

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 [The R.M.C. 803 session was called to order at 1103, 14
2 September 2016.]

3 MJ [COL OSBORN]: Military commission is called to order.
4 I want to also note that these proceedings are being
5 transmitted by closed circuit television to various CONUS
6 locations in compliance with the commission's order Appellate
7 Exhibit 006A. We also have Appellate Exhibit 001B which is my
8 biography which has been provided to the parties on 9
9 September 2016 and at this time I will invite either side to
10 question or challenge me based on my biography or any
11 additional matters. Government?

12 TC [MR. SCHNEIDER]: I have no questions, Your Honor.

13 MJ [COL OSBORN]: Defense?

14 CDC [MR. DIXON]: Your Honor, we would like to voir dire
15 briefly.

16 MJ [COL OSBORN]: Please proceed.

17 CDC [MR. DIXON]: Your Honor, we've received a copy of
18 Appellate Exhibit 001B. I would like to ask you a few
19 questions about it and related matters.

20 MJ [COL OSBORN]: Sure. Let me just turn to that, please.

21 CDC [MR. DIXON]: Pardon me?

22 MJ [COL OSBORN]: Give me a moment to turn to that
23 appellate exhibit. Okay. Go ahead.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 CDC [MR. DIXON]: Your Honor, did you know any of the
2 counsel in this case prior to being detailed by Judge Pohl?

3 MJ [COL OSBORN]: I have met Colonel Jackson before. We
4 were both in the Army Judge Advocate General's Corps.

5 CDC [MR. DIXON]: And had you heard of the Center for
6 Constitutional Rights or Jenner & Block prior to being
7 detailed in this case?

8 MJ [COL OSBORN]: Yes.

9 CDC [MR. DIXON]: What had you heard about the Center for
10 Constitutional Rights?

11 MJ [COL OSBORN]: Just what I read in the newspaper.

12 CDC [MR. DIXON]: Had you heard about the Center's
13 involvement in the Guantanamo cases?

14 MJ [COL OSBORN]: Not the with Guantanamo cases
15 specifically. I mean, I've heard of -- and I know about
16 cases, you know, CCR, but just in general, Center for
17 Constitutional Rights, but nothing specific.

18 CDC [MR. DIXON]: Okay.

19 MJ [COL OSBORN]: And it's all been what I read in the
20 newspaper.

21 CDC [MR. DIXON]: Okay. Do you have any particular views
22 about the Center for Constitutional Rights or the cases that
23 we litigate?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: No, I don't. And I don't even know what
2 cases you litigate in total.

3 CDC [MR. DIXON]: What had you heard about Jenner & Block
4 prior to being detailed in this case?

5 MJ [COL OSBORN]: I knew they were a law firm. I'm not
6 sure where they're headquartered out of. I believe they're
7 regarded as big law or white shoe law firm.

8 CDC [MR. DIXON]: Thank you. During your -- I've looked
9 at Appellate Exhibit 001B and I have one question or
10 clarification: During your career in the Army, have you ever
11 served as criminal defense counsel in the Trial Defense
12 Services or otherwise?

13 MJ [COL OSBORN]: I have not.

14 CDC [MR. DIXON]: Okay. Shifting gears a moment, had you
15 ever heard of Majid Khan prior to being detailed to this case?

16 MJ [COL OSBORN]: No.

17 CDC [MR. DIXON]: Since being detailed to the case, have
18 you read any news accounts or read any other public reports
19 about Majid Khan?

20 MJ [COL OSBORN]: No.

21 CDC [MR. DIXON]: And have you read the report by the
22 Senate Select Committee on Intelligence about the CIA torture
23 program?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: No.

2 CDC [MR. DIXON]: Have you discussed that reported with
3 anyone or heard summaries of that report from anyone?

4 MJ [COL OSBORN]: No. I mean, I know -- I have heard that
5 that document exists out there, but I have not read it or
6 discussed it with anyone.

7 CDC [MR. DIXON]: Were you -- are you aware or were you
8 otherwise aware that Mr. Khan's torture is described at length
9 in that report?

10 MJ [COL OSBORN]: Not aware.

11 CDC [MR. DIXON]: Okay. And have you during the course of
12 your career in the Army ever been involved in a case in which
13 an accused was subject to sexual assault by the CIA?

14 MJ [COL OSBORN]: No.

15 CDC [MR. DIXON]: And have you ever been involved in a
16 case in which the accused was waterboarded by the CIA?

17 MJ [COL OSBORN]: No.

18 CDC [MR. DIXON]: And have you been involved in a case in
19 which an accused was subject to other acts of torture,
20 including but not limited to, sleep deprivation and beatings?

21 MJ [COL OSBORN]: No. No.

22 CDC [MR. DIXON]: Do you have any --

23 MJ [COL OSBORN]: When you say beatings, I've had assault

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 cases in courts-martial. Is that what you're referring to?

2 CDC [MR. DIXON]: I'm referring to beatings by the CIA.

3 MJ [COL OSBORN]: No.

4 CDC [MR. DIXON]: And do you have any preset notions or
5 have you ever reached any prior conclusions about whether any
6 of those acts I've just described would be lawful under any
7 circumstances?

8 MJ [COL OSBORN]: I have no preconceived notions on that.

9 CDC [MR. DIXON]: Do you believe those acts would be
10 lawful if they were -- if they happened to a U.S. service
11 personnel who happened to fall into enemy hands?

12 MJ [COL OSBORN]: I would have to know what the facts are
13 and I would base any discussion on the lawfulness or
14 unlawfulness of those acts based on the individual facts ----

15 CDC [MR. DIXON]: And have you ever ----

16 MJ [COL OSBORN]: ---- or circumstances.

17 CDC [MR. DIXON]: Have you ever been involved in a case in
18 which an accused was tortured but nonetheless made a decision
19 to accept responsibility for his or her actions and to agree
20 to cooperate with the government over an extended period of
21 time, over a period of years?

22 MJ [COL OSBORN]: No.

23 CDC [MR. DIXON]: Have you ever been involved in a

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 terrorism case before?

2 MJ [COL OSBORN]: I have been involved in a case where
3 there was evidence sought to be admitted regarding terrorism,
4 but the charges did not -- the charges were not terrorism
5 related.

6 CDC [MR. DIXON]: What case was that, Your Honor?

7 MJ [COL OSBORN]: That's the United States versus Hasan,
8 court-martial in Texas in 2013.

9 CDC [MR. DIXON]: Is that the Fort Hood shooting case?

10 MJ [COL OSBORN]: Yes.

11 CDC [MR. DIXON]: Who is the defendant in that case?

12 MJ [COL OSBORN]: Major Nidal Hasan.

13 CDC [MR. DIXON]: What was Major Hasan's religion?

14 MJ [COL OSBORN]: He was Islam.

15 CDC [MR. DIXON]: And was his religion a factor in that
16 case in any way?

17 MJ [COL OSBORN]: I don't recall that there was any
18 evidence presented on his religion other than the fact that --
19 of what his religion was. And when you say -- you'll have to
20 clarify that question. I'm not exactly sure.

21 CDC [MR. DIXON]: Were there any issues that arose in that
22 case concerning his religious beliefs?

23 MJ [COL OSBORN]: Yes.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 CDC [MR. DIXON]: And what issues were those, if you can
2 describe them?

3 MJ [COL OSBORN]: There were some issues of whether or not
4 the -- the shooting was religiously motivated.

5 CDC [MR. DIXON]: And did -- what was the outcome of that
6 issue? How was that issue resolved?

7 MJ [COL OSBORN]: Prosecution put on evidence, you know,
8 of motive. It was not confined to religious motivation, but
9 they did put on evidence of motive.

10 CDC [MR. DIXON]: And you admitted that evidence.

11 MJ [COL OSBORN]: That evidence was admitted.

12 CDC [MR. DIXON]: Okay. Was the CIA involved in that
13 case?

14 MJ [COL OSBORN]: Not to my knowledge.

15 CDC [MR. DIXON]: And what happened to Major Hasan? What
16 was the outcome court-martial?

17 MJ [COL OSBORN]: The court-martial convicted him and he
18 was sentenced to death.

19 CDC [MR. DIXON]: How were you affected by that case?

20 MJ [COL OSBORN]: I don't know what that question means.

21 CDC [MR. DIXON]: Well, it's a case that involves -- that
22 involved a mass shooting on a U.S. military installation.

23 You're a senior military officer. It involved, as you said,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 issues relating to the accused's religion and his motivation
2 for carrying out that attack and a number of people died in
3 that attack. Did that have an impact on you personally?

4 MJ [COL OSBORN]: I presided over several murder cases, so
5 I don't believe that the case had a personal impact on me. It
6 was a lengthy case, but I don't believe that the case had any
7 type of personal residual impact on me.

8 CDC [MR. DIXON]: Is that the worst case that you've ever
9 been involved in.

10 MJ [COL OSBORN]: Define worst.

11 CDC [MR. DIXON]: Well in terms of the number of victims,
12 the degree of the carnage, the complexity of the case.

13 MJ [COL OSBORN]: Complexity of the case is a relative
14 term. You know, some cases have more complex legal issues
15 than others. Some cases are complex because of the number of
16 witnesses called. So complexity really is a relative term.

17 I have not had another case that had as many victims
18 in a murder case.

19 CDC [MR. DIXON]: Would your experience in that case
20 affect your ability to preside in a fair and impartial manner
21 over this case?

22 MJ [COL OSBORN]: Not at all.

23 CDC [MR. DIXON]: Would the fact that Majid Khan is Muslim

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 have any impact on the way Your Honor would conduct this case?

2 MJ [COL OSBORN]: Not at all.

3 CDC [MR. DIXON]: Just two more questions. Since you have
4 been detailed to this case, have you had any ex parte
5 communications with the prosecution?

6 MJ [COL OSBORN]: No.

7 CDC [MR. DIXON]: And during your career, during your
8 career in the Army, have you ever worked for or in conjunction
9 with any intelligence agency?

10 MJ [COL OSBORN]: No.

11 CDC [MR. DIXON]: Your Honor, based on your responses to
12 these questions that I've just asked you, we do not object and
13 do not seek Your Honor's disqualification from this case.

14 MJ [COL OSBORN]: So no challenges?

15 CDC [MR. DIXON]: No challenges.

16 MJ [COL OSBORN]: Thank you, Mr. Dixon.

17 CDC [MR. DIXON]: Thank you.

18 Previously the commission conducted a closed hearing
19 pursuant to M.C.R.E. 505(h) as well as a closed hearing
20 pursuant to R.M.C. 806(b)(2) and since the last session that
21 occurred on 29 February 2012 there have been two pretrial
22 conferences in accordance with M.C.R.E. 505(d)(1) and R.M.C.
23 802. So let me summarize what has been discussed in those 802

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 sessions.

2 We discussed the procedures to handle classified
3 matters which were discussed substantively in the closed
4 hearings. We discussed the general conduct and order of the
5 issues that we're going to address today and, in addition,
6 during the 802 conference defense counsel informed the
7 commission that the matters contained in Appellate Exhibit 015
8 are now moot. I will state that I have not read Appellate
9 Exhibit 015 nor do I know the contents of Appellate Exhibit
10 015.

11 Are those matters in Appellate Exhibit 015 moot,
12 Defense Counsel?

13 DDC [LTC JACKSON]: Yes, Your Honor.

14 MJ [COL OSBORN]: And what I just stated a complete and
15 accurate summary of the 802 sessions that have occurred in
16 this case? Government?

17 TC [MR. SCHNEIDER]: It is, Your Honor.

18 MJ [COL OSBORN]: Defense?

19 DDC [LTC JACKSON]: Yes, Your Honor.

20 MJ [COL OSBORN]: Both sides agree to the summary. Is
21 there anything else you would like to add to the summaries?

22 TC [MR. SCHNEIDER]: Nothing, Your Honor.

23 MJ [COL OSBORN]: Defense.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DDC [LTC JACKSON]: We agree. There's no addition.

2 MJ [COL OSBORN]: So what I would like to do now,
3 Mr. Khan, is go over your withdrawal of plea. If you would,
4 take a look at Appellate Exhibit 012, Defense Counsel, if you
5 would be so kind as to place a copy of that in front of him.

6 DDC [LTC JACKSON]: Just one moment, Your Honor.

7 MJ [COL OSBORN]: Sure. Take your time.

8 DDC [LTC JACKSON]: He has it now, Your Honor. Thank you.

9 MJ [COL OSBORN]: Now, it's my understanding, Mr. Khan,
10 pursuant to paragraph 29 of your original pretrial agreement,
11 do you see that there?

12 ACC [MR. KHAN]: Yes, ma'am.

13 MJ [COL OSBORN]: That you wish to withdraw your plea of
14 guilty to certain offenses; is that correct?

15 ACC [MR. KHAN]: Would you repeat that, please?

16 MJ [COL OSBORN]: Yes. Do you wish to withdraw your plea
17 of guilty to certain offenses.

18 ACC [MR. KHAN]: Yes, ma'am.

19 MJ [COL OSBORN]: And, Defense Counsel, if you would,
20 please place a copy of the charge sheet for Mr. Khan's review
21 so that he has that. Do you have that, Mr. Khan?

22 DC [MS. ORPETT]: We're getting it, Your Honor.

23 ACC [MR. KHAN]: I believe your Charge Number IV, right?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: That's --

2 ACC [MR. KHAN]: Material support? Yes, ma'am.

3 MJ [COL OSBORN]: Yes. I'm going to ask you what charge
4 on that charge sheet, are you wishing to withdraw your plea of
5 guilty from.

6 ACC [MR. KHAN]: Charge Number IV.

7 MJ [COL OSBORN]: Charge IV in its entirety, both
8 Charge IV, Specifications 1 and 2?

9 ACC [MR. KHAN]: Yes.

10 MJ [COL OSBORN]: Defense Counsel, is that your
11 understanding?

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

13 MJ [COL OSBORN]: Mr. Khan, during the previous session
14 back in 29 February 2012 you entered a plea of guilty to
15 Charge IV, Specifications 1 and 2, and the previous military
16 judge accepted your plea of guilty to that charge and its
17 Specifications at that time. Do you recall that?

18 ACC [MR. KHAN]: Yes, ma'am.

19 MJ [COL OSBORN]: What I would like for you to do now is
20 take a minute and read that charge and its two specifications
21 to yourself and make sure that that's the charge and
22 specifications that you would like to withdraw your plea of
23 guilty from and then please let me know when you're finished.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. KHAN]: Yes, ma'am, I'm pretty sure,
2 Specification Number 1 and Specification Number 2, I've read
3 them through.

4 MJ [COL OSBORN]: And those are the two specifications in
5 the charge you're wishing to withdraw your plea of guilty; is
6 that correct?

7 ACC [MR. KHAN]: Yes, ma'am.

8 MJ [COL OSBORN]: Okay. Now, at the time you entered your
9 plea of guilty back on 29 February 2012, the military judge
10 told you that you may request to withdraw from your guilty
11 pleas at any time before the sentence is announced and, if you
12 had a good reason for doing so, that your request would be
13 granted. Do you recall that?

14 ACC [MR. KHAN]: Yes, ma'am.

15 MJ [COL OSBORN]: And do you understand, Mr. Khan, that if
16 I accept your withdrawal of your plea of guilty to Charge IV
17 and its Specifications you would, in effect, be entering a
18 plea of not guilty to Charge IV and its Specifications. Do
19 you understand and agree to that?

20 ACC [MR. KHAN]: Yes, ma'am.

21 MJ [COL OSBORN]: And because your plea would change from
22 guilty to not guilty for Charge IV and its Specifications,
23 unless the charge and its specifications are dismissed, the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 government could still decide to go forward on that charge and
2 its specifications and attempt to prove those offenses beyond
3 a reasonable doubt. Do you understand that?

4 ACC [MR. KHAN]: Yes, ma'am.

5 MJ [COL OSBORN]: Now, Defense Counsel, if you would,
6 please state for the record what is the justification for
7 Mr. Khan's request to withdraw his plea of guilty to
8 Charge IV, Specifications 1 and 2.

9 CDC [MS. JESTIN]: Your Honor, we seek to withdraw that
10 plea. It is required as a matter of law by the D.C. Circuit
11 Court's decision en banc in al-Bahlul. There is no set of
12 facts on which Mr. Khan can be convicted and sentenced for
13 conduct prior to 2006 and we understand the government agrees
14 with this position.

15 MJ [COL OSBORN]: You're speaking of the 2014 decision in
16 al-Bahlul?

17 CDC [MS. JESTIN]: Yes.

18 MJ [COL OSBORN]: Thank you. Government, do you agree
19 with that?

20 TC [MR. SCHNEIDER]: I do, Your Honor.

21 MJ [COL OSBORN]: All right. Mr. Khan, your defense
22 counsel believe that that's a good reason to withdraw from
23 your plea of guilty. Do you agree with your defense counsel

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 on that?

2 ACC [MR. KHAN]: Yes, I agree, ma'am.

3 MJ [COL OSBORN]: And I understand there is a modification
4 to the pretrial agreement in this case and we're going to go
5 over that shortly. But, Trial Counsel, if I accept Mr. Khan's
6 request for withdrawal, what do you believe is going to occur
7 with the specifications of Charge IV?

8 TC [MR. SCHNEIDER]: Your Honor, I believe the defense or
9 the government will move to have those charges -- that charge
10 and those specifications dismissed.

11 MJ [COL OSBORN]: My understanding, or at least my
12 interpretation of the first paragraph of Appellate Exhibit
13 016K, and the modification, is that the defense intends to
14 move for dismissal of Charge IV and its specifications; is
15 that correct?

16 CDC [MS. JESTIN]: That's correct, Your Honor.

17 MJ [COL OSBORN]: All right. There is also a stipulation
18 of fact that the previous military judge went over back in
19 2012. It is Prosecution Exhibit 1. Based on Mr. Khan's
20 request for withdrawal, have the parties agreed to enter into
21 a new stipulation of fact or does Prosecution Exhibit 1
22 remain?

23 TC [MR. SCHNEIDER]: Your Honor, Prosecution Exhibit 1

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 remains unchanged.

2 MJ [COL OSBORN]: Okay. And have you seen that copy of
3 the stipulation of fact, Mr. Khan? Counsel, if you could
4 please provide Mr. Khan a copy.

5 ACC [MR. KHAN]: Excuse me, Your Honor.

6 Yes, ma'am. What is the question again? I do have
7 the stipulation with me.

8 MJ [COL OSBORN]: Okay, Mr. Khan. I'm specifically
9 inviting your attention to pages 8 to 11, which would be
10 paragraphs 42 through 61; and then also on page 17, which
11 would be paragraph 110. Those are the paragraphs that appear
12 to be dedicated to the material support to terrorism offenses
13 that Mr. Khan would like to withdraw his plea of guilty from.
14 Is that correct, Defense Counsel?

15 CDC [MS. JESTIN]: That's correct, Your Honor. Could we
16 please have a brief moment to confer?

17 MJ [COL OSBORN]: Sure. Take all the time you need.

18 CDC [MS. JESTIN]: Your Honor, if I may, we have conferred
19 with the government about those paragraphs and I don't want to
20 speak for the government, but our understanding is that their
21 position is those underlying facts captured in the paragraphs
22 would pertain to other charges and that their view would be to
23 oppose their removal from the stipulation of facts. I don't

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 think that we at this point are asking that the stipulation of
2 facts be modified or asking the court to adjourn this
3 proceeding so that we can address that at this point, but that
4 is our understanding of the government's position. We did
5 raise that this morning.

6 MJ [COL OSBORN]: So you're not, at this point, asking for
7 any modifications to the exhibit; is that correct?

8 CDC [MS. JESTIN]: Not at this juncture, Your Honor.

9 MJ [COL OSBORN]: All right. Just to be clear, the
10 Prosecution Exhibit 1, as it is with any stipulation of fact,
11 is in agreement between the defense counsel, the trial
12 counsel, and the accused. I'm not a party to the stipulation
13 of fact and I don't negotiate the terms of the stipulation of
14 fact. So I'm merely asking if whether or not you have
15 discussed that with your client and the effect of the
16 withdrawal of the plea on those particular paragraphs in
17 Prosecution Exhibit 1.

18 CDC [MS. JESTIN]: We have, Your Honor.

19 MJ [COL OSBORN]: Government, do you have anything else to
20 add on that issue?

21 TC [MR. SCHNEIDER]: No, Your Honor.

22 MJ [COL OSBORN]: All right. What I would like to do now
23 is go over the pretrial agreement. I do understand that there

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 is a modification to the pretrial agreement in this case. And
2 what we have done is document as presently marked as
3 Attachment B to Appellate Exhibit 016K, but I think it's
4 simpler and clearer, and what I've done is directed a copy of
5 the same document to be marked and referred to as Appellate
6 Exhibit 012A and that way it will then follow the original
7 pretrial agreement, which is Appellate Exhibit 012. But
8 Appellate Exhibit 016K and Appellate Exhibit 012A are the same
9 document; is that clear?

10 TC [MR. SCHNEIDER]: That's clear, Your Honor.

11 CDC [MS. JESTIN]: Yes.

12 MJ [COL OSBORN]: Defense Counsel, has Mr. Khan previously
13 been provided a copy of this document?

14 CDC [MS. JESTIN]: He has, Your Honor.

15 MJ [COL OSBORN]: The copy I have, which is the filing
16 with the court, does not appear to have your signature,
17 Ms. Jestin.

18 CDC [MS. JESTIN]: That's correct, Your Honor. I was not
19 present when this was signed in October. I could certainly
20 sign it now and hand up a copy to the court.

21 MJ [COL OSBORN]: But you certify you've advised the
22 accused of the effect of the foregoing and you've witnessed
23 his voluntary signature to this modification which is what you

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 would have been signing.

2 CDC [MS. JESTIN]: I did not witness his signature, Your
3 Honor. I have discussed it with him.

4 MJ [COL OSBORN]: All right. If you would, sign a copy of
5 Appellate Exhibit 012A and then give that to the court during
6 the next recess.

7 None of these documents, Mr. Khan, do you need a
8 translator for? You understand all of the documents that have
9 been placed before you as well as this document?

10 ACC [MR. KHAN]: Yes, ma'am.

11 MJ [COL OSBORN]: If at any time you feel you need a
12 translator or interpreter, you'll let me know, correct?

13 ACC [MR. KHAN]: Sure thing.

14 MJ [COL OSBORN]: All right. What I would like for you to
15 do is, looking at this Appellate Exhibit 012A, is that your
16 signature on the bottom of page 1?

17 ACC [MR. KHAN]: Confirmed, ma'am.

18 MJ [COL OSBORN]: And did your counsel explain this
19 document to you thoroughly before you signed it?

20 ACC [MR. KHAN]: Yes, ma'am.

21 MJ [COL OSBORN]: Do you understand the contents of this
22 modification to the pretrial agreement?

23 ACC [MR. KHAN]: Yes, ma'am.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: Do you also understand that this
2 modification of the pretrial agreement changes only certain
3 provisions of the original pretrial agreement and it
4 incorporated the rest of the provisions in the pretrial
5 agreement?

6 ACC [MR. KHAN]: Yes, ma'am.

7 MJ [COL OSBORN]: In other words, do you understand that
8 Appellate Exhibit 012A alters only a couple of the paragraphs
9 from your original pretrial agreement, not the entire
10 pre-trial agreement?

11 ACC [MR. KHAN]: Yes, ma'am.

12 MJ [COL OSBORN]: So did anyone force you, in any way, to
13 enter into this modification to the original pretrial
14 agreement?

15 ACC [MR. KHAN]: No, ma'am. It's all voluntarily.

16 MJ [COL OSBORN]: Has anyone made any promises to you that
17 are not written in this agreement in an attempt to get you to
18 modify your pretrial agreement with the convening authority?

19 ACC [MR. KHAN]: No, ma'am.

20 MJ [COL OSBORN]: Counsel, are Appellate Exhibit 012A,
21 along with the referenced pretrial agreement marked as
22 Appellate Exhibit 012 and Appendix A marked as Appellate
23 Exhibit 013, the full and complete agreement in this case?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 TC [MR. SCHNEIDER]: They are, Your Honor.

2 MJ [COL OSBORN]: Are you satisfied there are no other
3 agreements, government?

4 TC [MR. SCHNEIDER]: I'm satisfied.

5 MJ [COL OSBORN]: Defense?

6 CDC [MS. JESTIN]: Yes, Your Honor.

7 MJ [COL OSBORN]: Mr. Khan, generally in a pretrial
8 agreement, you agree to enter into a plea of guilty and the
9 convening authority agrees to take some action in this case,
10 it's usually in the form of limiting the sentence he'll
11 approve. Do you understand that?

12 ACC [MR. KHAN]: Yes, ma'am.

13 MJ [COL OSBORN]: And the law requires that I discuss the
14 conditions of the pretrial agreement with you. Now, I know
15 that the previous military judge already discussed with you
16 all of the terms of the pretrial agreement, so what I would
17 like to do this morning is only focus on the terms that have
18 been changed as a result of the modification to the pretrial
19 are agreement. Do you understand that?

20 ACC [MR. KHAN]: Yes, ma'am.

21 MJ [COL OSBORN]: And do you agree to that?

22 ACC [MR. KHAN]: Yes, ma'am.

23 MJ [COL OSBORN]: Okay. Let's take a look, then,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 together, at the first paragraph of Appellate Exhibit 012A.
2 And in that paragraph, it states your intentions to ask the
3 commission or ask the military judge to, number one, withdraw
4 your plea of guilty to Charge IV, Specifications 1 and 2, and
5 to dismiss or request dismissal of Charge IV, Specifications 1
6 and 2. Do you agree to that provision of the pretrial
7 agreement?

8 ACC [MR. KHAN]: Yes, ma'am.

9 MJ [COL OSBORN]: And paragraph 2, even though it's not
10 numbered, but in paragraph 2, it states that if I allow you to
11 do that, then the convening authority agrees to remain to be
12 bound by the previous pretrial agreement, the 13 February 2012
13 pretrial agreement and Appendix A. Do you understand and
14 agree to that provision?

15 ACC [MR. KHAN]: Yes, ma'am.

16 MJ [COL OSBORN]: And do you believe that's in your best
17 interest for that to occur?

18 ACC [MR. KHAN]: That is correct.

19 MJ [COL OSBORN]: If you would, please, take a look at
20 paragraph 3. It references paragraph 30 of the original
21 pretrial agreement. And in the original pretrial agreement at
22 that paragraph, you agreed that there are no other agreements
23 that have been made and, instead, must commit any agreement to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 writing. Do you understand that?

2 ACC [MR. KHAN]: Yes, ma'am.

3 MJ [COL OSBORN]: And there are numbered paragraphs under
4 paragraph 3 going to 1 -- 1, 2, 3, 4, 5. Those are the
5 numbered paragraphs that detail the modifications to the terms
6 of the original pretrial agreement. So let's look at the
7 first one there. The first limits the term "charges" and
8 "specifications" and wherever that appears in the original
9 pretrial agreement, this makes it clear that those terms shall
10 apply only to Charges I, II, III, and V, but not to Charge IV
11 and its Specifications. Do you understand and agree to that?

12 ACC [MR. KHAN]: Yes, ma'am.

13 MJ [COL OSBORN]: The second numbered paragraph there, in
14 paragraph 12A, states that paragraphs 5 and 5.a, and those are
15 the paragraphs that state if you withdraw or modify a guilty
16 plea then your agreement between you and the convening
17 authority would be canceled. That's what those are
18 referencing. Do you understand and agree to that?

19 ACC [MR. KHAN]: Yes, ma'am.

20 MJ [COL OSBORN]: Okay. So in paragraph 2 there, it's
21 stating that that application of what I just told you about,
22 the convening authority cancelling the agreement, if you
23 withdraw your plea of guilty, it's not going to apply to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Charge IV and its Specifications; it's only going to apply to
2 Charges I, II, III, V, the remaining charges. Do you
3 understand that?

4 ACC [MR. KHAN]: Yes, ma'am.

5 MJ [COL OSBORN]: In essence, what it's saying, Mr. Khan,
6 is that you're going to be able to withdraw your plea of
7 guilty; the convening authority is still going to be bound by
8 the agreement, the agreement is not going to be canceled, it's
9 going to live on. Do you agree with that?

10 ACC [MR. KHAN]: Yes, ma'am.

11 MJ [COL OSBORN]: Is that your understanding, Defense
12 Counsel?

13 CDC [MS. JESTIN]: Yes, Your Honor.

14 MJ [COL OSBORN]: Government?

15 TC [MR. SCHNEIDER]: It is, Your Honor.

16 MJ [COL OSBORN]: All right. Now, previously, Mr. Khan,
17 you agreed not to withdraw your plea of guilty. But because
18 the government and you have made this new agreement, they're
19 now allowing you to withdraw your plea to Charge IV and its
20 Specifications. Do you understand that?

21 ACC [MR. KHAN]: Yes, ma'am.

22 MJ [COL OSBORN]: Nothing in the previous agreement
23 required the government to allow you to do that. Do you

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 understand that?

2 ACC [MR. KHAN]: Yes, ma'am.

3 MJ [COL OSBORN]: Nothing in the agreement as modified
4 allows you to withdraw from any of the other charges,
5 Charges I, II, III, and V. Do you understand that?

6 ACC [MR. KHAN]: Would you repeat that, please?

7 MJ [COL OSBORN]: Yes. The previous provision in the
8 pretrial agreement did not allow you to withdraw from your
9 plea of guilty without -- excuse me -- without canceling the
10 pretrial agreement, but this new modification that you have
11 allows you to do that for Charge IV; doesn't allow you to do
12 that for any of the other charges. If you tried to withdraw
13 your plea of guilty to any of the other charges, then the
14 agreement that you have with the convening authority is
15 canceled. Do you understand and agree to that?

16 ACC [MR. KHAN]: So, hypothetically speaking right now,
17 ma'am, so there's also a charge of conspiracy. If that gets
18 dropped by the court of appeal, and just like we're dealing
19 with the material support right now, how's that going to work
20 in the sense that we're going to go through the same process
21 again with the exact same method, right?

22 MJ [COL OSBORN]: Well, what an appellate court may do
23 with the charges is different from what we're doing today

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 here, which is your voluntary request to withdraw your plea of
2 guilty.

3 ACC [MR. KHAN]: Right. Yes, ma'am. I get that. There's
4 a good chance if that happens we'd probably do the same
5 procedure, voluntary take the charge out and go from there.
6 All right, ma'am. I understand.

7 MJ [COL OSBORN]: And if that happened and your attorneys
8 negotiated the same type of agreement for modification of the
9 pretrial agreement, they may or may not do that. You know, I
10 don't know. But what we have here today is just the
11 modification of the agreement with respect to the material
12 support to terrorism charge.

13 ACC [MR. KHAN]: Yes, ma'am.

14 MJ [COL OSBORN]: You understand and agree to that,
15 Mr. Khan?

16 ACC [MR. KHAN]: Yes, ma'am.

17 MJ [COL OSBORN]: If there's anything you think is
18 unclear, ask me and we'll go over it again.

19 ACC [MR. KHAN]: Sure, ma'am.

20 MJ [COL OSBORN]: Take a look, please, at Paragraph
21 Number 3. It changes the time for the sentencing proceedings
22 in this case from four years to seven years. That is seven
23 years from the date of your guilty plea session on 29 February

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 2012; so, in other words, to 29 February 2019. Do you
2 understand and agree to the delay ----

3 ACC [MR. KHAN]: Yes, ma'am.

4 MJ [COL OSBORN]: ---- in this case?

5 ACC [MR. KHAN]: Yes, ma'am.

6 MJ [COL OSBORN]: Do you believe that that extended delay
7 will adversely affect you in any way?

8 ACC [MR. KHAN]: No, ma'am. I think it will probably help
9 me.

10 MJ [COL OSBORN]: So in paragraphs 4 and 5, those two
11 paragraphs simply recognize the removal of Charge IV from
12 paragraphs 20 and 29 of the original pretrial agreement.

13 ACC [MR. KHAN]: Yes, ma'am.

14 MJ [COL OSBORN]: And that was from the table of maximum
15 punishments in paragraph 20 and then in the reference to
16 Charge IV in paragraph 29. Do you understand and agree to
17 that?

18 ACC [MR. KHAN]: Yes, ma'am.

19 MJ [COL OSBORN]: Mr. Khan, are you satisfied with your
20 defense counsel and their advice regarding the pretrial
21 agreement as it's modified and as we've just discussed?

22 ACC [MR. KHAN]: Yes, ma'am.

23 MJ [COL OSBORN]: Do you understand that under the law in

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the military commission laws, the convening authority's
2 signature on these documents and your signature on these
3 documents make this offer and modification an agreement that's
4 binding upon the United States Government and binding upon
5 you?

6 ACC [MR. KHAN]: Yes, ma'am.

7 MJ [COL OSBORN]: And is that your understanding as well,
8 Mr. Schneider?

9 TC [MR. SCHNEIDER]: It is, Your Honor.

10 MJ [COL OSBORN]: Mr. Khan, do you understand that you may
11 request to withdraw from your plea of guilty to the remaining
12 charges and specifications at any time before the sentence is
13 announced and, if you have a good reason to doing so, your
14 request will be granted; but, in that case, the agreement that
15 you have with the convening authority will be canceled? Do
16 you understand and agree to that?

17 ACC [MR. KHAN]: Yes, ma'am.

18 MJ [COL OSBORN]: Do you understand this agreement will be
19 canceled and have no effect if your inquiry is reopened, your
20 guilty pleas are not accepted; if your pleas are modified or
21 changed to a not guilty plea or to a guilty plea to a lesser
22 offense; or if either party agrees to withdraw from the
23 agreement before the sentencing proceedings? Do you

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 understand that?

2 ACC [MR. KHAN]: Yes, ma'am.

3 MJ [COL OSBORN]: So right now because of this, the
4 agreement you have with the convening authority lives on. Do
5 you understand that?

6 ACC [MR. KHAN]: I'm sorry. Repeat that.

7 MJ [COL OSBORN]: The agreement you have with the
8 convening authority is still in effect.

9 ACC [MR. KHAN]: Yes, ma'am.

10 MJ [COL OSBORN]: Do you also understand the convening
11 authority's obligation to approve a sentence no greater than
12 that provided in this agreement, which is also including
13 Appendix A, may be canceled if you commit any offense
14 chargeable under the Military Commissions Act or if you fail
15 to otherwise fulfill the terms of this agreement between the
16 time the sentence is announced and the time the sentence is
17 approved by the convening authority?

18 ACC [MR. KHAN]: I understand that, ma'am.

19 MJ [COL OSBORN]: And do you understand that if this
20 agreement is canceled for any reason, your offer to plead
21 guilty cannot be used against you in any way, or at any time,
22 to establish your guilty by the government. Do you understand
23 that?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. KHAN]: Would you repeat the sentence, please?

2 MJ [COL OSBORN]: Yes. If this agreement is canceled for
3 any reason, sometime in the future, then your offer to plead
4 guilty can't be used against you in any way, or at any time,
5 to establish your guilt. Do you understand that?

6 ACC [MR. KHAN]: Yes, I understand that. Just a little
7 ambiguity I would like to clarify. So any statement I made
8 from the time I pled guilty and then the agreement has been
9 pulled out, would all the statements that I made be used
10 against me or would not?

11 MJ [COL OSBORN]: If the agreement is canceled, okay, and
12 if the agreement ends up canceled and you have no agreement
13 with the convening authority and we are -- just hypothetically
14 got into a situation where the government was going forward on
15 the charges, okay, then they could not use the statements that
16 you made during the providence inquiry against you in order to
17 prove up the charges.

18 [Conferred with courtroom personnel.]

19 ACC [MR. KHAN]: So basically you're saying the
20 stipulation of facts cannot be used against me in future,
21 right?

22 MJ [COL OSBORN]: No. Defense Counsel, do you want to
23 take a moment to discuss that with Mr. Khan? That's not what

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 I'm saying. We're talking about -- maybe we shouldn't be
2 talking about a hypothetical because that's not what we have
3 here in front of us today. Many, many things would have to
4 happen and we would have to be back here and discuss many,
5 many things. But right now, the situation is that you have --
6 that you have pled guilty and you have been found guilty,
7 okay, of all the charges and specifications. Those are the
8 findings of this commission based on your plea of guilty.

9 All we're doing here today is just addressing your
10 request to withdraw your plea of guilty to Charge IV and its
11 Specifications, okay? So that stipulation of fact, which is
12 Prosecution Exhibit 1, that is a piece of admitted evidence
13 into this trial and, going forward, that can be used in the
14 sentencing proceedings of this court-martial -- of this
15 commission.

16 What we were discussing, again, was a hypothetical if
17 we ended up in some situation where you had withdrawn all of
18 your pleas of guilty and the government was going forward and
19 there was no plea of guilty and no findings of guilty, which
20 has not occurred here.

21 ACC [MR. KHAN]: I get that. Thank you.

22 MJ [COL OSBORN]: Does that clarify it for both you ----

23 ACC [MR. KHAN]: Yeah.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: ---- and your defense counsel?

2 ACC [MR. KHAN]: Yes, ma'am.

3 MJ [COL OSBORN]: Is that your understanding as well,
4 Defense Counsel?

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

6 MJ [COL OSBORN]: Mr. Khan, do you agree that no other
7 promises have been made by the convening authority, or any
8 other person, which may potentially affect your offers to
9 plead guilty?

10 ACC [MR. KHAN]: Yes, ma'am.

11 MJ [COL OSBORN]: Now, if I permit Mr. Khan to withdraw
12 his plea of guilty to Charge IV and its Specifications,
13 notwithstanding the terms in Appendix A, what do you believe,
14 government, is the maximum punishment for the remaining
15 offenses for which Mr. Khan pled and was found guilty?

16 TC [MR. SCHNEIDER]: Your Honor, they remain unchanged.
17 By statute, the maximum penalties for these offenses is death,
18 but that's limited in the pretrial agreement to life in
19 prison. It's further limited in the pretrial agreement to a
20 limitation of 25 to 40 years in prison, to be imposed by the
21 commission. And the convening authority has agreed that if
22 the conditions of the pretrial agreement, including Appendix
23 A, are carried out, that he will sentence Mr. Khan to no more

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 than 25 years.

2 MJ [COL OSBORN]: Do you also believe a fine is part of
3 the maximum punishment that could be imposed in this case
4 regardless of whether or not the government they or may not be
5 asking for one?

6 TC [MR. SCHNEIDER]: I believe it is, Your Honor.

7 MJ [COL OSBORN]: Defense Counsel, do you agree?

8 CDC [MS. JESTIN]: Your Honor, one point of clarification.
9 In Appendix A referred to by the government, it specifies
10 should the convening authority, in its sole discretion,
11 determine that my client has provided full and truthful
12 cooperation amounting to substantial assistance, the convening
13 authority will approve a sentence not to exceed 19 years.

14 MJ [COL OSBORN]: Government?

15 TC [MR. SCHNEIDER]: That is the provision in the
16 pretrial -- or in Appendix A.

17 MJ [COL OSBORN]: Both you agree on that?

18 TC [MR. SCHNEIDER]: That's true, Your Honor.

19 MJ [COL OSBORN]: Thank you, Mr. Schneider.

20 Mr. Khan, you understand, then, that there have
21 been -- there's no change to the maximum punishment in this
22 case by virtue of you withdrawing your plea of guilt to
23 Charge IV and its Specifications?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. KHAN]: Yes, ma'am.

2 MJ [COL OSBORN]: Maximum punishment is still confinement
3 for life and a fine.

4 ACC [MR. KHAN]: Yes, ma'am.

5 MJ [COL OSBORN]: You understand and agree to that?

6 ACC [MR. KHAN]: Yeah.

7 MJ [COL OSBORN]: And then in Appendix A, which is
8 Appellate Exhibit 013, you have a copy in front of you?

9 ACC [MR. KHAN]: I do.

10 MJ [COL OSBORN]: All right. And my understanding, based
11 on the representations of counsel just a moment ago, is that
12 there are no modifications to Appendix A either, in regards to
13 the sentence that can be approved by the convening authority.
14 Do you understand and agree to that?

15 ACC [MR. KHAN]: Yes, ma'am.

16 MJ [COL OSBORN]: So, in other words, despite the fact you
17 are withdrawing your plea of guilty to Charge IV and its
18 Specifications, the convening authority has agreed to not
19 change any of those terms in Appellate Exhibit 013; the
20 maximum confinement remains the same and the maximum
21 confinement that the convening authority may approve has not
22 been reduced in any way. Do you understand that?

23 ACC [MR. KHAN]: Yes, ma'am.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: And do you still wish to withdraw your
2 plea of guilty to Charge IV and its Specifications?

3 ACC [MR. KHAN]: Yes, ma'am.

4 MJ [COL OSBORN]: I want you to take a moment and read
5 Appendix A silently to yourself and make sure that you
6 understand the provisions of that document.

7 ACC [MR. KHAN]: Ma'am, just to be sure, paragraph 3 in
8 the last couple of sentences, it says convening -- the last
9 line, the convening authority will approve a sentence not to
10 exceed 19 years, that is from 2012, right?

11 MJ [COL OSBORN]: Let me look at -- it's the approved.

12 TC [MR. SCHNEIDER]: Your Honor, it's from the time of his
13 plea -- from the time of his guilty plea.

14 MJ [COL OSBORN]: From 29 February 2012?

15 TC [MR. SCHNEIDER]: Yes, Your Honor.

16 MJ [COL OSBORN]: Is that your understanding as well,
17 Defense Counsel?

18 CDC [MS. JESTIN]: Yes, Your Honor.

19 MJ [COL OSBORN]: There appears to be agreement on that.

20 ACC [MR. KHAN]: Yes, ma'am.

21 MJ [COL OSBORN]: And that's if, as you see there in
22 Appendix A, if in the convening authority in his discretion
23 determines you have provided full and truthful cooperation

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 amounting to substantial assistance.

2 ACC [MR. KHAN]: Yes, of course.

3 MJ [COL OSBORN]: You understand that, then?

4 ACC [MR. KHAN]: Yes, of course, ma'am. I just want to
5 emphasize the words "not to exceed 19 years" because the
6 prosecution said "25 years." I just wanted to clarify that.

7 MJ [COL OSBORN]: Well, take a look. The 25 years, take a
8 look at paragraph 1.

9 ACC [MR. KHAN]: Yes. If I'm not cooperative, then --
10 okay. Yes, ma'am. I understand that. I'm good. Thank you.

11 MJ [COL OSBORN]: All right. That's why I wanted you to
12 make sure that when you saw the last sentence there in
13 paragraph 3, that's based on the convening authority's
14 discretionary decision as to your cooperation. Do you
15 understand and agree to that?

16 ACC [MR. KHAN]: Yes, ma'am.

17 MJ [COL OSBORN]: Okay. Do you have any questions as to
18 the terms, then, of Appendix A other than those that you've
19 just asked and that we've gone over?

20 ACC [MR. KHAN]: Could you just excuse for just a minute,
21 please?

22 MJ [COL OSBORN]: Sure.

23 ACC [MR. KHAN]: No questions, Your Honor.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: Do you understand and agree, then, to
2 the terms set forth in Appendix 13 [sic]?

3 ACC [MR. KHAN]: Yes, ma'am.

4 MJ [COL OSBORN]: Defense Counsel, have you advised
5 Mr. Khan of all the terms, and discussed those with him, of
6 Appellate Exhibit 013?

7 CDC [MS. JESTIN]: Yes, Your Honor.

8 MJ [COL OSBORN]: Do you believe those terms are in your
9 client's best interests?

10 CDC [MS. JESTIN]: Yes, Your Honor.

11 MJ [COL OSBORN]: Do you believe those are in your best
12 interest?

13 ACC [MR. KHAN]: Absolutely.

14 MJ [COL OSBORN]: Are you satisfied with your attorney's
15 advice concerning this pretrial agreement?

16 ACC [MR. KHAN]: Yes, ma'am.

17 MJ [COL OSBORN]: Did you enter this agreement, that's
18 Appellate Exhibit 012, and its modification, 012A, of your own
19 free will? That means -- well, have you entered into this
20 voluntarily?

21 ACC [MR. KHAN]: Yes, ma'am.

22 MJ [COL OSBORN]: And has anyone tried to force you to
23 make the modification to the pretrial agreement?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. KHAN]: No coercion, ma'am.

2 MJ [COL OSBORN]: Do you have any questions about the
3 pretrial agreement as modified?

4 ACC [MR. KHAN]: No, ma'am.

5 MJ [COL OSBORN]: Do you fully understand all of its terms
6 and how it affects your case?

7 ACC [MR. KHAN]: Yes, ma'am.

8 MJ [COL OSBORN]: Do both counsel agree with the
9 commission's interpretation of the pretrial agreement?

10 TC [MR. SCHNEIDER]: I do, Your Honor.

11 MJ [COL OSBORN]: Defense?

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

13 MJ [COL OSBORN]: All right. Defense Counsel, have you
14 had enough time and opportunity to discuss this case with
15 Mr. Khan?

16 CDC [MS. JESTIN]: Yes, You Honor.

17 MJ [COL OSBORN]: Mr. Khan, have you had enough time and
18 opportunity to discuss the pretrial agreement, as modified,
19 and the other documents that we've gone over with your defense
20 counsel?

21 ACC [MR. KHAN]: Yes, ma'am.

22 MJ [COL OSBORN]: Have you, in fact, consulted fully with
23 your defense counsel and received the full benefit of their

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 advice?

2 ACC [MR. KHAN]: Yes, ma'am.

3 MJ [COL OSBORN]: Are you satisfied that your defense
4 counsel's advice is in your best interest?

5 ACC [MR. KHAN]: Yes, ma'am.

6 MJ [COL OSBORN]: And you're satisfied with your defense
7 counsel?

8 ACC [MR. KHAN]: Yes, ma'am.

9 MJ [COL OSBORN]: Do you still intend to request to
10 withdraw your plea of guilty to Charge IV and its
11 Specifications?

12 ACC [MR. KHAN]: Yes, ma'am.

13 MJ [COL OSBORN]: Mr. Khan, I find you have shown good
14 cause to withdraw your plea of guilty to Specifications 1 and
15 2 of Charge IV and Charge IV. Therefore, your request to
16 withdraw your plea of guilty to those -- that charge and its
17 specifications, is granted.

18 Now, in the modification for the pretrial agreement,
19 it appears that you also -- your defense counsel may have a
20 motion with respect now to Charge IV and its Specifications.
21 If so, I'll entertain it at this time.

22 CDC [MS. JESTIN]: Your Honor, in light of the foregoing,
23 we move that Charge IV and its Specifications be dismissed.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL OSBORN]: Any objections, government?

2 TC [MR. SCHNEIDER]: No objection, Your Honor.

3 MJ [COL OSBORN]: Defense's Motion to Dismiss Charge IV
4 and its Specifications is granted.

5 Counsel, what's -- I want to move on now from the
6 modification of the pretrial agreement just to -- as we're
7 going to go forward with this case. What's the status of
8 discovery?

9 TC [MR. SCHNEIDER]: Your Honor, there's an agreement in
10 the pretrial agreement to a limited amount of discovery. We
11 have proposed a schedule and the defense, I believe, has
12 agreed that the schedule going forward to sentencing
13 accurately reflects a reasonable timing for discovery to get
14 everybody prepared for sentencing. And that proposed schedule
15 is in Exhibit AE 016Q.

16 MJ [COL OSBORN]: Do you foresee -- do you foresee
17 submitting a request for summary or substitutions under 505?

18 TC [MR. SCHNEIDER]: I do not, Your Honor.

19 MJ [COL OSBORN]: Defense, have you reviewed Appellate
20 Exhibit 016Q, Attachment B, which is the proposed trial
21 schedule?

22 CDC [MR. DIXON]: We have, Your Honor.

23 MJ [COL OSBORN]: Do you have any objections to that trial

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 schedule, now understanding it could be modified further down
2 the road for appropriate reasons? But do you have any
3 objections to that trial schedule as proposed?

4 CDC [MR. DIXON]: Not as proposed with the caveat -- not
5 as proposed with the caveat that Your Honor noted, which is
6 the right to seek to amend that as needed.

7 MJ [COL OSBORN]: One moment.

8 [Pause.]

9 MJ [COL OSBORN]: Okay. The commission will enter a
10 scheduling order taking into consideration Appellate Exhibit
11 016Q.

12 CDC [MR. DIXON]: Thank you, Your Honor.

13 MJ [COL OSBORN]: Mr. Khan, the previous military judge
14 went over this. As a procedural matter, anytime that we are
15 in court and then have a recess of some considerable time, the
16 further progress of the trial to and including the return to
17 sentencing in the case, if necessary, shall not be prevented
18 and the accused shall be considered to have waived the right
19 to be present whenever an accused initially present is
20 voluntarily absent. So again, as it was back in February of
21 2012, as it is today, if you're voluntarily absent, the
22 commission could proceed in your absence. Do you understand
23 that?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. KHAN]: Yes, ma'am.

2 MJ [COL OSBORN]: Are there any other matters from either
3 side that we need to discuss in today's hearing?

4 TC [MR. SCHNEIDER]: There are not from the government,
5 Your Honor.

6 MJ [COL OSBORN]: Defense?

7 CDC [MR. DIXON]: Your Honor, I have two other additional
8 items I'd like to mention. The first is, I'd like to put on
9 the record today the fact that Lieutenant Colonel Jackson is
10 scheduled to retire from the Army and Mr. Khan would like him
11 to remain on the case and is not going to agree to release him
12 from the case. We want that on the record. That's the first
13 item.

14 The second is Mr. -- because this is first time
15 Mr. Khan is appearing before Your Honor, he would like the
16 opportunity to address the commission directly, briefly.

17 MJ [COL OSBORN]: Go ahead, Mr. Khan. Let me just go
18 back. When is Colonel Jackson retiring?

19 DDC [LTC JACKSON]: Ma'am, I'm scheduled to retire 1
20 November. I have already -- the chief defense counsel's
21 office has already submitted a request for my withdrawal,
22 which I agree with, but I think we wanted to put it -- let you
23 know about it in case there's a problem, so this just doesn't

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 jump up, but everything seems to be going according to plan.

2 MJ [COL OSBORN]: 1 November of '16 ----

3 DDC [LTC JACKSON]: I'm sorry, ma'am?

4 MJ [COL OSBORN]: ---- of this year.

5 DDC [LTC JACKSON]: Yes, ma'am; yes, ma'am. 1 November of
6 2016.

7 MJ [COL OSBORN]: Thank you.

8 DDC [LTC JACKSON]: Thank you.

9 MJ [COL OSBORN]: Mr. Khan.

10 ACC [MR. KHAN]: First of all, thanks to Allah, the
11 omnipotent and omniscient, to give me courage to do the right
12 thing and took me away from prevarication path to the guidance
13 and I'd like to use this opportunity to show some kind of --
14 well, it's very imperative and incumbent for me to show some
15 kind of compunction to the families that my actions, my
16 grotesque and pernicious actions, may have caused some
17 understandably nonvenal pain to the family; and if it's any
18 consolation, I would like to sincerely apologize to the family
19 that I've caused, whether physically or mentally, pain.

20 And it's not like, you know, I don't get to come to
21 court as often as possible, so this is the -- probably the
22 second time I'm addressing court, so I'm using this
23 opportunity to just to show some kind of compunction or

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 regret; and actions speak more than words and that's what I
2 believe in and that's what I'm trying to show by my
3 cooperation that if that can ameliorate some of the pain for
4 the family and that was my whole objective to just use few
5 minutes to show some of the -- a true penitents by action --
6 so they can -- will ask Allah to forgive me and maybe they
7 can -- Allah can put forgiveness for me in their heart.

8 And, it's, you know, they say it's not how you start
9 but how you end the game, so I made obviously some grotesque
10 mistakes in my life. That's why I end up here. And -- but
11 I'd like to move on, even the whole -- I am not honestly
12 entrusted in the whole enhanced interrogation thing, method
13 they used. I just want to move on, as like the President
14 says, Let's move on, and -- but I just -- my objective in
15 future would be that I would really like to help the young --
16 I call them the young jihadis wannabes.

17 And I know it's not time and place but I just want
18 that to be on record, that -- and also I like transparency,
19 ma'am, and if -- a side note that, I mean, the discovery that
20 do happens I'd like to have all the things that I need for my
21 defense, like medical records and stuff like that. And I
22 don't like secrecy or surreptitious act so if there's
23 something sub rosa going on it just raises a lot of cautions

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 and my attorney can't even talk to me about so I'm very
2 ambivalent sometime. It's just natural tendency to do that.
3 So please, I will appreciate the judge can consider that and
4 future if there's a transparency, let me know, please. As
5 much ----

6 MJ [COL OSBORN]: All right.

7 ACC [MR. KHAN]: As much information possible.

8 MJ [COL OSBORN]: All right.

9 ACC [MR. KHAN]: Thank you, ma'am.

10 MJ [COL OSBORN]: Thank you, Mr. Khan. Anything else from
11 either side?

12 TC [MR. SCHNEIDER]: Nothing from the government, Your
13 Honor.

14 DDC [LTC JACKSON]: No, Your Honor.

15 MJ [COL OSBORN]: Commission's in recess.

16 [The R.M.C. 803 session recessed at 1159, 14 September 2016.]

17 [END OF PAGE]

18

19

20

21

22

23

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT