

***Military Commissions:
Pre-Sentencing and Sentencing Hearings
Mohammed “Zubair” Farik Bin Amin and
Mohammed “Lillie” Nazir Bin Lep
January 15-31, 2024***

Events:

Judge Lt. Col. Braun convened the pre-sentencing colloquy sessions of the Zubair-Lillie Military Commissions during the week of 15 January 2024. He then convened the sentencing panel and began the sentencing hearings on 23 January 2024.¹ The pre-sentencing colloquy sessions were primarily discussions as to how and when submitted exhibits could be presented to the sentencing panel, logistical difficulties with presenting victim impact statements and character witnesses, confirming the accused’s understanding of their guilty plea, government negotiation over the presentation of sworn and unsworn statements before the panel, and formalization of some of the items conceded as fact.

The judge initiated *voir dire* for the sentencing panel in the early afternoon of 23 January 2024.²

On 24 January 2024, the judge officially opened the sentencing phase of the commissions. Victim family members made their victim impact statements and answered questions from the witness box on 24 January. Two of Zubair’s brothers made their character witness statements on 25 January, followed by Zubair and Lillie making their unsworn statements. The government, the defense for Zubair, and the defense for Lillie made their closing statements to the panel on 26 January, and the judge instructed the sentencing panel on use of the sentencing worksheets and their deliberation obligations before withdrawing. The panel members returned once to receive clarification on the directions to consider recommendation of clemency.

At approximately 3:00 p.m. on 26 January 2024, the sentencing panel sentenced Zubair and Lillie each to 23 years and 0 days of confinement. There was no discussion in court indicating the submission of letters recommending clemency, and there was no announcement by the sentencing panel of a whole-panel recommendation of clemency. The judge thanked and dismissed the panel members and then conferred with the defense counsel teams and the accused to confirm that all were aware of their appellate rights. Part of this discussion revealed that the plea agreements stated that Convening Authority will approve a sentence no longer than six years of confinement, and that Zubair will receive credit for 311 days (about 10 months) of confinement, and Lillie will receive credit for 379 days (about 1 year) of confinement.

¹ The start of the sentencing hearing deviated slightly from the schedule set by the judge on 23 October 2023, possibly to allow for correction of visa and travel issues for the two family members serving as witnesses for the defense.

² The defense challenged panel members 2, 6, 7, 8, 15, 18, 20, and 23 for cause, based on answers to their survey worksheets given in both group and individual *voir dire*. Both the defense and the government agreed to strike panel members 4 and 5 for neutrality and impartiality concerns. The defense for Zubair peremptorily challenged panel member 10. After dismissing all of the challenged and struck panel members, the judge found panel members 1, 3, 9, 11, and 12 to be the primary sentencing panel, with panel members 13, 14, and 16 standing as alternates in attendance. The judge excused panel members 17, 19, 21, and 22 as excess.

Observations:

The sentencing phase of the Military Commissions in the case of Mohammed “Zubair” Farik Bin Amin and Mohammed “Lillie” Nazir Bin Lep differed a great deal from the sentencing phase in the case of Majid Khan.³ The Zubair-Lillie case focused far more on the testimony of victim family members impacted by the events of the Bali Bombing and more on their personal responsibility. In contrast, in Khan, focus was placed on the interactions between the accused and the United States government and the time he spent in the Renditions Interrogation Program (RDI), which resulted in the panel tendering a clemency recommendation to the convening authority for mitigation of torture in the reduction of his sentence.

The personalities of Zubair and Lillie were only discernable through the actions of their counsel during the pre-sentencing and sentencing phases. Majid Khan’s personality was only observable at the time of his sentencing when he gave his unsworn statement.

The desire by all sides to work together towards sentencing created a more comprehensive picture of the events leading up to and following the bombing. During the pre-sentencing colloquy, several challenges arose that could have delayed and extended the case into its scheduled third week, but all sides appeared to work together to reduce friction:

- The older Bin Amin brothers, who were witnesses for the Zubair defense, had some difficulties with their visas, delaying their travel to GTMO difficult. The government trial counsel contacted fellow members of the government to arrange alternative transportation and attendance options. The defense for Zubair expressed much frustration with bureaucratic confusion but combined forces with the government team. Ultimately, the Bin Amins were able to give their testimony in person.
- When the government received a late-submitted victim impact statement, the defense teams read and approved the inclusion of the statement very quickly, allowing for it to be added to the government case. Since the statement contained unverifiable photographs on a second page, defense counsel for Zubair asked that that page be omitted. The government pointed out that the defense could object to the statement format, but not the content, so the defense withdrew the omission request. In response, the government determined to include only the written portion of the statement, not the photographs.
- The judge ruled that victim family members could only read their own victim impact statements in the witness box, not the statements of any family who could not attend, on the basis that government witnesses needed to be sworn and a statement from someone not in attendance could not be sworn and cross-examined. The defense for Lillie noted that it had no witnesses to offer and explored with the judge whether it could adopt the victims’ family members as defense witnesses after the government relinquished them – since defense witnesses could make unsworn statements, which would allow the unsworn statements to be read. The judge came to no conclusions as to allowing the adoption, but the offer prevented further motions.
- While challenging panel member 6 for cause, the defense counsel for Zubair brought up several reasonable indications of bias, including stated political and religious alignments,

³ See Judicial Watch GTMO Archive, Majid Khan SENTENCING Hearing, October 28-29, 2021, <https://www.judicialwatch.org/documents/majid-khan-sentencing-hearing-october-28-29-2021/>.

but also stated that the challenge was partly because member 6 was in post-partum, so would be “distracted” and “unable to pay attention.” The government trial counsel appeared incredulous and offended on the member’s behalf, and there was background discussion by the government team. The government said it did not agree with all the bases for challenge but would not object to it.

The victim impact statements came from a wide variety of victim family members. American citizens, British citizens, and Greek citizens spoke. People who had lost sons, daughters, sisters, brothers, and uncles spoke. Some had known of their losses within days of the bombing, but others had searched for weeks and months before receiving confirmation. Most were mourning the loss of someone they knew personally, but one of the victim family members spoke of growing up in a household that constantly mourned and discussed the uncle whom he had not yet been born to meet. Some struggled to express themselves in their native English, others struggled through expressing themselves in English as a foreign language. Some had already forgiven the accused, some had chosen not to forgive the accused, and some spoke of the psychological impact of being on a continuing journey to accept their losses and try not to give into hate. They described hardships of faith, failing health, strained or broken family relationships, economic loss, and psychological trauma. One man noted that he had lost a grandchild because his dead son’s fiancée could not afford to be a single mother in her traditional society, even with the promise of the child being adopted by its grandparents. A woman noted her recent realization that she was the only one to remember some things about her brother, because nobody else had been part of their siblinghood. Each victim impact statement was differently relatable and a different story of pain and resilience. Several of the victim family members repeatedly apologized for weeping.

The younger of Zubair’s two older brothers who came to testify to his character also apologized for weeping. As Zubair’s senior by only three years, he remembered Zubair as the charming and religiously studious child who grew into a young man, and who babysat his nieces and nephews happily. He mourned the Zubair who had been raised to always be kind and not judge people, who had committed to always praying in the mosque rather than staying home to pray. He noted that communication with Zubair had become inconsistent once Zubair followed his sister away from home to study at university, so the family had not been aware of Zubair’s arrest for many years. When asked if there had ever been any anti-American or anti-western sentiments expressed in the home as Zubair grew up, Zubair’s brother broke down, saying, “You’re all so nice!” He told several stories about guards and lawyers being kind, fellow observers in the courtroom gallery being gentle and welcoming, and experiences that had touched him in the brief time he had been at GTMO. Though it has been suggested that this is a counterexample, indicating that he had been taught that Americans were bad, several of his comments indicated that he had expected to be the target of hatred because of his brother.

The older of Zubair’s two brothers did not weep, though he did appear emotionally impacted, especially when discussing his parents. As Zubair’s senior by twelve years, he noted that he had already been well into his schooling and was soon out of the house to work and marry, once Zubair was born. He spoke about the environment in which Zubair was raised and the preparations the family made to accommodate Zubair’s return. A new family house had been built, with space specifically for Zubair to move in and take responsibility for caring for his aging parents. Family businesses in restaurants and fuel stations have positions for Zubair to fill and others in the village might have places for him to work. The family had plans for supporting

Zubair in his reintegration to society and had never spoken against Americans or had any ties to extremism. Zubair's eldest brother remembered him as a serious and religious child, the most devoted among them, but that their mother had always taught them to not think poorly of other people. He recalled stories of heroes of the Muslim faith being told but nothing that would have caused Zubair to turn to terrorism.

Testimony by victim family members and by Zubair's brothers had been accompanied by photographs of people and places. When Zubair gave his unsworn statement, he chose to accompany it with pen and ink drawings that he had learned to create while in custody. He displayed a self-portrait of himself smiling during the first portion of his statement in which he related his memories of growing up in a happy family. A family that worked together to build its house out of lumber his father brought home from his job. Memories of his mother teaching everyone to be good Muslims, of hearing about the heroes of the faith, and about hearing news of Muslims being persecuted elsewhere. The memory of his difficult decision to give up religious schooling to take advantage of a scholarship for advanced studies away near his sister. He removed the smiling self-portrait as he said he did not want to compete with the victims and was not comfortable talking about his torture. His defense counsel then stepped in to conduct a question-and-answer session with Zubair about a series of about 15 pen-and-ink drawings he had done to illustrate things he remembered about being tortured. The drawings were not graphic, but they were high impact. Security interdiction measures interrupted the feed when the question-and-answer touched on classified information. After the portion of Zubair's unsworn statement that dealt with torture, he replaced the drawings with his smiling self-portrait again and testified that in the intervening years he had grown out of being the angry youth desperate to do something to help beleaguered Muslims. The person who had accepted and transferred money to the bombers, and who had attempted to hide the bombers, not realizing they intended to kill so many people. He stated that he was not angry with Americans, and that the guard force, his doctors, and his lawyers had taught him a lot. He stated his intention to find peaceful means for resolving conflicts in the future and to teach others to do the same.

Lillie did not submit any exhibits on his own behalf, beyond the text of his unsworn statement, and he had no friends or family members to testify to his character. He spoke in his unsworn statement about growing up in a sheltered village, bereft of the father who had died two weeks before his birth, learning Islam and life from his now-dead mother. He spoke of having learned good principles, but having been vulnerable to men who recognized his longing for a father figure and who targeted and used him to support causes and acts of which he is now regretful. He told of deciding the acts had been wrong and immediately cooperating once captured, whether he was under torture or not. He talked about members of the guard force who had shown him kindness and taught him what Americans were really like. He spoke of his regrets about what might have been if he had made a different choice, including raising a family and being there to support his mother during her last years. He apologized to his victims and their families and recognized that he could not expect forgiveness but hoped that his resolve to advocate peaceful conflict solutions and teach others not to make the same mistakes in the future might help.

Though the fact that Lillie called no witnesses and offered no exhibits has been theorized as a way to make him appear smaller and less culpable to the sentencing panel, the defense counsel for Lillie opened his closing statements by indicating that he and his co-counsels had tried for such, but that Lillie had instructed them against it and told them instead to streamline the process with the government as much as possible. He noted that Lillie had been extremely focused on the

victims and victim family members, fervently praying for them throughout their statements and listening intently, and that Lillie had considered himself to have morally been in the wrong, so it was important that the victims be able to have their say. He also stated that Lillie asked him not to discuss the torture, that Lillie did not define himself by it and had moved beyond it. So instead, the defense counsel reprised Lillie's unsworn statement, emphasizing that Lillie took full responsibility for his actions and their consequences, both legally and in his own moral understanding, that Lillie no longer sees America as the enemy that he was once told it was by men who had offered him brotherhood and the ability to do something for his fellow Muslims, and that Lillie does not believe he has any right to forgiveness so is not asking for mercy or trying to show himself as a victim. Instead, the defense counsel asked the panel to consider Lillie as a man who was young and made terrible choices and now lives in the full awareness of the consequences of those choices in loss to both him and others.

The defense counsel for Zubair also stated that he was young and made mistakes that had far-reaching consequences of which he is now aware. She noted that he is deeply sorry for the loss and pain it has caused, both to the victims and to his family. She also stressed that Zubair's worst mistake was one that looked innocuous on the surface—the transfer of some money and hiding people who were in danger. Though this resulted in many deaths, it is not right to place the weight of the blame for the whole conspiracy on Zubair, especially since he had already spent two decades incarcerated for it, part of that under severe torture. She contended that holding the one mistake of Zubair's youth over him and not allowing him to have grown beyond it was wrong, and that considering the torture, a clemency sentencing was the best justice.

The government trial counsel acknowledged in his closing statement that he thought the accused's contrition seemed genuine. He noted, however, that neither of the accused had had an upbringing that pushed them into paths of conspiracy, extremism, and terroristic acts, and that instead they had chosen to walk that direction themselves, resulting in the deaths of 202 people and the injuries of many more. He stressed that the consequences for the accused and their families were ongoing and that they had a future, where the consequences to the victims were final and their families did not have any chance of a future with them.

The sentencing panel did not choose to recommend clemency for either of the accused. This contrasts with the clemency recommendations made for Majid Khan. Rumor suggests that some members of the Majid Khan sentencing panel were irritated at having been asked to offer clemency when they found out later that Khan's pre-trial plea agreement overturned their sentencing decisions and provided a greater degree of clemency than they recommended. Though the panel members for Zubair and Lillie testified in *voir dire* that they were not familiar with the Military Commissions, nor the particulars of this case, several of them were members of the Intelligence Community and may have heard about Khan's sentencing. If this panel was aware that a plea agreement was in place and not being shared with them, it may have had a direct impact on any decision to offer or not offer a clemency recommendation.

The Convening Authority has not posted information on its sentencing authorizations for Zubair and Lillie to the Military Commissions database. If it follows the same pattern as for Majid Khan, it will not post this document until after Zubair and Lillie finish their sentences, if at all.