

10 MJ [COL GREGORY]: Yeah, I need that back in English, please.

11 ACC [MR. AL BAHLUL]: For now, I'm fine with what is going on in  
12 court.

13 MJ [COL GREGORY]: Okay. You can proceed; but please make sure  
14 he gets it in writing as soon as possible.

15 TC [MAJ COWHIG]: Yes, sir.

16 Striking the language, "join al Qaeda, an enterprise of  
17 persons who share the common criminal purpose that involved, at least  
18 in part, the commission or intended commission of one or more  
19 substantive offenses triable by military commission and did."

20 By striking the language in the second to last line of the  
21 first page of the charge sheet, "the common criminal purpose of the  
22 al Qaeda enterprise and of."

23 **[The court reporter signaled for the trial counsel to pause.]**

1           By striking the language on page 1 of 4 of the  
2 continuation, still in the Specification of Charge I, in the first  
3 line----

4           MJ [COL GREGORY]:   **[Indicating toward the court reporter]** I  
5 don't think she got that.

6           TC [MAJ COWHIG]:   In the first line, "willfully joined the al  
7 Qaeda enterprise and."

8           DC [MAJ FRAKT]:   Your Honor--I'm sorry to interrupt, but my  
9 interpreter is indicating that the translation is not a hundred  
10 percent accurate. I think it would facilitate the translation if a  
11 copy of the charges were actually provided to the court interpreter  
12 so she could----

13          MJ [COL GREGORY]:   So she can see the English?

14          DC [MAJ FRAKT]:   ----see the English and translate it, instead  
15 of having to do it on the fly with some possibly unfamiliar language.

16          MJ [COL GREGORY]:   Can we do that?

17          TC [MAJ COWHIG]:   We can do that; but the accused is indicating  
18 I believe that he would like to speak to Your Honor.

19          ACC [MR. AL BAHLUL]:   The order of translation is--the  
20 translation is in front of me now. That matter of translation for me  
21 is not a serious matter, and I don't care for it; and I would throw  
22 it away behind my back. I don't care for this. Just get me Arabic  
23 translation from a prosecutor, and you can summarize this session.

1 You are the ones who care for translation, not me.

2 MJ [COL GREGORY]: All right. Finish up your translation, Major  
3 Cowhig. I think you only have a couple of lines to go.

4 TC [MAJ COWHIG]: Yes, sir. Returning to the language I was on.  
5 Strike the words "willfully joined the al Qaeda enterprise and".

6 Beginning in the third line of page 1 of 4 of the  
7 continuation, strike the language, "the enterprise and".

8 Copies of these changes have been provided to yourself and  
9 defense counsel in English. We will make these change--we will make  
10 these changes in the Arabic version of the charge sheet and provide  
11 those to the accused as soon as possible.

12 MJ [COL GREGORY]: Very well.

13 ACC [MR. AL BAHLUL]: Up to now, I consider that I don't have  
14 anything. I consider what they have is nothing.

15 MJ [COL GREGORY]: Is what? I didn't get the last.

16 ACC [MR. AL BAHLUL]: Is nothing

17 MJ [COL GREGORY]: Well, the government moves to amend the  
18 charges.

19 Major Frakt, are you prepared to state whether or not you have  
20 an objection?

21 DC [MAJ FRAKT]: No objection.

22 MJ [COL GREGORY]: You may make the amendment. It's deleting  
23 language. It adds nothing. I agree that it's a minor change; and



1 usually when language is deleted, it's to the benefit of the accused  
2 anyway.

3           Would you like to go on to your preadmission of exhibits  
4 that you mentioned you would like to do, or is there anything else  
5 regarding this?

6           TC [MAJ COWHIG]: Perhaps just one more point, Your Honor: That  
7 it does not change the nature of the offense, other than to reduce  
8 the offense.

9           MJ [COL GREGORY]: That would be my interpretation: It reduces  
10 the offense.

11           Okay. You may continue.

12           TC [MAJ COWHIG]: Your Honor, we would like to take up Appellate  
13 Exhibit 32, previously filed with the court, which is the  
14 government's motion.

15           CT INT: Excuse me. Can you repeat the last word, please?

16           TC [MAJ COWHIG]: The government's motion.

17           MJ [COL GREGORY]: Turn that mike.

18 **[Major Cowhig did as directed.]**

19           TC [MAJ COWHIG]: For judicial notice of various statements of  
20 the President in Executive Order and Department of State notice.  
21 These are four prosecution exhibits reflected in Appellate Exhibit  
22 32, Prosecution Exhibits 1 through 4 for identification.

23           We would like to move those into evidence.

1 MJ [COL GREGORY]: Any objection to the court taking judicial  
2 notice of the four items set forth in this?

3 Let me just add, in looking at this: The first two items  
4 are some remarks by former President Clinton. I would take judicial  
5 notice of that as a news event and that the remarks were made, but I  
6 want to be clear that I will not take judicial notice of any  
7 expressed intent or interpretation of those remarks. They are what  
8 they are.

9 Make sense?

10 TC [MAJ COWHIG]: Yes, sir. That's--that is our understanding  
11 and our request, not that you reasonably would conclude, but that  
12 they would be accepted as statements of the President.

13 MJ [COL GREGORY]: All right. I will do that.

14 DC [MAJ FRAKT]: Your Honor, the--I have been directed not to  
15 offer any opinions or positions on any evidence the government  
16 intends to offer. So they may proceed without defense involvement.

17 MJ [COL GREGORY]: And again, just so we are clear: I  
18 understand that position; but if I do not have an objection to the  
19 evidence, I will consider that to be no objection.

20 DC [MAJ FRAKT]: Your Honor, may I ask a procedural question?

21 MJ [COL GREGORY]: You may. Sure.

22 DC [MAJ FRAKT]: In admitting this evidence today, are you  
23 admitting it for all purposes as a final matter, or are you admitting

1 it subject to the government laying a proper foundation and relevance  
2 for the exhibits at the trial?

3 MJ [COL GREGORY]: I would not admit evidence that is not  
4 relevant. So to that extent, any evidence offered by the government  
5 is predicated on it being relevant. If that predicate were not  
6 satisfied, then it would not be admitted. That is my understanding,  
7 that we do have that predicate.

8 And I will turn to Major Cowhig and ask, concerning the  
9 second part on foundation. What is the government's intent regarding  
10 foundation?

11 TC [MAJ COWHIG]: Yes. It's the government's intent, sir, that  
12 these be admitted for all purposes; and all the evidence which we are  
13 receiving in admission today is relevant to the case and probative of  
14 the charges.

15 MJ [COL GREGORY]: Would you be providing any additional  
16 foundational evidence, through witnesses or otherwise, when you  
17 present your case?

18 TC [MAJ COWHIG]: Yes, sir. In order to make the evidence  
19 relevant and meaningful for the panel, we will have to place it in  
20 the framework of the charges. Some of this evidence demonstrates its  
21 own relevance, such as the statements of the President, or the  
22 statements of the accused which we have yet to offer. Obviously,  
23 this will require more extensive testimony to explain.

1 MJ [COL GREGORY]: I'm satisfied that at this point the  
2 government would intend to provide witnesses or other evidence that  
3 would make this relevant to these proceedings. If that were not to  
4 occur, I would certainly entertain a relevance objection at that  
5 point. But at this point I do not have an objection on relevance or  
6 foundation or otherwise, and will accept, again, as a predicate, that  
7 the evidence is relevant and will be shown to be so by the government  
8 somehow, some way; and if they don't do that, I will revisit the  
9 issue.

10 So the short answer: Yes.

11 DC [MAJ FRAKT]: Thank you, Your Honor. I would request that  
12 copies--although this is not Mr. al Bahlul asking me to do this, but  
13 it seems to me that copies of all of this evidence should be provided  
14 to him; and where the evidence is in English, it should be translated  
15 for him.

16 MJ [COL GREGORY]: Is that going to happen?

17 TC [MAJ COWHIG]: No, sir, it is not.

18 MJ [COL GREGORY]: Okay.

19 TC [MAJ COWHIG]: The mechanism----

20 MJ [COL GREGORY]: How are you going to work that?

21 TC [MAJ COWHIG]: The mechanism for translation is a government  
22 funded translator has been provided to Mr. Bahlul. He is seated here  
23 in the courtroom.

1 MJ [COL GREGORY]: All right.

2 TC [MAJ COWHIG]: By order of the Court and by operation of the  
3 law, Major Frakt represents the accused.

4 MJ [COL GREGORY]: By default.

5 TC [MAJ COWHIG]: By default as well, sir; and we must deliver  
6 discovery to the counsel of the represented party.

7 MJ [COL GREGORY]: And then the defense translator can go over  
8 that with Mr. Bahlul?

9 TC [MAJ COWHIG]: Yes, sir. A large portion of this material is  
10 in Arabic in its original.

11 MJ [COL GREGORY]: Good. And is there anything that you have  
12 offered or intend to offer today that claim Mr. Bahlul would not see,  
13 or he is going to get to see it all?

14 TC [MAJ COWHIG]: Sir, all of this evidence is evidence that can  
15 be seen by Mr. al Bahlul, or we would not be offering it in court.

16 MJ [COL GREGORY]: That was my assumption, but I just wanted to  
17 make sure. Okay. Good. We will use that procedure.

18 DC [MAJ FRAKT]: Your Honor, and again, I don't know if Mr. al  
19 Bahlul cares to see the evidence----

20 MJ [COL GREGORY]: It will be available if he wants.

21 DC [MAJ FRAKT]: ----but I did want to note that the--we are not  
22 actually provided a government-funded interpreter for the translation  
23 of documents. Each time the defense comes down here to Guantanamo,

1 we have to request an interpreter. They are given a short-term  
2 contract, only for the time that we are here; and if we want a  
3 specific document or documents to be translated, we have to put in  
4 another request for funding through a separate contractor.

5 I have just been given a stack of documents some four to  
6 five inches high; and it seems unreasonable that these will be  
7 translated in time for the trial, although I haven't gone through  
8 them yet to see which ones are in English and which ones are in  
9 Arabic. It seems to me that it's the government's obligation to  
10 provide translations.

11 MJ [COL GREGORY]: That would make common sense, but we will see  
12 if that is the way it is.

13 DC [MAJ FRAKT]: I would note that the government has actually  
14 been appointed a full-time interpreter on their team, and indeed he  
15 is present here in the courtroom today.

16 MJ [COL GREGORY]: Why is there that difference between the  
17 defense translator, the apparent difference Major Frakt is describing  
18 and your own translator?

19 TC [MAJ COWHIG]: Because we asked a full-time translator of the  
20 convening authority, and he was appointed by the convening authority.

21 MJ [COL GREGORY]: Well, now Major Frakt is asking one.

22 TC [MAJ COWHIG]: Yes, sir. He must make that request to the  
23 convening authority, and we will certainly support that request.

1 MJ [COL GREGORY]: Major Frakt--I think he is making the  
2 request. Are you making the request for a full-time translator? The  
3 answer would be "yes," unless you want to say you are not making that  
4 request.

5 DC [MAJ FRAKT]: Well, my request was for the government to  
6 provide a translation of any documents they intend to use.

7 MJ [COL GREGORY]: Yeah. This just seems like it would have  
8 already occurred. Maybe I'm missing something; but, I mean, if you  
9 want to have a smooth process, you provide documents that are in  
10 English for the attorney and in the accused's native language.  
11 Otherwise, we just wait until they are translated. I mean, why  
12 wouldn't that already be taken care of? I don't understand.

13 TC [MAJ COWHIG]: Sir, the mechanism was set up in this system  
14 to provide translation of English documents to the accused other than  
15 the original charge sheet.

16 MJ [COL GREGORY]: Well, that mechanism doesn't seem to be  
17 working, based on what I'm hearing.

18 TC [MAJ COWHIG]: The defense needs to exercise that mechanism.

19 MJ [COL GREGORY]: I will tell you what I'm going to do. Major  
20 Frakt, you make your request in writing for what you need in this  
21 case. I thought I heard that they would support it. Let the  
22 convening authority act on that; and if it's an action that doesn't  
23 meet the needs of the defense, then, Major Frakt, make the motion to

1 me and I will issue an order that meets the needs of the defense.

2 **[Amplification of Arabic translation broadcast into the courtroom**  
3 **briefly fluctuates.]**

4 What is that noise?

5 TC [MAJ COWHIG]: Sir, I believe that's the microphone upstairs  
6 for the interpreter cutting in and out.

7 MJ [COL GREGORY]: Oh.

8 TC [MAJ COWHIG]: If I could clarify, the four to five-inch  
9 stack of documents that we provided to the defense, four inches of  
10 that is Arabic and don't need translations.

11 MJ [COL GREGORY]: Well, that makes it much easier.

12 Just make sure that they get what they need to prepare.

13 TC [MAJ COWHIG]: Yes, sir.

14 MJ [COL GREGORY]: And, Major Frakt, you request in writing what  
15 you need. They said they would support it. Let the convening  
16 authority take the action necessary to get you what you need, since I  
17 sitting here don't have any money; the convening authority has money.  
18 But then if we don't get what we need from the convening authority,  
19 then bring it to my attention, and I will take appropriate action  
20 after hearing the input from both sides; but I would encourage you to  
21 act speedily, as I'm sure you will. I'm sure you will.

22 DC [MAJ FRAKT]: Thank you, Your Honor.

23 TC [MAJ COWHIG]: Yes, sir; and if we could--I believe the



1 defense expressed a need to do that quickly. If we could set a  
2 deadline so that we would know what actions we would need to take.

3 MJ [COL GREGORY]: When are you going to submit your request,  
4 Major Frakt?

5 DC [MAJ FRAKT]: Well, I would need to consult with Mr. al  
6 Bahlul and get his views on this matter.

7 MJ [COL GREGORY]: And I know you have another hearing I believe  
8 this week. Is that correct?

9 DC [MAJ FRAKT]: Yes, Your Honor. I'm scheduled for tomorrow  
10 and Friday.

11 MJ [COL GREGORY]: How about this: Let's make it--we are  
12 getting close to the end of September. How about the end of the  
13 business day on the last day of September, which would be Tuesday,  
14 the 30th.

15 TC [MAJ COWHIG]: Sir, this--if I may, this is not a complicated  
16 request, sir.

17 MJ [COL GREGORY]: That's--if he wants to get in it earlier, he  
18 can do so; but I know he has hearings. So that is the deadline I'm  
19 setting.

20 TC [MAJ COWHIG]: Yes, sir. There is a form that typically our  
21 paralegals----

22 MJ [COL GREGORY]: Okay. Look, it's not appropriate to get into  
23 this kind of trivia on the record.

1 TC [MAJ COWHIG]: Yes, sir.

2 MJ [COL GREGORY]: Make your request. I know that you all talk  
3 to each other, and I encourage that type of civility. To the extent  
4 that you can, work this out in a civil manner that meets the needs of  
5 all concerned; and I'm confident that you will succeed without having  
6 to come to me to settle this rather petty dispute. Good.

7 TC [MAJ COWHIG]: Yes, sir.

8 MJ [COL GREGORY]: Are we ready to proceed?

9 **[Amplification of Arabic translation broadcast into the courtroom**  
10 **briefly fluctuates.]**

11 TC [MAJ COWHIG]: Did we resolve our----

12 MJ [COL GREGORY]: I don't know what is happening up there, but  
13 someone should check the microphone.

14 CT INT: We just did. We took care of it, Your Honor.

15 MJ [COL GREGORY]: Okay. Good.

16 So I have granted you permission to make the stated  
17 changes in the charge sheet. Now, where were we?

18 TC [MAJ COWHIG]: Had you ruled on Prosecution Exhibits 1  
19 through 4 for identification, sir, reflected in Appellate Exhibit 32?

20 MJ [COL GREGORY]: Yes. With the caveat that I stated, I was  
21 only taking notice of the remarks themselves and not any  
22 interpretation of those remarks.

23 TC [MAJ COWHIG]: Yes, sir. Yes, sir. Pursuant to the previous

1 written motion marked as Appellate Exhibit 33, the government moves  
2 for admission of Prosecution Exhibits 5 through 13 for  
3 identification. Those nine exhibits----

4 MJ [COL GREGORY]: I'm sorry. What is the caption on this one?  
5 Mine aren't numbered.

6 TC [MAJ COWHIG]: Sorry, sir. "Government's Motion for  
7 Preadmission of the Statements of the Accused."

8 MJ [COL GREGORY]: Oh, I'm sorry. Go ahead.

9 TC [MAJ COWHIG]: And those are law enforcement records of a  
10 number of statements, nine statements, of the accused.

11 MJ [COL GREGORY]: Would you care to state an objection?

12 DC [MAJ FRAKT]: No, thank you, Your Honor.

13 MJ [COL GREGORY]: Without objection, they are admitted as  
14 Prosecution Exhibit--tell me the numbers again.

15 TC [MAJ COWHIG]: Prosecution Exhibits 5 through 13, sir.

16 MJ [COL GREGORY]: 5 through 13 are admitted.

17 TC [MAJ COWHIG]: Sir, pursuant to a previous written motion  
18 marked as Appellate Exhibit 34, the government's motion for  
19 preadmission of evidence and notice of expert testimony, the Al Qaeda  
20 Plan Video, the government moves to admit Prosecution Exhibit 14 for  
21 identification into evidence as Prosecution Exhibit 14.

22 MJ [COL GREGORY]: Would you care to state an objection, Major  
23 Frakt?

1 DC [MAJ FRAKT]: No, Your Honor.

2 MJ [COL GREGORY]: Without objection, admitted as--I'm sorry,  
3 what is the number--the prosecution number?

4 TC [MAJ COWHIG]: 14, sir.

5 MJ [COL GREGORY]: 14.

6 TC [MAJ COWHIG]: Sir, pursuant to the government's previous  
7 written motion marked as Appellate Exhibit 35, the government's  
8 motion for preadmission of the letters of the accused, the government  
9 would like to move into evidence four letters written by the accused  
10 marked as Prosecution Exhibits 15 through 18 for identification, as  
11 Prosecution Exhibits 15 through 18.

12 MJ [COL GREGORY]: Any objection to what has been offered as  
13 Prosecution 15, 16, 17, and 18, letters written by Mr. Bahlul?

14 DC [MAJ FRAKT]: Well, we object to the government intercepting  
15 Mr. al Bahlul's mail; but otherwise, no objection.

16 MJ [COL GREGORY]: So I have an objection to these based on the  
17 interception of mail.

18 Would you care to respond to that objection?

19 TC [MAJ COWHIG]: Sir, we don't understand that as a legal  
20 objection to the admission of the evidence.

21 MJ [COL GREGORY]: I'm not aware that it is a legal basis,  
22 either, but I'm always open to possibilities.

23 So that is your basis for objection, is the interception of

1 the mail?

2 DC [MAJ FRAKT]: Yes, Your Honor.

3 MJ [COL GREGORY]: 15, 16, 17, 18 are admissible under the  
4 rules, so they are admitted.

5 Next----

6 TC [MAJ COWHIG]: Sir--sorry, sir. Pursuant to a previous  
7 written motion of the government marked as Appellate Exhibit 36, the  
8 government's motion for preadmission of various interviews of Usama  
9 bin Laden, other al Qaeda interviews, declarations and proclamations,  
10 the government moves to admit seven exhibits which have been  
11 previously marked as appellate exhibit--excuse me--Prosecution  
12 Exhibits 19 through 25 for identification, as Prosecution Exhibits 19  
13 through 25.

14 MJ [COL GREGORY]: None of these are statements of Mr. Bahlul.  
15 Right?

16 TC [MAJ COWHIG]: Correct, sir, they are not. They are  
17 statements of co-conspirators in furtherance of the conspiracy.

18 MJ [COL GREGORY]: Any objection other than the statement I  
19 previously made, that the prosecution needs to establish relevance?

20 DC [MAJ FRAKT]: Nothing further from the defense.

21 MJ [COL GREGORY]: All right. 19 through 25 are admitted; and  
22 again, I'm relying on your representation that these are somehow  
23 relevant to Mr. Bahlul.

1 TC [MAJ COWHIG]: Yes, sir.

2 Pursuant to a previous written motion marked as Appellate  
3 Exhibit 37, the government's motion for preadmission of videotaped  
4 statements of Usama bin Laden, Muhammed Atta, and Ziad al Jarrah, the  
5 government moves to admit into evidence what has been previously  
6 marked as Prosecution Exhibits 26 through 30 for identification, as  
7 Prosecution Exhibits 26 through 30.

8 MJ [COL GREGORY]: Again, with the understanding that the  
9 government needs to tie these into relevance, does the defense care  
10 to state an objection to these?

11 DC [MAJ FRAKT]: No thank you.

12 MJ [COL GREGORY]: Without objection, they are admitted as 26  
13 through 30.

14 TC [MAJ COWHIG]: Your Honor, pursuant to the government's  
15 previous written motion marked as Appellate Exhibit 38, the  
16 government's motion for preadmission of a video titled "Destruction  
17 of the American Destroyer USS COLE," which has been previously marked  
18 as Prosecution Exhibit 31 for identification, the government moves to  
19 admit that video as Prosecution Exhibit 31.

20 MJ [COL GREGORY]: Major Frakt, would you care to state any  
21 objection to----

22 DC [MAJ FRAKT]: I'm curious as to what form the video is. I  
23 don't see a video in this stack of papers.

1 MJ [COL GREGORY]: Yeah, and that's all I have **[indicating]**. So  
2 could you help us with that question. What format are you talking  
3 about here?

4 TC [MAJ COWHIG]: Sir, this video was previously provided to  
5 defense in discovery. We have other copies of this video on compact  
6 disc and DVD here. They have also been provided to the clerk in that  
7 format.

8 MJ [COL GREGORY]: So do you think you've got the DVD someplace,  
9 Major Frakt?

10 DC [MAJ FRAKT]: Yes, thank you for that clarification. No  
11 objection.

12 MJ [COL GREGORY]: Okay.

13 TC [MAJ COWHIG]: And there is attached to the documents we  
14 provided today an English transcript of that video.

15 MJ [COL GREGORY]: Is that all part of Prosecution 31? I just  
16 want to know exactly what I'm admitting.

17 TC [MAJ COWHIG]: Yes, sir.

18 MJ [COL GREGORY]: DVD with English translation?

19 TC [MAJ COWHIG]: Sir, I believe that this video is in a Windows  
20 media file format rather than a true DVD format.

21 MJ [COL GREGORY]: Is it on a little plastic round thing?

22 TC [MAJ COWHIG]: It's on a little plastic round thing, sir.

23 MJ [COL GREGORY]: Okay. That's what I'm admitting then.

1           What about the translation part?

2           TC [MAJ COWHIG]: And the translation is attached with the  
3 motion. It is the English transcript of the video.

4           MJ [COL GREGORY]: And that's all to be admitted as 31?

5           TC [MAJ COWHIG]: Yes, sir.

6           MJ [COL GREGORY]: All right. Without objection, admitted.

7           Just make sure, Major Frakt, you've got a copy of this; and  
8 if you don't, let them know and they will get you one, because I can  
9 see several sitting on their table over there.

10           So 31 is admitted.

11           TC [MAJ COWHIG]: And pursuant to previous written motion,  
12 marked as Appellate Exhibit 39, the government moves to admit three  
13 notebooks of the accused, which have been previously marked as  
14 Prosecution Exhibits 32 through 34, as Prosecution Exhibits 32  
15 through 34.

16           MJ [COL GREGORY]: And, again, on the format, I would assume  
17 that's just a hard copy?

18           TC [MAJ COWHIG]: Sir, we have provided that here today in hard  
19 copy; but it has been--in discovery, is provided in digital format.  
20 We are providing all of the discovery in digital format because of  
21 the volume of some of the material.

22           MJ [COL GREGORY]: And what about the language? What language?  
23 I assume since it's Mr. Bahlul's notebook, it's in his native



1 language.

2 TC [MAJ COWHIG]: Sir, these notebooks contain both Arabic and  
3 English. We have translations which we have provided of each of  
4 these three notebooks. We beg your leave to provide a revised  
5 translation for the second of those----

6 MJ [COL GREGORY]: 33?

7 TC [MAJ COWHIG]: ----3. Because we reviewed that translation  
8 and are polishing it to make some corrections.

9 MJ [COL GREGORY]: And again, I'm sure when the defense makes  
10 their request for the translation support, they can have their  
11 translator go over this as well. Make sure it tracks.

12 TC [MAJ COWHIG]: Yes, sir. That's why we are providing both.

13 MJ [COL GREGORY]: All right. Well, just provide whatever  
14 translation you, as the government representative, feel is the most  
15 accurate.

16 TC [MAJ COWHIG]: Yes, sir.

17 MJ [COL GREGORY]: And then the defense will, of course, have an  
18 opportunity to examine that with their translator. And I certainly  
19 don't claim to be a linguist; but if there is a difference in  
20 translations, we will deal with it. Battle of the expert  
21 translators, I suppose.

22 TC [MAJ COWHIG]: Sir, would you like to cover the----

23 MJ [COL GREGORY]: Well, let me give them a chance to object

1 here.

2 TC [MAJ COWHIG]: I'm sorry.

3 MJ [COL GREGORY]: Would you care to make an objection to what  
4 has been offered as 32, 33, and 34, the notebooks of Mr. Bahlul?

5 DC [MAJ FRAKT]: Not at this time, Your Honor.

6 MJ [COL GREGORY]: Without objection, they are admitted as 32,  
7 33, and 34.

8 TC [MAJ COWHIG]: Sir, we noted before beginning this session  
9 that the filings inventory that we have appears to be missing two  
10 appellate exhibits.

11 MJ [COL GREGORY]: Something that came up last time?

12 TC [MAJ COWHIG]: Both of them came up last time, sir.

13 MJ [COL GREGORY]: Go ahead.

14 TC [MAJ COWHIG]: One was the government's motion to compel the  
15 presence of the accused, which we--we did not discuss in depth at  
16 that session.

17 MJ [COL GREGORY]: It didn't become an issue.

18 TC [MAJ COWHIG]: And the other one was the government's request  
19 for judicial notice of the Law of War.

20 MJ [COL GREGORY]: Which I think I acted on?

21 TC [MAJ COWHIG]: Yes, sir. It's my recollection you did act  
22 upon that one.

23 MJ [COL GREGORY]: All right. And how would you like to mark

1 those?

2 TC [MAJ COWHIG]: And to avoid disrupting the--the markings that  
3 we have made--and we have one more that we have already marked--we  
4 would like to mark those 41 and 42, sir, appellate exhibits.

5 MJ [COL GREGORY]: You may.

6 ATC [MAJ HALE]: Your Honor, with regards Appellate Exhibit 41,  
7 which will be a motion to compel presence, we will add one attachment  
8 to that motion dealing with a possible instruction, should that issue  
9 arise.

10 MJ [COL GREGORY]: That's fine.

11 The translators have asked that we all speak slower.

12 ATC [MAJ HALE]: Your Honor, Appellate Exhibit 40, the  
13 government has made a motion for sentencing instructions particularly  
14 focused on the issue of detainee credit in a commissions proceeding.

15 The government has filed with that motion proposed  
16 sentencing instructions and possible instructions should a member's  
17 question come up.

18 MJ [COL GREGORY]: Did we mark those other two?

19 ATC [MAJ HALE]: It's part of Appellate Exhibit 40, sir.

20 MJ [COL GREGORY]: No. No. No. The ones that came up last  
21 time. Did we finish that? I thought we only dealt with one--what  
22 appellate exhibits--did we get both of those?

23 TC [MAJ COWHIG]: Yes, sir.

1 MJ [COL GREGORY]: Okay. 38 and 39.

2 TC [MAJ COWHIG]: 38 and 39, sir, respectively are the  
3 government's motion for preadmission of the COLE video.

4 MJ [COL GREGORY]: Okay. Then that's not it.

5 TC [MAJ COWHIG]: And 39 is the notebooks of the accused; 40 is  
6 the motion that Major Hale just mentioned.

7 MJ [COL GREGORY]: Oh, so we haven't done the ones from last the  
8 time, the missing appellate exhibit?

9 TC [MAJ COWHIG]: We just discussed that, sir; and we assigned  
10 41 to compel presence of the accused.

11 MJ [COL GREGORY]: 41.

12 TC [MAJ COWHIG]: And 42, judicial notice of Law of War.

13 MJ [COL GREGORY]: 42. So we are all set.

14 And what is your motion on this other? What's that number?

15 ATC [MAJ HALE]: 40, sir.

16 MJ [COL GREGORY]: 40?

17 ATC [MAJ HALE]: It was earlier marked.

18 MJ [COL GREGORY]: Okay. So you are all set. I just want to  
19 make sure we are all--go ahead. Go ahead.

20 ATC [MAJ HALE]: The government has submitted the instructions  
21 as noted, and also proposed instructions, should a member's question  
22 arise.

23 It is the government's position that detainee credit is

1 separate and distinct from adjudged confinement by a panel, and that  
2 the statute----

3 MJ [COL GREGORY]: Is this all in your motion?

4 ATC [MAJ HALE]: Yes, sir.

5 MJ [COL GREGORY]: That's okay. You don't need to--I will give  
6 you a chance to respond to this later, if you want. It's not  
7 something we need to deal with today. You can go ahead and mark it.

8 What is the appellate exhibit?

9 CT REP: 40, sir.

10 ATC [MAJ HALE]: 40, sir.

11 MJ [COL GREGORY]: Four-zero. Okay. I will give you a chance  
12 to respond to that.

13 DC [MAJ FRAKT]: Thank you, Your Honor.

14 ATC [MAJ HALE]: Is there a potential date of assignment if the  
15 defense is inclined to respond, Your Honor?

16 MJ [COL GREGORY]: No, not yet. Get to it when you--get it to  
17 me by the middle of October, if you care to.

18 DC [MAJ FRAKT]: Thank you, Your Honor.

19 It seems to me that requiring the defense to submit matters  
20 related to sentencing----

21 MJ [COL GREGORY]: That's a good point. I'm ahead of you on  
22 that. It seems premature, presupposes that we will have sentencing  
23 in this case.

1           ATC [MAJ HALE]: Your Honor, as noted in the filing, for  
2 purposes of efficiency during trial, it's an issue that is in  
3 controversy from the earlier trial.

4           MJ [COL GREGORY]: Yeah, but the earlier trial had a sentencing  
5 proceeding. It's not an issue for your findings case. Right?

6           ATC [MAJ HALE]: It is certainly separate and distinct from the  
7 findings case.

8           MJ [COL GREGORY]: Okay. Then I will deal with it if we have  
9 sentencing. The point is well taken.

10                   Anything related to possible sentencing in the case, you  
11 can--you can let me have if we get to that point. I will be happy to  
12 look at your motion in advance, but I'm not going to hear argument on  
13 it.

14                   Next?

15           TC [MAJ COWHIG]: That's all we intended to offer today, sir.

16                   We had requested that the Court ask the accused to enter  
17 pleas.

18           MJ [COL GREGORY]: I haven't got to that point. I got it on my  
19 list though.

20           TC [MAJ COWHIG]: Yes, sir.

21           MJ [COL GREGORY]: I got it on my list.

22                   There was something that you all mentioned concerning  
23 requesting a procedural order on instructions. Did you still want to

1 take that up today?

2 ATC [MAJ HALE]: Your Honor, with regards to procedural matters,  
3 the government would offer that, for efficiency, that the Military  
4 Judge instruct on the elements and the law, counsel would argue, and  
5 the Judge would then instruct the final procedural matters such as  
6 the voting and whatnot.

7 MJ [COL GREGORY]: I traditionally do all of that at the  
8 conclusion of the proof; and as I mentioned, I would be happy if both  
9 sides want me to--or one side--to give the panel an instruction, a  
10 summary instruction on the elements at the beginning before you make  
11 an opening statement, without going into all of the details.

12 ATC [MAJ HALE]: Certainly.

13 MJ [COL GREGORY]: Would that be acceptable?

14 ATC [MAJ HALE]: Yes, Your Honor.

15 MJ [COL GREGORY]: I will ask you to give me proposed  
16 instructions, both for the summary part at the beginning and the  
17 whole package at the end.

18 ATC [MAJ HALE]: That was the government's intention, Your  
19 Honor.

20 MJ [COL GREGORY]: Good. Please provide that and show it to the  
21 defense.

22 ATC [MAJ HALE]: Is our administrative day the 27th adequate, or  
23 is there an earlier date?

1 MJ [COL GREGORY]: Oh, that's the other thing we needed to talk  
2 about.

3 Is Monday, the 27th, acceptable to both sides to have a  
4 session like this without the panel to cover any administrative  
5 matters?

6 TC [MAJ COWHIG]: The government believes that would smooth the  
7 presentation of the trial, sir.

8 MJ [COL GREGORY]: Does that track with your schedule, Major  
9 Frakt?

10 DC [MAJ FRAKT]: Yes. Smooth would be nice for a change, Your  
11 Honor.

12 MJ [COL GREGORY]: I will endeavor to make that happen; but it  
13 requires some degree of cooperation between the sides, and I'm  
14 confident that will occur.

15 Did you want to talk about your possible VTC notice and  
16 your pending hearsay notice, or did you want to table that for now?  
17 I just have that on the list that you all provided.

18 TC [MAJ COWHIG]: Sir, we had included that on the list just to  
19 advise the defense and you of the possibility of that occurring. I  
20 don't believe it's a topic we need to take up today.

21 MJ [COL GREGORY]: All right. That's fine.

22 All right. And you can get me your proposed instructions  
23 as soon as you have them ready. I would like to take a look at them.



1 You can just send them by e-mail. Make sure they see what you are  
2 sending me.

3 TC [MAJ COWHIG]: Yes, sir.

4 MJ [COL GREGORY]: Or send it through our office, the way it  
5 works. You know how that goes.

6 TC [MAJ COWHIG]: Will do, sir. We will send it by the usual  
7 route, including defense counsel and directly to the clerk.

8 MJ [COL GREGORY]: Yeah. Don't send it to me directly, because  
9 80 percent of the time my e-mail doesn't work.

10 Did you have anything, Major Frakt, before we move on to me  
11 asking for pleas?

12 DC [MAJ FRAKT]: No. But in light of the amended specifications  
13 and the fact that they have not yet been provided in Mr. al Bahlul's  
14 language, it seems to me premature for him to enter pleas.

15 I believe that Mr. Bahlul wishes to make a statement to the  
16 Court.

17 MJ [COL GREGORY]: So is it your suggestion that, because of the  
18 amendment to the charges, that I defer pleas until our session on  
19 Monday, the 27th?

20 DC [MAJ FRAKT]: Yes, Your Honor.

21 MJ [COL GREGORY]: Does either side see the need for an  
22 in-person session before that? I don't.

23 DC [MAJ FRAKT]: Your Honor, I don't see a need for an in-person

1 session.

2 I would ask that the Court set a firm deadline for the  
3 government to provide notice of witnesses and evidence that they  
4 intend to offer; and that that fixed date represent a cutoff, and  
5 that anything--that they would be barred from offering anything that  
6 was not provided by that date.

7 MJ [COL GREGORY]: I would assume they would be ready to do that  
8 today, given how far along we are in the process.

9 Is there anything left?

10 TC [MAJ COWHIG]: Sir, there is material left; and we are not  
11 prepared to do that today.

12 MJ [COL GREGORY]: Well, they need to have time to respond to  
13 some new stuff.

14 DC [MAJ FRAKT]: Yes, Your Honor.

15 MJ [COL GREGORY]: I agree with Major Frakt, that I need to set  
16 a cutoff time; and if you haven't provided it by my cutoff time,  
17 whenever that occurs, then you don't get to use it. That would be my  
18 remedy.

19 TC [MAJ COWHIG]: Sir, we would ask to have the ability to  
20 reclamation specific items to the Judge.

21 MJ [COL GREGORY]: **[Referring to the translators]** To do what?

22 TC [MAJ COWHIG]: As part of that deadline, which we would  
23 certainly endeavor to meet, we would have to ask the ability----

1 MJ [COL GREGORY]: You have to wait until they are finished.

2 TC [MAJ COWHIG]: ----to seek exception for specific items from  
3 that deadline.

4 MJ [COL GREGORY]: You can seek, but I don't know if you will  
5 find.

6 DC [MAJ FRAKT]: Your Honor, in another case the Court made an  
7 order with such a deadline barring new witnesses or evidence absent a  
8 showing of extraordinary circumstances; and I would request a similar  
9 order with a cutoff date, to include matters the government intends  
10 to offer in sentencing, by two weeks from today.

11 TC [MAJ COWHIG]: Sir, we would prefer a date, approximately  
12 October 15th; and we would object to any deadline which exceeds the  
13 deadlines imposed by the rules.

14 MJ [COL GREGORY]: When do you think your deadline runs?

15 TC [MAJ COWHIG]: The deadline varies depending upon the  
16 material, sir.

17 MJ [COL GREGORY]: Well, I'm not going to split hairs over the  
18 defense's ability to know what you are going to present.

19 TC [MAJ COWHIG]: And we are not seeking to split hairs over  
20 defense----

21 MJ [COL GREGORY]: I mean, how long have you been preparing this  
22 case? I think the number is a matter of years rather than months;  
23 but we won't go into that.

1           I'm going to give you--I'm inclined to pick the 10th of  
2 October, which is a Friday; and that's more than two weeks from  
3 today. It's 16 days. And if you haven't provided it by the 10th of  
4 October, I don't want to anticipate what remedy I would grant, but it  
5 will either be continuance at your expense, or I will prohibit you  
6 from using the material.

7           TC [MAJ COWHIG]: This order extends to govern--excuse  
8 me--evidence that the government intends to use at the trial?

9           MJ [COL GREGORY]: Right. Anything you intend to offer.

10          TC [MAJ COWHIG]: Yes, sir.

11          MJ [COL GREGORY]: And I know you have been diligent in putting  
12 together all of this stuff that we just admitted today--I guess he  
13 got that. But any new stuff--I mean, how much new stuff is out  
14 there? How much could it be?

15          TC [MAJ COWHIG]: In order to present material to the Court and  
16 to the accused, the prosecutors are required to undergo an extensive  
17 review process.

18          MJ [COL GREGORY]: I know about that, and I know you have been  
19 dealing with that.

20          TC [MAJ COWHIG]: And that is our primary obstacle to turning  
21 over that evidence.

22          MJ [COL GREGORY]: Well, we had a hearing on this case--was it  
23 done on the 15th of August? 14th? It was a Thursday or a Friday.

1 TC [MAJ COWHIG]: It was during that week, sir. I don't recall  
2 the exact date of it.

3 MJ [COL GREGORY]: And as I recall, we had a conference  
4 immediately afterwards and set a trial date of 27 October. So  
5 whoever these people are, wherever they are who are looking at your  
6 evidence, reviewing your evidence, they have known, I suppose, that  
7 we have a trial date on 27 October since last month.

8 TC [MAJ COWHIG]: Yes, sir.

9 MJ [COL GREGORY]: Maybe they need to do one of those in-box  
10 exercises where they prioritize, because I think they have had enough  
11 time.

12 TC [MAJ COWHIG]: We will do all that we can to meet that  
13 deadline, sir.

14 MJ [COL GREGORY]: If you get it by the--well, that is the  
15 weekend before Columbus Day. That gives you two full weeks.

16 Would that be adequate, Major Frakt? I know that might be  
17 hard to say because you don't know what this is, but----

18 DC [MAJ FRAKT]: Yes, Your Honor. We appreciate you setting a  
19 date. We do know that the charges were preferred last February for  
20 the third time.

21 MJ [COL GREGORY]: Yeah, I'm not going to be too sympathetic to  
22 additional delay to give whoever these people are an opportunity to  
23 review your evidence. I'm going to set the 10th of October; and, if

1 it hasn't been disclosed by then, I'm inclined not to let you use it.

2 I will--in line with Major Frakt's suggestion, I will  
3 consider extraordinary circumstances, but they truly should be  
4 extraordinary.

5 TC [MAJ COWHIG]: Understood, Your Honor.

6 MJ [COL GREGORY]: And just having a lot of cases going on is  
7 not extraordinary.

8 TC [MAJ COWHIG]: Yes, sir.

9 MJ [COL GREGORY]: Because there is only one going on, on the  
10 27th of October, and that is this one.

11 Does that help?

12 TC [MAJ COWHIG]: Yes, sir. I believe that gives us very  
13 specific direction.

14 MJ [COL GREGORY]: I try to provide specific guidance. Come to  
15 me if it's a serious problem; I will consider what you have to say.  
16 So I'm not going to do a written order. I consider what I just said  
17 sufficient.

18 Anybody have any questions about my order?

19 TC [MAJ COWHIG]: Sir, could we request a written order?

20 MJ [COL GREGORY]: Draft me one; I will sign it.

21 TC [MAJ COWHIG]: Yes, sir.

22 MJ [COL GREGORY]: As long as it says what I just said, or  
23 close. All right.

1           So I think that addresses that concern, Major Frakt. I  
2 agree with you, that because of the amendment on the charge sheet, I  
3 want to give Mr. Bahlul an opportunity to see that before he enters a  
4 plea; and I will take that plea on the 27th.

5           Does that work for both sides?

6           TC [MAJ COWHIG]: It does, sir. We would also offer that, if we  
7 would take a 15-minute recess, we could certainly make those changes  
8 to the Arabic translation of the charge sheet; provide them to the  
9 accused; and move forward, today.

10          MJ [COL GREGORY]: Possibility.

11           What about that, Major Frakt? I mean, there is not that  
12 much to translate.

13          DC [MAJ FRAKT]: Quite frankly, Your Honor, I'm not sure why it  
14 hasn't happened already with the interpreter being available here for  
15 the last several hours; but----

16          MJ [COL GREGORY]: Point taken.

17          DC [MAJ FRAKT]: ----I think I would be open to the interpreter  
18 being excused from the courtroom to pursue that while Mr. al Bahlul  
19 makes his statement to the Court.

20          MJ [COL GREGORY]: I think that's an excellent suggestion. Let  
21 me give them time to get him appropriate instructions; and then Mr.  
22 Bahlul, we are back to you. And then we will take a break, give you  
23 and Major Frakt a chance to review this translation that he is going

1 to do; and then we will come back and do the pleas; and then we are  
2 finished, I think.

3 **[The prosecution team conferred.]**

4 ACC [MR. AL BAHLUL]: If you would please allow me, Your Honor.

5 MJ [COL GREGORY]: Yes.

6 ACC [MR. AL BAHLUL]: Will you ask for the recess----

7 MJ [COL GREGORY]: I'm sorry. I didn't get the last.

8 ACC [MR. AL BAHLUL]: Will you ask for a recess in a while?

9 MJ [COL GREGORY]: Oh, yeah. You want it now?

10 ACC [MR. AL BAHLUL]: It is your order, not mine.

11 MJ [COL GREGORY]: Do you want a recess before you make your  
12 statement, or would you like to make your statement and then have a  
13 recess? It's your choice.

14 ACC [MR. AL BAHLUL]: The recess is better for everybody, Your  
15 Honor.

16 MJ [COL GREGORY]: Right. I will give it to everybody; but I'm  
17 going to let you tell me: Do you want it before you make your  
18 statement or after?

19 ACC [MR. AL BAHLUL]: After, after, Your Honor.

20 MJ [COL GREGORY]: After the statement. Okay.

21 TC [MAJ COWHIG]: Sir, may we request a comfort break?

22 MJ [COL GREGORY]: So now they want it before you make your  
23 statement.



1 ACC [MR. AL BAHLUL]: Even in the--in the battlefield there is a  
2 recess.

3 MJ [COL GREGORY]: All right. How about 1130? That is about 15  
4 minutes.

5 All right. We will be in recess for 15 minutes. Then we  
6 will come back; and then we will here from you, Mr. Bahlul.

7 We are in recess, please.

8 **[The R.M.C. 803 session recessed at 1112, 24 September 2008.]**

9 **[The R.M.C. 803 session was called to order at 1136,**  
10 **24 September 2008.]**

11 MJ [COL GREGORY]: The commission is called to order. All  
12 parties present when the court recessed are again present.

13 DC [MAJ FRAKT]: Maybe you should instruct the court interpreter  
14 to start, Your Honor.

15 MJ [COL GREGORY]: Yeah. Okay. Interpreters, we are ready to  
16 go.

17 CT INT: Ready, Your Honor.

18 MJ [COL GREGORY]: One more time. The commission is called to  
19 order. All parties present when the court recessed are again  
20 present.

21 And I will ask both sides, and I will particularly remind  
22 myself, not to speak when the translator is speaking; and translator,  
23 just let us know if you have a problem.

1           ATC [MAJ HALE]: Your Honor, two administrative matters. I will  
2 take up the first.

3           It is the government's belief that based on this morning's  
4 proceedings; all matters discussed in the 802 yesterday have been  
5 adequately summarized.

6           MJ [COL GREGORY]: Thanks. I did do that somewhat in pieces as  
7 we got to each subject; but I will give either side an opportunity to  
8 add or correct the summaries of our conference that we had yesterday.

9           Trial counsel, anything to add or correct?

10          ATC [MAJ HALE]: Nothing further, Your Honor.

11          MJ [COL GREGORY]: Major Frakt?

12          DC [MAJ FRAKT]: Nothing.

13          MJ [COL GREGORY]: Very well.

14          TC [MAJ COWHIG]: Sir, the second administrative matter and a  
15 third: During the break we passed the Arabic version of the modified  
16 charge sheet to the accused. He had a few questions on it, and I  
17 believe our interpreter answered those questions for him.

18          And second, during our break the accused chose to have a  
19 meeting with his counsel and interpreter here in the courtroom.

20          MJ [COL GREGORY]: Yes. I saw that and inquired whether that  
21 was his desire, and was told that it was.

22          TC [MAJ COWHIG]: I also inquired with the Captain of the Guard  
23 Force regarding this morning; and what he related to me was that the

1 accused was present here in the holding cell in the courtroom  
2 building from approximately 0700, available to meet with counsel;  
3 that the accused met with the defense interpreter at approximately  
4 0800; and at approximately 0845, based upon the direction the Guard  
5 Force had received that we would begin at 0900, they began the  
6 process of moving the accused to the courtroom.

7           After they had begun that process the defense counsel, who  
8 was not available earlier, asked if he could meet with the accused.  
9 The Guard Force at that time did not believe they had the discretion  
10 to delay the movement of the accused to the courtroom.

11           There was some concern expressed I guess earlier by the  
12 accused regarding the privacy of this meeting and the requirement  
13 that the guards remain present here in the courtroom. The guards  
14 must be physically present, according to their standing operating  
15 procedures, when the accused is not contained in a cell.

16           When the accused is in the holding cell here and meets  
17 privately with counsel, he is shackled and the guards leave the room  
18 but are required to observe but not hear the accused and counsel for  
19 both safety and security of all concerned.

20           I simply wanted to place that on the record to explain the  
21 circumstances this morning.

22           MJ [COL GREGORY]: All right. Thank you. And I will just say  
23 I'm sure our personnel here, guards and everyone else, are following

1 the procedures as best they can; and that next time, if either side  
2 does need a delay in the expected start time, try to let us know that  
3 far enough in advance so that perhaps our guards can adjust the  
4 transport time. So that is fine.

5 TC [MAJ COWHIG]: Yes, sir.

6 Back to the issue of the changes to the Arabic version of  
7 the charge sheet. I had not noticed, but my co-counsel has pointed  
8 out to me that the accused raised his hands when I said that we had  
9 resolved his question regarding the charge sheet. So my  
10 understanding is that may be incorrect.

11 MJ [COL GREGORY]: I did see Mr. Bahlul raise his hand, and was  
12 going to ask him about that particular point.

13 ACC [MR. AL BAHLUL]: He said that he gave me a translated  
14 version in the Arabic language. And at the beginning the documents  
15 weren't organized, and I asked the translator to arrange them, of  
16 course, the translator of the prosecution.

17 He took it and took enough time to rearrange it and give it  
18 back to me; and he gave numbers, handwritten. And, notably, that the  
19 numbering should be done by a computer. There are many numbers are  
20 erased and there is some small numbers here, most of the documents  
21 like this, the numbers are not clear, which forced the translator of  
22 the prosecution to do that in his handwriting.

23 Besides, at the previous session he explained--in the

1 morning, this morning, you and I and everybody was listening, and  
2 heard that the expression that were underlined, the prosecutor was  
3 reading and the translator was translating. When they gave me that  
4 version, it was--I was told that there was things that were crossed  
5 off, not new expressions; and this document I have received before  
6 without all these corrections are amend, which had happened.

7           Besides the documents that I had in my possession, the  
8 charge list that was given to me officially before, previously, in  
9 the 5th Camp, it wasn't like that; it was very well-arranged. At the  
10 same time, the front page of the document, the three main charges  
11 were written down; and below each charge there is an authorization  
12 and some points. I found a description for the conspiracy charge and  
13 the points that were written below it.

14           The second point, which was conspiring to commit the  
15 killing or a murder, the description was written and points below  
16 that; but providing the material support for terrorism regarding the  
17 documents that I had did not have the descriptions or the points  
18 below. And when I say that, I'm only reading what is written in the  
19 documents.

20           For example, the conspiring and instigating to kill the  
21 people intentionally, to protect individuals, providing the material  
22 support for terrorism, I read it understanding the charges with  
23 reservations of the charges.

1           Also now what's required after these copies were given to  
2 me in the 5th prison and here today officially were given to me from  
3 the prosecution, this administrative confusion and its influence and  
4 the things that I see is a result to the confliction in the law that  
5 you are living.

6           However, when you do have a copy that is clear and fixed,  
7 especially in a very crucial subject such as the charges--here, we  
8 are not joking or playing; this is a matter of war between you and us  
9 and blood between you and us. It's not an issue and mistaken matter  
10 in a theater or a movie.

11           I would like to receive an official version and a correct  
12 translation, and complete and full documents for the charged list.  
13 Between nations--between countries, a country can--it is impossible  
14 for a country to give another country--to give it a copy that  
15 contains mistakes and nonsense, unless if it is a political plan.

16           Is it because you are now confronting al Qaeda organization  
17 and you are the greatest nation on the face of the earth and we are a  
18 small organization? And you are not by yourself, you have other  
19 countries of aid, that is like a coalition, more than 70 countries.

20           When this kind of administrative lack occurs, that shows  
21 your conflicts and your raging and I'm very happy with that. Anyway,  
22 this is only kind of an informality for me; but what is known in the  
23 whole world, that the American administration is known by all of

1 the--all by the--being very straight and under control.

2           Anyway, what I'm asking now is--from you now is a copy, a  
3 correct copy that has no mistakes. There is no need to play that  
4 game of translation that happens between countries. Don't do it to  
5 me. And this means that the French language is better and the best  
6 language to be used amongst politicians, so--and I'm not asking the  
7 Americans to give me a French written copy. Give me correct  
8 charges--give me correct charges and specified and clear, and  
9 not--things are not to be added to it at this time and nothing is  
10 missing from it. And----

11           CT INT: I'm going to ask him to repeat this, Your Honor.

12           ACC [MR. AL BAHLUL]: And do not come--and I don't want the CIA  
13 or the FBI to come and give me a copy and then the military  
14 intelligence come and give me a different copy, and then here in the  
15 courtroom I get a different copy. This is your problem. You have to  
16 have only one front that rules. Unless you have some kind of  
17 internal problems and issues, I don't want to get involved in your  
18 problems; and this is not my declaration today.

19           Only what I'm wondering, this case, these documents as you  
20 see, they are kind of black, handwritten lines crossed off, and it  
21 was--I was told this morning that it would be replaced by other kind  
22 of wordings and writings; and now these are--it was said that it's  
23 only things were being crossed off, and I'm not saying this to

1   embarrass the prosecution.

2                   It's my right to have a correct and a complete charge list.

3           MJ [COL GREGORY]:  And the one that is correct and complete is  
4 the one as modified that I was provided this morning.

5                   Is this the copy that Mr. Bahlul has?

6           TC [MAJ COWHIG]:  Yes, sir.

7                   There were two points I would like to address, if I may?

8           MJ [COL GREGORY]:  Okay.

9           TC [MAJ COWHIG]:  The first was the accused made mention of a  
10 letter that had the title of the offenses and the citation, giving  
11 the specific numbers of the law.

12                   That document that I think he is describing is a cover  
13 letter that accompanies the charges when they are presented to the  
14 accused; and here, we are merely modifying the charge sheet.

15                   The modification of the charge sheet that we made did not  
16 take out an offense; it merely changed the language, reduced the  
17 language related to that offense.

18                   The second----

19           MJ [COL GREGORY]:  Do you need to make any correction to the  
20 cover letter that you provided?  And I don't have the cover letter.

21           TC [MAJ COWHIG]:  No, sir.  Because the cover letter simply  
22 states the general nature of the charges, and the general nature of  
23 the charges has not changed.



1           It's customary in military courts, when language is  
2 stricken from a charge, to line out that language in the charge  
3 sheet, not to create a new charge sheet. We do this to preserve the  
4 record to show that the original charges have been changed by  
5 striking out certain language.

6           Thank you, sir.

7           MJ [COL GREGORY]: Yes.

8           And I would just add another reason that's done, the lining  
9 through, is, in order to issue a completely new charge sheet, the  
10 process of writing the charge sheet would have to begin again.  
11 That's why the rules allow modifications on an existing charge sheet.  
12 Nothing was added here; but sometimes, in other cases, things are  
13 added. And even in those cases, the additions are handwritten on the  
14 original charge.

15           So there is a reason for it. I understand it doesn't look  
16 pretty, but that's why it's the way it is.

17           ACC [MR. AL BAHLUL]: What you have indicated is not the only  
18 thing that happened today. I just spoke about what had taken place  
19 in the 5th Camp when they give me the charge list and what they given  
20 me before.

21           For example, today, the very crucial modifications and  
22 changes and additions--two additions. The point then--I'm saying it  
23 in Arabic. I don't know what would be the translation in the English

1 version. It's the letter Z and the letter--and also, the point two--  
2 in Arabic--these two charges, these two points were added. They were  
3 not--they did not exist before.

4 The point, equivalent Z, says: That the accused--who is  
5 me--kind of intended to or started to--started the arrangement or the  
6 preparation to all of the following Muhammed Atta, who is also a.k.a.  
7 Abd al Rahman al Masri and Ziad Jarah, a.k.a. Abu al Qa'qa al  
8 Lubnani, the pledging he was for Usama bin Laden. This is the point  
9 Z.

10 I read it out so it's easier for the prosecutor to read it  
11 in English.

12 MJ [COL GREGORY]: Was this in an older charge sheet?

13 ACC [MR. AL BAHLUL]: No. No, it wasn't in the old charges.

14 MJ [COL GREGORY]: Let's see if he has some explanation.

15 ACC [MR. AL BAHLUL]: I haven't finished----

16 MJ [COL GREGORY]: Okay.

17 ACC [MR. AL BAHLUL]: ----would you please allow me?

18 So as of the point G, I'm reading it out now. According to  
19 the instructions--according to instructions from Usama bin Laden, he,  
20 who is me, myself, I studied the economical effect resulted from the  
21 attacks of 11 September in 2001, written September 2001 against the  
22 United States, and I started to provide Usama bin Laden with these  
23 results.

1           These two points were added. They were added, and they  
2 were given to me in jail or Prison No. 5; but the old charge list,  
3 which was in Camp Echo, twice--I received it twice, once in 2004. I  
4 took them twice--I received them twice in 2004. When they--I was in  
5 the 5th Prison, it was given to me, and these two points were added.

6           Now, I don't have any comments on them because I'm waiting  
7 for you to ask me if I'm guilty or not guilty of all the main  
8 charges. And this is up to you, today, or I don't know when; I am  
9 ready to answer today or later on.

10          MJ [COL GREGORY]: First let me ask, Major Cowhig, was anything  
11 added to the charge sheet after the date of swearing, which appears  
12 to be February the 8th, 2008?

13          TC [MAJ COWHIG]: No, sir.

14          MJ [COL GREGORY]: Do you know what Mr. Bahlul might be  
15 referring to?

16          TC [MAJ COWHIG]: I believe Mr. Bahlul is referring to the  
17 charges that were sworn before the military commission under the  
18 President's Military Order.

19                 I was also involved in that prosecution as of  
20 November 2005, after those initial charges were sworn under the old  
21 system; and my recollection of those old charges, they were indeed  
22 served on the accused twice. Although, at this point I don't recall  
23 the reason we had to repeat service of the charges.

1 MJ [COL GREGORY]: But those charges are no more. Correct?

2 TC [MAJ COWHIG]: Sir, those charges were rendered void by  
3 *Hamdan v. Rumsfeld*. And the description that the accused has just  
4 provided regarding four points of the Conspiracy and Material Support  
5 for Terrorism charge, according to my memory of the difference  
6 between the charges under the President's Military Order, which are  
7 now void, and these charges under the Military Commissions Act. But  
8 these charges sworn in February of this year have not been changed in  
9 any way, other than we have changed them here today.

10 MJ [COL GREGORY]: And, again, I wasn't involved, obviously, in  
11 any of those older cases. But the only charges that are before the  
12 commission are the ones that we have been discussing today, as  
13 modified today.

14 ACC [MR. AL BAHLUL]: What he said is correct. And in our  
15 religion we are not allowed to lie, not even to my enemy, especially  
16 in a very important issue such as these. These two charges that were  
17 added and the two points that were added--and I'm not saying that  
18 they were added and I'm trying to escape from them. They are  
19 correct, and my comment will come later. And I do not say that to  
20 embarrass the prosecution or the government; I just wanted one thing:  
21 I don't want tomorrow to come to me with a different tactic or  
22 specific kind of--to kind of drop these charges again and then add  
23 the new charges. The charge is a charge. It does not change.

1 MJ [COL GREGORY]: This is the final version of the charge  
2 sheet. Right?

3 TC [MAJ COWHIG]: Sir, the government has no plans to withdraw  
4 and re-serve these charges.

5 MJ [COL GREGORY]: That's good, because these are the charges  
6 that we are going to trial on.

7 TC [MAJ COWHIG]: That is the government's plan, sir.

8 MJ [COL GREGORY]: And it's my plan, too.

9 ACC [MR. AL BAHLUL]: It is going to happen very soon. It is  
10 almost two or three weeks. The 27th is nearby.

11 MJ [COL GREGORY]: No changes between now and then.

12 ACC [MR. AL BAHLUL]: Between an hour to a different  
13 hour--another hour, things have changed. But, anyway, the old charge  
14 list that I had, if I had it with me now--in my cell--I would have  
15 brought it here with me and let you kind of compare so you know that  
16 I am telling the truth. But now, since we are short of time and  
17 today is the 24th of September, the 27th is very close and I am  
18 satisfied from the American government plans.

19 MJ [COL GREGORY]: Well, this is the final version of the charge  
20 sheet.

21 TC [MAJ COWHIG]: Yes, sir. There is one possible further  
22 modification we would make, which would be----

23 MJ [COL GREGORY]: I didn't think that was a question.

1 TC [MAJ COWHIG]: I'm sorry if I misinterpreted it, sir.

2 MJ [COL GREGORY]: But I will let you tell us what your possible  
3 further modification might be.

4 TC [MAJ COWHIG]: Which would be to strike some other minor  
5 language.

6 MJ [COL GREGORY]: You need to figure out real soon what it is  
7 you want to go to trial on.

8 TC [MAJ COWHIG]: It is these charges, sir. I simply did not  
9 want to mislead the Court. There may be an issue on a minor point  
10 that would cause us to amend.

11 MJ [COL GREGORY]: Well, we will see. I think it requires my  
12 permission.

13 TC [MAJ COWHIG]: We would seek your permission to do so, sir.  
14 And, again, it would not change the general nature of the charges.

15 MJ [COL GREGORY]: Sometimes when the government wants to amend  
16 by deleting certain language at the 11th hour, another option is  
17 simply to except out those words and enter a finding of not guilty as  
18 to those words.

19 TC [MAJ COWHIG]: Yes, sir. That certainly would----

20 MJ [COL GREGORY]: ----be an option.

21 Okay.

22 ACC [MR. AL BAHLUL]: My question: Is this the final one now?

23 MJ [COL GREGORY]: I can only tell you that we both heard his

1 response, and then you heard my reply. If he comes back and wants to  
2 modify again, he needs to ask my permission; and that permission will  
3 not be lightly granted.

4 ACC [MR. AL BAHLUL]: Tell me frankly: Did he ask you--did he  
5 ask your permission about this?

6 MJ [COL GREGORY]: He did today, in court.

7 ACC [MR. AL BAHLUL]: Just as I saw it. This addendum that was  
8 made here by crossing out, and it's all called addendum or revisions,  
9 to cross out, to add----

10 MJ [COL GREGORY]: Just crossing out here.

11 ACC [MR. AL BAHLUL]: Any kind of revision. Any kind of  
12 revision.

13 MJ [COL GREGORY]: But adding causes different questions.

14 ACC [MR. AL BAHLUL]: I don't blame you for approving this  
15 revision. It's----

16 MJ [COL GREGORY]: It actually helps, usually, an accused.

17 ACC [MR. AL BAHLUL]: It's not in your hand or my hand. It's in  
18 the hands of these senior politicians in the United States.

19 I swear to God, if this revision was between two countries  
20 and they have a truce between them, the war will start all over  
21 again; but-----

22 MJ [COL GREGORY]: Maybe. Maybe. Treaties can be modified.

23 ACC [MR. AL BAHLUL]: Of course, that depends. By swearing

1 here, I don't mean that there is a going to be a war, because you  
2 know very well, you all know that the conflict in thoughts and  
3 ideologies, before bodies--comes before bodies.

4 MJ [COL GREGORY]: One thing that will make it even more  
5 difficult for them to change anything after today is that I am going  
6 to ask you how you plead to these charges. And once you--and once I  
7 ask that question, that is called an arraignment, it becomes very  
8 difficult for the government to then change a charge sheet.

9 So we are at that point. So, Mr. Bahlul, Major Frakt, are  
10 you prepared to enter a plea?

11 DC [MAJ FRAKT]: I defer to Mr. al Bahlul.

12 ACC [MR. AL BAHLUL]: Thank you.

13 Your Honor, this paper in front of me right now, these are  
14 the words that I said previously. I am not trying to evade your  
15 question if I were guilty or not guilty. No. No. No. Don't  
16 understand it this way. I just want to say, if you can right now  
17 give me a copy--a final copy translated into--well-translated into  
18 Arabic and I don't see any cross--lines crossing with black ink, if  
19 I--if I take a drop of water out of this bottle and put it on this  
20 paper, then this black ink will disappear because it is a felt-tip  
21 pen.

22 I mean, for my answer to be accurate and your question to  
23 be accurate, it is saying tomorrow in this session that Judge Gregory



1 asked the accused are you guilty in this charge list or not; and the  
2 paper is still--still has cross-outs that are still wet.

3 MJ [COL GREGORY]: All right. It seems that we are back to  
4 where we were before I allowed the recess. At that point, I had said  
5 I would defer pleas until 27 October to permit the government time to  
6 provide an official and clean translation of the charges as modified,  
7 and to provide the defense an opportunity to review those; and then,  
8 on the 27th of October, I would take the plea.

9 So I think I'm back to that point.

10 ACC [MR. AL BAHLUL]: I have a suggestion.

11 MJ [COL GREGORY]: Well, that's the only one I have got left.

12 What is yours?

13 ACC [MR. AL BAHLUL]: I'm going to be more forgiving than the  
14 Americans.

15 Are you happy, Prosecution?

16 TC [MAJ COWHIG]: May I respond, Your Honor?

17 MJ [COL GREGORY]: I think I would ask for clarification of what  
18 area of your life you are happy in.

19 TC [MAJ COWHIG]: My answer would be, I'm not sure yet.

20 ACC [MR. AL BAHLUL]: You need to get answer from Bush.

21 MJ [COL GREGORY]: I don't know who they talk to. I honestly  
22 don't.

23 But back to the charge sheet. If you want a clean

1 translation, I would direct that that be provided. It should have  
2 already been done. And why it hasn't, I don't know; but it is  
3 appropriate that you have a clean translation.

4 ACC [MR. AL BAHLUL]: But I got that the audio isn't  
5 interrupted. I'm waiting for the rest of the sentence, Your Honor,  
6 to start my sentence.

7 Since the United Nations--I'm sorry--the United States is  
8 going through a war against us, I mean the Muslims, I mean the  
9 mujahedeen from al Qaeda, this is our turn; and that's not the  
10 American terminology. The terminology that is made in the American  
11 intelligence is terrorism.

12 Since they refuse a war against us, a dirty war and not  
13 clean one and such a paper that has lines crossed, so I will answer  
14 you for today's, whether I am guilty or not.

15 MJ [COL GREGORY]: Thank you.

16 ACC [MR. AL BAHLUL]: Are you ready for the answer?

17 MJ [COL GREGORY]: I said, "Thank you." And, if you are ready  
18 to respond, I will take your answer.

19 ACC [MR. AL BAHLUL]: Yes, I am ready; and I will give you the  
20 answer, and everybody is waiting for my answer despite that this is  
21 not the final list for the charges. Please let me ask the  
22 prosecution before I answer.

23 MJ [COL GREGORY]: Well, we have kind of been through that; but

1 I will ask one more time.

2 Is this the final version of the charge?

3 TC [MAJ COWHIG]: I'm prepared to say that that is the final  
4 version of the charges.

5 MJ [COL GREGORY]: I'm sorry?

6 TC [MAJ COWHIG]: That is the final version of the charges.

7 **[The accused spoke in Arabic.]**

8 TC [MAJ COWHIG]: If I may respond to the accused, sir?

9 Yes, indeed that is a contradiction. There is a  
10 contingency of proof that I, as a decision as the prosecutor, my  
11 habit would be to remove something if I don't believe that I would be  
12 able to prove it beyond a reasonable doubt.

13 MJ [COL GREGORY]: That's appropriate.

14 TC [MAJ COWHIG]: However, I may proceed responsibly if I  
15 believe the proof rises to probable cause and may satisfy a panel  
16 beyond a reasonable doubt. And based upon the judge's guidance, as  
17 the prosecutor, I will resolve this issue with this evidence by  
18 placing it in front of the panel and allowing them to decide on that  
19 matter.

20 So I can assure the accused that this is the final version  
21 of the charge sheet.

22 ACC [MR. AL BAHLUL]: What I told you before, I will answer; but  
23 one question to the Judge before I answer, if you allow me, Your

1 Honor.

2 MJ [COL GREGORY]: Sure.

3 ACC [MR. AL BAHLUL]: Let us imagine the proceedings for the  
4 27th, which will start, before it happens. As a successful director  
5 before it happens, you now in your capacity and your experience as a  
6 judge, you see my situation or the situation that I'm in, in this  
7 case. There is some kind of legal confusion. Is that right?

8 MJ [COL GREGORY]: Legal confusion as to what?

9 ACC [MR. AL BAHLUL]: In terms of the legitimacy and legal  
10 proceedings and then the interruption of the events. It's not a  
11 normal situation.

12 MJ [COL GREGORY]: Oh, you are referring to the reasons for your  
13 boycott?

14 ACC [MR. AL BAHLUL]: Up to now I still boycott, and this does  
15 not mean that I break the boycott. When I announced the boycott on  
16 the second session for the boycott, and that is available in the  
17 court to document, I said then--I explained--I explained the meaning  
18 of the boycott; and I said that my boycott does not mean absolute  
19 silence and it does not mean absolute talk; I will assess the  
20 interest for myself. But right now, if I tell you I'm not guilty and  
21 the sessions will start on the 27th and the government will present  
22 its evidence on the screen and all the electronic equipment available  
23 here and all the technology available, it will present its evidence

1 because I said I'm not guilty. Of course, now, I have not given an  
2 answer yet. This is just a----

3 MJ [COL GREGORY]: Hypothetical.

4 ACC [MR. AL BAHLUL]: Yeah. Hypothetical.

5 The American government--well, for me, the American  
6 government is not just the people who are--even you are a part of the  
7 American government. Even those who are here are part of the  
8 American government. Everyone in this courtroom is part of the  
9 American government except for myself and [REDACTED]. [REDACTED]  
10 [REDACTED], I consider him-- [REDACTED], if you don't want me to talk  
11 about you, I'm fine. If you will allow me to speak.

12 DEF INT: Briefly.

13 ACC [MR. AL BAHLUL]: I'm not going to involve you.

14 [REDACTED] represents a Yemeni community that lives in  
15 the United States, and they carry both citizenships; and they  
16 understand the American culture and the Yemeni culture. And I'm a  
17 Yemeni and a Muslim like he is; and in general--I mean, I personally,  
18 if the proceedings of the 27th begin, as an al Qaeda man, I don't  
19 like and I don't want and I don't wish for the Yemenis to enter the  
20 United States in the case of al Qaeda in America; and let them be far  
21 from the political struggle. And I really appreciate the efforts of  
22 Mr. [REDACTED] for helping me, and I personally ask him in front of everyone  
23 to--not to interfere in this case and not to enter--to be a part of a

1 case between al Qaeda and America.

2           And why is that? The reason for that, the announced  
3 reason, is that my culture--my ethics and my religion do not allow me  
4 at all, even if I was in the middle of the American's home--and I am  
5 in the middle here as a detainee and accused--and accused, to use  
6 even like a little part, to explain a little part of that  
7 relationship that brings me close to █████ as a Muslim and as a Yemeni.  
8 So, therefore, I have to be fair; and I don't want any Yemeni to be a  
9 part of my case, not even a translator. Of course, in the past I  
10 asked for an attorney; and the government refused that.

11           Only one thing I would accept to be present, one Saudi  
12 interpreter, if the government approves of. And the reason for this  
13 request is because the Saudi system is a part in the problem between  
14 the United States and al Qaeda; and that's why there should be an  
15 interpreter, because I will never use that religious relationship or  
16 that Arabic relationship.

17           What I'm asking the Judge right now, and I will say that I  
18 will be present in all sessions--and that is not because I broke the  
19 boycott; it's only when I heard about the news of the recent events.  
20 And you all know it, this was told to me; I'm not sure if it's true  
21 or not, what happened in Yemen.

22           Is that true, Prosecution?

23           DC [MAJ FRAKT]: I believe Mr. Bahlul is referring to the

1 bombing of the embassy in Yemen.

2 MJ [COL GREGORY]: I saw it on the news.

3 ACC [MR. AL BAHLUL]: This is one of the reasons that made me  
4 decide to be present for all sessions; and now, right now, here, the  
5 issue here is legal; and that's let's put politics aside.

6 I am not guilty.

7 I am not guilty.

8 I am not guilty.

9 And what I did and I will do, and I'm doing right now, is  
10 to kill Americans--to fight--excuse me--to fight America.

11 And if you allow me and you let me go to Yemen, I will not  
12 leave the American government anywhere on the face of this earth. I  
13 will fight them with my tongue and my hand and my money and myself  
14 until the last thought, until the last drop of blood. And consider  
15 my presence here as a detainee and as a person who is going to be  
16 convicted tomorrow, a person still fight against America as a  
17 prisoner. Because my presence here will make the Muslims rise for  
18 our cause.

19 In the past you were facing one man from Ramzi Yousef;  
20 then, it became an organization, al Qaeda; and tomorrow it's going to  
21 be a nation. Believe me that the man who used--who was governing  
22 Yemen, he was in a kingdom called the Yemeni--the Mutawakkilite  
23 Yemeni Kingdom.

1 MJ [COL GREGORY]: I need to take a recess, and then we will  
2 pick up after the recess. So----

3 ACC [MR. AL BAHLUL]: Are you upset? Are you upset from my  
4 talk?

5 MJ [COL GREGORY]: No. No. No. Let me just take a recess.  
6 That's not it. I need to find out why--why something is doing  
7 something up here.

8 ACC [MR. AL BAHLUL]: Let me be more forgiving than the  
9 Americans.

10 MJ [COL GREGORY]: No. That's fine. We will take a break, and  
11 then we will come back in ten minutes.

12 We will be in recess for about ten minutes.

13 **[The R.M.C. 803 session recessed at 1242, 24 September 2008.]**

14 **[The R.M.C. 803 session was called to order at 1327,**  
15 **24 September 2008.]**

16 MJ [COL GREGORY]: The commission is called to order. All  
17 parties present when we recessed are again present.

18 Mr. Bahlul, I have this----

19 **[The military judge paused. The Arabic interpretation of the remarks**  
20 **were not broadcasted into the courtroom.]**

21 ACC [MR. AL BAHLUL]: Go ahead, Your Honor.

22 MJ [COL GREGORY]: We will try that again. The commission is  
23 called to order. All parties present when the commission recessed



1 are again present.

2 Mr. Bahlul, I have this paper that says that on today, the  
3 24th of September, I needed to provide you an opportunity for prayer  
4 at 1253.

5 And so I hope during the recess, did you have an  
6 opportunity for the prayer?

7 ACC [MR. AL BAHLUL]: Yes, I did pray; but I would like to add  
8 something.

9 MJ [COL GREGORY]: You can, but I just wanted to make sure you  
10 had a chance to pray.

11 ACC [MR. AL BAHLUL]: I would like to add something here  
12 concerning the prayer, please.

13 The session was over. That matter is of no concern to me,  
14 but you interrupted me suddenly. Perhaps, if you would like to  
15 interrupt me, then I can stop.

16 As to the matter that the U.S. is considerate of my  
17 opportunity to pray, we thank them for this matter. God the exalted  
18 in the Koran says----

19 CT INT: A verse has been recited that the interpreter is not  
20 able to translate adequately.

21 ACC [MR. AL BAHLUL]: That's fine, you don't have to translate  
22 it; but I will explain it. It means that even if your enemy you  
23 abhor, it does not mean that you have to be insulting to him. In

1 turn, himself, does not accuse you of--that you must be fair even  
2 with your enemy. Being hateful is not an excuse for not being fair  
3 with him. God the exalted says be fair, and that is more indicative  
4 of your faith.

5 The policy that we observe--the U.S. policy that we observe  
6 today in which the concept of prayer is understood, which is  
7 considered a personal freedom, because jihad is a concept that they  
8 do not accept; and when they show tolerance of an opportunity for us  
9 to pray, as for jihad, it's something else for me.

10 Of course, we are your enemies; and it would be impossible  
11 for us to--for you to accept jihad from us. Even in the  
12 battlefield--even in the battlefield there are times for--during  
13 which the time when enemies are confronting each other, there is an  
14 opportunity to set aside battle for a short period.

15 Anyways, at any rate, thank you for this.

16 May I continue with my previous speech?

17 MJ [COL GREGORY]: You may.

18 ACC [MR. AL BAHLUL]: Thank you.

19 I stopped at a point--of course, I had stopped at a point  
20 where I had said I was not guilty; and I said I would say--I would do  
21 this and that and that. And I would say, god willing--despite that,  
22 if god willed. And I stopped at the point of the government in Yemen  
23 before the current republican regime, I said that previously in Yemen

1 there was a monarchy named the Yemeni Mutawakkilite Kingdom.

2           You said a--how did you--to the interpreter, how did you  
3 translate a monarchy?

4 **[The court interpreter explained to the accused how he interpreted**  
5 **the word "monarchy."]**

6           ACC [MR. AL BAHLUL]: Excellent. Thank you.

7           This monarchy could not control the Yemeni people without a  
8 system of which is called "the system of hostages." They would take  
9 hostages from the tribes, and these hostages would be detained in the  
10 capital. Today, America does the same thing, but in a western  
11 manner.

12           Yemeni hostages kidnapped from Pakistan who were sold,  
13 99 percent have no relationship to al Qaeda. However, America has  
14 plans in the area and has allowed them to remain hostages up to this  
15 point to enable control of Yemen.

16           This is not the case for me. I said this for a reason I  
17 would like to bring out. If I was sentenced--the question is  
18 directed to the Judge. If I was sentenced for a specific period,  
19 whatever it may be, it would be of no concern to me. But the  
20 question: Is the American government--of course, the judge does not  
21 perhaps have an answer to this question, but I would like to put it  
22 forth. Would you then place me in Cuba, in America, or in another  
23 country?

1           The matter in this regard, that your retention of the  
2 Yemeni hostages in Cuba, the kidnapped hostages, is in truth serves  
3 our purpose, al Qaeda's purpose. Believe me, I'm very clear when I  
4 speak this way. This is directed to the politicians who control this  
5 military government, this military court.

6           Sometime our enemies achieve for us what we wish, because  
7 God the exalted----

8           CT INT: There are different synonyms for the word--there are  
9 different synonyms that the interpreter would like to make out.

10          DC [MAJ FRAKT]: Maybe my interpreter can help.

11          DEF INT: Colors, colors of fabrics, basically.

12          CT INT: Now I offer his explanation.

13          ACC [MR. AL BAHLUL]: That would embellish their--the prophet's,  
14 Muhammad--peace be upon him--said that God supports this religion  
15 with people of no ethical or moral--of no morals.

16                 What does that mean, [REDACTED]?

17          **[The defense interpreter and the accused confer.]**

18          DEF INT: Has no value to the ethics or religion in terms of  
19 their faith to God.

20          ACC [MR. AL BAHLUL]: What we can observe from what took place  
21 here today in Cuba, that the Yemeni hostages have remained up to this  
22 point and have not left. As a member of al Qaeda, I would not tell  
23 you to retain them or make them leave, or tell you to reach an

1 agreement with the Yemeni government in their regard.

2 We need to take a look at your policy. What has occurred  
3 is that many Yemenis are under trial in this military court. I  
4 believe they constitute the greatest percentage of those, from what I  
5 can tell from the names.

6 At any rate, all that I said today, I--would you be allowed  
7 to have a Saudi interpreter present should the 27th session start?

8 MJ [COL GREGORY]: During the recess, I asked the trial counsel  
9 to check into the availability of a Saudi interpreter and to report  
10 back to me. I don't have an answer yet.

11 ACC [MR. AL BAHLUL]: Is it possible? And this is a verbal  
12 request from me.

13 MJ [COL GREGORY]: Understand, and it is possible; and I'm  
14 checking into it.

15 ACC [MR. AL BAHLUL]: It's a verbal request, in addition to  
16 another verbal request that representatives from the foreign ministry  
17 attend, politicians and jurists from the Yemeni government and the  
18 Saudi government.

19 Why? I hope this request is approved because I lived in  
20 Saudi Arabia for 20 years, as I lived in Yemen; and I left with bin  
21 Laden fighting the American regime, its allies in the area, the Saudi  
22 government, the Yemeni government. But we in al Qaeda fight the  
23 head, America. Thus, this case, such people should be

1 presence--present. Yes, I said incorrectly. Forgive me, translator.

2           Why should they be present? Because they are a party to  
3 the case. Saudi Arabia is a party. The Yemen is a recent party,  
4 too. After Bush, "Those who are not with us are against us";  
5 therefore, they are a party, an ally--an ally to America. He sent  
6 representatives here and cooperated from a security standpoint.  
7 These are your allies. Don't you trust them?

8           Have the politicians here and the jurists. You are able to  
9 apply censorship. It doesn't make a difference to me, but only from  
10 a historical standpoint that such it should be represented, unless  
11 the Americans say they don't need the assistance of anyone.

12           I challenge America. If such people, hypocrites--such  
13 hypocrites lent assistance, it would not have been able to size down  
14 al Qaeda's operations; but al Qaeda operations continue. They will  
15 not stop.

16           This is not a comment on recent events that occurred in  
17 Yemen. I do not know what party took responsibility for them. The  
18 only thing I would like to say: The government, I consider you of  
19 the government, too. All those present here are in the U.S.  
20 government, whether they agree with the government's opinion or not,  
21 from the inside or from the outside, whether civilian or military, in  
22 the end, it's only a tactical difference between us; and they may  
23 have difference of opinions. It's a difference in type or kind, a

1 difference in type.

2 Presumably the U.S. government would like to prove on the  
3 27th that I--and after that the sentence that I will receive, is a  
4 correct one, because they have evidence against me.

5 Today we heard the prosecutor list this evidence, one, two,  
6 three. I had the courage to attend here and observe the evidence and  
7 listen to them. Despite that, I have--before that, I had indicated  
8 the master of the evidence, I said that I was of al Qaeda and I did  
9 these actions. Of course, I had said "not guilty." Correct. I'm  
10 not guilty, and what I did was not a crime. But in your point of  
11 view, I am a criminal; but I'm not a criminal. I do not care how you  
12 observe my actions. And for that reason, at this time I will comment  
13 on these accusations, and I perceive this comment to be important in  
14 my case.

15 First, the charge of conspiracy. God be praised that I  
16 lived up to today in which I observed with my own eyes how a great  
17 country like America accuses--of course, it's great in your  
18 concept--accuses an individual or an organization with conspiracy.

19 Before this time, I read in Western media and even in the  
20 trumpet newspapers in the Muslim countries say that we, the  
21 Islamists, we have the complex of conspiracy; but it's obvious that  
22 America right now is living this conspiracy. It imagines a ruler  
23 somewhere, and all around him there are--he will be afflicted with

1 the disease of doubt. He will doubt his wife, ministers, all the  
2 officials.

3 Be it that you accuse me of conspiracy with bin Laden is a  
4 gain for me because you, yourselves, live the doubt of conspiracy.

5 Two: This instigation I am reading with reservations,  
6 instigation to commit deliberate killing against protected  
7 individuals. You call it this; we call it instigation to jihad.

8 I played this role in media in al Qaeda, and I do the same  
9 here in the military court. I know that if anything of what I am  
10 saying leaves, any aspect of that supports mujahideen and jihad, even  
11 if it was to occur in a short while or at a longer day, it would have  
12 some effect. Even if it was words I had myself said, even if these  
13 words were not dealt with in their entirety and they prevented some  
14 of what I had to say, my mere presence here as a prisoner in America  
15 serves my purpose.

16 Three: Providing material support to terrorism. This is  
17 your expression. We in our religion call it cooperation with jihad  
18 and mujahedeen through our souls and through our wealth. Yes, I  
19 supported; and, God willing, I will support with my soul, with my  
20 wealth, and with my intellectual and blood.

21 I will comment on internal matters. It has written that al  
22 Bahlul has joined--this is my family's name. Of course, my name is  
23 Ali Hamza Ahmed Suliman al Bahlul, Ali Hamza Ahmad Suliman al



1 Bahlul--the aforementioned al Bahlul had joined al Qaeda project  
2 willfully, and willfully agreed an agreement to support these  
3 purposes, these illegal purposes and committed--willfully committed  
4 the following actions to--for the purpose of reaching the objective  
5 or another objective by agreement--by plan and agreement.

6 Yes, it's true; I joined al Qaeda. And the agreement is  
7 called a pledge of allegiance. I revealed it in court previously;  
8 and, once again, I pledge allegiance to bin Laden here in court.

9 The actions I took, if you considered those disgraceful,  
10 it's up to you. Judge me.

11 A. He went to Afghanistan with the intention to join al  
12 Qaeda. I was a member of al Qaeda before going to Afghanistan. A  
13 new piece of information: You can correct that. Make your  
14 correction. I give you the authority to do that.

15 B. He met Saif Al-Adel, the head of the Security Committee  
16 in al Qaeda and--about joining al Qaeda. That's incorrect. I was a  
17 member before that, before I met him from Yemen; and, by threat in  
18 '93, neither the American or the Yemeni investigators knew that, and  
19 I announce this for the first time.

20 C. He joined a type of training, a military type of  
21 training at a camp under al Qaeda supervision, at the time was in  
22 Afghanistan near Aynak camp.

23 The funny thing is that the word "camp"--and this was done

1 for investigative purposes. It may have been incorrect. It may have  
2 been something incorrect from an American or from the translator; and  
3 I will show you something about this first.

4 In parentheses, the successful Arabic translator--of  
5 course, I say this sarcastically about the successful Arabic  
6 translator--he has written it as "Mes Aynak." It's not a "mes"; it's  
7 a camp. "Camp."

8 In truth, I was a trainer before joining this camp. Change  
9 that. Change it. I was trained at Sadr Camp 1900--1900--1990.  
10 After Saddam had entered Kuwait, I traveled from Saudi Arabia to  
11 Afghanistan and trained at this camp. It was not affiliated with al  
12 Qaeda. After that, I trained in al Qaeda camps. Change the  
13 information you have.

14 D. He pledged allegiance to al Qaeda leader, Usama bin  
15 Laden, and joined al Qaeda, and then started to provide personal  
16 services to al Qaeda. It's an expression that does not say when this  
17 occurred. It is supposed to also be part of other items. It may be  
18 item D; but even D was incorrect because the pledge to allegiance was  
19 in '93.

20 E. All this work of the U.S. government and all that hard  
21 work of going up and down was all for nothing. I amend the  
22 accusations against me. I'm not amending these accusations because I  
23 don't want to stay in jail or so I be pointed at as with bin Laden;

1 it's in our religion considered infidelity or apostasy--apostasy and  
2 also other kind of infidelity and apostasy to have another god in  
3 addition to God.

4           Apostasy. It's considered apostasy and infidelity if a  
5 person works for another person, another human being. Even for bin  
6 Laden, I'm not working for him; I am working for the God of bin  
7 Laden.

8           I'm not saying these things to amend the accusations that  
9 you mentioned today after I embarrassed the government this morning  
10 in its fault and mistakes.

11           If I were a person who doesn't claim responsibility for his  
12 own actions in life and after life, I wouldn't have said that to you;  
13 but do not interpret this in thinking that I have certain political  
14 goals.

15           H. Of course the Article D, yes, I pledged allegiance to  
16 bin Laden and joined al Qaeda, and I visited him in Sudan; and I  
17 joined him with my family in Afghanistan.

18           H. He prepared and helped in preparing marketing  
19 materials, various marketing materials, including a videotape  
20 destroying the USS COLE for--to market for funding for al Qaeda and  
21 recruiting and teaching people and members in reference to the goals  
22 and targets of al Qaeda in order to urge and instigate members and  
23 people to commit terrorism.

1           You can call it terrorism. You can call it whatever you  
2 want. Make your terms in the factories of the CIA as much as you  
3 want, and you can call it whatever you want. You can put the term as  
4 much as you like. We are still going and going in liberations, and  
5 you can consider my presence here as kind of liberation.

6           MJ [COL GREGORY]: Mr. Bahlul.

7           ACC [MR. AL BAHLUL]: Because this is where the conflict is.

8           MJ [COL GREGORY]: Mr. Bahlul.

9           ACC [MR. AL BAHLUL]: Go ahead.

10          MJ [COL GREGORY]: I have asked you to enter a plea. You have  
11 entered a plea of not guilty to all of the charges. It is not  
12 necessary for you to go through each one to explain why in your  
13 opinion the charge is deficient.

14                 The government has the burden of proof.

15          ACC [MR. AL BAHLUL]: I'm not justifying.

16          MJ [COL GREGORY]: And I'm not through explaining. The  
17 government has the burden of proof. The government has the burden of  
18 proof. If they fail to meet their burden, the law requires that you  
19 be found not guilty of that particular charge.

20                 I advise you that it's not wise for you to continue  
21 pointing out where, in your opinion, the various charges may be  
22 deficient.

23                 If you desire to do so during the trial, you will have an

1 opportunity to present why you believe the charges are deficient and  
2 your counsel will have an opportunity to attack those charges. It is  
3 not appropriate at this point to go through them one by one to  
4 explain each charge.

5 ACC [MR. AL BAHLUL]: It's a problem that you go with the  
6 government that you ask me if I am guilty or not guilty today?

7 MJ [COL GREGORY]: I have already asked you, and you have told  
8 me that you are not guilty; and I have entered that plea for you.

9 ACC [MR. AL BAHLUL]: What about your military regulation, your  
10 law? Military law says that the detainee, when asked whether he  
11 pleads guilty or not guilty, he will answer his response generally  
12 and then he can talk also about the points.

13 MJ [COL GREGORY]: The appropriate time to do that is during the  
14 trial, which begins on the 27th. The only point of today is to get  
15 your plea of guilty or not guilty; and I have done that.

16 ACC [MR. AL BAHLUL]: You should have told me from the beginning  
17 that. You should asked me whether I'm guilty or not guilty----

18 MJ [COL GREGORY]: I did.

19 ACC [MR. AL BAHLUL]: ----and not let me go all that way, but it  
20 looks like you got bored and then----

21 MJ [COL GREGORY]: No, actually, Mr. Bahlul, I wanted to provide  
22 you an opportunity to speak because you had requested that today.

23 ACC [MR. AL BAHLUL]: Good. I'm going to give you a choice now:

1 Since you are a judge and you have this law and the military court,  
2 you can get me out of here, because now you and I are in a conflict.  
3 I consider you a part. There is no difference between you and that  
4 person who is there, and the biggest proof of this is that you took  
5 off your conservation and you stopped me from talking.

6 MJ [COL GREGORY]: No. It's--Mr. Bahlul, it's only because--one  
7 moment.

8 ACC [MR. AL BAHLUL]: I agree to stop talking.

9 MJ [COL GREGORY]: The reason that I stopped----

10 ACC [MR. AL BAHLUL]: Go ahead. I demand that if this is your  
11 extent of doing things, then let me out of court, because you are  
12 part of them. You can either let me continue, or let me out.

13 MJ [COL GREGORY]: What I'm going to do is provide you a recess  
14 and give you the opportunity to speak with your detailed counsel  
15 about whether it is wise for you to continue commenting on each  
16 individual charge. And I have this major standing over here.

17 Do you have something to add?

18 TC [MAJ COWHIG]: Yes, sir. I think Mr. al Bahlul may be  
19 referring to Rule 910.

20 I'm sorry. Interpreter, you are cutting in and out.  
21 Please be certain that your microphone is working.

22 CT INT: I'm sorry. Can you hear me?

23 TC [MAJ COWHIG]: Yes.

1 MJ [COL GREGORY]: Yes.

2 TC [MAJ COWHIG]: Rule 910 allows the accused to plead as  
3 follows: Not guilty; guilty; not guilty to the offenses charged, but  
4 guilty of a lesser named-----

5 CT INT: What was the fourth, mister?

6 TC [MAJ COWHIG]: To a lesser charge, lesser included offense.

7 I'm sorry, interpreter, you are cutting in and out on your  
8 microphone.

9 **[The interpreter explains again to the accused what Major Cowhig just**  
10 **said.]**

11 TC [MAJ COWHIG]: -----and, by exceptions and substitutions. And  
12 I'm paraphrasing here. I'm paraphrasing there at the end, sir.

13 But I understood you to say that your concern was that the  
14 accused understand that the government does have the burden. The  
15 government intends to carry that burden.

16 ACC [MR. AL BAHLUL]: And I'm demanding them.

17 TC [MAJ COWHIG]: And the Military Judge wanted to be certain  
18 that the accused understood that burden.

19 MJ [COL GREGORY]: Well, that's right; and that Mr. Bahlul  
20 understands that he has no obligation to point out deficiencies in  
21 the charges.

22 ACC [MR. AL BAHLUL]: I'm not showing deficiencies.

23 MJ [COL GREGORY]: That's the way I understood it.

1 ACC [MR. AL BAHLUL]: I'm not saying deficiencies. I'm just  
2 telling the truth. What I said, I said it not because I was obliged  
3 to and nobody obligated or forced me to. And if you stop me now, the  
4 same thing will take place tomorrow.

5 MJ [COL GREGORY]: But do you understand, it may not be wise for  
6 you to do that?

7 ACC [MR. AL BAHLUL]: Your sense and understanding of wisdom  
8 and--wisdom is different than ours. You want to show--you want to  
9 look like you are fair. You should have said that in the beginning.

10 MJ [COL GREGORY]: Do you wish to continue?

11 ACC [MR. AL BAHLUL]: It's not my wish nor desire; it's my  
12 right. I have the right to talk. These are my actions.

13 MJ [COL GREGORY]: If you wish to comment on these charges, I  
14 will let you continue. But I just want you to understand that you  
15 are under no obligation to do so, and that it may not be wise.

16 Also, one more point: If you want to take a recess to  
17 discuss this with Major Frakt, I will give you an opportunity to do  
18 that.

19 ACC [MR. AL BAHLUL]: This defense does not represent me. I am  
20 saying, a judge in Islam, if he is angry or needs to go to the  
21 restroom or hungry or any other event, or is scared of anything,  
22 should not judge, should not rule.

23 And I can understand from what you said now. In the



1 beginning you let me talk, you did let me talk. Then when part of my  
2 talk and statement made you angry, you stopped me.

3 MJ [COL GREGORY]: No. "Anger" is the wrong word. "Concerned."  
4 Concerned, because I don't want to see you--do you know the word  
5 "incriminate"?

6 ACC [MR. AL BAHLUL]: This is in your law, to self-incriminate  
7 yourself.

8 MJ [COL GREGORY]: Yes.

9 ACC [MR. AL BAHLUL]: In your sense, it is self-incrimination.

10 MJ [COL GREGORY]: And it's possible that you may be helping the  
11 government by your comments, and I want to make sure you understand  
12 that.

13 ACC [MR. AL BAHLUL]: In a sense--if I think in that sense like  
14 you do--if I had your sense of thinking, I wouldn't have left my  
15 house to fight America. I have the right to explain actions that I  
16 did. There is no person who is nonbiased in this courtroom except  
17 for this person [**indicating defense interpreter**].

18 I'm asking you, [REDACTED], isn't it my right to comment on  
19 actions that I did?

20 DC [MAJ FRAKT]: Mr. al Bahlul, the interpreter is here only to  
21 interpret, not to comment on the proceedings.

22 ACC [MR. AL BAHLUL]: My conversation--my speech now made--just  
23 like it made the judge angry, it made that lawyer angry.

1 DC [MAJ FRAKT]: Okay, Mr. al Bahlul. I will--I will take it  
2 easy. Thank you.

3 ACC [MR. AL BAHLUL]: Would you please answer, [REDACTED]? He has the  
4 right to talk. America does not allow him to talk? Why do you close  
5 his mouth? He lives in your country, anyway, and he has--he is  
6 natural--he is a citizen. Probably you are--you are assuming that I  
7 am--because where I go from Yemen. If that's what you are thinking,  
8 I will take away what I said. I withdraw what I said.

9 MJ [COL GREGORY]: Well, as long as you understand that you  
10 don't need to comment on these charges individually, and understand  
11 that the things you say may be helpful to the government. If you  
12 would like to continue, you may continue.

13 ACC [MR. AL BAHLUL]: Well, then, thank you. Thank you.

14 MJ [COL GREGORY]: And I might add that I don't believe that  
15 Major Frakt is angry, and I'm not angry. I am concerned. I'm  
16 concerned. A different word.

17 ACC [MR. AL BAHLUL]: Let me say that you are concerned.

18 DC [MAJ FRAKT]: Okay. Mr. al Bahlul, I just want you to  
19 understand that the role of the defense linguist--and I would ask the  
20 Judge to explain the role of the defense linguist, and that he does  
21 not have a speaking role other than to assist with interpretation.

22 MJ [COL GREGORY]: That is his job, and I would not require--and  
23 I would not require him to go beyond his job.

1 ACC [MR. AL BAHLUL]: All right. All right. Now it showed--it  
2 showed that you close mouths and shut up mouths here even in the  
3 military court, just with excuse that it's administration and law.

4 MJ [COL GREGORY]: Are we talking about the translator?

5 ACC [MR. AL BAHLUL]: Yes. Yes. It's my right. It's my right  
6 to listen to his response.

7 MJ [COL GREGORY]: If he wants to translate something, that's  
8 his job.

9 TC [MAJ COWHIG]: Your Honor, if I may. On the identification  
10 of interpreter by name, I believe there is a protective order in  
11 place.

12 MJ [COL GREGORY]: Oh, yes. Could I just ask that we not  
13 mention the interpreter's name?

14 CT INT: Do you want me to translate that?

15 MJ [COL GREGORY]: Please.

16 **[The court interpreter interpreted the Judge's last statement.]**

17 ACC [MR. AL BAHLUL]: By my mouth, by me?

18 MJ [COL GREGORY]: Go ahead.

19 TC [MAJ COWHIG]: Your Honor----

20 ACC [MR. AL BAHLUL]: You already mentioned his name earlier.

21 TC [MAJ COWHIG]: ----the protective order covers the  
22 publication of the names of the interpreters in the press.

23 MJ [COL GREGORY]: Right.

1 TC [MAJ COWHIG]: And here in the courtroom I think exposes a  
2 risk that the name might be published.

3 MJ [COL GREGORY]: Right. Because we have the press listening  
4 someplace.

5 ACC [MR. AL BAHLUL]: And also, what about all the others in the  
6 room? Why only this person you don't want him to talk? Just like I  
7 know your name, Mr. Judge.

8 MJ [COL GREGORY]: Oh, that's right. Yeah. And that's fine.  
9 We know all of our names. It's just a protective order for the  
10 translators, and that was in place long before. A part of the  
11 contract, I suppose.

12 ACC [MR. AL BAHLUL]: They probably gave you a code name before  
13 from the beginning.

14 MJ [COL GREGORY]: I don't know. We could make up a name for  
15 him.

16 Is there something we could just call the translator?

17 DC [MAJ FRAKT]: It's fine to refer to him as "Mr. [REDACTED]." We are  
18 just asking that his family name not be used.

19 MJ [COL GREGORY]: Let's call him "Mr. [REDACTED]."

20 ACC [MR. AL BAHLUL]: You put his last name on the card that he  
21 is carrying.

22 MJ [COL GREGORY]: Oh, I didn't do that. I haven't done  
23 anything with him.

1 DC [MAJ FRAKT]: It is fine. It is fine for you to know his  
2 name. We are not trying to hide anything; but we are just simply  
3 protecting Mr. [REDACTED]'s privacy from the rest of the world.

4 MJ [COL GREGORY]: Let's just call him "Mr. [REDACTED]," and we can  
5 move on.

6 ACC [MR. AL BAHLUL]: Since the morning, I was calling him [REDACTED],  
7 and he didn't say anything; but your account----

8 MJ [COL GREGORY]: No. No. That's all I heard was [REDACTED]. But  
9 someone else thought they heard something else. I don't know.

10 DEF INT: Your Honor, if I may say something, please?

11 MJ [COL GREGORY]: Oh, sure.

12 DEF INT: I will say it in Arabic to Mr. Bahlul; and then the  
13 translator can actually--the simultaneous translation, translator can  
14 actually translate for you.

15 **[The defense interpreter is speaking in Arabic to the accused, and it**  
16 **is translated below by the court interpreter.]**

17 CT INT: If you have any other question or comment in this area,  
18 I prefer that you take a recess and then you will talk--we will meet  
19 and talk about the other subject, and I hope you will accept that.

20 ACC [MR. AL BAHLUL]: With all respect, Mr. [REDACTED], before this  
21 scene took place and the Americans are saying that they want to  
22 protect you from me, from the beginning, before this conflict taking  
23 place now, before prayers, I said that I wanted Yemenis in America to

1 uphold--whether they are citizens of Yemen or citizens of the U.S.,  
2 or both citizens, dual citizenships; and I said because of this, I  
3 did not want [REDACTED] to be an interpreter.

4 Do not change the picture and say that you want to protect  
5 him from me or from us, al Qaeda. I assure you, Mr. [REDACTED], you are--I  
6 respect you very much. You are on the top of my--you are high--you  
7 are high up, and we protect you. We protect you, and we protect  
8 Yemenis everywhere.

9 Please do not come between [REDACTED] and me. That's why I wanted  
10 [REDACTED] to be far away. This is a sad issue. Do you want to allow me to  
11 practice my right?

12 MJ [COL GREGORY]: You may continue, as long as you understand  
13 you don't have to and that, by doing so, you might help the  
14 government, possibly.

15 ACC [MR. AL BAHLUL]: I know that.

16 MJ [COL GREGORY]: All right.

17 ACC [MR. AL BAHLUL]: And I know there are positives and  
18 negatives and wrong and right, and I know fault and right and wisdom  
19 and non-wisdom. We have differences in our understanding of all  
20 these are two different--and the criterias and ways of measurements  
21 are different. We have different ways of measuring things. Let me  
22 continue.

23 I reached a point--I reached point W. He worked as--he

1 worked as a security guard--as a secretary, personal secretary and  
2 media person for Usama bin Laden in supporting al Qaeda. That's  
3 true.

4 I want to add a small thing: You in the West understand  
5 the person who is in my position now, the way I understand--I  
6 understood things from your media and your culture. The person who  
7 takes my role now is a person who seems to be proud of what he is  
8 doing--of what he is doing. But this is not what I'm doing here.  
9 These are accusations. They must--they might have been one day death  
10 sentences and possibly life in jail and prison. If it is understood  
11 in the West that a person who does this gets this punishment, then we  
12 are different.

13 I want to add another point that is very important. Since  
14 I was captured in Pakistan and Pakistanis sold me to U.S. government  
15 for \$5,000 and I was delivered to them, since the second  
16 investigation I talk about the reality of my situation. I hope that  
17 up to this moment during comment on these accusations, that nobody  
18 will understand or interpret my situation and behavior that it is  
19 that I have something that I'm scared of in Yemen from--of the Yemeni  
20 government or Saudi government, or interpret this speech or talk that  
21 it's an attempt from my side to send some coded messages by my speech  
22 to al Qaeda cell abroad. It's your drowning, it's your exaggeration  
23 in security matters, did not help you on 9/11.

1           Z. He started in arranging matters for every--for each of  
2 the following, Muhammed Atta, who is also a.k.a. Abd al Rahman al  
3 Masri and Ziad Jarrah, who is also called Abu al Qa'qa al Lubnani to  
4 pledge allegiance for UBL, Usama bin Laden. Actually, this session  
5 was very personal and very secret and did not know about it except  
6 from me; and they have no proof other than my speech, or possibly I  
7 wrote this--I can't remember. But it is a fact, it is true. And I  
8 hope that this speech will not interpret it that I am sad or angry  
9 because that I did not join Muhammed Atta on 9/11 or Ziad Jarrah, or  
10 that I'm sad that I did not go with them and I only did these  
11 arrangements for them, or have the honor of joining them, in our  
12 sense of matters.

13           This is not true. Every time, every country when a person  
14 is being investigated or interrogated, whether it's criminal or not  
15 criminal, or legal prosecution, criminal or legal investigation in  
16 all countries of the world, in all cultures of the law, and in laws  
17 from god or laws by man, the person is asked--the person who said the  
18 truth is asked, "Why did you say the truth?"

19           Is this true, Mr. Prosecutor?

20           MJ [COL GREGORY]: You may continue.

21           ACC [MR. AL BAHLUL]: Take a point of this, and you can respond  
22 later.

23           Number Z, Article Z is right. I have three more points,



1 and we will be done. I will not take--or probably four, and will not  
2 take long and will go fast.

3 MJ [COL GREGORY]: Excuse me. Did you say "Z"?

4 ACC [MR. AL BAHLUL]: Z. Yes, Z. Well, Z in Arabic. It's not Z  
5 in English. Something else.

6 MJ [COL GREGORY]: Yeah. Because I don't have Z.

7 ACC [MR. AL BAHLUL]: It's in Arabic.

8 MJ [COL GREGORY]: Is it H, translator?

9 CT INT: Possibly H, you can say.

10 DEF INT: Your Honor, it's G.

11 ACC [MR. AL BAHLUL]: Okay. G.

12 MJ [COL GREGORY]: G?

13 DEF INT: Yes, sir.

14 CT INT: Okay. G.

15 ACC [MR. AL BAHLUL]: H. With the media statements and  
16 marketing statements and the declarations that were--that had to talk  
17 about martyrdom for each of--for Mr. Atta and Ziad al Jarrah in  
18 preparation for acts of terrorism that were perpetrated by Muhammed  
19 Atta and Ziad al Jarrah and others at various **[the microphone cut**  
20 **out]** in the United States in September--on September 9, 2001.

21 This point actually--and God is a witness--I was--I did not  
22 have the honor of taking of Muhammed Atta nor Ziad al Jarrah, because  
23 after I met them in Afghanistan, I had to travel to Yemen; and I did

1 not take pictures of them. And if I did, I would have said; but  
2 actually I did not.

3 But you said earlier--I have said earlier that they pledged  
4 allegiance to bin Laden through me; but taking pictures of them did  
5 not take place.

6 And the next point: According to instructions by Usama bin  
7 Laden about the economical effect of 9/11 on the U.S, and he provided  
8 the results of the study to Usama bin Laden. Is that true--it is  
9 true, but it is missing something. It was not only on the economical  
10 effect, but also the political effect and the social effect and  
11 psychological effect, only these effects.

12 Next item: He maintained and fixed equipment--equipment of  
13 media and communications equipment for the benefit of Usama bin Laden  
14 and other members of al Qaeda leadership.

15 K. Next item: My comment on this, maintaining the  
16 equipment, this is not true. I don't know much about hardware. I  
17 know--I might know a little; but most of what my work is in software.  
18 And preparing equipment for media is true; but after the "wa,"  
19 **[untranslated Arabic "and"]** I don't know what that is. And--after  
20 the word "and," I don't know what's there. There is nothing.

21 The last item, K., he dressed himself with an explosive  
22 belt and a rifle and grenades--and grenades to protect Usama bin  
23 Laden and prevent him from being captured, it is true. Yes, the

1 rifle, that's true. Grenades, that's true. Other weapons, that's  
2 true. But the explosive belt is not true. But I said in the  
3 investigations just to give some effect on the interrogators; and the  
4 reason behind this is that the stupid investigators, when you give  
5 them what they want, you can get out of them 20 other points, just  
6 like you put a trap in the chess game. But this doesn't mean that if  
7 I was given an explosive belt and bin Laden--and if bin Laden asked  
8 me to explode myself, that I wouldn't do that. Of course, I would.  
9 I would.

10 I have given you something now. Put it in your mind in any  
11 way you like. I was bored when I was in Afghanistan and working on  
12 computers and papers and cameras and TVs; and I asked bin Laden for a  
13 martyrdom operation, suicide operation; but he refused. The reason  
14 why he refused was that he--that there are many other people other  
15 than you or so--the recruiting people through media gets you more  
16 people than suicidal attacks.

17 Even in America, in every country in the world, media is  
18 the master ministry or department; and it has strategic goals, just  
19 like the United Nations and Internal Affairs and the Treasury  
20 Department; and god bless us, his speech was right.

21 We will see what you will--your ruling will be. I'm done  
22 with my comments. And these comments that I made, whether they were  
23 today or tomorrow, is my right because they are my actions.

1           And I apologize to the judge that I interrupted him and I  
2 got emotional during the discussion. I thank you for giving me the  
3 chance.

4           MJ [COL GREGORY]: And again, I just wanted to make sure that  
5 you understood you needed to say nothing.

6           ACC [MR. AL BAHLUL]: I understand this very well.

7           MJ [COL GREGORY]: Other than entering your plea. And I have  
8 taken your plea of "not guilty" to all of the charges.

9           ACC [MR. AL BAHLUL]: Yes. Regardless of the details.

10          MJ [COL GREGORY]: Right.

11          ACC [MR. AL BAHLUL]: And we are waiting for the evidence on the  
12 27th?

13          MJ [COL GREGORY]: That is correct.

14                   Major Frakt?

15          DC [MAJ FRAKT]: It appears to me, Your Honor, that Mr. al  
16 Bahlul has asked me repeatedly not to represent him; has informed the  
17 Court----

18          ACC [MR. AL BAHLUL]: Not to. Did you say "not to"?

19          DC [MAJ FRAKT]: Not to represent you.

20          ACC [MR. AL BAHLUL]: And also to withdraw, to get out of the  
21 courtroom.

22          DC [MAJ FRAKT]: Right, and also to withdraw from  
23 representation; and he has informed the Court of his desire that I

1 not represent him. He has indicated that he does intend to--to  
2 attend, to be present at the trial. He appears to be quite capable  
3 of representing his own interests. I'm not sure how I could possibly  
4 contribute.

5 So I would ask permission from the Court to withdraw or be  
6 excused from representing Mr. Bahlul, who clearly does not want me.

7 Thank you.

8 MJ [COL GREGORY]: I will take that as a request to reconsider  
9 my ruling at our last session in which Mr. Bahlul expressed his  
10 desire to continue his boycott, and I understand that. And since he  
11 is not representing himself, you are the detailed counsel and I will  
12 not allow you to withdraw and will not release you. So perhaps you  
13 will find some role with Mr. Bahlul, perhaps not; but you will remain  
14 on the case, as I directed last time.

15 ACC [MR. AL BAHLUL]: I have a suggestion. I interrupt.

16 I'm boycotting. It was told--I was told about you, that  
17 you give me the option of seeing the sessions or watching the  
18 sessions even if I'm boycotting. As an example, I could be in  
19 another--I could be out of the court. In one way or the other, there  
20 should be a way that I can be watching the sessions. I don't know  
21 what mechanism that can be.

22 MJ [COL GREGORY]: I have been told that's possible.

23 ACC [MR. AL BAHLUL]: Is this a matter of a week or two,

1 Mr. Judge?

2 MJ [COL GREGORY]: Is what a matter of a week?

3 CT INT: If he can watch the sessions.

4 ACC [MR. AL BAHLUL]: If the sessions will start, will they  
5 take--on the 27th, will they take two weeks or three weeks?

6 MJ [COL GREGORY]: I have been told by the lawyers they expect  
7 ten days.

8 ACC [MR. AL BAHLUL]: I have a suggestion: Since there is some  
9 doubt, and I hear your expression and the expression of Mr. Frakt,  
10 when you expressed--when you talk about my boycotting, you say  
11 desire. It's not a desire; it's my right.

12 MJ [COL GREGORY]: You are doing it. I understand that.

13 ACC [MR. AL BAHLUL]: There is a difference between saying a  
14 "desire" and "right." This is a right that one studies, and I'm very  
15 well aware of things, with no pressure. And the world is waiting to  
16 see the evidence against me. Isn't this right?

17 Justice requires from you, we--we both agree that at least  
18 on the minimum of justice, even if we disagree on the concept of  
19 justice. The U.S. government needs to prove its evidence against me,  
20 and you--as you are taking the role of a judge, you should appear as  
21 if you are fair. And I'm sure it's not going to be your role alone,  
22 it will be also the jury's ruling. And if I take the boycotting a  
23 hundred percent and I don't attend the sessions at all--and you told

1 me earlier that it's my choice to attend or not to attend during  
2 those ten days. Right?

3 MJ [COL GREGORY]: I will give you an opportunity each day to  
4 attend. And let me say one more thing: The government has filed a  
5 motion to compel attendance. I have not reviewed their motion. I  
6 have not ruled on it.

7 ACC [MR. AL BAHLUL]: To force me to attend?

8 MJ [COL GREGORY]: That is their motion. Yes.

9 ACC [MR. AL BAHLUL]: You don't need motion. The latest events  
10 in Yemen is what brought me here, and it will make me attend every  
11 session and sit on this chair and see the evidence; and I will talk  
12 and comment, and I will say whether it's true evidence or not true,  
13 untrue evidence, honest witness or non-honest; and I will let  
14 everybody listen. And I will not consider this partly boycotting--I  
15 will not consider it partial boycotting; and, at the same time, I  
16 will not consider that I will represent myself as a lawyer.

17 Had it been that legal proceedings of this Court to keep  
18 your prestige, let him say whatever he wants. The person who says  
19 that he is the lawyer, let him say whatever he wants. You forced him  
20 to fall into that. He is between two matters: Either his legal  
21 principles, or break the military order and put himself in jeopardy  
22 of breaking the order. He is in a test of choosing between his  
23 principles and his orders. I did not put him in this test. You,

1 your prestige put him in there. Your appearances.

2 We have tried to solve this problem. If I attend--and I  
3 will attend all the sessions during the ten days--it's my right to  
4 receive the evidence through you, Mr. Judge. The government will  
5 deliver to you and you give it to me.

6 MJ [COL GREGORY]: Actually, it goes through Mr. Frakt. I don't  
7 receive it.

8 ACC [MR. AL BAHLUL]: Let's continue with the U.S. appearances.  
9 You care about appearances more than the matters. I will consider  
10 that correspondent--I will consider you--I will consider him a  
11 correspondent, just like that correspondent there **[pointing]**.

12 Give me, and Ali deliver it. The U.S. government delivered  
13 me the accusations against me--the evidence against me through the  
14 person that they appointed in an embarrassing situation between his  
15 legal principles and his military threat; and I took it from him,  
16 that he is like a clerk in a court or a--just a correspondent; and  
17 then he delivered it to the Yemeni group, the educated Yemeni group  
18 in the West to give it to another Yemeni that choose Ali Hamza that  
19 the West considers a terrorist.

20 And you say that this is normal. I have no problem with  
21 that, that you have all kinds of protection, the legal protection and  
22 open session. You offered me legal counsel, and we are looking to  
23 come in ten days.



1           The third point of legal protection, that's called the  
2 proof value of the evidence. Is that true? And what will the U.S.  
3 government do with Ali Hamza? And how is politics going to interfere  
4 with law? Respect your principles, not for us; it's your values. We  
5 are happy that you are embarrassed in your own values. We don't care  
6 that press will know that Hamza has all of this evidence against him.  
7 I mentioned the evidence by my own.

8           Your Honor, the evidence is on earth and after life. In  
9 total justice and fairness, one will meet God. That the person--the  
10 highest--the highest proof on a person is that he witnesses on  
11 himself on judgment day; that some people, although God will get them  
12 witnesses, they falsify what the god--what God said. That's in our  
13 religion. And God will--and God will let them show their proof of  
14 the evidence. God will make their skin talk and say and their  
15 tongues will talk, in addition to the books that the ancients would  
16 write.

17           Bush--when Bush had the reaction for 9/11, he called the  
18 operation against Afghanistan "total justice." Then he--then Muslims  
19 complained about this, as I heard in the media; and they said that  
20 total justice can only happen by God, that there is no total justice  
21 on earth. And there will be another day on judgment day when we will  
22 meet, all of us will meet.

23           We also have claims against America, and we have evidence

1 and statements. But this conflict like this, one day is for you and  
2 one day is against you; one day you are a winner, one day you are a  
3 loser; and what matters is who is the happier one at the end. I  
4 don't mean in real life; I mean in the second life.

5 Thank you.

6 MJ [COL GREGORY]: Anything else by either side before I recess  
7 pending our session to begin on the 27th?

8 TC [MAJ COWHIG]: Yes, sir. Three items from the government.

9 I understood the accused asked for representatives from the  
10 Saudi and Yemeni government. It is his right to do so, but the  
11 United States government cannot compel their attendance. Our office  
12 will facilitate any requests made by the accused through his counsel  
13 to those representatives.

14 MJ [COL GREGORY]: Please do that.

15 ACC [MR. AL BAHLUL]: If they were asked, they would not object;  
16 political and legal advisors.

17 TC [MAJ COWHIG]: Second point, sir: I want to apologize to the  
18 accused and to the Court, and explain it's a custom in the United  
19 States courts for the counsel not to talk directly in the midst of a  
20 session but to ask permission of the Judge; and that is why I looked  
21 to the Judge when asked questions.

22 MJ [COL GREGORY]: That's fine.

23 TC [MAJ COWHIG]: The third point, sir, was that--if I

1 understood the accused correctly, he appeared to be reasserting his  
2 motion for self-representation, apparently asking for some type of a  
3 hybrid counsel role.

4 MJ [COL GREGORY]: I did not take it that way, and that's why I  
5 viewed Major Frakt's statement as a request for me to reconsider my  
6 earlier determination back last month. I did so, and I stand by that  
7 determination.

8 Anything else?

9 TC [MAJ COWHIG]: Nothing else at this point, sir.

10 MJ [COL GREGORY]: What about Mr. Bahlul's request for a Saudi  
11 interpreter? Can you check to see if one is available?

12 TC [MAJ COWHIG]: Sir, we know that there are a number of  
13 Saudi/American interpreters that do work. We believe the appropriate  
14 way to pursue that would be for defense to request specifically a  
15 Saudi/American interpreter.

16 MJ [COL GREGORY]: Can you submit that request, Major Frakt?

17 DC [MAJ FRAKT]: I certainly can.

18 Mr. al Bahlul, is that your request, that Mr. [REDACTED] be  
19 replaced with a Saudi interpreter for----

20 ACC [MR. AL BAHLUL]: I'm asking this from the Court, not  
21 through you.

22 MJ [COL GREGORY]: All right. Well, consider the request made.  
23 And if you need something in writing, see me after.

1 TC [MAJ COWHIG]: Sir, we will take that as an order from the  
2 Judge, to request on behalf of the accused a Saudi/American  
3 interpreter.

4 MJ [COL GREGORY]: Good. Saves a bit of paperwork.

5 Anything else?

6 TC [MAJ COWHIG]: Not from the government, Your Honor.

7 MJ [COL GREGORY]: Anything, Major Frakt?

8 DC [MAJ FRAKT]: No, Your Honor.

9 MJ [COL GREGORY]: When we have the panel here--you can see how  
10 difficult it is today to have the alternating translations. With a  
11 large group of people, with witnesses, with lawyers talking, it's  
12 going to be even more difficult.

13 Given that, Mr. Bahlul, I would ask that you use the  
14 headset so that the translators can translate simultaneously.  
15 Otherwise, I----

16 ACC [MR. AL BAHLUL]: I understand that.

17 MJ [COL GREGORY]: Otherwise, I believe we will have more  
18 confusion like we had today. and the translators are doing a good  
19 job, the best they can; it's just that it will make their job easier  
20 and better if we do it simultaneously. So that's what we will do.

21 Anything else? All right. We are in recess.

22 And if Mr. Bahlul and Major Frakt need to speak, please  
23 give them an opportunity to do that.

1 ACC [MR. AL BAHLUL]: I don't like--I don't want to meet him.

2 MJ [COL GREGORY]: Okay. All right.

3 We are in recess until 27 October.

4 **[The R.M.C. 803 session recessed at 1511, 24 September 2008.]**

5 **[END OF PAGE]**

6

7

1 [The R.M.C 803 session was called to order at 0929, 27 October 2008.]

2 MJ [COL GREGORY]: This military commission is called to order.  
3 First, let me review where we are in the process. And I'll turn to  
4 the trial counsel and ask, has there been any changes or corrections  
5 to the convening order since our session in September?

6 TC [MAJ COWHIG]: Yes, sir, there have.

7 MJ [COL GREGORY]: You can go ahead and announce those, please.

8 TC [MAJ COWHIG]: Sir, I'll announce it, if it's all right, all  
9 orders in order.

10 MJ [COL GREGORY]: That's fine.

11 TC [MAJ COWHIG]: We are convening first by Military Commission  
12 Convening Order Number 07-01 dated----

13 MJ [COL GREGORY]: Whoa, watch your speed for the translators.

14 TC [MAJ COWHIG]: Dated 1 March 2007. That order was amended by  
15 MCCO Number 07-05, dated 29 May 2007, and further amended by MCCO  
16 Number 08-03, dated 22 October 2008.

17 [THE NEXT PAGE IS THE AMENDED MCCO, DATED 22 OCTOBER 2008 AND IS NOT  
18 A NUMBERED PAGE.]

19 [END OF PAGE]

1 MJ [COL GREGORY]: All right. Thank you. And while you're  
2 standing, would you like to go ahead and announce the persons  
3 present?

4 TC [MAJ COWHIG]: Yes, sir. The only change in the prosecution  
5 order is that we've been joined by Captain Chris Eason. He's been  
6 detailed to this Military Commission by the Chief Prosecutor, Colonel  
7 Morris, and he's been sworn and certified in accordance with the  
8 applicable regulations and statutes, sir.

9 MJ [COL GREGORY]: Have there any changes--I recognize one new  
10 court reporter. Do we need to announce any changes to our court  
11 reporting staff?

12 TC [MAJ COWHIG]: Yes, sir. We had not been tracking the court  
13 reporters by name.

14 MJ [COL GREGORY]: Oh, that's right. But we have a new one.

15 TC [MAJ COWHIG]: Yes, sir.

16 MJ [COL GREGORY]: Okay. Previously sworn? That's the main  
17 thing I was concerned about.

18 TC [MAJ COWHIG]: Yes, sir.

19 MJ [COL GREGORY]: Okay. Do you want to cover any new appellate  
20 exhibits since our last session? I believe there were some motions  
21 filed, or would you like to do that later?

22 TC [MAJ COWHIG]: Sir, we would like to take them in the order  
23 that we're going to address them today as they come up.

1 MJ [COL GREGORY]: All right. We'll do that.

2 ATC [CAPT EASON]: Sir?

3 MJ [COL GREGORY]: Yes.

4 ATC [CAPT EASON]: Before we get to the motions, I provided the  
5 court reporter with a copy of the detailing letter dated 12 December  
6 2008 from Colonel Morris himself.

7 MJ [COL GREGORY]: All right. And that would be Appellate 58.  
8 Thank you.

9 Major Frakt, any changes on your side of the aisle?

10 DC [MAJ FRAKT]: Yes, Your Honor. We have had Mr. al Bahlul's  
11 request--our prior defense linguist was released. And a new  
12 interpreter was--defense interpreter has been retained for these--  
13 this trial. And he has been sworn and his name has been provided to  
14 the military commission.

15 MJ [COL GREGORY]: Thank you. I'll come back to the filing  
16 inventory as we progress through the appellate exhibits. Since our  
17 last session, we have had two 802 conferences, at least two. The  
18 first was by telephone.

19 During that conference, I reviewed some concerns as  
20 indicated in the government motion to clarify Mr. al Bahlul's pro se  
21 status. Did you want to go ahead and mark that at this time? That  
22 would be your motion to clarify the accused's pro se status. Have I  
23 got that caption correct?



1 TC [MAJ COWHIG]: Yes, sir. We had styled it as a supplemental  
2 filing to----

3 MJ [COL GREGORY]: A supplement to your earlier?

4 TC [MAJ COWHIG]: Yes, sir.

5 MJ [COL GREGORY]: Okay. Well, concerning that, as I indicated  
6 in the 802 that we had yesterday, I am prepared to enter findings  
7 concerning Mr. Bahlul's status, and this will be by way of recap of  
8 our prior hearings.

9 In August I held my first hearing with Mr. Bahlul. At that  
10 hearing, I was prepared to conduct a pro se inquiry with him as a  
11 follow-up to Judge Brownback's May session that he had with Mr.  
12 Bahlul. However, for the reasons set forth below, that inquiry was  
13 no longer relevant or necessary.

14 At the August hearing, Mr. Bahlul announced his intention  
15 to boycott the trial. He did not renew his request to proceed pro se  
16 and asked to depart the courtroom. He stated that he only wanted to  
17 return to make a statement on the day of sentencing.

18 I advised Mr. Bahlul that such a boycott of the trial would  
19 forfeit his statutory right to represent himself. Had Mr. Bahlul  
20 been allowed to persist in *pro se* representations while boycotting  
21 the hearing, he would have been granted essentially the *de facto*  
22 power to stop the commission from proceeding at all.

23 Mr. Bahlul acknowledged an understanding of this and

1 renewed his request to depart the courtroom. I granted his request  
2 and I took a recess to allow time for Major Frakt, the detailed  
3 defense counsel, to confer with Mr. Bahlul.

4 I reconvened the court with counsel. Mr. Bahlul was absent.  
5 Major Frakt announced that Mr. Bahlul did not wish to return, had  
6 directed him to waive all motions, demand a speedy trial, and, in  
7 effect, present a defense of standing mute.

8 I directed Major Frakt that as detailed counsel he would  
9 represent Mr. Bahlul in accordance with his wishes as far as  
10 ethically permissible. With agreement of all counsel, I set 23  
11 September as the next hearing to take up any additional motions and  
12 pre-admit any evidence.

13 The September 23 hearing actually began on the 24th of  
14 September. At the September hearing, Mr. Bahlul expressed his  
15 preference to attend the trial if such attendance would not forfeit  
16 his boycott.

17 I advised him that his boycott was similar to a motion to  
18 dismiss for lack of jurisdiction, which, if denied by a trial judge,  
19 was not waived by an accused's continued presence at the trial.  
20 Therefore, I informed him that he could attend the trial without  
21 forfeiting his stated boycott of the trial. He did not renew his  
22 request to represent himself.

23 Mr. Bahlul entered pleas of not guilty to all charges and

1 specifications and I accepted those pleas. Major Frakt announced  
2 that he had consulted with his state bar concerning Mr. Bahlul's  
3 directive to proceed with the defense of standing mute and had been  
4 authorized to proceed with that strategy.

5 Is that correct, Major Frakt?

6 DC [MAJ FRAKT]: Yes, Your Honor.

7 MJ [COL GREGORY]: Okay. Thank you.

8 At the May hearing, Judge Brownback found that standing  
9 mute is a legally permissible strategy for an accused. I agree with  
10 Judge Brownback's finding and add only that such a strategy in no way  
11 relieves the government of its burden to prove an accused's guilt  
12 beyond reasonable doubt.

13 As I said, the government requested that I again clarify  
14 the pro se issue. These are my essential findings clarifying that  
15 issue. And I ask if either side has any additional questions?

16 TC [MAJ COWHIG]: Nothing from the government, Your Honor.

17 DC [MAJ FRAKT]: Yes, Your Honor. Mr. al Bahlul has a statutory  
18 right to represent himself under the Military Commissions Act. He  
19 invoked that right in May at the arraignment. He was granted that  
20 right. He has asked--or has refused representation of myself.

21 It is not inconsistent with the right to represent one's  
22 self to also boycott. And indeed it is not inconsistent even to be  
23 absent and represent one's self. In fact, there is a case *Thomas*

1 *versus State of Delaware*, 842 Atlantic 2nd 1244, which establishes  
2 that a pro se accused may both boycott, and represent himself, and be  
3 absent from his trial.

4           Therefore, as I had requested before, I request to be  
5 relieved of the court appointed duty to represent Mr. al Bahlul and  
6 request that the defense linguist who is here to facilitate my  
7 interaction with Mr. al Bahlul also be excused as there will be no  
8 need for either of us if Mr. al Bahlul is granted the right to  
9 represent himself as he should be. Thank you.

10           MJ [COL GREGORY]: Thank you. Trial Counsel, do you have any  
11 comment to the legal argument that Major Frakt just put forth  
12 specifically referencing the Delaware case?

13           TC [MAJ COWHIG]: Yes, sir, just briefly. The Delaware case  
14 relies upon the Sixth Amendment analysis, calling on *Faretta and*  
15 *McKaskle versus Wiggins*. I just point out that this proceeding here  
16 is governed by the Military Commissions Act, and the Military  
17 Commissions Act requires that an accused meet certain standards set  
18 out in that act to function as a pro se defendant and imposes certain  
19 duties on both the accused and the detailed defense counsel,  
20 modifying, I think, substantially an analysis that appears in that  
21 Delaware case.

22           MJ [COL GREGORY]: One of the essential criteria for a judge in  
23 evaluating a *pro se* request, indeed it's a threshold criteria, is

1 whether the request is timely. As I stated in August, I was prepared  
2 to conduct the required *pro se* inquiry with Mr. Bahlul. However, he  
3 expressed at that time that he did not want to attend the trial and  
4 renewed his boycott.

5 And after advising him that such a boycott and  
6 nonattendance would forfeit the right to proceed *pro se*, he  
7 acknowledged the understanding and did not renew his request to  
8 proceed *pro se* and I allowed him to depart. At the September hearing  
9 the request was not renewed, but he reiterated his boycott.

10 Given what has gone before in this case, I find that even  
11 if there were a request to proceed *pro se*, at this point that request  
12 would not be timely. I would further find that under the rules of the  
13 commissions, the commission will not proceed with an empty table on  
14 the defense side and that Major Frakt, as detailed counsel, will  
15 continue to represent Mr. Bahlul as I said, in accordance with Mr.  
16 Bahlul's wishes as far as ethically permissible.

17 Anything else on that?

18 DC [MAJ FRAKT]: I understand, Your Honor. I will be joining Mr.  
19 Bahlul's boycott of the proceedings sitting silently at the table.

20 MJ [COL GREGORY]: And as Judge Brownback said, standing mute is  
21 a viable option for a criminal defendant. And if that is the  
22 defense's choice, I will not interfere with that choice.

23 But I again emphasize that such a defense posture does not,

1 in any way, relieve the government of its burden of proving an  
2 accused's guilt beyond a reasonable doubt.

3 So, Mr. Bahlul, again I recognize that you are boycotting  
4 these proceedings. And as I told you in September, your attendance  
5 here does not forfeit or negate your boycott. As you heard, Major  
6 Frakt is your detailed counsel, and will speak for the defense.

7 You will have an opportunity to speak as a witness when  
8 it's the defense's turn; that's your choice. Until that time, only  
9 Major Frakt may speak for the defense side and may cross-examine the  
10 government witnesses. You, of course, at any time may speak with  
11 your lawyer during the course of these proceedings.

12 I will protect your right to attend these proceedings.  
13 But, you will forfeit that right if you become disruptive by such  
14 actions as speaking in the presence of commission members other than  
15 as a witness when it is your turn, or any other type of conduct that  
16 materially interferes with conduct of these proceedings.

17 If such conduct occurs, I will first caution you that such  
18 conduct is disruptive and could forfeit your right to attend the  
19 proceedings. If the conduct continues, then we'll take a recess  
20 while you depart the courtroom.

21 Should this happen, I will inquire on each following day  
22 whether you wish to return. I might add for the record that I did  
23 direct that audio and video capability be set up in an alternate room

1 so you can continue to hear and see the trial should you depart the  
2 courtroom.

3           Anything else on that?

4           TC [MAJ COWHIG]: Nothing from the government, Your Honor.

5           MJ [COL GREGORY]: A negative response from the defense.

6           The next issue that I brought up was given the defense  
7 posture of presenting a defense of standing mute, and I understand  
8 Mr. Bahlul's direction to Major Frakt not to file motions in the  
9 case, that I would have to draw the line somewhere of where the  
10 judge, in this case me, should *sua sponte* intervene to ensure a fair  
11 trial.

12           One of those areas that I feel is such--have such a duty to  
13 intervene is concerning Mr. Bahlul's earlier statements to Judge  
14 Brownback and myself. During our previous hearings, to both me and  
15 Judge Brownback, Mr. Bahlul made extensive remarks. The government  
16 may intend to use those remarks against Mr. Bahlul during its case in  
17 chief.

18           Pursuant to my authority under Military Commission Rule of  
19 Evidence 102 and 103(d), to ensure that the rules be interpreted  
20 fairly, I find that Mr. Bahlul's remarks during the pretrial hearings  
21 to Judge Brownback and myself are not admissible against him during  
22 the government's case-in-chief.

23           Mr. Bahlul's remarks to Judge Brownback and me were in the

1 context of explaining his boycott of the trial. And as such, I view  
2 them as analogous to limited purpose testimony.

3           If Mr. Bahlul desires to put this information or other  
4 matters before the commission members, then he has the choice of  
5 doing so as a witness during the defense case-in-chief. But  
6 essentially, Mr. Bahlul has the keys to that door.

7           Any questions about that?

8           ATC [MAJ HALE]: None from the government, Your Honor.

9           MJ [COL GREGORY]: Okay. A negative response from the defense.

10           We covered additional items during the conference yesterday  
11 which continue briefly this morning. Another one of those areas  
12 where I believe it is incumbent on a trial judge to act *sua sponte*  
13 concerns jurisdiction of the court.

14           As both sides I'm sure are aware, in other cases here,  
15 jurisdictional questions have been raised. Obviously they haven't  
16 been raised in this case. It's critical to any criminal or civil  
17 proceeding for that matter that the court have jurisdiction. For a  
18 military commission to have jurisdiction, there must be a proper  
19 finding that the accused is an unlawful combatant.

20           As I believe both sides know, the CSRT in this case made a  
21 finding that the accused was an enemy combatant and for whatever  
22 reason did not include the word "unlawful". And that has been the  
23 subject of much litigation in other cases.



1           One remedy for that and I believe it is a remedy that has  
2 been used, is to conduct a hearing with the trial judge to determine  
3 whether the jurisdictional threshold has been met.

4           That is the remedy I will follow in this case. It seems  
5 somewhat a waste of everyone's time to have a separate hearing on  
6 that when I can make that determination based on evidence presented  
7 by the government during its case-in-chief.

8           So, my ruling on jurisdiction will be that at the  
9 conclusion of the government's case, I will determine whether enough  
10 evidence has been presented to show by a preponderance, which is the  
11 legal standard on jurisdiction, that the court does have  
12 jurisdiction.

13           If the defense were participating, the defense could stand  
14 up at that time and make a motion to dismiss for lack of jurisdiction  
15 based on failure of the proof. I will essentially entertain that  
16 motion for them.

17           And so, Trial Counsel, as part of your case-in-chief, I  
18 will be listening for jurisdictional facts and will decide at the  
19 conclusion of the case-in-chief whether jurisdiction has been shown  
20 by a preponderance of the evidence.

21           TC [MAJ COWHIG]: Understood, Your Honor.

22           MJ [COL GREGORY]: Does that sound like an appropriate way of  
23 proceeding in this case?

1 TC [MAJ COWHIG]: It does, sir.

2 MJ [COL GREGORY]: All right. Then that's what I'll do.

3 Would you like to defer a discussion of the elements at  
4 this time? We did mention some concerns during our conferences about  
5 the elements. And I told both sides my view on those without  
6 deciding, of course.

7 ATC [MAJ HALE]: I think it would be most efficient if we hold  
8 that 802 for Tuesday, when we have a gap in time, Your Honor. We'll  
9 hold, Your Honor.

10 MJ [COL GREGORY]: So, that's not an issue that needs to be  
11 resolved before the panel questioning this afternoon? I didn't see  
12 it in your voir dire questions as a possible issue.

13 TC [MAJ COWHIG]: No, sir.

14 MJ [COL GREGORY]: All right. We will need to--I want to nail  
15 that down, though, before we begin the case-in-chief. It's important  
16 that you know, and everybody knows, exactly what needs to be proven  
17 in this case.

18 So, let's try to work that out perhaps after our session  
19 today with the members. But it needs to be on the record, my finding  
20 concerning the elements. But for now I'll defer it.

21 Would you also like to defer a discussion and a ruling on  
22 this issue of credit for time that Mr. Bahlul has spent while in a  
23 confinement status?

1           ATC [MAJ HALE]: Yes, Your Honor. Consistent with the 802  
2 discussion on voir dire questions, we'll have those three questions  
3 stricken that deal with that as well.

4           MJ [COL GREGORY]: All right. I'll defer that.

5                   I did speak on Sunday with Commander Willard who is a  
6 chaperone, I guess I'll call him, for the members, because I wanted  
7 to try to structure the trial schedule consistent with his logistical  
8 schedule and transportation schedule for the members and inform both  
9 sides that based on my discussions with them and factoring in his  
10 requirements, we would plan to have a morning session with the  
11 members from nine to approximately 1230.

12                   Then, we will recess until two to allow Mr. Bahlul the  
13 prayer time and the other parties to get lunch, whatever they want to  
14 do. Then, we'll come back at two and go to approximately five. That  
15 schedule seems to work best with the transportation issues that he's  
16 dealing with. And I believe both sides were okay with that proposal.

17                   We still all right with that?

18           TC [MAJ COWHIG]: Yes, sir. And we have a shift to daylight-  
19 savings time, I believe.

20           MJ [COL GREGORY]: A week from today.

21           TC [MAJ COWHIG]: Yes, sir.

22           MJ [COL GREGORY]: And then we'll deal with that variable.

23           TC [MAJ COWHIG]: Yes, sir.

1 MJ [COL GREGORY]: Okay. I do note that Mr. Bahlul is not  
2 wearing the headphones. But, as I said last time to Mr. Bahlul and  
3 others, all of us saw the problems with the in-court announcement of  
4 the translation. So, Mr. Bahlul, if you want to listen to the  
5 translation, it's available for you in the headphones; but we're not  
6 going to be piping it into the courtroom this time.

7 Were there any other issues that we needed to cover that  
8 were raised in our 802s? Again my summary of the 802, I'm taking it  
9 issue by issue. I don't want to miss anything.

10 TC [MAJ COWHIG]: Yes, sir. And there was a request by the  
11 accused for representatives from the Saudi----

12 MJ [COL GREGORY]: Oh, yes.

13 TC [MAJ COWHIG]: I apologize if I'm misstating.

14 MJ [COL GREGORY]: No, I remember that.

15 TC [MAJ COWHIG]: And the Yemeni government.

16 MJ [COL GREGORY]: Yes. Please tell us the status of that.

17 TC [MAJ COWHIG]: That request was passed through the Office of  
18 the Deputy Assistant Secretary of Defense for Detainee Affairs.  
19 Representatives of that office made contact with both the Saudi and  
20 Yemeni embassies on multiple occasions and did not receive a response  
21 from those embassies indicating that they wished to attend and  
22 observe the trial.

23 MJ [COL GREGORY]: Well, if you get a response, they're

1 certainly welcome. But, obviously the court has no power to compel  
2 their attendance.

3 TC [MAJ COWHIG]: Yes, sir.

4 MJ [COL GREGORY]: It's up to those governments. If they want  
5 to send a representative, they certainly can. There is plenty of  
6 open seating. So, just let me know if you hear something from them  
7 that says they're going to send someone and we'll take whatever steps  
8 are necessary to find them a seat.

9 TC [MAJ COWHIG]: Yes, sir, we will.

10 MJ [COL GREGORY]: Okay. Any other issues in the 802? That's,  
11 I believe, the end of my list.

12 TC [MAJ COWHIG]: Sir, we had discussed briefly, I believe,  
13 protective orders for the witness and for the panel members.

14 MJ [COL GREGORY]: I had signed those, I believe.

15 TC [MAJ COWHIG]: Yes, sir.

16 MJ [COL GREGORY]: We need to make those appellate exhibits or  
17 perhaps they already are appellate exhibits.

18 TC [MAJ COWHIG]: They are, sir.

19 MJ [COL GREGORY]: And since they are protective orders, have  
20 they already been published to spectators and press members or is  
21 that something that needs to be announced from up here? I don't  
22 know.

23 TC [MAJ COWHIG]: Sir, it's our understanding that the court

1 staff makes that announcement to the members of his press.

2 MJ [COL GREGORY]: All right. Well, if I need to announce it,  
3 let me know. Otherwise I will assume that things went as normal and  
4 it already has been announced.

5 TC [MAJ COWHIG]: Yes, sir.

6 MJ [COL GREGORY]: As one last area, obviously I've reviewed a  
7 lot of material that you've submitted to me in this case and I've had  
8 a couple of interactions with Mr. Bahlul following Judge Brownback's  
9 interactions with him.

10 And, I would just say that having reviewed everything  
11 presented in these pretrial hearings and having personally spoken  
12 with Mr. Bahlul on two prior occasions, I'm not aware of any matter  
13 that might be a ground for challenge against me. But, I will once  
14 again offer either side the opportunity to question and/or challenge  
15 me.

16 TC [MAJ COWHIG]: The government has no questions on voir dire,  
17 Your Honor.

18 MJ [COL GREGORY]: Major Frakt? A negative response from the  
19 defense table.

20 I will tell the members, of course, that Mr. Bahlul entered  
21 a plea of not guilty to all charges and specifications. And he is  
22 presumed to be innocent unless and until his proof--his guilt is  
23 proved beyond a reasonable doubt.

1 I will ask the members group questions, fairly standard.  
2 I'll show you those during our break so you know what I'm going to  
3 ask. And I have reviewed the government proposed voir dire and made  
4 some suggested edits to that.

5 Major Hale, are you okay with the suggested edits, is there  
6 anything you would like to put on the record?

7 ATC [MAJ HALE]: No, sir. This is a matter of representation.

8 MJ [COL GREGORY]: Okay. Do we have a copy of the charges to  
9 provide to the members?

10 TC [MAJ COWHIG]: Yes, sir, we do.

11 MJ [COL GREGORY]: We'll need to mark that as the next appellate  
12 exhibit. You may have already marked it. I don't know.

13 TC [MAJ COWHIG]: I believe it will be 59.

14 Sir, I pass the defense counsel, and I'm now passing to the  
15 court reporter, a draft of the flimsy. And there has also been  
16 prepared an Arabic version which I have also passed to the defense  
17 counsel.

18 MJ [COL GREGORY]: Okay. Please make sure that Mr. Bahlul  
19 receives that.

20 TC [MAJ COWHIG]: And, I'm passing a copy of the Arabic version  
21 also to the court reporter, sir.

22 MJ [COL GREGORY]: I'll give some time for Major Frakt and Mr.  
23 Bahlul to look at that if you would like and if you want to confer.

1           Hearing no objection; I will use Appellate 59 as the copy  
2 of the charges and specifications and give those to the members.  
3 We'll take that up shortly before we bring in the members. And if  
4 there are no changes, then you may put this in the folders of the  
5 members unless you would like to hand it to them.

6           TC [MAJ COWHIG]: No, sir, we would prefer to put it in the  
7 folders.

8           MJ [COL GREGORY]: That's the way I prefer it.

9           TC [MAJ COWHIG]: And should we go ahead and mark the Arabic  
10 translation as Appellate Exhibit 60?

11          MJ [COL GREGORY]: Mark the Arabic version as Appellate 60.

12          TC [MAJ COWHIG]: And I apologize for not recalling, sir. I  
13 believed you indicated in the 802 that you would like us to prepare a  
14 list of witnesses also for that folder.

15          MJ [COL GREGORY]: Just for the convenience of the parties and  
16 our court reporters and other personnel so we know who is going to be  
17 coming in here in a rough schedule of that.

18          TC [MAJ COWHIG]: All right, sir.

19          MJ [COL GREGORY]: I don't know that that needs to be an  
20 exhibit. It's just a helpful aid.

21          TC [MAJ COWHIG]: Is it intended to go in their folders, sir?

22          MJ [COL GREGORY]: Oh, on the voir dire?

23          TC [MAJ COWHIG]: Yes, sir.



1 MJ [COL GREGORY]: Got it. The other reason for doing it. Yes,  
2 we'll need to make the one that goes in their folders an exhibit,  
3 because you wanted me to ask them to review it to see if they knew  
4 anybody?

5 TC [MAJ COWHIG]: Yes, sir.

6 MJ [COL GREGORY]: We'll mark that as 61.

7 TC [MAJ COWHIG]: Sir, I apologize, I have only one copy of this  
8 list here. I'll show it to the defense and then bring it to the  
9 court reporter.

10 MJ [COL GREGORY]: Sure. You can get it later, that's okay. So  
11 that will be 61, the witness list. And you may put a copy of that  
12 into the folders. And again the purpose of this is so the members  
13 can review----

14 TC [MAJ COWHIG]: And I believe we saw that as potential  
15 witnesses, Your Honor.

16 MJ [COL GREGORY]: As potential witnesses, who they might be  
17 hearing from, to see if they know any of these people. And, if so,  
18 that will allow either side or both sides to pursue a possible  
19 challenge against the member and at least explore their knowledge of  
20 the person. All right.

21 Is there anything else that we need to cover at this  
22 session? Trial Counsel, I'm sorry. I recall you mentioning at some  
23 point you might have some exhibits you wanted to pre-admit or have

1 you decided to wait on that?

2 TC [MAJ COWHIG]: We would like to wait on that for a later  
3 session, Your Honor.

4 MJ [COL GREGORY]: All right. Is there anything else for this  
5 session?

6 TC [MAJ COWHIG]: Not for this session.

7 MJ [COL GREGORY]: Major Frakt, anything?

8 A negative response from the defense.

9 Well, we're scheduled to be with the members at two. And  
10 given the logistics of the transportation to and from, I would prefer  
11 not to change that start time because I'm sure they've already  
12 arranged for that to happen.

13 So we'll be in recess until--could you all come back at a  
14 quarter till? Or do you think that's necessary before we bring in  
15 the members? Shall we just be in recess until two?

16 I'll tell you what, we'll be recess until two. If you have  
17 any issues, I'll be available at least by a quarter till two. Just  
18 come to me in chambers and let me know if there's any issues we need  
19 to take up and we'll do it.

20 TC [MAJ COWHIG]: Yes, sir.

21 MJ [COL GREGORY]: And please during this rather extended  
22 recess, it's about four hours, make sure that Mr. Bahlul has his  
23 midday meal and anything else he might need. All right. We're in

1 recess.

2 **[The R.M.C. 803 session recessed at 1007, 27 October 2008.]**

3 **[The R.M.C. 803 session was called to order at 1356, 27 October**  
4 **2008.]**

5 MJ [COL GREGORY]: The commission is called to order.

6 During the recess, I provided both sides an electronic copy  
7 of my questions that I'll be asking the members. Is there anything  
8 that we need to take up before I bring in the members, anyone?

9 TC [MAJ COWHIG]: Nothing, Your Honor.

10 MJ [COL GREGORY]: Okay. A negative response from the defense.

11 Go see if they're ready. And when they are and when  
12 they're lined up, you can bring them on in.

13 **[The members entered the courtroom.]**

14 MJ [COL GREGORY]: Please come on in and take your seats.  
15 Please be seated, everyone.

16 **[All persons did as directed.]**

17 **[The R.M.C 803 session was terminated and the military commission**  
18 **commenced at 1358, 27 October 2008.]**

19 MJ [COL GREGORY]: The commission is called to order. All  
20 parties present before the recess are again present and all of the  
21 commission members are also with us.

22 Let me just make an announcement before we move on here.  
23 For the protection and the privacy of the members, the commission

1 will be using numbered designations rather than names during the  
2 proceeding.

3 I remind all participants in the proceeding, as well as all  
4 observers, that a protective order has been issued regarding the  
5 identity of the members of the commission or taking their pictures or  
6 otherwise identifying them with any specificity.

7 The clerk of the court has copies of that order. If anyone  
8 would like to review it or ask questions about it, please check with  
9 our clerk of the court.

10 Members, you may notice early on and during the trial that  
11 myself as well as others may be speaking a little bit slowly. That's  
12 because these proceedings are being translated simultaneously into  
13 the accused's native language. And sometimes I may even have to stop  
14 if I get a signal from the translator that says they have fallen  
15 behind. So that's the reason for that.

16 Trial Counsel, would you like to announce the convening  
17 order and the persons present.

18 TC [MAJ COWHIG]: Yes, sir. The commission is convened by  
19 Commission Convening Order No. 07-01 dated 1 March 2007, as amended  
20 by Commissions Convening Order No. 07-05 dated 29 May 2007, further  
21 amended by Commissions Convening Order No. 08-03 dated 22 October  
22 2008, copies of which have been furnished to each member of the  
23 court.

1           The accused and the following persons detailed to this  
2 court are present:

3           **COLONEL GREGORY, MILITARY JUDGE;**  
4           **MAJOR COWHIG, MAJOR HALE, CAPTAIN EASON, PROSECUTORS;**  
5           **MAJOR FRAKT, DEFENSE COUNSEL; and**  
6           **THE COMMISSION MEMBERS, as set out in the convening orders.**

7           No person is absent.

8           MJ [COL GREGORY]: Would you like to, at this point, go ahead  
9 and announce the general nature of the charges in the case?

10          TC [MAJ COWHIG]: Yes, sir. The convening orders would be made  
11 a sealed appellate exhibit, Your Honor?

12          MJ [COL GREGORY]: Yes.

13          TC [MAJ COWHIG]: The general nature of the charges is one  
14 Charge of conspiracy to commit murder of protected persons, attacking  
15 civilians, attacking civilian objects, murder in violation of the law  
16 of war, destruction of property in violation of the law of war,  
17 terrorism, and providing material support to terrorism;

18                 One Specification of solicitation to commit murder of  
19 protected persons, to attack civilians, to attack civilian objects,  
20 to commit murder in violation of the law of war, to destroy property  
21 in violation of the law of war, to commit acts of terrorism, and to  
22 provide material support for terrorism;

23                 One Specification of providing material support for

1 terrorism.

2           The charges were preferred by Colonel Maher and referred to  
3 this court by Judge Crawford, the Convening Authority.

4           MJ [COL GREGORY]: All right. Thank you. Members, before we  
5 get to the oath for you, which will be administered by the trial  
6 counsel, there should be a copy of the convening order in front of  
7 you there.

8           Would you please check that order, find your name and check  
9 the spelling, rank, unit of assignment, and if you see any problem  
10 with that, please raise your hand; or if you don't see your name  
11 anywhere, let us know that too.

12           So number 2, Juror Number 2, Member Number 2, and Member  
13 Number 1.

14           MEMBER 1: Correction, I have it in the second page.

15           MJ [COL GREGORY]: You're good. Number 1 is good. Juror--  
16 Member Number 2, there was a problem with yours?

17           MEMBER 2: Yes, sir.

18           MJ [COL GREGORY]: All right. Is that with the name spelling or  
19 unit of assignment or something along those lines?

20           MEMBER 2: Spelling and unit location.

21           MJ [COL GREGORY]: Location of the unit?

22           MEMBER 2: Yes, sir.

23           MJ [COL GREGORY]: All right. Trial Counsel, can you make sure

1 we get the unit of Member Number 2 corrected?

2 TC [MAJ COWHIG]: Yes, sir, we will.

3 MJ [COL GREGORY]: And we'll take care of that. I don't suppose  
4 we should mention the unit in open court. Take care of that. Thank  
5 you.

6 Anyone? Number 9. Yes.

7 MEMBER 9: The assignment is incorrect.

8 MJ [COL GREGORY]: All right. Same with Member Number 9, unit  
9 of assignment. Let's double-check both Number 2 and Number 9 on unit  
10 of assignment and correct that as necessary.

11 TC [MAJ COWHIG]: Yes, sir.

12 MJ [COL GREGORY]: Yes.

13 MEMBER 1: The assignment as well, Your Honor.

14 MJ [COL GREGORY]: The assignment on Number 1 and Number 3?

15 MEMBER 3: Yes, sir, unit of assignment.

16 MJ [COL GREGORY]: Unit of assignment. So, it looks like we  
17 have several units of assignment issues. Let's check those. And can  
18 you let me know the status of that after you have a chance to check  
19 that?

20 TC [MAJ COWHIG]: Yes, sir.

21 MJ [COL GREGORY]: Okay. Thanks. Other than that everyone is  
22 good, everyone does appear on the orders. So with that, I believe  
23 we're ready to proceed to the swearing of the commission. And while

1 we do that, I would ask everyone to please stand while Major Cowhig  
2 gives you your oath.

3 **[The members did as directed and were sworn by the trial counsel.]**

4 MJ [COL GREGORY]: You may be seated

5 **[All members did as directed.]**

6 MJ [COL GREGORY]: Thanks. And with that oath, the commission  
7 is assembled. Members, I'll now give you some preliminary  
8 instructions.

9 My duty as the military judge is to ensure that this trial  
10 is conducted in a fair, orderly, and an impartial manner. I'll  
11 preside over all the open sessions, I rule on any objections, and  
12 I'll instruct you on the law applicable to the case.

13 You are required to follow my instructions on the law and  
14 may not consult any other source as to the law pertaining to the case  
15 unless, of course, it's something admitted as evidence.

16 This rule applies throughout the trial including your  
17 closed session deliberations and any time that we're in recess. Any  
18 questions that you have of me should be asked in open court so that  
19 everybody can hear the question as well as the answer that I give  
20 you.

21 At a previous session in this case, Mr. Bahlul, the  
22 accused, entered a plea of not guilty to all charges and  
23 specifications. I accepted that plea and have entered a finding of



1 not guilty to all charges and specifications as his plea.

2 I believe in your folders you have a copy of the charges  
3 that are before you. At this point, I'd like for you to take a few  
4 minutes to read those to yourself and then I'll continue the  
5 preliminary instructions. And if you don't have a copy of the  
6 charges, please raise your hand and I'll make sure you get one.

7 Has everyone had a chance to finish reviewing the charges  
8 and specifications? All right. That's an affirmative response by  
9 all.

10 Members, it's your duty to hear the evidence and determine  
11 whether the accused is guilty or not guilty of any of those charges  
12 that you just read. And if you were to find him guilty of any  
13 offense, then it would also be your duty to adjudge an appropriate  
14 sentence.

15 It's the duty of the trial counsel over to my left, Major  
16 Cowhig, Major Hale, and Captain Eason, to represent the government.  
17 It's the duty of the defense, Major Frakt, to represent the accused.  
18 Under the law, the accused is presumed to be innocent of these  
19 offenses.

20 The government has the burden of proving the accused's  
21 guilt by legal and competent evidence beyond a reasonable doubt. A  
22 reasonable doubt is an honest, conscientious doubt suggested by the  
23 material evidence or lack of it in this case. It is an honest

1 misgiving generated by insufficiency of proof of guilt. Proof beyond  
2 a reasonable doubt means proof to an evidentiary certainty, although  
3 not necessarily to an absolute or mathematical certainty.

4           The proof must exclude every fair and reasonable hypothesis  
5 of the evidence except that of guilt. The fact that charges have  
6 been preferred against this accused and referred to this commission  
7 for trial does not permit any inference of guilt.

8           You must determine whether the accused is guilty or not  
9 guilty based solely on the evidence presented here in court and on  
10 the instructions that I'll give you. Because you cannot properly  
11 make that determination until you've heard all the evidence and  
12 received the instructions, it is of vital importance that you keep an  
13 open mind until all the evidence has been presented and the  
14 instructions have been given.

15           I will instruct you fully before you begin your closed  
16 session deliberations and my practice is to give you a copy of my  
17 final written instructions in writing so you can take those to the  
18 deliberation room with you for your reference. In those instructions  
19 I will likely repeat some of the instructions which I'm giving you  
20 now or possibly during the trial. Please bear in mind that all of my  
21 instructions are designed to assist you in performing your duties as  
22 court members.

23           The final determination as to the weight of the evidence

1 and the credibility of the witnesses in this case rests solely upon  
2 you. You have the duty to determine the believability of the  
3 witnesses.

4           In performing this duty, you must consider each witness'  
5 intelligence and ability to observe and accurately remember; in  
6 addition to the witness' sincerity and conduct in court as well as  
7 any bias, interest, or motive to misrepresent.

8           Consider also the extent to which each witness is either  
9 supported or contradicted by other evidence, the relationship each  
10 witness may have with either side, and how each witness might be  
11 affected by your verdict.

12           In weighing a discrepancy by or between witnesses, you  
13 should consider whether it resulted from an independent mistake or a  
14 deliberate lie. Taking all these matters into account, you should  
15 then consider the probability of each witness' testimony and the  
16 inclination of the witness to tell the truth. The believability of  
17 each witness' testimony should be your guide in evaluating the  
18 testimony, not the number of witnesses called.

19           During this initial session with you, I'll ask some  
20 questions and counsel will be given an opportunity to ask you  
21 questions and exercise any challenges. With regard to challenges, if  
22 you know of any matter that you feel might affect your impartiality  
23 to sit as a commission member, you must disclose that matter.

1           Please bear in mind that any statement you make should be  
2 made in general terms so as not to disqualify other members that can  
3 hear your statement. Grounds for challenge would include if you had  
4 investigated any offense charged, formed a fixed opinion as to what  
5 an appropriate punishment would be for the accused, if convicted, or  
6 any other matter that may affect your impartiality regarding an  
7 appropriate sentence for this accused or your findings.

8           Questions asked by myself and the lawyers are not intended  
9 to embarrass you, they are not an attack on your integrity, they are  
10 asked merely in order to determine whether a basis for challenge  
11 exists. It is certainly no adverse reflection on a member to be  
12 excused from this case.

13           You will be questioned individually and collectively, but  
14 in either event please indicate an individual response to the  
15 question asked. Unless I indicate otherwise, you are required to  
16 answer all the questions.

17           You'll find that most of the questions to you during this  
18 first part of the case will be to you as a group and simply call for  
19 a yes or a no answer. If your answer is yes, please do so just by  
20 raising your hand, you don't have to respond orally. And then  
21 whoever asks the question will note your affirmative responses for  
22 the record. If your answer is no, you just don't raise your hand.

23           You must keep an open mind throughout the trial. You must

1 impartially hear the evidence and instructions on the law. And only  
2 when you're in your closed session deliberations may you properly  
3 make a determination as to whether the accused is guilty or not  
4 guilty.

5           With regard to sentencing, should that become necessary,  
6 you may not have any preconceived idea or formulas to either the type  
7 or the amount of punishment which should be imposed if the accused  
8 were to be convicted. Counsels are given an opportunity to question  
9 all the witnesses. If you feel that there are substantial questions  
10 that should be asked when counsels are finished, then I'll give you a  
11 chance to do that. And the way we handle that, is you write out on a  
12 form that we'll provide to you your question, I circulate it to both  
13 sides for any comment they may have, and then if the question can be  
14 asked, I'll ask the witness, the witness directs the response to you.

15           On your question forms, should you write out any questions,  
16 please include your member number on the questions so we know who is  
17 asking it for the record. Please keep a couple of things in mind in  
18 regard to this questioning option that you have:

19           First, you cannot attempt to help either side, the  
20 government, or the defense, by your questions;

21           Second, please keep in mind that counsel knows a lot more  
22 about this case than we do. And very often they don't ask what might  
23 appear to be an obvious question because they already know that the

1 witness doesn't know anything about it.

2           The Rules of Evidence control what can be received into  
3 evidence. As I indicated, questions of witnesses are subject to  
4 objection. During the trial when I sustain an objection, please  
5 disregard both the question and the answer. If I overrule the  
6 objection, then you may consider both the question and the answer.

7           During any recess you may not discuss the case with anyone,  
8 not even among yourselves. You must not listen to or read any  
9 account of the trial or consult any source, written or otherwise, as  
10 to the matters involved in the case.

11           You must hold your discussion of the case until you are all  
12 together in your closed session deliberations so that all the panel  
13 members have the benefit of your discussion.

14           Please do your best to avoid contact with witnesses and  
15 potential witnesses in the case. You obviously don't know who those  
16 people are. You may pass them in the hallway, I don't know. But if  
17 anyone attempts to discuss the case in your presence during any  
18 recess, please immediately tell them to stop and let me know about  
19 that the very next time we're together and I'll take care of it.

20           I'll do my best to estimate the time needed for recesses  
21 and hearings outside your presence. For example, I know that  
22 initially you weren't supposed to be in here until tomorrow, but I  
23 made the decision yesterday that it looked like we would have time

1 this afternoon to do this initial questioning of the members, and if  
2 there were any excusals, that would allow me to permanently excuse  
3 anyone today who will not be participating in the case, and you can  
4 begin to make arrangements to depart.

5           Sometimes my guess as to the duration of a hearing outside  
6 your presence is wrong because something new comes up during that  
7 hearing. In that regard, I just ask for your patience and  
8 understanding. And that will contribute to an atmosphere that's  
9 consistent with the fair administration of justice.

10           While you're in your closed session deliberations, only  
11 you, the members, will be present. You must remain together and may  
12 not allow any unauthorized intrusion into your deliberations. Each of  
13 you has an equal voice in the vote with the other members in  
14 discussing and deciding all the issues submitted to you.

15           In addition to the duties of other members, whoever is our  
16 senior member after challenges will act as the presiding officer  
17 during your closed session deliberations and will also speak for the  
18 commission in announcing your decisions.

19           I expect this following general order of events: First  
20 today the questioning of you, the members, and any challenges and  
21 excusals. Tomorrow, opening statement and beginning of the  
22 presentation of the evidence by the government. Then, of course, the  
23 defense would have an opportunity, should they choose, to present

1 anything. Then, you'll hear closing argument. I'll give you the  
2 instructions on the law. Then you'll--I'll give you instructions on  
3 deliberations--how to conduct your deliberations. And then you'll  
4 deliberate. And when you reach a decision, you'll come out and  
5 announce your decision. If you were to find the accused guilty of  
6 any offense, then we would also have a sentencing proceeding.

7           Just to give you a preview on expected length, I've been  
8 told by the lawyers in the case that the government's case is  
9 expected to last through this week. Given that just to let you know  
10 a timeline, I doubt there will be a conclusion of this trial before  
11 sometime in the following week. That's the best I can guess at this  
12 point.

13           The appearance and demeanor of all parties to the trial  
14 should reflect the seriousness with which this trial is viewed.  
15 Careful attention to all that occurs in the trial is required of  
16 everyone. If it becomes uncomfortable in here, you need a break for  
17 any reason; all you have to do is let me know that you would like a  
18 recess. And we'll take a recess so you can attend to whatever you  
19 need to attend to.

20           Each of you can take notes, if you like, during the course  
21 of the trial. You can use them to refresh your own memory during  
22 your deliberations, but they may not be read or shown to other  
23 members since they're not a substitute for what was actually



1 presented in court.

2 At the time of any recess, you can cover your notes, if you  
3 like, and leave them there in the jury box, I believe the  
4 deliberation room will also be secure, or you can take them with you,  
5 your choice.

6 If at any time you need to make a statement or ask a  
7 question during the trial, it will greatly assist our court reporters  
8 here if you will just preface that with your member number.

9 Anyone have any questions at this point? Okay. A negative  
10 response by all.

11 Before I give counsel an opportunity to ask you questions,  
12 I'll ask a few. And again, if you have an affirmative response, just  
13 raise your hand.

14 Does anyone know the accused in this case, Mr. Bahlul? No  
15 one. Okay. That's a negative response by all.

16 You've read the charges and the specifications that are  
17 before you. Does anyone have any prior knowledge of the facts or  
18 events in this case? No one. Okay. Negative by all.

19 Is anyone directly involved with any of the incidents  
20 alleged in the charges and specifications? Okay. Negative by all.

21 In your folder you'll find a list of the potential  
22 witnesses in the case. I would like for you to take a moment and  
23 review that list. And then I'm going to ask if anybody knows any of

1 those people. Does anyone not have the list? Okay. Everybody's got  
2 it.

3 All right. Having had a chance to review the list, does  
4 anyone know any of those people on the list, recognize any of the  
5 members? Okay. Negative by all.

6 Has any member or someone close to you, family, friend,  
7 been the victim of either an offense alleged or a similar offense?  
8 Negative by all.

9 Does any member have a family member or close friend who  
10 has been killed or wounded during service in Iraq or Afghanistan?  
11 Negative by all.

12 Does any member have a family member or close friend who  
13 has been killed or wounded in an act of suspected terrorism?  
14 Negative by all.

15 Having seen the accused, Mr. Bahlul, and having read the  
16 charges and specifications, does anyone feel that you cannot give him  
17 a fair trial for any reason? Does anyone feel that way? Negative by  
18 all.

19 Is anyone aware of any media coverage of this particular  
20 case? Negative by all.

21 Has anyone previously served on a court-martial or military  
22 commission panel? Positive by all. Thank you. You can put your  
23 hands down.

1           Can each of you who have served as a court member or  
2 commission member put aside what you may have heard in that previous  
3 proceeding and decide this case solely based on the evidence  
4 presented here and the instructions as to the applicable law that  
5 I'll give you? Can everyone do that? If so, please raise your hand.  
6 All right. That's affirmative by all. Thank you.

7           Again, that was every member raised their hand for previous  
8 participation and every member raised their hand in response to my  
9 last question.

10           The accused has pled not guilty to all charges and  
11 specifications and is presumed to be innocent unless and until his  
12 guilt is established by legal and competent evidence beyond a  
13 reasonable doubt. Does everyone agree to follow this fundamental  
14 rule of law? If so, please raise your hand. That's an affirmative  
15 by all.

16           Can each of you apply this rule of law and vote for a  
17 finding of not guilty unless you are convinced beyond a reasonable  
18 doubt that the accused is guilty? Can everyone do that? Affirmative  
19 by all.

20           You are perhaps somewhat familiar with the military  
21 commissions system and you know that the accused has been charged,  
22 his charges have been forwarded to a convening authority and been  
23 referred to this commission for trial.

1           None of this warrants any inference of guilt. Can each of  
2 you follow this instruction and not infer that the accused is guilty  
3 of anything merely because the charges have been referred to this  
4 commission for trial? Can everyone follow that? Thank you.  
5 Affirmative by all.

6           On the other hand, can each of you vote for a finding of  
7 guilty if you are convinced that under the law the accused's guilt  
8 has been proven by legal and competent evidence beyond a reasonable  
9 doubt? Can everyone do that? Affirmative by all. Thank you.

10           The burden of proof to establish the accused's guilt rests  
11 solely on the prosecution. The burden never shifts to the defense to  
12 establish the accused's innocence. Does everyone understand and  
13 agree to follow this fundamental rule of law? Affirmative by all.

14           Further, the accused has an absolute right to remain  
15 silent. You will not draw any inference adverse to the accused if he  
16 does not testify as a witness. And the fact that an accused does not  
17 testify must be completely disregarded by you. Does everyone  
18 understand and agree to follow this fundamental rule of law? Okay.  
19 Affirmative by all.

20           Will each you keep an open mind and wait until you've heard  
21 all the evidence and my instructions to decide whether the accused is  
22 guilty or not guilty? Can everyone do that? Affirmative by all.  
23 Thank you.

1           This next question has a rather long preface. I have  
2 previously advised you that it's your duty as court members,  
3 commission members, to weigh the evidence and resolve controverted  
4 questions of fact. In so doing, if the evidence is in conflict,  
5 you'll necessarily be required to give more weight to some evidence  
6 than other evidence. The weight, if any, to be given all the  
7 evidence in this case is solely within your discretion.

8           So it's neither required nor expected that you give equal  
9 weight to all the evidence. However, what is expected is that you  
10 use the same standards in weighing and evaluating all the evidence  
11 and the testimony of each witness and that you not give more or less  
12 weight to the testimony of a particular witness merely because of  
13 that witness' status, position, or station in life.

14           With that, will each of you use the same standards in  
15 weighing and evaluating the testimony of each witness, can everyone  
16 do that? Okay. Affirmative by all.

17           Does each of you agree not to give more or less weight to  
18 the testimony of a particular witness solely because of that witness'  
19 position or status? Can everyone do that? Okay. Affirmative by  
20 all. Thank you.

21           I don't think this is an issue, but I need to ask anyway.  
22 Is any member of the commission in the rating chain, supervisory  
23 chain, or a rater or additional rater of any other member? Anyone?

1 Does anyone rate in any capacity or supervise in any capacity any  
2 other member? Okay. That's a negative by all.

3 As I said we have Major Cowhig, Major Hale, and Captain  
4 Eason over here for the prosecution team, Major Frakt over here for  
5 the defense. Of course, you heard I'm the judge. Has anybody had  
6 any dealings with any of the parties to the trial to include any  
7 counsel that might affect your performance of duty as a court member  
8 in any way? Anyone? Okay. Negative by all.

9 Does anyone know of anything of a personal or professional  
10 nature that would cause you to be unable to give your full attention  
11 to these proceedings throughout the trial? Anyone? Okay. Negative  
12 by all.

13 Since this is the only time that we have an opportunity to  
14 discuss with you, whether you should be a commission member in this  
15 case, I must ask some questions at this time concerning sentencing.  
16 Before I do that, I want to emphasize that you should in no way infer  
17 that my questions indicate some opinion that we'll get to sentencing,  
18 because that will only happen if you find the accused guilty of an  
19 offense beyond a reasonable doubt. Everyone understands that and  
20 agree to follow it? Okay. Affirmative by all.

21 Just as with the findings portion of the trial, it is  
22 imperative that you keep an open mind in the sentencing phase, if  
23 there is one. During the sentencing phase, you will hear evidence

1 about the offense or offenses and the accused that you must consider  
2 before reaching a decision on an appropriate sentence. I'll instruct  
3 you on the law regarding sentencing and the full range of permissible  
4 sentences.

5           You have obviously heard none of that evidence or law at  
6 this point and it is, therefore, unfair to ask you hypothetical  
7 questions about your opinion of particular sentences at this very  
8 early stage. The key consideration for you at this point is whether  
9 you can keep an open mind on sentencing options until you've heard  
10 all the evidence and my instructions.

11           If you have what the courts call an "inelastic  
12 predisposition" toward the imposition of particular punishment based  
13 solely on the nature of the offense for which the accused would be  
14 sentenced or found guilty, then you should not sit on this panel.

15           Some people refer for that as cookie-cutter justice. If a  
16 person did this, then they get this. That's not permitted.

17           Does any member having only read the charges in this case  
18 believe that you would be compelled to vote for any particular  
19 punishment based solely on the charges? Does anybody feel that way?  
20 Okay. That's a negative by all.

21           As I said, if sentencing proceedings are required, I will  
22 instruct you on the full range of permissible sentences. You should  
23 consider all the options within that range. Consider doesn't

1 necessarily mean that's what you vote for. Consider means you think  
2 about it and make a choice in your own mind one way or the other as  
3 to whether a particular option is an appropriate sentence.

4           Each member must keep an open mind and you must not choose  
5 or refuse to consider any possible sentence until you've heard all  
6 the evidence and my instructions and you're in your closed session  
7 deliberations upon sentence. Can each of you follow this  
8 instruction? Okay. Thank you. Affirmative by all.

9           Can each of you be fair, impartial, and open minded in your  
10 consideration of an appropriate sentence if called upon to do so in  
11 this case and consider the full range of permissible sentences?  
12 Could everyone do that? Okay. Affirmative by all.

13           Can each of you reach a decision on sentence if required to  
14 do so on an individual basis in this particular case and not solely  
15 on the nature of the offense or offenses of which the accused may be  
16 convicted? Can everyone do that? Affirmative by all. One last  
17 question on sentencing.

18           Does any member have a fixed opinion on sentence at this  
19 point that will not yield to the evidence and my instructions? Does  
20 anyone feel that way? Negative by all.

21           Before I turn it over to the lawyers to ask questions, I'll  
22 ask a catchall here at the end. Is any member aware of any matter  
23 which might raise a substantial question concerning your



1 participation in this trial as a court member? Anything at all that  
2 makes you uneasy about being here?

3 Member Number 4, is this something we should speak with  
4 individually?

5 MEMBER 4: I don't think so.

6 MJ [COL GREGORY]: Okay. Please.

7 MEMBER 4: I participated in a funeral for a USS COLE member.

8 MJ [COL GREGORY]: All right. Thank you. Let's follow that up  
9 on individual voir dire. Thanks for that. Anyone else? Yes, ma'am.

10 MEMBER 12: Member 12, sir. I work for the DOD audit unit.

11 MJ [COL GREGORY]: You want to follow up on that too.

12 Anyone else? Good. Thank you. That's a negative by the  
13 others.

14 Trial Counsel, would you like to ask the members any  
15 questions?

16 ATC [MAJ HALE]: Thank you, Your Honor, we would.

17 MJ [COL GREGORY]: Thank you.

18 ATC [MAJ HALE]: Good afternoon, members. I am Major Hale. And  
19 again the methodology remains the same. An affirmative response is  
20 if you would please raise your hands, a negative response is required  
21 by the absence of the raised hands of the members.

22 Outside of news accounts, have any members read either for  
23 personal or professional reasons about al Qaeda? I have a

1 affirmative responses from members number 3, 5, 8, 9, and 13,  
2 negative responses from remaining members. Number 12 has also  
3 indicated an affirmative response as to having read about al Qaeda  
4 for personal or professional reasons.

5 Members, outside of news accounts, have any members read  
6 for personal or professional reasons about Usama bin Laden? I have  
7 affirmative responses from Member Number 3, Member Number 5, Member  
8 Number 6, 8, 12, 9, and 13. Negative responses from the remaining  
9 members.

10 Has any member done any personal or professional reading on  
11 Islam? I have affirmative responses from Member Number 3, Member  
12 Number 5, Member Number 13, Member Number 11, Member 9, and Member  
13 12. Negative responses from the remaining members.

14 Has any member done any personal or professional reading  
15 pertaining to the Muslim faith? I have affirmative responses from  
16 Member Number 3, Member Number 5, Member Number 13, Member Number 11,  
17 and Member Number 9. Negative responses from the remaining members.

18 Members, if the accused were convicted of an offense which  
19 carried a maximum sentence of life, is there any member who could not  
20 consider imposing a sentence of life for any reason? I have a  
21 negative response from all members.

22 Members, if convicted, is each member able to sentence this  
23 accused for his offenses and not consider sentences they may be aware

1 of from past commissions?

2 MJ [COL GREGORY]: I think----

3 ATC [MAJ HALE]: I'll ask the question one more time.

4 If convicted, is each member able to sentence this accused  
5 for his offenses and not consider sentences they may be aware of from  
6 past commissions? I have affirmative responses from all members.

7 And I realize the military judge asked you a question along  
8 this line, but I'm going to ask it slightly differently. How many  
9 panel members have served on a commission panel in the past? I have  
10 affirmative responses from Member Number 1, 3, 7, 8, 9, and 10.

11 For those and the remaining panel members for a negative  
12 response, for those that answered in the affirmative, does each of  
13 you understand this commission process is completely separate and  
14 distinct from your previous commission experience? I have  
15 affirmative responses from all members who raised their hand who have  
16 in the past sat on a commission panel.

17 For the members who answered in the affirmative to having  
18 read--or excuse me, having served on a commission panel in the past,  
19 are you able to set aside your opinions of the process based on the  
20 prior case that you experienced? I have affirmative responses again  
21 from the same members.

22 Thank you, Your Honor. No remaining questions.

23 MJ [COL GREGORY]: Does the defense wish to ask any questions?

1 All right. Negative response from the defense table.

2 And, members, I reminded in my earlier advice that the  
3 prosecution has the burden of proof. The burden never shifts to the  
4 defense to prove innocence or for that matter to do anything to  
5 include questioning the members.

6 So, you will not hold any adverse inference to the accused  
7 because they may not ask you questions at this early stage or do  
8 other things during the government's case. Can everyone follow that  
9 instruction? All right. Affirmative by all.

10 Did you wish to question members individually? I know that  
11 at least two we need to bring back and I assume there are others  
12 based on your questions.

13 ATC [MAJ HALE]: There are, Your Honor.

14 MJ [COL GREGORY]: All right. The way we handle that is I'll  
15 just excuse everyone to go back into the deliberation room. And I  
16 know there's no bathroom in there, it's down the hall. So you don't  
17 have to stay locked up in there.

18 And what we'll do is I'll have our bailiff just bring you  
19 out one at a time depending on who they tell me they would like to  
20 talk to. So at this point I'll excuse all the commission members to  
21 the deliberation room. And then I'll hear from counsel which ones  
22 they want to talk to individually.

23 **[The members withdrew from the courtroom.]**

1 MJ [COL GREGORY]: All right. All the members have departed.  
2 Everyone else is still here.

3 Major Hale, I know we need to speak with Member Number 4  
4 and Member Number 12. Did you need anyone else on the front row?  
5 We'll just take it by row.

6 ATC [MAJ HALE]: Members--Your Honor, Member Number 1 and Member  
7 Number 3.

8 MJ [COL GREGORY]: All right. So we'll do 1, 3, and 4. And  
9 we'll just take them in numerical order.

10 So if you could ask Member 1 to come join us. And we're  
11 not doing the all rise thing for the individual members.

12 **[Member 1 entered the courtroom.]**

13 MJ [COL GREGORY]: Sir, please come on out and take a seat **[did**  
14 **as directed]**. I believe there are just some follow-up questions for  
15 you.

16 Major Hale.

17 **INDIVIDUAL VOIR DIRE OF MEMBER 1**

18 **Questions by the assistant trial counsel:**

19 Q [MAJ HALE]: Good afternoon, Member Number 1, sir.

20 A [MEMBER 1]: Good afternoon.

21 Q [MAJ HALE]: You indicated an affirmative response to a  
22 previous commission experience. Were you selected as a panel member,  
23 sir?

1 A [MEMBER 1]: No, sir, I was selected as a panel member.

2 Q [MAJ HALE]: Do you recall the name of that case?

3 A [MEMBER 1]: This is the David Hicks case.

4 Q [MAJ HALE]: Have you formed any opinions about the  
5 Commission's process based on your experience having been a panel  
6 member in that particular case?

7 A [MEMBER 1]: Not this--not this commission here.

8 Q [MAJ HALE]: And I understand your answer to mean consistent  
9 with one of the en banc questions then, sir that you are able to  
10 separate out the two processes?

11 A [MEMBER 1]: I do.

12 Q [MAJ HALE]: Do you agree that the sentence in that case is  
13 irrelevant when considering the sentence in this case, if that should  
14 be become necessary in this case?

15 A [MEMBER 1]: I agree.

16 Q [MAJ HALE]: And, sir, are you able to give the government and  
17 the accused a fair trial before this commission?

18 A [MEMBER 1]: I do.

19 ATC [MAJ HALE]: I don't have any additional questions, Your  
20 Honor.

21 MJ [COL GREGORY]: All right. Thank you. Return to the  
22 deliberation room.

23 **[Member 1 withdrew from the courtroom.]**

1 ATC [MAJ HALE]: Number 3 is next. Are we ready for Member 3?

2 ATC [MAJ HALE]: Yes, Your Honor.

3 **[Member 3 entered the courtroom.]**

4 MJ [COL GREGORY]: Sir, just come on down and have a seat **[did**  
5 **as directed]**. I believe the Major just has a few follow-up questions  
6 for you.

7 **INDIVIDUAL VOIR DIRE OF MEMBER 3**

8 **Questions by the assistant trial counsel:**

9 Q [MAJ HALE]: Good afternoon, sir.

10 A [MEMBER 3]: Good afternoon.

11 Q [MAJ HALE]: From your affirmative responses, you indicated  
12 that you had been a past commission member?

13 A [MEMBER 3]: Correct.

14 Q [MAJ HALE]: And what particular case was that?

15 A [MEMBER 3]: I believe it was the first case that was tried.  
16 Do you want me in open court to say which one it is?

17 MJ [COL GREGORY]: Yeah, if you know the name. If you remember  
18 the name.

19 MEMBER 3: Hicks.

20 Q [MAJ HALE]: Have you formed any commission--opinions, sir,  
21 about the commission's process based on your experience as a panel  
22 member on Hicks?

23 A [MEMBER 3]: No.

1 Q [MAJ HALE]: And, sir, do you agree that a sentence in that  
2 case is irrelevant when considering a sentence in this case?

3 A [MEMBER 3]: Yes.

4 Q [MAJ HALE]: Sir, are you able to give the government and the  
5 accused a fair trial before this commission?

6 A [MEMBER 3]: Yes.

7 Q [MAJ HALE]: Sir, you indicated that you had done a  
8 substantial amount of reading on a number of the subjects that I  
9 asked about. Is that based--was that for personal or professional  
10 reasons?

11 A [MEMBER 3]: Professional reasons.

12 Q [MAJ HALE]: And was that as part of a career level PME  
13 process or a paper that you were working on?

14 A [MEMBER 3]: Career level PME.

15 Q [MAJ HALE]: Not part of a war college thesis or anything like  
16 that?

17 A [MEMBER 3]: Well, that's--that would be a career level PME.

18 Q [MAJ HALE]: I didn't know if it was a thesis writing or  
19 reading for professional at that level. Different services have  
20 different customs.

21 A [MEMBER 3]: Right. Yes, in two different cases two war  
22 college experiences. Yes, I'm both writing papers and reading.



1 Q [MAJ HALE]: And what were the topics of the papers that you  
2 wrote on?

3 A [MEMBER 3]: Well, the topics had to do with counter-  
4 insurgency theory.

5 Q [MAJ HALE]: Was that in Afghanistan or in Iraq or across the  
6 whole theater?

7 A [MEMBER 3]: Well, theory in general.

8 Q [MAJ HALE]: In general?

9 A [MEMBER 3]: Yeah.

10 ATC [MAJ HALE]: Thank you, Your Honor. Thank you, sir.

11 MJ [COL GREGORY]: Thanks.

12 **[Member 3 withdrew from the courtroom and member 6 entered.]**

13 MJ [COL GREGORY]: Colonel, please just come on back out and  
14 just have a seat **[did as directed]**. Major Hale has some follow-up  
15 questions for you.

16 **INDIVIDUAL VOIR DIRE OF MEMBER 4**

17 **Questions by the assistant trial counsel:**

18 Q [MAJ HALE]: Sir, from one of the judge's questions, you  
19 indicated that you had served in a funeral for a COLE member?

20 A [MEMBER 4]: That's correct.

21 Q [MAJ HALE]: Would you go into a little more detail about  
22 that?

23 A [MEMBER 4]: I was a commander of a unit that provided an

1 honor guard detail.

2 Q [MAJ HALE]: We might find it here. Were you in that--was  
3 that part of the INI staff?

4 A [MEMBER 4]: That's correct.

5 Q [MAJ HALE]: Is there anything about that experience, if you  
6 hear testimony pertaining to the attack on the USS COLE that might  
7 affect your ability to sit as a fair and impartial commission member  
8 in this case?

9 A [MEMBER 4]: No.

10 Q [MAJ HALE]: And it was members of your unit, not yourself,  
11 that served in the detail?

12 A [MEMBER 4]: I was also there as well.

13 Q [MAJ HALE]: Did you have an opportunity to interact with any  
14 of the surviving crew members?

15 A [MEMBER 4]: No.

16 MJ [COL GREGORY]: Colonel, you said you were in the Honor Guard  
17 as well?

18 MEMBER 4: I was attending, not really in the Honor Guard.

19 MJ [COL GREGORY]: You attended the ceremony?

20 MEMBER 4: Yes, sir.

1 Q [MAJ HALE]: Sir, was that in support of your unit's function  
2 there or were you there because you knew the person that had been  
3 killed?

4 A [MEMBER 4]: It was in support of a unit function.

5 ATC [MAJ HALE]: Thank you, sir. Your Honor, I have no  
6 additional questions.

7 MJ [COL GREGORY]: All right. Thanks very much, Colonel.

8 **[Member 4 withdrew from the courtroom.]**

9 MJ [COL GREGORY]: The second row. Anyone?

10 ATC [MAJ HALE]: Your Honor, I believe we'll take the entire  
11 second row, just some quick questions.

12 MJ [COL GREGORY]: Number 5.

13 **[Member 5 entered the courtroom.]**

14 MJ [COL GREGORY]: Colonel, come on out. And I'll tell you  
15 what, you can just sit in the front row, make it easier on everybody  
16 **[did as directed]**. Major Hale just has some follow-up questions for  
17 you.

18 **INDIVIDUAL VOIR DIRE OF MEMBER 5**

19 **Questions by the assistant trial counsel:**

20 Q [MAJ HALE]: Good afternoon, sir. I would just like to follow  
21 up, sir, in those reading questions.

22 A [MEMBER 5]: All right.

1 Q [MAJ HALE]: You indicated you had done some studying on al  
2 Qaeda and Usama bin Laden. Was that for personal or professional  
3 reasons?

4 A [MEMBER 5]: Both.

5 Q [MAJ HALE]: With regards to those readings, were you working-  
6 -that was the professionally related?

7 A [MEMBER 5]: Right.

8 Q [MAJ HALE]: Were they part of any war college or career level  
9 thesis that you were working on?

10 A [MEMBER 5]: Yes, yes. And also I'm a brigade commander. And  
11 I train units to go to Iraq and Afghanistan. It's essential for me  
12 to know the TTPs of al Qaeda.

13 Q [MAJ HALE]: Is there anything about your reading both on a  
14 personal or professional level that would affect your ability to sit  
15 as a fair and impartial Commission member in this particular case?

16 A [MEMBER 5]: No.

17 Q [MAJ HALE]: Is there anything about the nature of the  
18 charges, sir that based on your professional or personal readings  
19 that again would affect your ability to sit as a fair and impartial  
20 commission member?

21 A [MEMBER 5]: No.

1 Q [MAJ HALE]: Again I had asked the two questions with regards  
2 to the study of Islam and the Muslim faith. Was that part of the  
3 personal and professional reading related to your command duties?

4 A [MEMBER 5]: Yes.

5 Q [MAJ HALE]: And, sir, is there anything about those  
6 experiences with regards to the reading of Islam and the Muslim faith  
7 that again would affect your ability to sit as a fair and impartial  
8 commission member in this particular case?

9 A [MEMBER 5]: No.

10 Q [MAJ HALE]: Are there any particular readings, sir, that  
11 stand out, as far as titles that you recall would call to the  
12 commission's attention that you have relied on?

13 A [MEMBER 5]: Nothing stands out.

14 ATC [MAJ HALE]: Thank you, Your Honor. I have no other  
15 questions.

16 MJ [COL GREGORY]: All right. Thanks, Colonel. You can return  
17 to the deliberation room.

18 **[Member 5 withdrew from the courtroom.]**

19 MJ [COL GREGORY]: Again, that was Member 5. And we're bringing  
20 out Member 6.

21 **[Member 6 entered the courtroom.]**

22 MJ [COL GREGORY]: Colonel, come on out. And if you want to,  
23 you can just sit in the front row that will make it easier **[did as**

1 **requested**]. Major Hale just has some follow-up questions for you.

2 **INDIVIDUAL VOIR DIRE OF MEMBER 6**

3 **Questions by the assistant trial counsel:**

4 Q [MAJ HALE]: Good afternoon, ma'am.

5 A [MEMBER 6]: Good afternoon.

6 Q [MAJ HALE]: One of my questions had dealt with personal or  
7 professional reading. And you had indicated an affirmative response  
8 to having read Usama bin Laden, I believe?

9 A [MEMBER 6]: **[Member nods head.]**

10 Q [MAJ HALE]: All right. Was that for personal or professional  
11 reasons?

12 A [MEMBER 6]: Professional.

13 Q [MAJ HALE]: And were you working on some type of career level  
14 thesis or anything like that at the time?

15 A [MEMBER 6]: No. It was military school.

16 Q [MAJ HALE]: Military school?

17 A [MEMBER 6]: **[Member nods head.]**

18 Q [MAJ HALE]: Was there a particular subject that that reading  
19 was required that you can recall?

20 A [MEMBER 6]: I cannot recall.

21 ATC [MAJ HALE]: Thank you, Your Honor. I have no additional  
22 questions. Thank you, ma'am.

23 MJ [COL GREGORY]: Thank you.

1 [Member 6 withdrew from the courtroom.]

2 MJ [COL GREGORY]: Captain, come on out. You can take your seat  
3 right there on the end. The front row is good anywhere [did as  
4 requested]. Major Hale just had a couple of additional questions for  
5 you.

6 [Member 7 entered the courtroom.]

7 INDIVIDUAL VOIR DIRE OF MEMBER 7

8 Questions by the assistant trial counsel:

9 Q [MAJ HALE]: Good afternoon, sir. You had indicated an  
10 affirmative response, sir, to having served as a commission member in  
11 the past?

12 A [MEMBER 7]: Yes, sir.

13 Q [MAJ HALE]: Sir, have you formed any opinions about the  
14 commission's process based on your previous commission experience?

15 A [MEMBER 7]: No, sir.

16 Q [MAJ HALE]: Was that commission the Hicks case?

17 A [MEMBER 7]: Yes, sir.

18 Q [MAJ HALE]: And, sir, would you agree that the sentence in  
19 that case is irrelevant while considering a sentence in this case?

20 A [MEMBER 7]: Yes, sir.

21 Q [MAJ HALE]: Sir, are you able to give both the government and  
22 the accused a fair trial before this commission?

23 A [MEMBER 7]: Yes, sir.

1 Q [MAJ HALE]: And is there anything about that past  
2 commission's experience that would make you unable to sit as a fair  
3 and impartial commission member in this case?

4 A [MEMBER 7]: No, sir.

5 ATC [MAJ HALE]: Thank you, Your Honor. I have no further  
6 questions. Thank you.

7 MJ [COL GREGORY]: Okay. You can return to the room.

8 **[Member 7 withdrew from the courtroom and Member 8 entered the**  
9 **courtroom.]**

10 MJ [COL GREGORY]: Number 8. Just come on out and have a seat  
11 there **[did as directed]**. Major Hale just has a few additional  
12 questions for you.

13 **INDIVIDUAL VOIR DIRE OF MEMBER 8**

14 **Questions by the assistant trial counsel:**

15 Q [MAJ HALE]: Thank you, sir. Sir, I believe you indicated an  
16 affirmative response to having sat as a commission member in the  
17 past?

18 A [MEMBER 8]: Yes.

19 Q [MAJ HALE]: And was that the Hicks case?

20 A [MEMBER 8]: I believe so.

21 Q [MAJ HALE]: It was----

22 A [MEMBER 8]: He's from Australia. Honestly I don't remember  
23 his name, but it does sound familiar.



1 Q [MAJ HALE]: All right. Sir, have you formed any opinions  
2 about the commission process based on that past commission  
3 experience?

4 A [MEMBER 8]: No.

5 Q [MAJ HALE]: Sir, do you agree that the sentence in that case  
6 is irrelevant in considering a sentence in this case, should  
7 sentencing be necessary?

8 A [MEMBER 8]: Yes.

9 Q [MAJ HALE]: Sir, are you able to give both the government and  
10 the accused a fair trial before this commission?

11 A [MEMBER 8]: Yes.

12 Q [MAJ HALE]: Sir, you had indicated an affirmative response to  
13 having done some personal or professional reading on Usama bin Laden  
14 and al Qaeda, I believe?

15 A [MEMBER 8]: Yes.

16 Q [MAJ HALE]: Was that on the personal side or professional  
17 side?

18 A [MEMBER 8]: Personal, newspaper, magazines.

19 Q [MAJ HALE]: Have you done anything--and I realize I think I  
20 phrased it in the news; any books or any particular titles that you  
21 recall reading?

22 A [MEMBER 8]: No.

1 Q [MAJ HALE]: Is there anything about the material that you did  
2 read on those two subject areas that would affect your ability to sit  
3 as a fair and impartial commission member?

4 A [MEMBER 8]: No.

5 ATC [MAJ HALE]: Thank you, Your Honor. I have no other  
6 questions.

7 MJ [COL GREGORY]: All right. Thanks. You can return to the  
8 deliberation room.

9 **[Member 8 withdrew from the courtroom.]**

10 MJ [COL GREGORY]: Next row.

11 ATC [MAJ HALE]: Next in order, sir. We basically have quick  
12 questions for each one.

13 **[Member 9 entered the courtroom.]**

14 MJ [COL GREGORY]: Okay. Number 9. Please come on in, Colonel,  
15 and have a seat and then Major Hale just had a few additional  
16 questions for you **[did as directed]**.

17 **INDIVIDUAL VOIR DIRE OF MEMBER 9**

18 **Questions by the assistant trial counsel:**

19 Q [MAJ HALE]: Sir.

20 A [MEMBER 9]: Hi.

21 Q [MAJ HALE]: Good afternoon, sir.

22 A [MEMBER 9]: Good afternoon.

1 Q [MAJ HALE]: Sir, I believe you indicated an affirmative  
2 response to having served as a commission member in the past?

3 A [MEMBER 9]: That's correct.

4 Q [MAJ HALE]: And do you recall the name of that case?

5 A [MEMBER 9]: It was the Hicks case.

6 Q [MAJ HALE]: Sir, have you formed any opinions about the  
7 commission's process based on your past commission experience?

8 A [MEMBER 9]: No, I have not.

9 Q [MAJ HALE]: Sir, do you agree with the following, that the  
10 sentence in that case is irrelevant when considering a sentence in  
11 this case, should sentencing be necessary?

12 A [MEMBER 9]: That's correct.

13 Q [MAJ HALE]: Sir, are you able to give both the government and  
14 the accused a fair trial before this commission?

15 A [MEMBER 9]: Yes.

16 Q [MAJ HALE]: Sir, is there anything about your past commission  
17 experience that would--that you feel would make you unable to sit as  
18 a fair and impartial commission member?

19 A [MEMBER 9]: No, I do not.

20 [END OF PAGE]

1 Q [MAJ HALE]: I would ask a quick series of questions, sir,  
2 with regards to professional reading or personal reading. I think  
3 you gave an indication that you had done reading in several of those  
4 areas. Was that for personal or professional reasons?

5 A [MEMBER 9]: Both.

6 Q [MAJ HALE]: And based on your previous billets, have you had  
7 an opportunity with regards to professional reading to write any  
8 thesis papers or any papers for any schoolhouse?

9 A [MEMBER 9]: I have.

10 Q [MAJ HALE]: Did any of them relate to the questions I had  
11 asked earlier about al Qaeda or Usama bin Laden?

12 A [MEMBER 9]: No, they did not.

13 Q [MAJ HALE]: Was your reading on al Qaeda or Usama bin Laden  
14 in support of any particular classes that you were taking for  
15 military purposes?

16 A [MEMBER 9]: No, but I was an instructor at one professional  
17 school, so I came across a lot of it there.

18 Q [MAJ HALE]: Sir, anything about your tour of duty at the  
19 schoolhouse that in any way would affect your ability to sit as a  
20 fair and impartial member and review doctrine or things of that  
21 nature in regards to al Qaeda?

22 A [MEMBER 9]: No.

1 Q [MAJ HALE]: And was your review of Islam and the Muslim  
2 faith, those two questions, was that part of your duties at the  
3 schoolhouse?

4 A [MEMBER 9]: That's correct.

5 Q [MAJ HALE]: Again is there anything about your experience  
6 having studied those areas that would affect your ability to sit as a  
7 fair and impartial commission member?

8 A [MEMBER 9]: No.

9 ATC [MAJ HALE]: Thank you, Your Honor.

10 MJ [COL GREGORY]: Thanks. Colonel, you can return to the  
11 deliberation room.

12 **[Member 9 withdrew from the courtroom and Member 10 entered the**  
13 **courtroom.]**

14 MJ [COL GREGORY]: Colonel, come on out and have a seat. Major  
15 Hale just has a couple follow-up questions for you.

16 **INDIVIDUAL VOIR DIRE OF MEMBER 10**

17 **Questions by the assistant trial counsel:**

18 Q [MAJ HALE]: Good afternoon, sir.

19 A [MEMBER 10]: Good afternoon.

20 Q [MAJ HALE]: You had indicated, sir, an affirmative response  
21 to having served as a commission member in the past?

22 A [MEMBER 10]: Yes, sir.

1 Q [MAJ HALE]: Sir, was that the Hicks case?

2 A [MEMBER 10]: Yes, it was.

3 Q [MAJ HALE]: Sir, have you formed any opinions about the  
4 commission's process based on your experience in that particular  
5 commission?

6 A [MEMBER 10]: Other than just how fair it was--in my opinion,  
7 how fair it was.

8 Q [MAJ HALE]: Sir, do you agree with the following, that the  
9 sentence in that case is irrelevant when considering a sentence in  
10 this case?

11 A [MEMBER 10]: Yes.

12 Q [MAJ HALE]: Sir, are you able to give both the government and  
13 the accused a fair trial before this commission?

14 A [MEMBER 10]: Yes, sir.

15 Q [MAJ HALE]: Sir, is there anything about your experience  
16 involving the Hicks case that would affect your ability to sit as a  
17 fair and impartial member today in this particular commission?

18 A [MEMBER 10]: No, there is not.

19 ATC [MAJ HALE]: Thank you, sir.

20 MJ [COL GREGORY]: Thanks, Colonel. You may return to the  
21 deliberation room.

22 **[Member 10 withdrew from the courtroom and Member 11 entered the**  
23 **courtroom.]**

1 MJ [COL GREGORY]: Captain, just have a seat there on the front  
2 row. Major Hale just had a couple of follow-up questions for you.

3 **INDIVIDUAL VOIR DIRE OF MEMBER 11**

4 **Questions by the assistant trial counsel:**

5 Q [MAJ HALE]: Good afternoon, sir.

6 A [MEMBER 11]: Hi.

7 Q [MAJ HALE]: Sir, I believe you indicated--check the number  
8 here.

9 A [MEMBER 11]: 11.

10 Q [MAJ HALE]: Yes, sir. I had asked--I believe you indicated  
11 an affirmative response to the commissions question--court-martial?

12 A [MEMBER 11]: Court-martial.

13 Q [MAJ HALE]: Court-martial. Thank you. You also indicated an  
14 affirmative response to a series of questions I asked about Islam and  
15 the Muslim faith?

16 A [MEMBER 11]: Correct.

17 Q [MAJ HALE]: Sir, was the reading in that area for personal or  
18 professional reasons?

19 A [MEMBER 11]: Both.

20 Q [MAJ HALE]: And professional readings; were they pertaining  
21 to any particular courses you were taking or any career level type  
22 schools?

23 A [MEMBER 11]: Yes.

1 Q [MAJ HALE]: Sir, did you have an opportunity to write any  
2 papers in the area of the Muslim faith or Islam?

3 A [MEMBER 11]: No.

4 Q [MAJ HALE]: Were they just part of a particular portion of  
5 the curriculum at the time?

6 A [MEMBER 11]: Yes.

7 Q [MAJ HALE]: Is there anything about the readings, any  
8 particular titles that stand out in your mind, sir, that you can  
9 recall reading?

10 A [MEMBER 11]: No.

11 Q [MAJ HALE]: Is there anything about that experience having  
12 been required reading as part of your schooling that would affect  
13 your ability to sit as a fair and impartial member in this particular  
14 commission?

15 A [MEMBER 11]: No.

16 ATC [MAJ HALE]: Thank you, Your Honor. Thank you, sir.

17 **[Member 11 withdrew from the courtroom.]**

18 MJ [COL GREGORY]: All right. Thanks.

19 **[Member 12 entered the courtroom.]**

20 Colonel, you can come on out, just have a seat on the front  
21 row there. And Major Hale just had a couple of follow-up questions  
22 for you.



1 INDIVIDUAL VOIR DIRE OF MEMBER 12

2 Questions by the assistant trial counsel:

3 Q [MAJ HALE]: Good afternoon, ma'am.

4 A [MEMBER 12]: How are you, Major?

5 Q [MAJ HALE]: I'm doing fine, ma'am, thank you. And I have a  
6 series of questions that you had indicated an affirmative response in  
7 the area put by the military judge. Could you just tell us briefly  
8 what your role is with the CRST team, if you are able to base it on  
9 your billet description?

10 A [MEMBER 12]: I am the lead for a group of joint officers who  
11 assembled the government's evidence with the Combative Status Review  
12 Tribunal, CSRT.

13 Q [MAJ HALE]: Based on that knowledge of the system, do you  
14 feel that would influence your ability to sit as a fair and impartial  
15 commission member?

16 A [MEMBER 12]: No, I don't.

17 Q [MAJ HALE]: I'll ask the follow-up question. Why do you  
18 believe that it would not?

19 A [MEMBER 12]: In an effort to not sound hokey, because I  
20 believe in the system, I believe we have an obligation to be fair and  
21 to only to consider what's before us and disregard anything we've  
22 read or come across, professionally or personally.

1 Q [MAJ HALE]: Based on the way the program is set up that you  
2 work on, do you believe or do you know if you've come across this  
3 particular accused file?

4 A [MEMBER 12]: I did not recognize his name. I would know to a  
5 greater degree of certainty if I had a number.

6 Q [MAJ HALE]: 39.

7 A [MEMBER 12]: No.

8 Q [MAJ HALE]: As one who serves on the CSRT, what is your  
9 opinion of how the U.S. Government is handling the determination of  
10 status as an unlawful enemy combatant?

11 A [MEMBER 12]: I know that my group of officers took their  
12 responsibility seriously in that is inculpatory and exculpatory--  
13 there are inculpatory and exculpatory factors that they are looking  
14 for. They have an obligation to also look for exculpatory factors.

15 So, I know that they take their responsibilities seriously.  
16 We do that separately from the actual tribunal, the members who make  
17 the decision. And having interacted with those members, I know that  
18 they are very, very conscientious and take their responsibilities  
19 seriously also to only look at what's before them.

20 And what's before them is simply what my group of officers  
21 has put before them. So I know their folks are not doing extraneous  
22 research and not bringing to bear any other opinions that they have.

1 Q [MAJ HALE]: I'll come back to my last question in a moment.  
2 Ma'am, you also indicated to a series of questions about personal and  
3 professional reading having read about Usama bin Laden and al Qaeda.  
4 Was that part of a school process or part of understanding your  
5 current assignment?

6 A [MEMBER 12]: It was a part of my current assignment. We go  
7 to a training course because we have to understand that--some of what  
8 we read as we're going through the evidence factors.

9 Q [MAJ HALE]: And is there anything about this billet and the  
10 training required for this billet that makes you believe you would be  
11 unable to sit as a fair and impartial member in this case?

12 A [MEMBER 12]: No.

13 Q [MAJ HALE]: If someone on the outside looking in heard that a  
14 member who prepares the files for the CSRT sat on the panel, what  
15 would be the rest of the story, if you will, as to why you would be  
16 able to survive a challenge?

17 A [MEMBER 12]: Other than the fact that I have integrity and I  
18 believe in the process and I will follow the judge's instructions,  
19 that's the rest of the story. But I do believe it presents an  
20 appearance problem and on its face it looks to be a conflict.

21 ATC [MAJ HALE]: One moment, Your Honor.

22 MJ [COL GREGORY]: Sure.

1 Q [MAJ HALE]: A logical question. How long have you been with  
2 the CSRT?

3 A [MEMBER 12]: April 2008.

4 Q [MAJ HALE]: And I do have one question from your  
5 questionnaire I would like to ask. You indicated you wanted to open  
6 a free legal clinic, why?

7 A [MEMBER 12]: Why?

8 Q [MAJ HALE]: Why?

9 A [MEMBER 12]: Because I have a commitment to community  
10 service. And I believe that that is--in acquiring a lawyer degree I  
11 guess, that is one of ways I believe that I am called to give back to  
12 the community.

13 Q [MAJ HALE]: Ma'am, is that an indication of a plan to go on  
14 to law school after you retire?

15 A [MEMBER 12]: No. That's an indication that I'll be going to  
16 law school next fall.

17 ATC [MAJ HALE]: Your Honor, I have no additional questions.

18 MJ [COL GREGORY]: All right. Thank you.

19 ATC [MAJ HALE]: Thank you, ma'am.

20 **[Member 12 withdrew from the courtroom.]**

21 MJ [COL GREGORY]: Please come on up and have a seat. Major  
22 Hale has some additional questions for you.

23 **[Member 13 entered the courtroom.]**

1 INDIVIDUAL VOIR DIRE OF MEMBER 13

2 Questions by the trial counsel:

3 Q [MAJ HALE]: Good afternoon, sir.

4 A [MEMBER 13]: Good afternoon.

5 Q [MAJ HALE]: I had asked you a series questions about your  
6 personal and professional reading having to do with al Qaeda or Usama  
7 bin Laden. Were those readings for personal or professional reasons?

8 A [MEMBER 13]: Professional, sir.

9 Q [MAJ HALE]: And were those readings as part of a course that  
10 you were taking for your career level?

11 A [MEMBER 13]: No, sir. The antiterrorism monitor at one of  
12 the bases where I was at used to send out information sheets and I  
13 would read them.

14 Q [MAJ HALE]: Outside of the information sheets that your  
15 terrorism person responsible for force protection----

16 A [MEMBER 13]: Yes, sir.

17 Q [MAJ HALE]: ----was sending out, were you doing any outside  
18 reading in al Qaeda or Usama bin Laden?

19 A [MEMBER 13]: No, sir.

20 Q [MAJ HALE]: Was there anything about the information that was  
21 passed in those briefing sheets that would affect your ability to sit  
22 as a fair and impartial member?

23 A [MEMBER 13]: No, sir.

1 Q [MAJ HALE]: You also indicated an affirmative response to  
2 having served--or excuse me. Having read personally or professionally  
3 in the area of Islam and the Muslim faith?

4 A [MEMBER 13]: Yes, sir.

5 Q [MAJ HALE]: Again was that for personal or professional  
6 reasons?

7 A [MEMBER 13]: Both, sir.

8 Q [MAJ HALE]: Both. And I know you have--one of your  
9 questionnaire answers indicated that working with a Christian  
10 ministry. Is that part of that--part of that indication based on  
11 that missionary answer?

12 A [MEMBER 13]: No, sir. Just for personal interest, trying to  
13 get more information, learn as much as I can.

14 Q [MAJ HALE]: Do you recall any particular titles that you read  
15 on in this area?

16 A [MEMBER 13]: No, sir.

17 Q [MAJ HALE]: Were you--did you order books, if you will, from  
18 Amazon or did you check them out of the library? How did you go  
19 about getting your research material for your reading?

20 A [MEMBER 13]: I believe I borrowed one from somebody. I can't  
21 remember where I got the other one, sir.

22 Q [MAJ HALE]: So not a large volume of books, one or two?

23 A [MEMBER 13]: No, sir.

1 Q [MAJ HALE]: Is there anything about the readings that you've  
2 done in your own personal belief system that would affect your  
3 ability to sit as a fair and impartial member in this commission  
4 process?

5 A [MEMBER 13]: No, sir.

6 Q [MAJ HALE]: Being amongst many O-6s and just a couple O-5s,  
7 is there anything about possibly be being in the deliberation room  
8 with that many senior officers that would affect your ability to  
9 voice your opinion on the evidence?

10 A [MEMBER 13]: No, sir.

11 ATC [MAJ HALE]: Thank you, Your Honor. Thank you, sir.

12 MJ [COL GREGORY]: Thanks.

13 **[Member 13 withdrew from the courtroom.]**

14 MJ [COL GREGORY]: Defense, I know that you said you didn't have  
15 any questions of the panel members, but I'll give you another  
16 opportunity to bring anyone back that you would wish based on those  
17 individual responses. Is there any request from the defense table?  
18 A negative response.

19 If you would like to take a recess while you discuss your  
20 challenges, it might be appropriate to give our court reporters a  
21 break and our translators a break as well.

22 ATC [MAJ HALE]: Concur, Your Honor.

23 MJ [COL GREGORY]: All right. Let's take a recess. You can let

1 the members know that we're going to be in recess for 15.

2 ATC [MAJ HALE]: 15 is fine, Your Honor.

3 MJ [COL GREGORY]: 15 minutes. And at the end of 15 minutes,  
4 they can just gather in the deliberation room and we'll start again.  
5 All right. Thanks. We'll be in recess for 15 minutes.

6 **[The R.C.M. 803 session recessed at 1521 on 27 October 2008.]**

7 **[The R.M.C. 803 session was called to order at 1535 on 27 October**  
8 **2008.]**

9 MJ [COL GREGORY]: The commission is called to order. All  
10 parties present when we recessed are again present. The members are  
11 absent.

12 Trial Counsel, do you have any challenges for cause?

13 ATC [MAJ HALE]: Yes, Your Honor. The government challenges for  
14 cause Members Number 6 and 12. Would you like us to take 12 first,  
15 Your Honor?

16 MJ [COL GREGORY]: Sure.

17 ATC [MAJ HALE]: 12. We think Member 12 would be a fair and  
18 impartial member, we believe she identified the concern that the  
19 appearance based on her current billet would make it inappropriate  
20 for her to sit.

21 And even the difficulty of giving the rest of the story to  
22 someone looking from the outside on the proceedings, she recognized  
23 it and identified that concern. So, it would just be the appearance



1 of her being on the panel.

2 MJ [COL GREGORY]: On Member 12?

3 ATC [MAJ HALE]: On Member 12.

4 MJ [COL GREGORY]: I agree you with on Member 12. Although I  
5 may not find any actual bias, I would under my authority under the  
6 rules to grant a challenge in the interest of justice, specifically  
7 referencing subparagraph (n) as the grounds for challenge, and would  
8 grant the challenge based on her participation and her knowledge of  
9 the CSRT process, especially given what I know about this case  
10 already. So, I will grant the challenge on Member Number 12.

11 ATC [MAJ HALE]: Challenge for cause for Number 6. Answers to  
12 the questions from individual voir dire were incomplete and vague.

13 MJ [COL GREGORY]: Did you have any other challenges for cause--  
14 --

15 ATC [MAJ HALE]: No, Your Honor.

16 MJ [COL GREGORY]: ----besides 6 and 12? Tell me specifically  
17 what it is about 6 that you found troubling, because quite frankly, I  
18 didn't pick it up.

19 ATC [MAJ HALE]: Your Honor, I had asked her questions about her  
20 personal and professional readings. Her answers were the least  
21 complete, in the government's opinion, in the area and were vague as  
22 to what she was reading or doing with regards to her study, if you  
23 want to call it that, or referred to personal reasons on Usama bin

1 Laden which was her specific affirmative response.

2 MJ [COL GREGORY]: Like I say I didn't note that. Defense, did  
3 you have any input on Member Number 6 that you wish? Negative from  
4 the defense.

5 So you feel that her answers weren't--the lack of  
6 completeness in her answers gives a challenge for cause under which  
7 subsection? Just in the interest of sub (n), having the commission  
8 free from substantial doubt or is there something more specific that  
9 you had in mind?

10 ATC [MAJ HALE]: I think, Your Honor, you summed it up  
11 adequately.

12 MJ [COL GREGORY]: Well, I didn't see it. But there's no  
13 opposition to the challenge for cause and you have articulated the  
14 reason that you feel qualifies under (n). So I'll grant the  
15 challenge.

16 ATC [MAJ HALE]: We have no further challenges for cause, Your  
17 Honor.

18 MJ [COL GREGORY]: Defense, did you have any challenges for  
19 cause? I suppose not. Negative from the defense.

20 Under my authority under Commission Rule 912(f)(4) which  
21 authorizes the military judge in the interest of justice to excuse a  
22 member against whom a challenge of cause would lie and especially  
23 given our circumstances where the defense by choice is not

1 challenging and not asking questions, I must say I'm uncomfortable  
2 from an implied bias standpoint, public perception standpoint with  
3 Member Number 4 participating, given that he--a group from his unit  
4 provided honor guard services for someone who was killed in the  
5 attack on the COLE and he himself attended the funeral of this  
6 person; that plus what I know based on what the government has  
7 previewed as far as their case, and its emphasis on the attack on the  
8 COLE.

9           While I do not find any actual bias on the part of that  
10 member, in the interest of the public perception of the fairness of  
11 the proceedings, I am going to excuse Member Number 4.

12           I'd like to ask you, Trial Counsel, a question about your  
13 recollection of some responses by Member Number 5. He stated he was  
14 an Army brigade commander and had read I believe extensively,  
15 personally and professionally, on al Qaeda and various things such as  
16 that and mentioned that he's responsible for training people to go  
17 fight in Iraq and Afghanistan. Did you note anything in his  
18 responses that did or did not cause you any concerns?

19           ATC [MAJ HALE]: No, Your Honor. We understand the judge's  
20 ruling on Number 4. With regard to Number 5, his experiences are not  
21 as such that they're out of the norm for any person that's held a  
22 command billet. It's what one would expect of a leader of Soldiers  
23 and/or Sailors.

1           He indicated that his experience as a commander in  
2 preparing soldiers in a time of further deployments to an area of  
3 conflict would not affect his ability to sit as a panel member in the  
4 commission. He answered the questions in a professional manner and  
5 in elaborating on them would indicate a thoughtful response to the  
6 questions by counsel so that the record could develop as to his  
7 impartiality with the commission process.

8           MJ [COL GREGORY]: I think that's a good point. I was slightly  
9 concerned. Had he responded in the affirmative that he knew someone  
10 who had been wounded or killed in the theater, I might feel  
11 differently. But as I recall, his response on that was a negative.

12          ATC [MAJ HALE]: That's correct, Your Honor. I think he gave a  
13 negative response to that.

14          MJ [COL GREGORY]: All right. The defense has indicated they  
15 have no challenges for cause. The government has challenged 6 and  
16 12. On my own I am challenging 4. So 4, 6, and 12 are challenged  
17 for cause.

18           Trial Counsel, do you have a peremptory challenge?

19          ATC [MAJ HALE]: May we have a moment, Your Honor?

20          MJ [COL GREGORY]: Sure. Peremptory challenge?

21          ATC [MAJ HALE]: Peremptory challenge to Number 13, Your Honor.

22          MJ [COL GREGORY]: The defense has indicated no peremptory  
23 challenge. I will excuse members 4, 6, 12, and 13. Correct?

1 ATC [MAJ HALE]: Concur, Your Honor.

2 MJ [COL GREGORY]: That would leave us with nine members, well  
3 above the quorum required. So I intend to bring the members--all the  
4 members back in. I will formally excuse those members. I will thank  
5 them for their service and tell them they are free to depart the  
6 island.

7 I will tell the others that they are excused for the day  
8 and they consider themselves in recess status until tomorrow at--is  
9 0900 still the preferred start time?

10 TC [MAJ COWHIG]: Yes, sir, if the time remains this afternoon  
11 to do an 803 session and consider other evidentiary issues.

12 MJ [COL GREGORY]: Oh, yes. You all won't be excused, I just  
13 want to cut the members loose.

14 TC [MAJ COWHIG]: Yes, sir.

15 **[The members entered the courtroom.]**

16 **[The R.M.C. 803 session terminated and the military commission**  
17 **commenced at 1547, 27 October 2008.]**

18 MJ [COL GREGORY]: Everyone please be seated **[all persons did as**  
19 **directed]**.

20 MJ [COL GREGORY]: All parties present, all members are with us.

21 Members, during your time there, I discussed challenges  
22 with counsel. I'm ready to announce those. And what we'll do, I'll  
23 announce the excusals. Those persons who are excused may feel free

1 to depart and make arrangements to leave the island at your  
2 convenience.

3 For the rest of you, you will be excused for the evening,  
4 be in recess status, and hope that--be ready to begin the  
5 presentation of the evidence with you tomorrow at 0900.  
6 Transportation has already been worked out to have you here each day  
7 at that time.

8 So the following members are permanently excused: Member  
9 Number 4, Member Number 6, Member Number 12, and Member Number 13. I  
10 want to thank you for your time and attention this afternoon and  
11 thank you for what I'm sure were your efforts to get here. But you  
12 are permanently excused; you don't need to return to the courtroom.

13 And, Member Number 1, you remain our senior I believe. So  
14 you will act as the presiding officer for the commission and as I  
15 said preside provide over the closed session deliberations and also  
16 you will announce the decisions of the commission.

17 Any questions before I excuse you for the evening?  
18 Negative by all. You can leave your notes, if you like, in the  
19 deliberation room, if you have any, and we'll secure that. And I'll  
20 see you here tomorrow at 0900. The members are excused.

21 **[The members withdrew from the courtroom.]**

22 **[The military commission terminated and the R.M.C. 803 session**  
23 **commenced at 1550, 27 October 2008.]**

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MJ [COL GREGORY]: All right. Everyone please be seated [**all persons did as directed**]. The members have departed.

I believe there's a convening order I need to take care of as an appellate exhibit.

TC [MAJ COWHIG]: Yes, sir, I believe that's been assigned Appellate Exhibit Number 62, sir.

MJ [COL GREGORY]: 62. And will that convening order be sealed or is there some other way to mask the names of the members on that order?

TC [MAJ COWHIG]: Based upon your order, sir, it will be sealed. It's possible to redact, but we need to preserve the information still in the sealed exhibit.

MJ [COL GREGORY]: I understand. So that's the way it will be handled. Anything else before I recess the commission for the day?

Again, Counsel, if you have anything you need to bring to my attention, you can do it in an 802 session or we can have a session out here. Obviously, I don't make any rulings in our conferences, so if there's something you want to rule or if you want to pre-admit some evidence.

TC [MAJ COWHIG]: Yes, sir. We would like to pre-admit some evidence. We'd ask for a recess until 1615. We anticipate we would need about a 20-minute session after that.

1 MJ [COL GREGORY]: All right. We'll be in recess until 1615.

2 Let me know if you need more after that, then we'll come back in.

3 **[The R.M.C. 803 session recessed at 1552, 27 October 2008.]**

4 **[The R.M.C. 803 session was called to order at 1628, 27 October**  
5 **2008.]**

6 MJ [COL GREGORY]: The commission is called to order. All  
7 parties are present, and the members have departed.

8 During the break I received a request from some of our  
9 spectators for potential witnesses and exhibit lists. I passed that  
10 through our clerk of court to the PA with directions to see how we  
11 could accommodate that and here is what we have.

12 At the beginning of each day of trial, the trial counsel  
13 will announce their potential prospective witnesses for that day. As  
14 far as the exhibit list, I ask that that be released through public  
15 affairs just to give it a scrub to make sure there's not some  
16 protective order on any of the stuff on the list. I don't think  
17 there is.

18 But again, our clerk of court is working that and will  
19 coordinate with both sides before she releases it. But I did ask  
20 that it be released to the maximum extent possible. So in answer to  
21 whoever it was that submitted the request, you'll get the witnesses  
22 list, if you will, orally from the trial counsel. And if you guys  
23 could remember to do that at the beginning of the day, you can just



1 announce it: today we expect to hear from the following.

2 TC [MAJ COWHIG]: Yes, sir.

3 MJ [COL GREGORY]: And, of course, I'm not announcing the name  
4 of anything that has a protective order, I understand that.

5 TC [MAJ COWHIG]: Of course, sir.

6 MJ [COL GREGORY]: Okay. So that should address that.

7 Are you all ready to offer something?

8 TC [MAJ COWHIG]: Yes, sir. We would like to offer additional  
9 items into evidence. We ask that the court authorize an immediate  
10 substitution in terms of scanned photographs of the material, the  
11 purpose of that being to allow this evidence to be stored in an  
12 evidence locker while here in Guantanamo because we don't have such a  
13 facility here which the court has direct access to.

14 MJ [COL GREGORY]: Right. And you did mention that concern to  
15 me. And I believe our court reporters are on board with the  
16 immediate substitution so that they're not responsible for storing  
17 it.

18 TC [MAJ COWHIG]: Yes, sir.

19 MJ [COL GREGORY]: That's fine. You may do so.

20 TC [MAJ COWHIG]: Thank you, sir. I believe we left off with  
21 Prosecution Exhibit 34 at our prior session, sir.

22 MJ [COL GREGORY]: We'll double-check the original list just to  
23 make sure. 34 is the last exhibit I have offered and admitted.

1 TC [MAJ COWHIG]: Sir, the government would offer into evidence  
2 what's been marked as Prosecution Exhibit 34. Pardon me, sir.

3 MJ [COL GREGORY]: 35.

4 TC [MAJ COWHIG]: 35. This is a small notebook bearing what  
5 will later to show the prints of the accused.

6 MJ [COL GREGORY]: All right. None of this is evidence that was  
7 subject to our preadmission hearing we held last month?

8 TC [MAJ COWHIG]: No, sir.

9 MJ [COL GREGORY]: Okay.

10 TC [MAJ COWHIG]: We left off at Prosecution Exhibit 34 which is  
11 also a notebook, but a different notebook.

12 TC [MAJ COWHIG]: Yes, sir.

13 MJ [COL GREGORY]: All right. How many exhibits are you going  
14 to be offering this afternoon? And the reason I ask is I'm wondering  
15 if perhaps you should offer them in en masse so I can ask the defense  
16 en masse if there's an objection to any of those.

17 TC [MAJ COWHIG]: Sir, I can offer them en masse. We have  
18 broken out several sub-exhibits to make their description on the  
19 record easier. So the numbers on our list don't give the total.

20 MJ [COL GREGORY]: Okay. Well, we'll just do it a piece at a  
21 time then.

22 TC [MAJ COWHIG]: I can do them in groups, sir.

23 MJ [COL GREGORY]: Okay. Let's do groups then.

1 TC [MAJ COWHIG]: Prosecution Number 35--35 Alpha is the  
2 notebook itself. 35 Bravo through Foxtrot are lab reports of the FBI  
3 latent print unit lab relating to that item.

4 Prosecution Exhibit 36 is a handwritten letter from 'Abd-  
5 al'Rahman to Abu-Anas al-Makki. Prosecution Exhibit 37 is a letter  
6 from Mansur Al Yemeni asking advice on moving a family to Yemen or  
7 Pakistan. It was addressed to the accused.

8 MJ [COL GREGORY]: Are you going to get our court reporters  
9 spelling of these names?

10 TC [MAJ COWHIG]: Yes, sir, we'll provide the court reporter  
11 with a transliteration of those names, sir.

12 MJ [COL GREGORY]: Okay.

13 TC [MAJ COWHIG]: And they also appear in the translations that  
14 accompany those items, sir.

15 Prosecution Exhibit 38 Alpha is a personal letter from  
16 Mansur again to Abu-Anas, the accused. 38 Bravo is a letter to the  
17 accused from his spouse. 38 Charlie is also a letter to the accused  
18 from his spouse. The original is in Arabic accompanied by  
19 translations in English.

20 Prosecution Exhibit 39 Alpha through Papa are books, all  
21 but one of which bear the inscription on the title page or on the  
22 inner page of the book property of Abu-Anas al-Makki which is a kunya  
23 of the accused, indicating that these books belong to him.

1           One of these books does not bear that inscription but was  
2 found along with those other items, that is 39 Lima. The title of  
3 that book is *The Upcoming Information War Book*, cover translation. To  
4 limit the size of the record, sir, we would ask that the substitution  
5 be rather than of the entire book, the title and the title page with  
6 translation for each.

7           MJ [COL GREGORY]: Do you intend at all to refer to the content  
8 of the books during your case?

9           TC [MAJ COWHIG]: Only to the subject of the book which is shown  
10 by the title, sir.

11          MJ [COL GREGORY]: So the content itself would not be relevant  
12 to the case?

13          TC [MAJ COWHIG]: We do not intend to bring any content of the  
14 book, sir.

15          MJ [COL GREGORY]: It sounds reasonable then to just use the  
16 cover page. Now, will the members be getting just the cover page?

17          TC [MAJ COWHIG]: Yes, sir, we intend to offer simply the cover  
18 page with translation and the page that bears the inscription of  
19 Property of Abu-Anas al-Makki and the translation of that.

20          MJ [COL GREGORY]: All right. Then I'll admit it to that extent  
21 and will not admit the entire content of the book.

22          TC [MAJ COWHIG]: Yes, sir. Would it be acceptable to maintain  
23 the integrity of these items to remain treated as evidence in

1 envelopes, sir, so that the book will not be able to be opened here  
2 in court, just simply keep all that together----

3 MJ [COL GREGORY]: That's fine.

4 TC [MAJ COWHIG]: ----when it's presented here in court?

5 Prosecution Exhibit 40 Alpha, Bravo, and Charlie. 40 Alpha is a  
6 diagram of a safe house located on Tariq Road. 40 Bravo are  
7 photographs from that raid on the safe house on Tariq Road. 40  
8 Charlie is capture photo of Ramzi Bin al Shibh, who was captured at  
9 that safe house.

10 Prosecution Exhibit 41 Alpha is a group of DVDs of the  
11 video prepared by the accused, "The Destruction of the American  
12 Destroyer USS COLE"; 40 Bravo----

13 MJ [COL GREGORY]: You mean 41 Bravo?

14 TC [MAJ COWHIG]: I'm sorry. 41 Bravo, Your Honor, is a group  
15 of labels that go on DVDs, the DVD titled "The Will of the Martyrs of  
16 New York and Washington," another video produced by As-Sahab.

17 MJ [COL GREGORY]: Back to the beginning of all this, are you  
18 saying you're going to substitute copies of all of those DVDs into  
19 the record?

20 TC [MAJ COWHIG]: Sir----

21 MJ [COL GREGORY]: Is that what I authorized?

22 TC [MAJ COWHIG]: In this case this is the video identified by  
23 the Harmony number, AFGP Number 905880. It is the COLE video that

1 was previously entered into evidence. It comes from this group of  
2 videos. These are identical reproductions of that same video about  
3 the safe house.

4 MJ [COL GREGORY]: I'm just trying to figure out--I want to make  
5 clear for the record what it is that actually needs to go into the  
6 record.

7 TC [MAJ COWHIG]: In this case we would ask that you authorize  
8 the substitution of a photograph of this stack.

9 MJ [COL GREGORY]: Of the stack, not photographs of each  
10 individual DVD?

11 TC [MAJ COWHIG]: No, sir.

12 MJ [COL GREGORY]: I wouldn't think.

13 TC [MAJ COWHIG]: No, sir.

14 MJ [COL GREGORY]: I'll authorize the stack since that's the  
15 purpose of the exhibit. And you're going to I assume have some  
16 witness talk about that these--this stack of DVDs, what they contain.

17 TC [MAJ COWHIG]: Yes, sir, and how--their particular purpose.

18 MJ [COL GREGORY]: All right.

19 TC [MAJ COWHIG]: Prosecution Exhibit 42, 43, and 44 are other  
20 versions of the COLE video captured in the Tariq Road raid.

21 MJ [COL GREGORY]: Each one is a different version?

22 TC [MAJ COWHIG]: Each one a different version, sir.

23 Prosecution Exhibit 45 is the gray briefcase shown here in front of

1 the table, sir. And in that case we would ask for a photograph to be  
2 substituted obviously in the record.

3 MJ [COL GREGORY]: Is it empty?

4 TC [MAJ COWHIG]: It is, sir.

5 MJ [COL GREGORY]: Okay. On 42, 43, and 44, are copies of each  
6 of those videos in the record?

7 TC [MAJ COWHIG]: A photograph of the exterior and the content  
8 of the video itself, sir, in the record, transferring----

9 MJ [COL GREGORY]: So a copy of the video on the DVD to go into  
10 the record?

11 TC [MAJ COWHIG]: Yes, sir.

12 MJ [COL GREGORY]: Okay.

13 TC [MAJ COWHIG]: Prosecution Exhibit 46, a map of Pakistan and  
14 Afghanistan, dating testimony.

15 MJ [COL GREGORY]: Where did this map come from? Is it a Google  
16 thing or something like that?

17 TC [MAJ COWHIG]: It is a----

18 MJ [COL GREGORY]: I'm just thinking of the authentication that  
19 it's accurate.

20 TC [MAJ COWHIG]: The witness will authenticate it, sir. I  
21 believe it comes from standard DOD graphics.

22 MJ [COL GREGORY]: Well, if you're going to have a witness  
23 authenticate it, that's fine.

1 TC [MAJ COWHIG]: Prosecution Exhibit 47 Alpha through Hotel.  
2 Alpha will be various passport photos captured in the same raid on  
3 Tariq Road. Bravo through Foxtrot--and I apologize to the court  
4 reporter, this is a variation from how we marked it earlier when we  
5 remarked those, are bin Laden family passports. 47 Golf is an  
6 identification card pertaining to Khalid Sheikh Mohammed captured at  
7 that same location. 47 Hotel is a degree certificate belonging to  
8 Khalid Sheikh Mohammed.

9 MJ [COL GREGORY]: What kind of certificate?

10 TC [MAJ COWHIG]: It is an engineering degree from----

11 MJ [COL GREGORY]: Oh, a degree.

12 TC [MAJ COWHIG]: Yes, sir, from North Carolina Tech, a  
13 certificate.

14 MJ [COL GREGORY]: Belonging to?

15 TC [MAJ COWHIG]: Khalid Sheikh Mohammed, sir.

16 MJ [COL GREGORY]: And I assume you're going to bring some  
17 witness that will try to make this relevant to this case?

18 TC [MAJ COWHIG]: Yes, sir, that is right.

19 MJ [COL GREGORY]: Okay.

20 TC [MAJ COWHIG]: 48 Alpha through Foxtrot are items seized in  
21 that same raid. Alpha, electronic switches; Bravo, also electronic  
22 switches of different bearing; Charlie, wiring, apparent triggers for  
23 explosive devices; Delta, Echo, and Foxtrot altered Sega game



1 cartridges also apparently converted into triggers for explosive  
2 devices.

3 MJ [COL GREGORY]: Sega game cartridges?

4 TC [MAJ COWHIG]: Yes, sir.

5 49 Alpha is an issue of "Der Spiegel" magazine seized in  
6 that same raid. The topic of that issue of "Der Spiegel" is the 9/11  
7 attacks on the United States. 49 Bravo----

8 MJ [COL GREGORY]: Do you want the whole magazine in the record?

9 TC [MAJ COWHIG]: The cover will be the most important part,  
10 sir, and the fact that inside that magazine are found prints of an  
11 individual who was captured in that raid.

12 MJ [COL GREGORY]: And I don't know, I've never seen it. I'm  
13 just asking for purposes of the record what our court reporters need  
14 to know will go into the record from this magazine. If you want the  
15 whole thing, that's fine. But based on the previous requests, it  
16 would have to be photocopied, right?

17 TC [MAJ COWHIG]: Yes, sir, it was scanned.

18 MJ [COL GREGORY]: Scanned.

19 TC [MAJ COWHIG]: The electronic version of it.

20 MJ [COL GREGORY]: All right.

21 TC [MAJ COWHIG]: The cover and the pages where the fingerprints  
22 appear.

23 MJ [COL GREGORY]: And you'll be identifying those particular

1 pages through a witness?

2 TC [MAJ COWHIG]: Yes, sir.

3 MJ [COL GREGORY]: All right. So you'll use the cover and the  
4 pages that the witness identifies that are relevant to this case.

5 TC [MAJ COWHIG]: Prosecution Exhibit 50 Alpha through India  
6 will be portions of other versions of the COLE video captured at  
7 another raid in Karachi, Pakistan.

8 MJ [COL GREGORY]: A through what?

9 TC [MAJ COWHIG]: A through I, sir.

10 MJ [COL GREGORY]: A through I.

11 TC [MAJ COWHIG]: 51, sir, is a video of a lecture delivered by  
12 Usama bin Laden of the Ka'ab bin Malek lecture with an English  
13 translation for the script.

14 52 Alpha and Bravo are letters and sketches of the accused.  
15 Alpha is a DA Form 2668-R, a detainee postcard; Bravo is a sketch on  
16 plain paper.

17 53 Alpha is a video; it is a segment of an NBC news  
18 broadcast showing a "Predator" video dating late September of 2000  
19 over Tarnak Farms in Afghanistan; Bravo is a written statement by the  
20 director of the CIA, [REDACTED].

21 And, sir, 54 is an item for which you had already taken  
22 judicial notice, but we thought it should be marked as a prosecution  
23 exhibit. It is the certificate of nonexistence of records, sir,

1 relating to the accused.

2 MJ [COL GREGORY]: So you wanted to provide the certificate that  
3 I took judicial notice of?

4 TC [MAJ COWHIG]: Yes, sir.

5 MJ [COL GREGORY]: So you would want me to instruct that I've  
6 taken judicial notice of a particular item? That's normally the way  
7 I would do it as opposed to having a separate prosecution exhibit.

8 TC [MAJ COWHIG]: If you would prefer that method.

9 MJ [COL GREGORY]: No, you've already got them marked that way.  
10 So this is the certificate.

11 TC [MAJ COWHIG]: Of nonexistence of records. CNR is the term  
12 commonly used by the NS folks.

13 Exhibits 55 through 57 are curriculum vitae for the  
14 individuals we have--expect to testify as experts. 55 is [REDACTED]  
15 from the FAVIA, Forensic Analysis--I'm sorry. Forensic Audiovisual--  
16 FAVIA. I apologize. We'll get the correct words for that acronym  
17 tomorrow.

18 MJ [COL GREGORY]: I'm sure the expert can help you.

19 TC [MAJ COWHIG]: I hope she can too. The second is for Mr. [REDACTED]  
20 [REDACTED] from the latent print unit of the FBI lab. 57 is for [REDACTED]  
21 [REDACTED].

22 58 Alpha through Hotel, A through H, are placards prepared  
23 by [REDACTED] for her testimony, comparing one of the journals--two of

1 the journals of the accused, I'm sorry, Your Honor, and an  
2 instruction manual for Adobe Premiere.

3 And we would also ask that you take judicial notice of the  
4 instruction manual for Adobe Premiere 5.0, which is a dated version  
5 of the program that's still available on the market. This program  
6 was the one described by the accused during interrogations as having  
7 been used to create the COLE video.

8 Ms. [REDACTED] will use portions from this manual to compare them  
9 to his journal and to his statements.

10 MJ [COL GREGORY]: What do you have that marked?

11 TC [MAJ COWHIG]: We are asking that you take judicial notice.  
12 We could mark it as 59, sir.

13 MJ [COL GREGORY]: Oh, you just wanted me to take judicial  
14 notice of it without using it as an exhibit with the----

15 TC [MAJ COWHIG]: We have portions of it extracted for 58 Alpha  
16 through Hotel.

17 MJ [COL GREGORY]: Oh, those were the expert aids that are going  
18 to be used that came from that book?

19 TC [MAJ COWHIG]: Yes, sir.

20 MJ [COL GREGORY]: I'll think about the judicial notice, but it  
21 seems that your expert would certainly be able to testify that that's  
22 an Adobe manual.

23 TC [MAJ COWHIG]: Yes, sir, she would.

1 MJ [COL GREGORY]: I really don't see the need for judicial  
2 notice. Let me think about that one.

3 TC [MAJ COWHIG]: All right, sir. Sir, 59, two photographs  
4 taken by Special Agent [REDACTED], who will be one of our witnesses  
5 testifying, regarding the "Predator" video and Tarnak Farms.

6 MJ [COL GREGORY]: You said two photographs. Are you going to  
7 break those out 59A and B?

8 TC [MAJ COWHIG]: Yes, sir, 59A and B.

9 MJ [COL GREGORY]: Okay.

10 TC [MAJ COWHIG]: 60 will be another group of videos; "The  
11 Destruction of the American Destroyer USS COLE," combined with "The  
12 Will of the Martyrs of New York and Washington," AFGB Number 905881,  
13 which is another group of videos, this same video, and an additional  
14 video seized at that same site.

15 And for that, sir, we would ask the same substitution in  
16 the record, a photograph of the stacks of the videos. And the  
17 content of "The Destruction of the American Destroyer USS COLE" would  
18 already be included in the record under that particular item and to  
19 include a copy of the other video.

20 MJ [COL GREGORY]: So the content of the stack in 60 is not your  
21 point, it's the quantity?

22 TC [MAJ COWHIG]: Yes, sir.

23 MJ [COL GREGORY]: Okay. Given that and assuming again as with

1 all of these that you're going to have some witness come in and make  
2 the relevance bridge for us, I'll allow you to just substitute a  
3 photograph of the stack. But if we get into particulars of a piece  
4 of the stack, then we'll need to revisit this and separate that part  
5 out.

6 TC [MAJ COWHIG]: Yes, sir. And we'll be alert to that.

7 MJ [COL GREGORY]: It just depends how the testimony goes.

8 TC [MAJ COWHIG]: That's all we have for this afternoon, sir.

9 MJ [COL GREGORY]: All right. Is there anything from the  
10 defense concerning what's been offered as 35 through 60? No  
11 objection from the defense.

12 I will admit them again subject to the witnesses testifying  
13 as the government anticipates to make this relevant to this  
14 particular case.

15 TC [MAJ COWHIG]: Yes, sir.

16 MJ [COL GREGORY]: And if that bridge is not built, then we  
17 won't cross it.

18 TC [MAJ COWHIG]: Yes, sir.

19 MJ [COL GREGORY]: Okay. But for now I'll consider them  
20 admitted, but I'll be listening for the relevance tie. So I have  
21 admitted 35 through 60 and the subparts as described with the letter  
22 designations. And you may make the substitutions as requested.

23 TC [MAJ COWHIG]: Thank you, Your Honor.

1 MJ [COL GREGORY]: Is there anything else before we recess?

2 Anything, anyone?

3 TC [MAJ COWHIG]: Not from the government, sir.

4 MJ [COL GREGORY]: All right. Then we'll be in recess. 8:30  
5 for us, nine o'clock for the members. That's still our plan? All  
6 right. I'll see you at 8:30. We're in recess.

7 **[The R.C.M. 803 session recessed at 1651, 27 October 2008.]**

8 **[END OF PAGE]**

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1 [The R.M.C. 803 session was called to order at 0852,  
2 28 October 2008.]

3 MJ [COL GREGORY]: This commission is called to order.

4 All parties present. The members are absent; and Mr.  
5 Bahlul is with us; and again, Mr. Bahlul, I can't pipe it through.  
6 It's too much trouble. You can wear the headset if you would like.

7 First, a couple of exhibit items to clear up.

8 The court member questionnaires will be sealed as Appellate  
9 53, and then the convening order yesterday that was marked as 62  
10 we'll make that part of the convening orders that are already in  
11 Appellate [sic] 2, and re-open Appellate Exhibit 62.

12 Does that track?

13 [Counsel nodded in response.]

14 MJ [COL GREGORY]: And Appellate Exhibit 2 will be sealed.

15 Thank you.

16 Next, Trial Counsel, during our brief conference this  
17 morning you said that you would have some additional items you would  
18 like to offer before I bring in the members; is that correct?

19 TC [MAJ COWHIG]: Yes, sir, eight additional items.

20 MJ [COL GREGORY]: All right. You can do that now.

21 TC [MAJ COWHIG]: Sir, the government would like to offer what  
22 has been marked as Prosecution Exhibit 33C, D, E, F, G, and H for  
23 identification. Those are--C, charted enlargements of prints that



1 were prepared by our first witness, Mr. [REDACTED] from the Latent  
2 Print Unit of the FBI lab.

3 MJ [COL GREGORY]: What number did you say?

4 TC [MAJ COWHIG]: 34C.

5 I'm sorry, 33C, Your Honor.

6 MJ [COL GREGORY]: 33C.

7 Because I have already admitted a 33.

8 TC [MAJ COWHIG]: Yes, sir.

9 MJ [COL GREGORY]: And this is a subpart of 33?

10 TC [MAJ COWHIG]: Yes, sir.

11 MJ [COL GREGORY]: Okay. Go ahead.

12 TC [MAJ COWHIG]: 33D are print identification photographs that  
13 were used to create that charted enlargement pertaining to page 47 of  
14 AFGP Number 801138, which is Prosecution Exhibit 33A.

15 33E are major case prints of the accused taken on 1 October  
16 2008.

17 33F is a ten-print card taken from the accused in 2003.

18 33G is a ten-print card taken from the accused in 2002.

19 Those are used in the comparisons of prints on those items and other  
20 items, sir.

21 MJ [COL GREGORY]: And one of your witnesses will be using  
22 these?

23 TC [MAJ COWHIG]: Yes, sir, the first witness.

1 MJ [COL GREGORY]: Okay.

2 TC [MAJ COWHIG]: And 33H is an identification summary appendix  
3 to the FBI lab reports pertaining to Prosecution Exhibits 32, 33, and  
4 34.

5 MJ [COL GREGORY]: Defense, any objection?

6 Negative response from the defense.

7 33A through--I didn't catch your last.

8 TC [MAJ COWHIG]: H, sir.

9 MJ [COL GREGORY]: H as in hotel is admitted.

10 TC [MAJ COWHIG]: And two other items, sir, marked as  
11 Prosecution Exhibit 61 for identification. 61A is Box 2 of Lot 1B86.  
12 These boxes back here, sir, they are boxes used to ship evidence from  
13 Afghanistan in late 2001. One of our witnesses today, Special Agent  
14 Keenan will testify regarding the receipt and further shipment of  
15 these boxes.

16 MJ [COL GREGORY]: So that is just the--just the outer part of  
17 the box, nothing inside it?

18 TC [MAJ COWHIG]: Just the outer part of the box, sir, because  
19 the markings on the outside of the box will help her to explain how  
20 this evidence was received and transmitted.

21 MJ [COL GREGORY]: And that will be 61A and B?

22 TC [MAJ COWHIG]: 61A and B, sir.

23 Box 2 is 61A. Box 5 is 61B.

1 MJ [COL GREGORY]: Okay. Anything else, and then I will turn to  
2 the defense.

3 TC [MAJ COWHIG]: No, sir. We ask, of course, substituting for  
4 the boxes, to substitute photographs of the surfaces.

5 MJ [COL GREGORY]: You may substitute a photo of any response on  
6 the boxes.

7 So, no objection. The two boxes are admitted as A and B,  
8 and you may substitute a photo in the record.

9 Anything else?

10 TC [MAJ COWHIG]: Sir, if we can offer to the defense and to  
11 Your Honor and to the court reporter a copy of the prosecution  
12 exhibits as we have tracked them. We will also provide an electronic  
13 copy of this to the court reporter.

14 MJ [COL GREGORY]: That will be good.

15 **[Major Cowhig handed a copy of the tracking list to the court**  
16 **reporter and the military judge.]**

17 TC [MAJ COWHIG]: There is one change we did not make, Your  
18 Honor, based upon our 802. On this tracking list that we just  
19 distributed, 59, I believe we determined in session yesterday would  
20 be an appellate exhibit. There is a 59A and B on this list as well.  
21 So on this list where it says "59" Adobe Premiere Instructions  
22 Manual," we should strike that from the list.

23 MJ [COL GREGORY]: So one of your witnesses will just be

1 referring to this as a demonstrative aid or something and that's why  
2 you want it to be an appellate exhibit?

3 TC [MAJ COWHIG]: We have those pages included in the 58A  
4 through H, sir.

5 MJ [COL GREGORY]: I see. So 59 is just the entire manual that  
6 58 is deprived from?

7 TC [MAJ COWHIG]: Yes, sir.

8 MJ [COL GREGORY]: So you don't want to offer 59 as a separate  
9 exhibit?

10 TC [MAJ COWHIG]: As marked on this list, no, sir; but there is  
11 a 59A and B which are photos of hillside of Farouq Training Camp and  
12 Tarnak Farms.

13 MJ [COL GREGORY]: So they are still in?

14 TC [MAJ COWHIG]: They remain, sir.

15 MJ [COL GREGORY]: All right. So 59, the Adobe Premiere  
16 Instruction Manual is withdrawn. 59A and B remain.

17 Anything else?

18 TC [MAJ COWHIG]: Sir, yesterday we had a 53A and B. It does  
19 not appear on this list.

20 MJ [COL GREGORY]: I had that down as your--in my notes from  
21 yesterday, your NBC news video and statement of George Tenet.

22 TC [MAJ COWHIG]: Yes, sir. We would like to withdraw 53B and  
23 simply remain with 53, the NBC broadcast video.

1 MJ [COL GREGORY]: 53B is withdrawn. 53A remains.

2 TC [MAJ COWHIG]: And I believe that's all we have, sir.

3 MJ [COL GREGORY]: All right. Thank you.

4 All right. This morning, during our conference, I told  
5 both sides that I wanted to bring closure to this issue concerning  
6 the elements of the offense, particularly before the government  
7 offers opening statement. I'm going to do that now.

8 As I said, to the extent that The Charge and Specification  
9 alleges that Mr. Bahlul was an unlawful enemy combatant and to the  
10 extent that a particular act in the charges and specifications is  
11 alleged to be a violation of the Law of War, I find that the  
12 government must prove that particular allegation beyond a reasonable  
13 doubt, cannot rely on any presumption to prove that since they are,  
14 in fact, alleged.

15 Therefore, I find that there is a dual requirement for the  
16 government to prove beyond a reasonable doubt that where alleged as  
17 an unlawful enemy combatant and that the particular act alleged is a  
18 violation of the Law of War that must be proved beyond a reasonable  
19 doubt.

20 Also, as I mentioned yesterday, I find it would not be  
21 efficient to conduct a separate jurisdiction hearing. So I will be  
22 listening for that evidence during the course of the government's  
23 case-in-chief to determine whether by a preponderance of the evidence

1 the accused's unlawful enemy combatant status has been established to  
2 show personal jurisdiction.

3 I recognize that there are differences of opinion on this  
4 interpretation and that the government opposes this interpretation.

5 If the government would like to expand upon its opposition  
6 to this interpretation, you may do so by a written motion for  
7 reconsideration. But this is my ruling.

8 But I understand your desire to put something in the record  
9 about your opposition to this.

10 But I just want to clarify that as my ruling.

11 In any case, criminal statutes should be strictly  
12 construed; and at the end of the day, that's the basis of how I view  
13 this. Those particular items that I referenced are alleged in the  
14 charges and specifications that are contained in the statute's  
15 reference; and therefore, I find that the government must prove those  
16 beyond a reasonable doubt.

17 I will provide both sides a draft of my written  
18 instructions on findings before we reach that point for your comment.

19 But again, within the broad parameter that I am finding,  
20 those elements require proof beyond a reasonable doubt.

21 TC [MAJ COWHIG]: Yes, sir. The government does anticipate  
22 filing a motion for reconsideration.

23 MJ [COL GREGORY]: You may do so. I understand you want to put

1 your opposition in the record, but I think the most efficient way to  
2 do that is by written motion and not oral argument.

3 TC [MAJ COWHIG]: Yes, sir. That was our intent.

4 MJ [COL GREGORY]: Thank you.

5 The only thing I see remaining before I bring out the  
6 members is: Trial Counsel, would you like to list for our spectators  
7 your list of expected witnesses for today?

8 TC [MAJ COWHIG]: Yes, sir.

9 MJ [COL GREGORY]: To the extent that you can. If they are  
10 covered by a protective order, you can reference that too.

11 TC [MAJ COWHIG]: Yes, sir.

12 We have one witness today governed by protective order, our  
13 last witness.

14 The witnesses we expect to call today are Mr. [REDACTED],  
15 a latent print examiner from the Latent Print Unit of the FBI Lab;  
16 Miss [REDACTED], who is an audio/visual analyst also from the FBI  
17 Lab; Special Agent [REDACTED], who was an FBI agent in Pakistan  
18 in 2001; Special Agent [REDACTED], United States Army CID  
19 investigator who will testify regarding an unmanned aerial vehicle  
20 surveillance in Afghanistan in September of 2000; and the Joint  
21 Detention Group S-2 Officer-in-Charge, who is covered by a protective  
22 order. He will testify by his duty position, not by his name, sir.  
23 He will testify regarding letters written by the accused while on

1 detention here at Guantanamo Bay.

2 MJ [COL GREGORY]: All right. And again, these protective  
3 orders are with our clerk. If anyone has any questions about the  
4 scope of those, they are free to ask her that question.

5 Are we ready to bring in the members?

6 TC [MAJ COWHIG]: Yes, sir.

7 BAILIFF: All rise **[all persons did as directed, and the members**  
8 **entered the courtroom].**

9 **[The R.M.C. 803 session terminated, and the military commission**  
10 **commenced at 0906, 28 October 2008.]**

11 MJ [COL GREGORY]: Please come on in and take your seats.  
12 Everyone please be seated **[all persons did as directed].**

13 All right. All parties are present. All the members are  
14 with us.

15 Members, good morning.

16 We had a brief session before we started to take care of  
17 some--some matters, but I believe we are ready to proceed.

18 At this time, it's appropriate that I offer the trial  
19 counsel an opportunity to make an opening statement.

20 TC [MAJ COWHIG]: Thank you, Your Honor **[moving to the podium].**

21 I am an officer of al Qaeda. The American people pay  
22 taxes, because they pay taxes, they fund the government's  
23 aggressions. We are not responsible for the ignorance of the



1 American people.

2 I want you to pray for me to join Mohamed Atta, Sinan  
3 al-Mihdar, Abu Rabi'ah, and his brother Abu Qa'qa Lubnani, Abu  
4 al-'Abbas al-Janubi and the rest of the heros of 9/11.

5 Blood. Blood. Destruction. Destruction. I swear by  
6 Allah that I envy you for the direct role you had in the 9/11 events;  
7 but at the same time, I praise almighty Allah for allowing me to have  
8 a simple and indirect role. The battle has just started. It is only  
9 at the beginning stages. Tomorrow is judgment day.

10 If I were incapable of jihad with my hands, soul, or money,  
11 only jihad by word and pen is left.

12 Sir, members of the panel, these are the words of Ali Hamza  
13 Ismael Suliman al Bahlul, the accused.

14 He sits before you, charged at this military commission,  
15 not a court-martial, of three offenses. Those offenses appear on the  
16 flyer that you have in the folders before you.

17 He is charged with conspiracy to murder protected persons,  
18 to attack civilians, to attack civilian objects, to commit murder in  
19 violation of the Law of War, to destroy property in violation of the  
20 Law of War, to commit terrorism, and to provide material support for  
21 terrorism.

22 He is also charged with soliciting others, named  
23 individuals and unnamed individuals, of soliciting those same

1 offenses: Murder of protected persons, attacking civilians,  
2 attacking civilian objects, murder in violation of the Law of War,  
3 destruction of property in violation of the Law of War, terrorism,  
4 and providing material support for terrorism.

5           The third charge is providing material support for  
6 terrorism.

7           The accused early in 1999 traveled to Afghanistan from  
8 Yemen. He traveled there knowing that he was going to join al Qaeda.  
9 He knew of the organization. He knew of its purposes. He knew what  
10 it intended to do. He knew the leaders of that organization, and he  
11 knew what their declarations of what their organization was created  
12 for, what it was going to do, and what it had done.

13           Once he arrives in Afghanistan, he met with an individual  
14 by the name of Saif al-Adel. Saif al-Adel is one of the individuals  
15 the accused is charged of conspiring with to commit those crimes; and  
16 conspiracy is nothing more than an agreement to do certain things;  
17 and in this case those certain things are those offenses.

18           Saif al-Adel was the head of the security commit of al  
19 Qaeda. After meeting with Saif al-Adel, the accused underwent  
20 additional military training at an al Qaeda sponsored terrorist  
21 training camp near Aynak in Afghanistan, near the south of Kabul.

22           He met with Saif al-Adel a number of other times.  
23 Following the completion of that training session, he met with Usama

1 bin Laden, the head of the al Qaeda organization.

2           In that meeting, the accused discussed extensively the  
3 purpose of al Qaeda, the aims of al Qaeda, the intent of al Qaeda, of  
4 its leader and of its members; and in that meeting; the accused took  
5 the hand of Usama bin Laden and pledged bayat. Bayat is a word which  
6 simply means "oath" when translated into English. It's an oath of  
7 obedience, an oath of fealty, what you might consider a medieval  
8 concept of utter obedience.

9           That oath was to join and support Usama bin Laden. A  
10 consequence to that oath was that he was bound to support this  
11 terrorist organization, al Qaeda; and a consequence of that oath was  
12 that he was bound to support terrorism, material support of  
13 terrorism, providing his own personal services, providing material,  
14 providing funds.

15           His role that he took on in al Qaeda had several aspects to  
16 it. His most immediate role was as the personal secretary of Usama  
17 bin Laden; the personal secretary of the leader of the al Qaeda  
18 organization.

19           In that role as the personal secretary, he kept a journal.  
20 That journal is this journal here [**holding up journal**]. It is  
21 Prosecution Exhibit 33. It's also identified by evidence tracking  
22 number from when it was seized in Afghanistan as AFGP2002801138. You  
23 don't need to remember that. It will be mentioned a few times. We

1 will just call it Prosecution Exhibit 33.

2           This journal contains considerable information indicating  
3 the duties that the accused carried out as the personal secretary of  
4 Usama bin Laden.

5           One of those was that the accused apparently observed on  
6 the date that he records it, September 28 in the Year 2000, the day  
7 American spy plane, he refers to it as, was overhead at Tarnak Farms.  
8 Tarnak Farms was where the accused was. Tarnak Farms is where Saif  
9 al-Adel was. He is mentioned in that very same entry. Tarnak Farms  
10 was where Usama bin Laden was. Tarnak Farms was a center of  
11 operations and training for al Qaeda in September of the Year 2000.

12           Also in this journal are minutes of several meetings of the  
13 leadership of al Qaeda. At one of those meetings, before the attack  
14 to the USS COLE, the minutes reflect a discussion of an impending  
15 major attack and the benefits that al Qaeda expects to reap as a  
16 result of that attack: New recruits, new attention, and a platform to  
17 launch new propaganda. There are also other items in this journal  
18 that we will tell you about as we present testimony from our  
19 witnesses and as you see the evidence.

20           I mentioned propaganda. The accused's other central role  
21 in the al Qaeda organization was to produce propaganda, in particular  
22 this piece of propaganda titled "*The Destruction of the American*  
23 *destroyer USS COLE.*" That is something of a misnomer. There is very

1 little in this video to do with the USS COLE, a few short clips at  
2 the beginning. The majority of the material in the video is  
3 propaganda, a political argument and indoctrination of solicitation.

4 This video is also widely known as "The State of the Umma"  
5 the Umma referring to the Islamic world and an Islamic nation.

6 One of the central goals of the al Qaeda organization was  
7 to bring forth an Islamic government that met the desires of the  
8 leadership of al Qaeda, of Usama bin Laden and Ayman Zawahiri.

9 Most the content of this video has very little to do with  
10 the attack on the USS COLE. The attack on the USS COLE was to garner  
11 attention to spread this message.

12 We will show you this video in the course of this trial.  
13 We will also present testimony from individuals who viewed this video  
14 as recruits and trainees to the al Qaeda organization.

15 They will describe for you what this video was intended to  
16 do. They will tell you that this video was intended to solicit them  
17 and the other members of the audience there in their first week of  
18 training at an al Qaeda terrorist training camp in Afghanistan to  
19 join the organization to support terrorism, to carry out acts of  
20 terrorism; particularly two acts that many found troubling.

21 The video was designed to overcome two areas of resistance:  
22 Suicide operations and the type-fear ideology.

23 In Islam, suicide is a grave sin. Yet suicide attacks have

1 become a major tactic. A portion of this video is designed to  
2 overcome and develop Muslim's belief that suicide in an attack is  
3 sinful. Type-fear ideology is an ideology not invented by al Qaeda  
4 but promoted by al Qaeda.

5           Typically, one Muslim and another Muslim are both Muslims.  
6 One does not have the right to decide that the other is not. Al  
7 Qaeda took on to itself the ability to declare certain people,  
8 certain regimes, certain political organizations as outside the  
9 faith. What this gave al Qaeda and what it gives al Qaeda today is a  
10 philosophy, a rationale for attacking Muslim governments. This video  
11 is designed to overcome those two aspects.

12           We will also present to you testimony from an FBI agent who  
13 interviewed the accused extensively, discussed the contents of the  
14 video and the purpose of the video with the accused. We will also  
15 present to you a propaganda expert who will breakdown this video and  
16 place it in the context of other propaganda products produced by al  
17 Qaeda and their purposes.

18           That propaganda expert will point out some very interesting  
19 aspects of this video. This video was released in early 2001. This  
20 video contains footage of 9/11 hijackers in it. There is one  
21 particularly chilling segment.

22           As you watch the video, you will notice an individual  
23 firing a medium anti-aircraft weapon at a mountainside. It's an

1 impressive weapon, but you wonder, why are they showing that they can  
2 hit the side of a mountain with an anti-aircraft weapon. That's all  
3 you will see of the clip in the COLE video.

4 In a subsequent propaganda release after the 9/11 attack,  
5 you will see that individual sitting on that aircraft weapon--  
6 anti-aircraft weapon turn around. You will see his face. He is one  
7 of the 9/11 hijackers.

8 Going back to the accused's story. While the accused was  
9 present in the area of Kandahar in the 1999/2000 time frame, he met  
10 two individuals. He met many individuals, but two in particular.  
11 Those are Mohammed Atta and Ziad al Jarrah. You may know from media  
12 reports that Mohammed Atta and Ziad al Jarrah were two of the 9/11  
13 hijackers, in fact, Mohammed Atta is considered to be the leader of  
14 the operational team. We will present testimony as to those facts  
15 for you.

16 The accused met those two individuals there in Kandahar.  
17 He spoke with them. In fact, he roomed with them, the three of them  
18 alone. The accused also arranged for Mohammed Atta and Ziad al  
19 Jarrah to swear the oath, to swear bayat to Usama bin Laden. The  
20 accused also wrote their martyr wills. What is a martyr will? A  
21 "martyr will" is a declaration that a suicide operative writes before  
22 carrying out a suicide operation. It describes in general terms what  
23 the operative is about to do. For operational security, obviously,

1 generally these martyr wills would not contain the details of the  
2 operation.

3           The martyr will is typically videotaped in al Qaeda for  
4 later exploitation so that al Qaeda can present this suicide  
5 operative as the ideal to recruit more suicide operatives for more  
6 operations in the future.

7           I read to you the statement of the accused regarding the  
8 small role that he had. That's what he is referring to. His small  
9 role was to write the propaganda declarations, the martyr wills of  
10 Mohammed Atta and Ziad al Jarrah. His regret is that he did not  
11 videotape them.

12           We did, however, capture another videotape of one of these  
13 individuals, Ziad al Jarrah rehearsing his martyr will. You will see  
14 a portion of that tape.

15           Back to the accused's story. While still in Afghanistan,  
16 the accused served as the media man for Usama bin Laden and other  
17 members of the al Qaeda leadership. He was sometimes mistaken for a  
18 bodyguard because he was frequently in contact with Usama bin Laden  
19 and others. He carried a rifle and grenades to protect Usama bin  
20 Laden. He traveled with Usama bin Laden whenever they left en masse  
21 from their areas, such as Tarnak Farms or their compounds in  
22 Kandahar.

23           When he traveled with Usama bin Laden, he would carry with



1 him the media equipment, bin Laden's laptop computer, a satellite  
2 downlink so that they could keep in touch with the news. If you are  
3 a terrorist, it's important to know what your coverage is in the  
4 media. He also carried various files and other items. He had his  
5 own van to carry all of his equipment around.

6 In early September 2001, bin Laden announced that they were  
7 displacing from Kandahar in anticipation of an operation. The  
8 accused loaded his equipment into the van and joined the convoy as  
9 they displaced. They went to an area near Khost, a city in eastern  
10 Afghanistan near the Tora Bora Mountains, near the Pakistani  
11 frontier. They set up in a remote location. Bin Laden told the  
12 accused, It's very important that I see the news today. The accused  
13 attempted to obtain a video signal using their satellite dish. He  
14 was unable to do so, apparently because of the contours of the  
15 terrain where they were. He did succeed in obtaining an audio  
16 signal.

17 Using that audio signal, bin Laden, the accused, and other  
18 members of the al Qaeda leadership followed the 9/11 attacks as they  
19 unfolded. The accused displaced later in that day or early the next  
20 day to establish a video link so they could obtain the news footage  
21 of the attacks.

22 Those facts form the core of the first and the last charge,  
23 the charge of conspiracy and the charge of material support for

1 terrorism. The charge in the middle, the central charge, is that of  
2 solicitation and incitement to others to commit the offense that I  
3 listed for you earlier.

4           The primary role of the accused was to grow the  
5 organization. One of the primary means to do that was through  
6 medium. An individual can speak directly to other individuals,  
7 sometimes to groups of individual; but to reach a wider audience, you  
8 have to turn to medium. If you record your statement, you don't have  
9 to be in the room. You can send it off to this group or that group;  
10 and if your statement, if your message is critical and needs to be  
11 given the first week of training to every class of trainees that goes  
12 through the terrorist training camp, turning it into a video is often  
13 handy.

14           If you want to broadcast your message around the world  
15 because you realize that your message will only reach a small portion  
16 of the population, you need to seek out that population. The way you  
17 do that is by disseminating your video through the Internet.

18           Our propaganda expert will testify as to the distribution  
19 of this video through the Internet and just how widely it did reach  
20 audiences.

21           How are we going to show you these facts? I have shown you  
22 two items of evidence. There will be many more. We are going to  
23 bring to you a number of witnesses. We expect over the course of

1 four to five days to show you all of these items.

2           You will hear first today from a latent print examiner from  
3 the FBI lab. He will place the prints of the accused on this journal  
4 **[indicating]**, the journal that serves principally as the personal  
5 secretary's journal. He will place the prints of the accused on two  
6 other notebooks. Those notebooks contain detailed notes on the  
7 production of a video, a video like "The State of the Umma", "The  
8 Destruction of the American Destroyer, USS COLE".

9           He will also tell you that he found the prints of the  
10 accused on another, fourth, smaller notebook, a pocket day timer.  
11 That pocket day timer also contains the prints of another known  
12 member of al Qaeda, al Sharabi. Al Sharabi was one of Usama bin  
13 Laden's body guards. That notebook contains information indicating  
14 that al Sharabi traveled to Southeast Asia in anticipation of  
15 terrorist operations in that area.

16           That notebook contains the address of another known al  
17 Qaeda associate and Jemaah Islamiyah member another terrorist  
18 organization in Southeast Asia.

19           The two notebooks about the video, the next witness you  
20 will from will be [REDACTED]. She is a video expert, also from the  
21 FBI Lab, who examined statements of the accused given in the 2002,  
22 2003 time frame, where he describes how he prepared the COLE video.  
23 She has compared those statements with these two notebooks. She will

1 tell you that those two notebooks match the description given by the  
2 accused and are entirely consistent with the production of this  
3 video.

4 We will also bring you Special Agent [REDACTED]. She  
5 is an agent with the FBI. She was stationed in Pakistan on what  
6 looked to be a somewhat relaxing assignment in Pakistan in 2001.  
7 That changed very quickly.

8 She will talk to you about the seizure of these items. I  
9 note, she was not directly involved, but she received these items.  
10 They were brought to her there in Pakistan and sent forward to the  
11 United States. She will also talk to you about what was going on in  
12 those areas at that time.

13 Special Agent [REDACTED], an agent with the U.S. Army  
14 Criminal Investigation Division, he will testify to you about the  
15 video from the unmanned aerial vehicle mentioned in the accused's  
16 journal entry where the accused and Saif al-Adel, the head of  
17 security at the al Qaeda Organization watched this unmanned aerial  
18 vehicle over Tarnak Farms on September 28, 2000. He will also  
19 describe having walked the terrain and matching that terrain to that  
20 video.

21 You will also hear from an individual who you will only  
22 know as the Joint Detention Group S-2 Officer-In-Charge. His  
23 identity is protected by a protective order, also protected by the

1 classification guidelines of Joint Task Force Guantánamo.

2 He will introduce for you four letters written by the  
3 accused while he has been here in detention in Guantanamo. Two of  
4 those letters are to Ramzi Bin al Shibh. Ramzi Bin al Shibh is also  
5 a member of al Qaeda, an operator involved in a series of attack, an  
6 operator involved in the 9/11 operation.

7 The other two of those letters written by the accused while  
8 here in Guantanamo are written to Khalid Sheikh Mohammed. Khalid  
9 Sheikh Mohammed is the architect of the 9/11 operation.

10 We will publish the content of those letters written in  
11 Arabic, translated into English to you today.

12 Over the following days, you will hear from Special Agent  
13 [REDACTED], formerly Special Agent [REDACTED], no longer with the  
14 FBI, now running his own business, describing his interviews of the  
15 accused. Much of the story that I described for you before I began  
16 describing witnesses for you was obtained through those interviews.

17 You will also hear from Special Agent [REDACTED], still  
18 with the FBI regarding early interviews of the accused here at Joint  
19 Task Force Guantanamo, at that point a different task force.

20 We expect on the third day to provide you testimony from a  
21 Naval Investigative Service Agent, [REDACTED]. He also conducted  
22 an extensive interview of the accused. It also reflects many of the  
23 details of the story that I described for you.

1 Both [REDACTED] and [REDACTED] speak Arabic. [REDACTED]  
2 is a native speaker.

3 You will hear testimony from three men convicted of  
4 material support for terrorism: [REDACTED], [REDACTED], and [REDACTED]  
5 [REDACTED]. They are members of what was stamped in the media as the  
6 [REDACTED] [REDACTED], mostly from the area of [REDACTED],  
7 [REDACTED], suburb of [REDACTED], who traveled to Afghanistan after  
8 having been recruited by an al Qaeda recruiter; trained in al Qaeda  
9 training camp. They will describe their experience, and they will  
10 describe being shown the COLE video not once, but several times.  
11 Each of them traveled in a different cohort through that training.  
12 Each, with their cohort, was shown the video. They will describe  
13 their reactions to the video, their understanding of what they were  
14 being solicited to do, to commit these acts and the reactions of all  
15 of those around them.

16 One of these gentlemen will describe for you a series of  
17 meetings. [REDACTED] met with an individual he knows as "Khallad".  
18 Khallad asked him to take copies of the COLE video back to Pakistan  
19 and back to the United States. [REDACTED] at that point believed he  
20 had gotten himself in way over his head and declined to carry the  
21 videos back to the United States, having seen the video and having  
22 known what was on it. He was then called into a meeting with Usama  
23 bin Laden. Usama bin Laden questioned him about his reasons for

1 being there at training, his motives for leaving, and reasserted the  
2 request that he carry copies of the COLE video back to Pakistan and  
3 back to the United States. At that point [REDACTED] will tell you he  
4 felt it was a good idea to take the video.

5 We anticipate on the last day of testimony that you will  
6 hear from [REDACTED] [REDACTED] is an expert in the  
7 al Qaeda organization and in propaganda in particular. He will  
8 describe the history of the al Qaeda organization, make a  
9 presentation to you regarding the evolution of the al Qaeda  
10 organization, and then describe extensively the COLE video. We  
11 promise we will only make you watch the whole thing once.

12 We are confident at the conclusion of these several days of  
13 testimony, that we will demonstrate to you beyond a reasonable doubt  
14 that the accused committed all of these offenses.

15 We bear the burden of proof beyond a reasonable doubt of  
16 every element of the offenses, the United States government.

17 My name is Major Dan Cowhig, Major Charles Hale of the  
18 Marine Corps, and Captain Chris Eason, together we are the  
19 prosecutors. We will meet the government's burden with this  
20 evidence; and we ask you that you look at the evidence very  
21 carefully, evaluate it extensively, and carry out your duty to hold  
22 us to that burden.

23 Sir, members of the panel, thank you.

1 MJ [COL GREGORY]: I understand that the defense would like to  
2 defer their opportunity to make an opening statement until the  
3 conclusion of the government's proof.

4 Is that still the defense preference?

5 That's an affirmative response.

6 Members, that is an option for the defense, to defer making  
7 an opening statement; and they have elected to do that. So you will  
8 not be hearing an opening statement from the defense at this time.

9 Also I would remind you that opening statements are not  
10 evidence. They are merely offered as an outline, if you will, to  
11 help you organize the evidence that is to follow.

12 Major Cowhig, are you ready to call your first witness?

13 TC [MAJ COWHIG]: Yes, sir. The government calls Mr. [REDACTED]

14 [REDACTED].

15 MJ [COL GREGORY]: And if any of the spectators need to come and  
16 go during the proceedings, there is no restriction as far as I'm  
17 concerned on that.

18 [END OF PAGE]



1 MR. [REDACTED], Civilian, was called as a witness by the  
2 prosecution, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the trial counsel:

5 Q [MAJ COWHIG]: Please have a seat. Mr. [REDACTED], you are with the  
6 Federal Bureau of Investigation?

7 A [MR. [REDACTED]]: Yes.

8 Q [MAJ COWHIG]: Where is it that you work?

9 A [MR. [REDACTED]]: I work at the FBI Laboratory.

10 Q [MAJ COWHIG]: And what is it that you do there?

11 A [MR. [REDACTED]]: I'm a Latent Fingerprint Examiner.

12 Q [MAJ COWHIG]: Where is that laboratory located?

13 A [MR. [REDACTED]]: It's in Quantico, Virginia.

14 Q [MAJ COWHIG]: And do you have an official title in addition  
15 to being a Latent Print Examiner?

16 A [MR. [REDACTED]]: Yes. I'm a Physical Scientist Forensic Examiner.

17 Q [MAJ COWHIG]: And do you supervise a unit there?

18 A [MR. [REDACTED]]: I don't supervise a unit. I'm the Major Case  
19 Coordinator.

20 Q [MAJ COWHIG]: And what is--how long have you been employed in  
21 the field of fingerprints?

22 A [MR. [REDACTED]]: Approximately four and a half years.

1 Q [MAJ COWHIG]: And your educational background?

2 A [MR. █████]: I have a Bachelor's of Science in Biology, with a  
3 minor in Chemistry from Utah State University; and I have a Master's  
4 of Science in Molecular and Microbiology from the University of  
5 Massachusetts in Boston.

6 Q [MAJ COWHIG]: Do you have additional experience and training  
7 in the field of fingerprints?

8 A [MR. █████]: Yes. I completed a two-year training program at  
9 the FBI Laboratory that involved process--proper processing and  
10 handling of evidence, proper classification of inked prints,  
11 development and preservation of latent prints, proper identification  
12 methods.

13 I completed casework under the supervision of a mentor;  
14 and at the end, I successfully completed a three-day comprehensive  
15 certification examination to become a Physical Scientist Forensic  
16 Examiner.

17 Q [MAJ COWHIG]: What are your duties there at the Lab?

18 A [MR. █████]: My general duties are that I receive, inventory,  
19 examine, and process items of evidence for the presence or  
20 development of latent prints. If I do develop latent prints, I can  
21 compare those latent prints to known inked prints or I can launch  
22 those prints against the FBI's automated fingerprint database.

23 At the conclusion of my comparisons, I issue a report;

1 and I can testify in court to those results if requested to do so.

2 Q [MAJ COWHIG]: So what is a known fingerprint?

3 A [MR. ██████]: On the palmar side of the hand and also on the  
4 soles of the feet is a specific type of skin known as friction  
5 ridges.

6 A known print is the intentional reproduction of these  
7 ridges. It's generally taken with a white card and using black  
8 printer's ink, and it's rolled onto the hand and then rolled onto the  
9 paper.

10 Q [MAJ COWHIG]: And the latent print?

11 A [MR. ██████]: A latent print is an unintentional or chance  
12 reproduction of those friction ridges. Latent prints generally tend  
13 to be an--you are not able to see them with a naked eye, and they  
14 need some type of processing or chemical or alternate light source to  
15 make them visible. These are just left by chance. When you touch an  
16 item, the perspiration or the oils or lotion or if you were to have  
17 dirt or paint on your hands that's left behind, that would be defined  
18 as a latent print.

19 Q [MAJ COWHIG]: And are there differences in the types of  
20 surfaces in terms of the types of prints?

21 A [MR. ██████]: There are. Generally, in the latent print unit  
22 there are--we consider everything one of two types for the most part,  
23 and there are some deviations; but things mostly fall into the

1 category of porous or nonporous. An example of a porous item would  
2 be like a piece of paper----

3 MJ [COL GREGORY]: Excuse me. I'm sorry. I'm getting an  
4 indication that our speed is a little fast for our translators.

5 WIT [MR. █████]: I apologize.

6 TC [MAJ COWHIG]: I'm sorry.

7 WIT [MR. █████]: I forgot about the translator.

8 TC [MAJ COWHIG]: Going back to----

9 MJ [COL GREGORY]: You can proceed, but a little slower, please.

10 WIT [MR. █████]: Yes.

11 MJ [COL GREGORY]: It's being simultaneously translated; and I  
12 apologize for the interruption, but try to consciously speak slower.

13 WIT [MR. █████]: I will.

14 MJ [COL GREGORY]: Thanks.

15 **Questions by the trial counsel continued:**

16 Q [MAJ COWHIG]: You were describing the difference in surfaces  
17 between porous and nonporous.

18 A [MR. █████]: Yes. A porous item would be something like  
19 paper, something that the latent print would actually be drawn into  
20 and it would be held inside the item. A nonporous item would be  
21 something like a soda can or a plastic bottle or a gun, and these  
22 latent prints tend to sit on the surface of those items.

1 Q [MAJ COWHIG]: How do you do the comparison between the latent  
2 prints and the known prints?

3 A [MR. ██████]: When items are received in the laboratory,  
4 they--each one goes through a series of processes, depending on  
5 the--the evidence itself will dictate the series of processes that it  
6 will receive based on the type of evidence that it is. So at each  
7 step in the process, a process is completed, the latent prints would  
8 be photographed one to one, and they would be preserved because the  
9 next step in the process can sometimes be harmful to the latent  
10 prints that were developed in the previous step. So all of the ink  
11 prints are captured photographically one to one; and once the entire-  
12 -generally, once the entire item is processed, those prints are  
13 compared side by side with an actual inked fingerprint card, using a  
14 small magnifier; and they are manually compared one to one by an  
15 examiner.

16 Q [MAJ COWHIG]: Is there a certain point that you are looking  
17 for in the print or----

18 A [MR. ██████]: What do you mean?

19 Q [MAJ COWHIG]: What do you look for in the print to compare  
20 them?

21 A [MR. ██████]: Well, in latent--for--in prints--prints are  
22 permanent and unique. That is the basis of our--of our science that  
23 your fingerprints are permanent. They are set in their fixed