

**Military Commissions:
Arraignment of BALI BOMBERS
Encep Nurjaman (aka Hambali), Mohammed Nazir Bin Lep, and Mohammed Farik Bin Amin
August 30–31, 2021**

Events:

During the open sessions of the military commissions on August 30 and 31, Judge Commander Hayes C. Larsen (USN) presided over the arraignment of Encep Nurjaman (Hambali), Mohammed Nazir Bin Lep, and Mohammed Farik Bin Amin on charges that included murder, conspiracy to commit murder, and accessory after the fact, among other allegations.^{1, 2}

Judge Larsen underwent voir dire August 30 and took the step of voir diring the Bahasa Indonesian (a form of Malay spoken in Indonesia) and Malay language interpreters. The judge informed the accused of their rights to attendance, counsel, and interpretation/translation in their native languages and confirmed their understanding of their rights. At the behest of the lead defense counsel, the judge also checked Bin Lep's comprehension of the proceedings in Bahasa Indonesian since Bin Lep voluntarily decided to switch from listening in his native Malay language.

On August 31, the government read the charges into the record, but he did not read the charge sheet appendices into the record because all three of the accused waived the reading of the appendices. Judge Larsen explained to the accused that the arraignment had been completed, reiterated their rights to attendance at sessions throughout all stages of the commission proceedings, and cautioned them that even in the event of their voluntary absences, the court session for the day of an absence would proceed.

During both days, the defense teams repeatedly raised objections to and concerns about the competence and abilities of the interpreters. Each defense team at separate times asserted that the arraignment was defective because the defendants were not receiving complete understanding of what was happening. Judge Larsen noted and allowed the objections on both days but stated the court's confidence in and acceptance of the certification of the interpreters. He also determined that objections to the interpreters and claims of the deficiency of the arraignment should be raised and argued in motions at a later time, explaining that the arraignment would lock the charge sheet, allowing no further modification of the charges, so the military commission could move forward.

Nurjaman, Bin Lep, and their defense teams deferred entry of a plea in response to the charges. Bin Amin and his defense team reserved entry of a plea.

Observations:

The subject of interpreters arose frequently during the proceedings and may be related to a series of filings from February and March 2021 that were decided against Bin Amin.³ The defense objected to the way the court interpreters were conducting their interpretations, objected to not having interpreters

1 Nurjaman AE0001.004(TJ) "Biography, Department of the Navy: Judiciary CDR Hayes C. Larsen."

[https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0001.004\(TJ\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0001.004(TJ)).pdf)

2 Nurjaman AE0001.003(TJ) Detailing Memorandum.

[https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0001.003\(TJ\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0001.003(TJ)).pdf)

3 [https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0008.001\(GOV\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0008.001(GOV)).pdf)

[https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0008.002\(AMI\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0008.002(AMI)).pdf)

[https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0008.003\(Gov\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0008.003(Gov)).pdf)

[https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20\(AE0008.004\(TJ\)\).pdf](https://www.mc.mil/Portals/0/pdfs/Nurjaman/Nurjaman%20(AE0008.004(TJ)).pdf)

at the defense tables (though it was noted that two of the three defense teams had brought their own interpreters to GTMO), objected that the court interpreters were biased against the detainees, and objected to an interpreter at the government table that two of the accused recognized as an interpreter from their sessions before the Periodic Review Board. Argument against the court interpreters continued even after one detainee, on his own initiative, created a workaround to aid in his understanding – and would have been able to explain the proceedings in court to his co-defendant, who could not use the workaround. The defense teams may regard their argument concerning deficiency of the arraignment based on unclear translation as their best opportunity to bring about an abatement of proceedings against their clients.

Several of the defense teams' civilian lead counsels exhibited a lack of familiarity with the purpose of an arraignment. One expressed her lack of understanding as to why the arraignment had to be completed, or possibly what the consequences of an arraignment were. Another repeatedly asked about procedures for raising objections to charges, despite the judge explaining and eventually appearing to make a bench ruling that objections should be raised as motions at a later date. Comparison of military commission arraignment procedures to other courts' procedures for placing charges on the record and informing the accused in a formal court setting do not reveal insurmountable dissimilarities, so two lead counsels out of three having apparent difficulties understanding the arraignment is unusual.

Judge Larsen demonstrated his bench style as sympathetic and flexible, but also decisive. He exhibited more patience for repetitive arguments than what some other judges presiding over military commissions may demonstrate, but he ultimately made his limits very clear. If he continues in this style, Judge Larsen has the potential to move the motions and arguments presented in open sessions along much faster by issuing bench rulings for repetitive questions and/or delay-seeking tactics.

Motions:

Motion	Government	Defense	Judge
(No number. Discussion of facility of interpreters.)		<p>–D (Bin Lep) stated concern that the interpreters have a script in front of them and would object if the translators were translating the script instead of the court's words.</p> <p>–D (Nurjaman) asked if the interpretation track was being recorded for later review.</p>	<p>–Judge did not know if the translators were being recorded, and planned to ask, but directed that the court would conduct voir dire of the translators immediately.</p> <p>–Judge asked the government if the Office of Military Commissions had</p>

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	<p>–Government confirmed that the interpreters it had provided could do so, per the detailing under the Rule for Military Commission 502E.</p>	<p>–D (Bin Lep) reported that Bin Lep could not understand the Malay translation.</p> <p>–D (Nurjaman) confirmed. –D (Bin Lep) confirmed. –D (Bin Amin) confirmed.</p> <p>–Nurjaman said yes.</p> <p>–Bin Lep confirmed hearing but asserted not understanding 100%. –D (Bin Lep) stated that the interpreter did not translate what Bin Lep actually said.</p> <p>–Bin Lep confirmed understanding the judge in English, but not well. –D (Nurjaman) stated that the interpreters were not translating what the prosecution or other defense personnel were saying. –D (Nurjaman) entered a formal objection that the translation was really bad</p>	<p>arranged for translators that could convert English to Indonesian and Malay, and Malay and Indonesian into English.</p> <p>–Judge thanked the government and noted to D (Bin Lep) that that was what was now being addressed. –Judge asked if Nurjaman understands and speaks Bahasa Indonesian, and if Bin Lep and Bin Amin understand and speak Bahasan Malay.</p> <p>–Judge asked Nurjaman directly if he could understand the interpreter. –Judge asked Bin Lep if he could understand the interpreter.</p> <p>–Judge asked Bin Lep if he could understand the judge in English.</p>

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	<p>–Interpreter 1 learned English and Malay in Malaysia, where he was born, and then studied to receive bachelor's and master's degrees in English in the United States.</p> <p>–Interpreter 1 responded that he was translating Malay, and that he had learned it at school and at home during his childhood in Malaysia. He formally studied Malay in grade school and high school and took the Malaysian standard exam “SPM.”</p> <p>–Interpreter 1 is a Malay proficiency tester for the DOD and is qualified as an interpreter for the state of Colorado courts.</p> <p>–Interpreter 1 had translated 5 cases in Malay, was trained in translating legal issues, and was never disqualified as a Malay interpreter.</p>	<p>and not adequate. Requested that a recording be made of the interpretations.</p> <p>–Bin Lep said yes, about 30%, because the words were not in a normal order.</p>	<p>–Judge was unwilling to entertain the objection yet.</p> <p>–Judge asked Bin Lep if, given an increase in volume, he could understand the translation.</p> <p>–Judge asked Interpreter 1 how the interpreter learned English.</p> <p>–Judge asked Interpreter 1 which language he had been brought to translate, and how the interpreter learned that language.</p> <p>–Judge asked about Interpreter 1's accreditations.</p> <p>–Judge asked about Interpreter 1's experience translating legal issues.</p> <p>–Judge asked if Interpreter</p>

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	<p>–Interpreter 1 said no to all three questions.</p> <p>–Interpreter 2 stated that she was raised bilingual in English and Bahasa Indonesian and went to formal language school in the 3rd grade. She later received a Fulbright Scholarship to study in the USA.</p> <p>–Interpreter 2 stated her certification in English and Bahasa.</p> <p>–Interpreter 2 spent her entire primary education in Indonesia and attended the University of Indonesia. She has received certification in the languages she is working in.</p> <p>–Interpreter 2 has been an interpreter in Kentucky, New York, and other states. In Kentucky, she was not certified because Kentucky does not have certification for Indonesian languages. She has been a court interpreter for healthcare and bankruptcy cases.</p>		<p>1 knew Bin Lep's family, Bin Lep himself, or had any personal or professional issues that would impact true interpretation for the proceedings.</p> <p>–Judge asked Interpreter 2 how she learned English, and if she formally studied English.</p> <p>–Judge asked what languages Interpreter 2 was certified to interpret for the commission.</p> <p>–Judge asked if Interpreter 2 formally studied Bahasa.</p> <p>–Judge asked if Interpreter 2 has worked in other courts and been certified in those jurisdictions.</p> <p>–Judge asked if Interpreter 2 had had any training to</p>

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	<p>–Interpreter 2 said yes and has used it approximately 7 times.</p> <p>–Interpreter 2 said no.</p>	<p>–Nurjaman understood.</p> <p>–Bin Lep said that the structure is “reversed, upside-down.”</p> <p>–D (Nurjaman) stated that if the court intended to find the interpreters as qualified, D (Nurjaman) would object.</p> <p>–D (Nurjaman) twice objected that the judge had not read all the questions supplied by the defense.</p>	<p>translate complicated legal issues.</p> <p>–Judge asked if there was anything in Interpreter 2's personal or professional life that would impact true interpretation.</p> <p>–Judge asked Nurjaman if he was able to understand the interpreter as she spoke.</p> <p>–Judge asked Bin Lep if he understood the interpreter.</p> <p>–Judge stated that the interpreters have already been certified and sworn, so the court would not be finding anything about qualifications without a motion questioning those qualifications.</p> <p>–Judge twice stated that the questions would be made part of the record.</p> <p>–Judge shared that he had learned that the translations were being recorded, and that the government would work to share those recordings.</p>
(No number. Resolving a potentially sensitive issue after a security pause.)		<p>–D (Bin Amin) stated that Bin Amin recognized an interpreter who translated at a Periodic Review Board, and that the interpreter might be sharing</p>	

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	<p>–Government noted that it would object if instructed to remove the interpreter.</p>	<p>confidential information with the prosecution. –D (Bin Amin) asserted that the prosecution had no reason to retain an interpreter at the table, so this was potential government intimidation. –D (Bin Lep) concurred with D (Bin Amin).</p> <p>–D (Bin Amin) asked that the interpreter be removed from the courtroom.</p>	<p>–Judge thanked the defense for bringing the matter to the court's attention and directed that the defense should place it into a written motion that could be properly vetted for sensitivity.</p> <p>–Judge deferred the issue in favor of finishing the arraignment.</p>
Arraignment		<p>–Nurjaman understood. –Bin Lep understood. –Bin Amin understood.</p> <p>–Nurjaman understood. –Bin Amin understood. –Bin Lep did not understand, or, rather, was concerned at not having discussed the opportunity with his counsel.</p>	<p>–Judge explained that the accused were entitled to representation by military lawyers and asked if the accused understood this.</p> <p>–Judge explained that the accused could request particular military lawyers and asked if the accused understood this.</p> <p>–Judge explained that the accused could retain qualified civilian counsel, at no cost to the</p>

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		<p>–Nurjaman understood. –Bin Lep understood. –Bin Amin understood.</p> <p>–Nurjaman understood but requested an Indonesian lawyer. –D (Nurjaman) noted that the defense team had made that request to the Convening Authority, but that it had been denied. –D (Nurjaman) corrected himself that the Convening Authority had not denied the request but had not responded to it.</p> <p>–Nurjaman understood. –Bin Lep understood. –Bin Amin understood.</p> <p>–Nurjaman stated no questions but reiterated a desire for an Indonesian attorney.</p> <p>–Nurjaman said yes.</p>	<p>government, and asked if the accused understood this.</p> <p>–Judge explained that qualified counsel had to be admitted to practice law in the United States and be willing to comply with the military commissions. He asked if the accused understood.</p> <p>–Judge acknowledged, then asked again if the accused understood their rights to civilian attorneys.</p> <p>–Judge explained that military council would remain, even if a civilian counsel was retained. –Judge asked if any of the detainees had questions about their rights as explained.</p> <p>–Judge asked Nurjaman if he desired to be represented by the civilian and military counsels on his team.</p> <p>–Judge asked Bin Lep if he understood his rights about</p>

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		<p>–Bin Lep stated understanding.</p> <p>–Bin Lep said yes.</p> <p>–Bin Amin said yes.</p> <p>–Bin Amin said yes.</p> <p>–Nurjaman said yes. –Bin Lep said yes. –Bin Amin said yes.</p>	<p>attorneys.</p> <p>–Judge asked Bin Lep if he desired to be represented by the civilian and military counsels on his team.</p> <p>–Judge asked Bin Amin if he understood his rights to counsel.</p> <p>–Judge asked Bin Amin if he desired to be represented by the civilian and military counsels on his team.</p> <p>–Judge swore all counsels in.</p> <p>–Judge informed the accused of their rights to attend or absent themselves from any court session, and the possible ramifications of absence. Judge asked the accused if they understood.</p>
<p>(No number. Judge qualifications and offer of voir dire.)</p>	<p>–Government asked about the judge's knowledge of the detainees prior to</p>		<p>–Judge placed his qualifications on record.</p> <p>–Judge advised all present of any previous encounters he had had with any personnel present or known to have acted or be acting upon the behalf of the government or the accused.</p> <p>–Judge pledged that no incidence prior or ongoing impacted, was impacting, or would ever in some way impact his ability to perform as an impartial judge in this matter.</p> <p>–Judge offered right of voir dire to the government.</p>

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	<p>being detailed to the case, and if any of the judge's friends or family had had any connections to the accused or the case.</p> <p>–Government asked about the judge's awareness of the case prior to being detailed.</p> <p>–Government asked if the judge had discussed the case with anyone substantively, not just administratively.</p> <p>–Government asked if the judge had made any public statements of opinion about the case, the guilt or innocence of the accused, terrorism, or Al Qa'eda and Jema'ah Islamiyah.</p> <p>–Government asked if any of the judge's friends or family had been victims of terrorism-related offenses.</p> <p>–Government asked about the judge's retirement eligibility.</p> <p>–Government asked about any civilian or otherwise follow-on employment prospects.</p> <p>–Government asked about several other personnel</p>		<p>–Judge stated no awareness of the detainees prior to detailing, and no connections to anyone connected to the case or detainees.</p> <p>–Judge had no awareness of the case prior to being detailed.</p> <p>–Judge said no.</p> <p>–Judge said no.</p> <p>–Judge said no.</p> <p>–Judge is eligible for retirement in August or September of 2023, but given a recent selection for promotion, has chosen not to retire until at earliest spring of 2025.</p> <p>–Judge had none.</p>

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	<p>connected to or affiliated with the case.</p> <p>–Government confirmed with the judge that his current orders were for duty in Norfolk, VA, and asked if he had any orders that would send him away.</p> <p>–Government asked if the judge's deployment in Abu Ghraib after the abuses had resulted in the judge investigating the personnel or any of the detainees, and if his experiences would impact his impartiality.</p> <p>–Government asked if the judge's deployment on an aircraft carrier had ever</p>		<p>–Judge knew few of the names, and those few he pledged did not impact his impartiality.</p> <p>–Judge did know Cmdr. Eric Nelson of the defense from concurrent rotations in Japan for two years, and their families did watch children for each other. After rotations diverged, nobody kept in touch except via sporadic Facebook-style messages. When on the same base, they saw each other weekly, “At least at church on Sunday.” They never discussed either of their positions relative to the military commission.</p> <p>–Prior to nomination, the judge had received orders to go to Washington state, but those orders had been canceled so he could remain in proximity to Washington D.C. and the time zone that the military commission will occur in.</p> <p>–Judge responded no.</p>

Motion	Government	Defense	Judge
	<p>taken him to Southeast Asia, or if any other deployments had required him to work with the police of Southeast Asia.</p> <p>–Government asked if any of the judge's experiences in Southeast Asia would impact his ability to be impartial.</p>	<p>–D (Nurjaman) asked if the judge professionally knew anyone impacted by terrorism or the wars in Iraq and Afghanistan.</p> <p>–D (Nurjaman) asked how long the judge was at Abu Ghraib and asked what he did there.</p> <p>–D (Nurjaman) asked if the judge had ever followed up on the abuses at Abu Ghraib.</p>	<p>–Judge said no, except for one brief stint in the Philippines and Hong Kong, where he worked with the embassy country teams and the Naval Criminal Investigative Service, but not with police.</p> <p>–Judge said no.</p> <p>–Judge stated that he had a brother who served multiple tours in Afghanistan or Iraq, and like most personnel serving after 9/11 he knows people involved in the global war on terror, but nothing of that impacts his ability to sit as a military judge.</p> <p>–Judge confirmed six months and stated that he was there as part of Team 134, which reviewed files on incoming detainees and determined whether to refer the detainees to the Disciplinary Review Board for release, or to the Central Criminal Court of Iraq for prosecution.</p> <p>–Judge said no, that the investigations were</p>

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		<p>–D (Nurjaman) asked if the judge ever worked with international organizations like the ICRC while at Abu Ghraib.</p> <p>–D (Nurjaman) asked if any of the files that the judge reviewed included requests for intelligence.</p> <p>–D (Nurjaman) asked if the review required international legal standards regarding detainees, or if it was just a law-of-war situation.</p> <p>–D (Nurjaman) asked if any of the referrals for prosecution dealt with mistreatment of prisoners or something similar.</p> <p>–D (Nurjaman) asked about the training provided by the DOD and the Navy about law of war violations or criminal acts that would help with the processing of the files.</p> <p>–D (Nurjaman) asked what crimes the judge was asked to look for in identifying files for prosecution.</p>	<p>complete before his arrival, and the Iraqi nationals were controlling the portion of the prison where the events had occurred.</p> <p>–Judge said no, that his responsibilities were not at that level at that time.</p> <p>–Judge said no, and that those would have stood out.</p> <p>–Judge said no, international law was a separate portfolio, and his work was all law-of-war.</p> <p>–Judge did not recall anything of that nature.</p> <p>–Judge had the standard mobilization training and was given familiarization by the task for supervisor.</p> <p>–Judge stated that the crimes were battlefield crimes or acts against coalition forces. He did not see only criminal crimes, like rape or robbery. Briefings concerning</p>

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		<p data-bbox="724 359 1096 464">–D (Nurjaman) asked what sorts of crimes the judge did see.</p> <p data-bbox="724 758 1096 863">–D (Nurjaman) asked if the judge had seen any cases involving torture.</p> <p data-bbox="724 873 1096 1083">–D (Nurjaman) asked if the judge had read anything about Mitchell and Jessen and defined “Enhanced Interrogation Techniques” as torture.</p> <p data-bbox="724 1125 1096 1335">–D (Nurjaman) asked if the judge had thought about torture being a violation of international law but no person in the U.S. having been prosecuted for it.</p> <p data-bbox="724 1640 1096 1919">–D (Bin Lep) stated that Bin Lep had transitioned from the Malay translation to the Indonesian translation voluntarily, because he believed that the Indonesian translation might be more adequate at communicating</p>	<p data-bbox="1105 212 1448 390">review focused on standards of proof for the Central Criminal Court of Iraq, and what evidence met those standards.</p> <p data-bbox="1105 432 1468 789">–Judge listed being caught with bomb-making material or IEDs; being caught with a phone and bomb-making material near an IED; being caught with arms and ammunition that exceeded limits; being caught in direct combat against coalition forces.</p> <p data-bbox="1105 831 1308 863">–Judge said no.</p> <p data-bbox="1105 1052 1451 1157">–Judge said no, but that he was generally aware of EITs as a subject.</p> <p data-bbox="1105 1314 1456 1524">–Judge had not thought in those terms but is aware of international law and the law of warfare as pertains to the prohibition against torture.</p> <p data-bbox="1105 1566 1433 1671">–Judge noted that D (Bin Lep) wanted to bring something up.</p>

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		<p>the events in court.</p> <p>–D (Bin Lep) objected to the interpreter again.</p> <p>–D (Bin Lep) iterated concern that the interpreters are biased against the detainees.</p> <p>–Bin Lep confirmed listening to the Indonesian translation.</p> <p>–Bin Lep said yes.</p> <p>–Bin Lep stated that he speaks Indonesian 70%.</p> <p>–Bin Lep estimated he was using 50% Malay, 50% Indonesian to respond to the judge.</p> <p>–Bin Lep estimated his understanding as 100%, between the two translations.</p> <p>–D (Bin Lep) re-registered objection to the interpreters and questioned their competence.</p> <p>–D (Bin Amin) stated that Bin Amin was understanding about half of the situation and agreed with D (Bin Lep) that the arraignment was deficient.</p> <p>–D (Nurjaman) asked the judge who he was advising,</p>	<p>–Judge asked Bin Lep if he was listening to the Indonesian translation.</p> <p>–Judge asked Bin Lep if he could understand what the judge was saying through the Indonesian interpretation.</p> <p>–Judge asked Bin Lep how well he speaks Indonesian.</p> <p>–Judge asked what language Bin Lep was using to respond to his questions.</p> <p>–Judge asked Bin Lep how much of the proceedings he had understood to that point. (Question was requested by D (Bin Lep).)</p> <p>–Judge reviewed the process of voir dire with Bin Lep.</p> <p>–Judge restated the court's satisfaction with the certified interpreters at this time and directed proceedings to continue.</p>

Motion	Government	Defense	Judge
		<p>when he was in Southeast Asia as a legal advisor in the military.</p> <p>–D (Nurjaman) asked what Navy regulations covered international issues such as servicemen arrested in a foreign country.</p> <p>–D (Nurjaman) asked if the UCMJ required the military to provide local counsel to personnel that get arrested overseas.</p> <p>–D (Nurjaman) asked if the purpose of such a policy was to ensure military personnel could understand what was happening in a foreign legal proceeding.</p> <p>–D (Nurjaman) asked if the judge spoke to foreign lawyers or foreign law firms as part of checking on these situations.</p> <p>–D (Nurjaman) asked if these foreign law firms represented the U.S.</p>	<p>–Judge responded that he was advising the country team and visiting forces, usually regarding liberty incidents. He noted that none of the issues at advisement pertained to international law, and he never interacted with a non-U.S. Embassy.</p> <p>–Judge said that the UCMJ (Uniform Code of Military Justice) governed that.</p> <p>–Judge noted that that depended on the country and added that part of his job at that time was to assist embassy country teams in identifying law firms that could represent military members.</p> <p>–Judge supposed that could have been a reason but stated that he was not privy to the reasoning as a lieutenant at the time.</p> <p>–Judge agreed that he did sometimes interact with foreign lawyers and law firms.</p>

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		<p>servicemen.</p> <p>–D (Nurjaman) suggested that the process was connected to the joint forces agreements.</p> <p>–D (Nurjaman) asked if the judge had any contact with personnel who had been arrested in a foreign country.</p> <p>–D (Nurjaman) asked if the judge had contact with lawyers or local interpreters who would represent the arrested personnel.</p> <p>–D (Nurjaman) asked if the judge had become aware of the Bali and Jakarta bombings while working in Southeast Asia.</p> <p>–D (Nurjaman) asked if the judge was aware at the time of the Moro front and Muslim insurrections in the Philippines.</p> <p>–D (Nurjaman) asked if the judge was aware of the trials in Indonesia of people accused of the Bali and Jakarta bombings.</p> <p>–D (Nurjaman) asked if the judge followed the news while based in Southeast Asia.</p> <p>–D (Nurjaman) asked if the</p>	<p>–Judge noted that that depended on the situation. He then reiterated that his role had only been to ensure that the embassy had a process in place to deal with those situations.</p> <p>–Judge clarified that the process he was ensuring was that the embassy knew who to notify if a servicemember was arrested, and what initial steps should be taken.</p> <p>–Judge said no.</p> <p>–Judge could not recall an instance that called on him to do so.</p> <p>–Judge said no, not specifically.</p> <p>–Judge was aware but had no involvement.</p> <p>–Judge said no.</p> <p>–Judge said that he only followed news about servicemembers getting in trouble, not foreign news.</p>

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		<p>judge knew of the Senate Select Committee on Intelligence Report on Torture, had ever watched “The Report,” or had ever watched “The Mauritanian.”</p> <p>–D (Nurjaman) asked if the judge believed he would be able to compel witness testimony that might be embarrassing to the U.S. government or military.</p> <p>–D (Nurjaman) asked, with regards to classification guides, etc., what training the judge has received about 505 evidence and what is or is not a national security interest.</p> <p>–D (Nurjaman) asked if the judge would be comfortable in disagreeing with the government about what constitutes a national security interest.</p> <p>–D (Nurjaman) asked if the judge had been called upon to do similar before, and what sorts of cases they were.</p>	<p>–Judge said no, though he had seen that “The Mauritanian” was available on the flight to GTMO, so he was aware it was a movie.</p> <p>–Judge stated that he has no reservations on that point, and that his commitment is to follow the law.</p> <p>–Judge received military training involving 505 hearings, but nothing specific to the evidence that will be presented in the commission.</p> <p>–Judge said yes.</p> <p>–Judge stated that he had had several M.R.E. 505 hearings before, and related that there had been a case where the accused had significant 505 information in the service records. The</p>

Motion	Government	Defense	Judge
		<p data-bbox="724 394 1068 604">–D (Nurjaman) asked if a prior acquaintance with OMC Director Reismeier would impact the judge's ability to chastise or direct OMC.</p> <p data-bbox="724 688 1052 865">–D (Nurjaman) asked if anyone had expressed an expectation of the judge's performance or provided any guidance on rulings.</p> <p data-bbox="724 871 1096 1081">–D (Nurjaman) asked how the judge was going to reconcile his obligations as a court martial judge with his duties as a military commission judge.</p> <p data-bbox="724 1270 1088 1522">–D (Nurjaman) asked, considering the judge's impending promotion, if the judge would request to remain on the commission case rather than assuming a command position.</p>	<p data-bbox="1105 212 1455 422">judge had to make many findings of what information could or could not be presented based on content and classification level.</p> <p data-bbox="1105 579 1455 716">–Judge said no and reiterated that his job and commitment was to follow the law.</p> <p data-bbox="1105 835 1308 867">–Judge said no.</p> <p data-bbox="1105 1056 1446 1308">–Judge shared that he had been completing cases or giving them to colleagues, and he was readying himself for full commitment to the commissions process.</p> <p data-bbox="1105 1497 1463 1925">–Judge explained that those were two different things. With his promotion, he was allowed to apply for command screening, but that only opened the future potential to become a commanding officer, not that he would be assigned a command as a result. He stated he was not seeking to rotate out of the</p>

Motion	Government	Defense	Judge
		<p data-bbox="724 247 1073 390">–D (Bin Lep) asked about the process involved in the judge joining the trial judiciary.</p> <p data-bbox="724 758 1052 863">–D (Bin Lep) asked what date the judge was nominated.</p> <p data-bbox="724 905 1073 1010">–D (Bin Lep) asked what date the judge accepted the trial judiciary.</p> <p data-bbox="724 1125 1089 1268">–D (Bin Lep) asked how the judge became aware he would be joining the trial judiciary.</p> <p data-bbox="724 1493 1078 1667">–D (Bin Amin) asked if the judge was familiar with the Naval Law Review, and if he had functioned as an editor thereof in 2013.</p> <p data-bbox="724 1677 1084 1820">–D (Bin Amin) asked about the judge's level of involvement with the Naval Law Review.</p>	<p data-bbox="1105 212 1344 243">commission billet.</p> <p data-bbox="1105 359 1463 789">–Judge believed that the process was that his name was submitted to the Office of Military Commissions by the Navy Judge Advocate General. On determining that the judge met all the requisite qualifications, OMC accepted the judge. The judge was then detailed to the case.</p> <p data-bbox="1105 831 1455 936">–Judge did not know for sure, but believed it was in December of 2020.</p> <p data-bbox="1105 978 1442 1157">–Judge noted that his date of oath and his date of detailing were both in the appellate exhibits he had submitted.</p> <p data-bbox="1105 1230 1463 1524">–Judge said that he had spoken with Col. Watkins about where he was located (Norfolk), how he was detailed, and that he would likely stay there for ease of process if detailed to a case.</p> <p data-bbox="1105 1671 1317 1703">–Judge said yes.</p> <p data-bbox="1105 1818 1446 1923">–Judge said that he volunteered to assist Capt. Stephen Reyes, who was</p>

Motion	Government	Defense	Judge
		<p data-bbox="724 359 1081 499">–D (Bin Amin) asked if the judge recalled an article called “The Use of Hearsay in Military Commissions.”</p> <p data-bbox="724 653 1081 936">–D (Bin Amin) asked how the judge would decide if faced with choosing between his conscience and the law, then revised her question to ask if he had ever faced such a decision before.</p>	<p data-bbox="1105 216 1468 426">writing a death penalty article for the Naval Law Review. The judge was part of a team of three who checked the citations on the article.</p> <p data-bbox="1105 506 1455 716">–Judge did not recall reading or even being aware of that article. His sole involvement was with the Reyes death penalty article.</p> <p data-bbox="1105 947 1468 1377">–Judge cautioned D (Bin Amin) that these were questions about his deliberative process and not suitable for voir dire, but then stated that he follows the law and the issue that is before him, without passion or prejudice for whom it might affect, and regardless of personal feelings.</p>
<p data-bbox="152 1398 334 1608">(No number. Discussion of procedure for arraignment charge reading.)</p>		<p data-bbox="724 1398 1081 1577">–D (Nurjaman) asked the judge if he should raise objections with each common allegations charge or use a different procedure.</p>	<p data-bbox="1105 1545 1468 1724">–Judge directed that the government was to read out the charges, and the defense should not mount objections at this time.</p> <p data-bbox="1105 1730 1455 1902">–Judge directed that after the reading of the charges, the court and all parties would conduct a scheduling order, and the</p>

Motion	Government	Defense	Judge
	<p data-bbox="370 541 698 793">–Government explained that the common allegations are part of the charges, but not written and repeated every time they occur. They are instead referred to.</p> <p data-bbox="370 1276 698 1705">–Government explained that there was not a particular authority, but it was the government's position that they are incorporated into the charges by way of reference statement, and if the accused choose to have the charges read, these common allegations should be read as well.</p>	<p data-bbox="724 321 1096 499">–D (Nurjamen) asked why the “common allegations” should be noted at the end of each charge if they are not written in the charges.</p> <p data-bbox="724 762 1096 1054">–D (Nurjaman) stated that the common allegations as stated outside of the “charge one, specification one” format do not have anything to do with most of the charges that refer to repeating them.</p> <p data-bbox="724 1675 1096 1925">–D (Bin Amin) stated that there was no objection from her team to the government proceeding by the Federal Rules of Court and Federal Rules of Evidence, as this sounded, if they are equally</p>	<p data-bbox="1105 216 1464 352">scheduling order would set the opportunities for raising objections to the charges and other procedures.</p> <p data-bbox="1105 468 1388 573">–Judge asked the government about the common allegations.</p> <p data-bbox="1105 1024 1412 1308">–Judge asked for the authority by which the government was stating that the common allegations were incorporated into the charges even if not explicitly repeated.</p>

Motion	Government	Defense	Judge
		<p>applied to both the prosecution and the defense.</p> <p>–D (Bin Amin) expressed unfamiliarity with the legal consequences, and why they could not finish the arraignment hypothetically on September 1. Asked for the judge's clarification.</p>	<p>–Judge determined that the charge sheet that the government brought was the government's charge sheet. If there were defects to the charges and specifications, if there are objections to the form, legality, or jurisdiction, those should be established in motions at a later date.</p> <p>–Judge stated that there were legal consequences to the completion of the arraignment, so it should be completed today.</p> <p>–Judge explained that, after the reading of the charge sheet and the completion of the arraignment, the government would no longer be able to change the charges or the charge sheet. Arraignment would lock the charges down, so that the commission could proceed.</p>
<p>(No number. After the reading of the charges, and the waiving of the reading of the appendices, the accused were asked to enter pleas.)</p>		<p>–D (Nurjamen) confirmed waiving of the reading of the appendices.</p> <p>–D (Bin Lep) reiterated waiving of reading of the charges and the appendices.</p> <p>–D (Bin Amin), after discussion with Bin Amin,</p>	<p>–Judge asked for confirmation that all defendants and defense counsel waived the reading of appendices after the charges.</p>

Motion	Government	Defense	Judge
		<p>confirmed waiving of the reading of the appendices.</p> <p>–D (Nurjaman) affirmed intent to defer entry of a plea.</p> <p>–D (Bin Lep) affirmed intent to defer entry of a plea.</p> <p>–D (Bin Amin) affirmed intent to reserve entry of a plea.</p> <p>–Nurjaman said yes.</p> <p>–Bin Lep said yes.</p> <p>–Bin Amin said yes.</p>	<p>–Judge asked Nurjaman how he pleaded but paused after to ask D (Nurjaman) if the intention was to defer entry of a plea.</p> <p>–Judge asked Bin Lep how he pleaded but paused after to ask D (Bin Lep) if the intention was to defer entry of a plea.</p> <p>–Judge asked Bin Amin how he pleaded but paused after to ask D (Bin Amin) if the intention was to reserve entry of a plea.</p> <p>–Judge addressed the accused and reiterated to them that the arraignment has now locked the charges against modification.</p> <p>–Judge informed the accused of their rights to attend every session in every stage of the trial, and that the trial would continue even if they were voluntarily absent, including a sentencing session.</p> <p>–Judge asked Nurjaman if he understood the explained rights.</p> <p>–Judge asked Bin Lep if he understood the explained rights.</p> <p>–Judge asked Bin Amin if he understood the explained rights.</p> <p>–Judge explained the accused's responsibilities to apprise their counsels of “any issues.”</p> <p>–Judge asked the accused if they had any questions</p>

Motion	Government	Defense	Judge
		-Nurjaman said no. -Bin Lep said no. -Bin Amin said no.	about their explained rights and what occurred over the two days.