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1 [The R.M.C. 803 session was called to order at 0907, 22 July
2 2105.]

3 MJ [CAPT WAITS]: Please carry on.

4 The commission will come to order. All parties who
5 were present when the commission recessed are once again
6 present with the exception of Mr. Mikeal Clayton for the
7 prosecution. In addition, several new counsel have been
8 detailed to the prosecution and they are present this morning.

9 Lieutenant Colonel Long, please state the full names
10 of newly detailed trial counsel, their detailing information,
11 qualifications, status as to oath, and state whether any of
12 these counsel have acted in any disqualifying manner in this
13 case.

14 TC [LTC LONG]: Certainly, Your Honor. Pursuant to the
15 government's trial counsel detailing memorandum dated 21 July
16 2015, the following trial counsel and deputy trial counsel,
17 assistant trial counsel have been detailed to this commission.
18 Lieutenant Colonel David J. Long, Trial Counsel; Mr. Felice
19 J. ----

20 DDC [LtCol JASPER]: Excuse me, Your Honor, we have a
21 problem with the microphone. Hadi al-Iraqi cannot hear the
22 interpreter.

23 MJ [CAPT WAITS]: Through his earpiece, you mean?

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1 DDC [LtCol JASPER]: Yes, sir.

2 MJ [CAPT WAITS]: Who do we get to work on that? We need
3 technical assistance.

4 Let's try this one more time, Colonel Long. Please
5 put that information that I requested into the record at this
6 time.

7 TC [LTC LONG]: Yes, Your Honor. Lieutenant Colonel David
8 J. Long, Trial Counsel; Mr. Felice J. Viti, Deputy Trial
9 Counsel; Commander Kevin L. Flynn, Assistant Trial Counsel;
10 Major Joshua S. Bearden, Assistant Trial Counsel; Lieutenant
11 Commander B. Vaughn Spencer, Assistant Trial Counsel.

12 I will now announce the detail and qualifications for
13 all of us.

14 MJ [CAPT WAITS]: Do you want to state their branches of
15 service?

16 TC [LTC LONG]: I will. Lieutenant Colonel David J.
17 Long, United States Army. Mr. Felice J. Viti, Assistant
18 United States Attorney. Commander Kevin L. Flynn, United
19 States Navy. Major Joshua S. Bearden, United States Army.
20 Lieutenant Commander B. Vaughn Spencer, United States Navy.

21 All trial counsel have been detailed to the military
22 commission by the Chief Prosecutor in accordance with Rule for
23 Military Commission 503. All members of the prosecution are

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1 qualified under Rule for Military Commissions 502(d) and have
2 been previously sworn in accordance with Rule for Military
3 Commission 807. No member of the prosecution has acted in any
4 manner which might tend to disqualify us in this proceeding.

5 MJ [CAPT WAITS]: All right. Colonel Long, do you want to
6 state for the record where the proceedings are being
7 transmitted based on prior orders of the court -- of the
8 commission?

9 TC [LTC LONG]: Yes, Your Honor. Pursuant to orders of
10 the court, these proceedings are being transmitted stateside
11 at a remote location by CCTV in Fort Meade, Maryland.

12 MJ [CAPT WAITS]: Okay.

13 TC [LTC LONG]: Your Honor, if I may, just for one moment
14 with the court's indulgence, you had mentioned the one --
15 trial counsel no longer present was Mr. Mikeal Clayton. I
16 would just like to thank on the record his many years of
17 dedicated service to this case and to the commissions.

18 Thank you, Your Honor.

19 MJ [CAPT WAITS]: Thank you. All right. At this time I
20 am going to advise the accused of his right to be present and
21 his right to waive his presence at future sessions of this
22 commission.

23 Mr. Hadi, you have the right to be present during all

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1 sessions of this commission. If you request to be absent from
2 any session, your absence must be voluntary and of your own
3 free will.

4 Your voluntary absence from any session of the
5 commission is an unequivocal waiver of your right to be
6 present during that session. Your absence from any session
7 may negatively affect the presentation of the defense in your
8 case. Your failure to meet with and cooperate with your
9 defense counsel may also negatively affect the presentation of
10 your case.

11 Under certain circumstances, your attendance at a
12 session can be compelled regardless of your personal desire
13 not to be present. Regardless of your voluntary waiver to
14 attend a particular session of the commission, you have the
15 right at any time to decide to attend any subsequent session.
16 For example, if you decide not to attend a morning session of
17 the commission, but you wish to attend the afternoon session,
18 you must notify the guard force of your desire to do so.
19 Assuming there is enough time to arrange transportation, you
20 will then be allowed to attend the afternoon session.

21 You will be informed of the time and date of each
22 session of the commission to afford you the opportunity to
23 decide whether you wish to attend a particular session.

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1 Do you understand what I have just explained to you?

2 ACC [MR. HADI]: Yes, I do.

3 MJ [CAPT WAITS]: Very well. All right.

4 At this time, the commission is going to summarize
5 several R.M.C. 802 conferences that have been held since the
6 last session of this commission. The first R.M.C. 802
7 conference occurred on 6 May 2015. The military judge was
8 located in Naples, Italy. The trial counsel were all located
9 at their Washington, D.C. offices. The defense counsel were
10 located here in Guantanamo Bay. Obviously this was a
11 telephonic 802 conference.

12 The scheduling order for this personal jurisdiction
13 hearing of these two weeks was the framework for the
14 conference. The stated purpose of the previously docketed 25
15 to 29 May 15 hearing was entitled Hearing on Hearsay Notices,
16 Motions to Compel Witnesses and Other Pending Preadmittance
17 Motions Necessary for the Jurisdictional Hearing.

18 As to hearsay notices, the government at the 802
19 conference stated that they would only include those notices
20 provided in preadmission motions, which it asked to be heard
21 at the July session of the commission. The defense had no
22 hearsay notices.

23 As to motions to compel witnesses, the government

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1 stated that they had none. The defense also stated that they
2 had none.

3 As to motions to preadmit evidence, by that point the
4 government had filed several motions to preadmit evidence, but
5 had requested, for judicial economy, again, that all of those
6 motions be heard at this July hearing. The only motions not
7 involving witnesses, based on the government's proffer, were
8 Appellate Exhibit 036 and 039, which the government agreed
9 could just be heard along with all other motions to preadmit
10 at this July session. The defense had no motions to preadmit.

11 On the issue of preadmittance motions, the commission
12 noted that, based on the defense responses, it was clear that
13 the defense's concern was that it have the opportunity to
14 challenge the evidence in front of the members eventually
15 detailed to this commission. The commission noted that
16 pursuant to Military Commission Rule of Evidence 104(e), that
17 the commission was bound to allow the defense to do that. So
18 obviously it would be done.

19 The commission inquired of the government regarding
20 its intentions with respect to recalling witnesses at trial
21 through whom to introduce any preadmitted evidence. The
22 government proffered that it would recall the same witnesses
23 for purpose of introduction of evidence at trial, while

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1 possibly not all witnesses for each item of evidence, but the
2 defense would obviously be free to request any witnesses that
3 they deemed relevant and necessary to challenge the weight to
4 be accorded any admitted evidence at trial.

5 That seemed to the commission to allay defense
6 concerns and the government memorialized this proffer in its
7 replies to all of the defense responses on the government's
8 motions to preadmit two days later. That was Appellate
9 Exhibits 037B through 043B.

10 The next milestone discussed at this R.M.C. 802
11 conference was the 9 June 2015 deadline for the defense to
12 file motions to suppress the accused's confessions,
13 admissions, and other statements upon which the government
14 intended to rely at this personal jurisdiction hearing in
15 July.

16 The defense by that time had filed a motion to compel
17 discovery of matters related to this deadline. That was
18 Appellate Exhibit 020F.

19 The government had responded that the motion was not
20 ripe. The commission stated it would agree with the
21 government but for the fact of the July jurisdictional
22 hearing. The government stated that it had already provided
23 the defense the discovery related to the evidence it intended

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1 to preadmit on this subject at the jurisdictional hearing,
2 with the exception of some agent notes. The only other
3 potential matter was discovery related to prior conditions of
4 confinement, which would be the subject of future M.C.R.E. 505
5 pleadings.

6 At Major Stirk's suggestion, the commission agreed to
7 allow the defense the future opportunity, prior to trial, to
8 file motions related to those matters as they all related to
9 confinement prior to any statements at issue. This is covered
10 in the commission's ruling on the defense motion to compel
11 discovery which is contained in Appellate Exhibit 020F.

12 The last milestone discussed was the 30 June 2015
13 notice deadline. The government proffered that it would only
14 be giving notice of items the defense will already have been
15 provided in discovery for some time. The defense stated that
16 that was their understanding as well.

17 The commission then inquired of both sides what
18 actual business the commission could take up at the May
19 hearing that was docketed. Again, of the government's motions
20 to preadmit, only Appellate Exhibits 036 and 039 did not give
21 notice of any witnesses to be called. All other government
22 motions to preadmit required witness testimony and the
23 government requested to call those witnesses at the July

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1 hearing.

2 Accordingly, the parties agreed there was no reason
3 not to combine Appellate Exhibits 036 and 039 with the motions
4 that required witnesses at the July hearing. The only law
5 motion the commission would consider hearing at the May
6 session would have been Appellate Exhibit 024, the
7 ex post facto motion. Again, with two weeks docketed in July,
8 there was no time-sensitive reason not to hear that motion at
9 the July session as well.

10 The limited business that could have been taken up in
11 May would have amounted to no more than a few hours on the
12 record. The parties agreed it was not efficient and that all
13 of these matters could easily be added to the July session and
14 taken up then.

15 The commission notified the parties that it would be
16 promulgating a new scheduling order going into 2016 with the
17 same pattern of the last two weeks of every month. Both sides
18 were agreeable.

19 Finally, the commission inquired of the defense as to
20 what they were referring to in their motion to compel
21 discovery, Appellate Exhibit 020F, when they said they hadn't
22 had the opportunity to review some original evidence. The
23 defense informed the commission that they were referring to

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1 original documents for handwriting analysis by their experts.
2 The government averred that they were ready and willing to
3 provide the original evidence and the commission advised the
4 defense to lean forward and request it, to which the defense
5 agreed.

6 Do counsel for either side wish to add anything to
7 the court's summary of the 802 session or change anything that
8 the commission has stated? Trial Counsel?

9 TC [LTC LONG]: Your Honor, that largely tracks what the
10 government recalls. The one notable exception would be when I
11 reference the court's order 27 May 2015, AE 020I, paragraph 3,
12 where the court writes any evidence -- and this is in relation
13 to the 802 and the discussion that you detailed, Your Honor.
14 Any evidence related to discoverable matters pertaining to the
15 in personam jurisdiction hearing not promptly provided to the
16 defense will not be considered by the commission for the
17 purposes of determining in personam jurisdiction.

18 So the government did not see or understand there to
19 be a hard date as to when we could provide notice of new
20 material, other than what was in the prior scheduling order
21 that the court had issued for 30 June, which was notice of new
22 material.

23 MJ [CAPT WAITS]: All right. Well, I will just say for

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1 the record that "promptly" means promptly, and based on the
2 entire context of our discussion at the 802 conference, that
3 meant now. So I don't think it was subject to interpretation,
4 and particularly the fact that the government said they had
5 already been provided everything, but I hear what you are
6 saying and I can read what's in the order.

7 TC [LTC LONG]: Thank you, Your Honor.

8 DDC [LtCol JASPER]: Nothing further from the defense on
9 this matter, sir.

10 MJ [CAPT WAITS]: Thank you, Colonel Jasper.

11 All right. The next 802 conference the commission is
12 going to summarize is the one that occurred on Sunday night,
13 Sunday afternoon at 1700 after we all got here. All counsel
14 were present up in building AV34, with the exception of
15 Mr. Viti, whom the court had not been notified was detailed to
16 the case yet. His first appearance was yesterday at an 802
17 conference. However, all of the other counsel were there.

18 Before the commission could begin outlining the
19 agenda for its July session, Lieutenant Colonel Jasper stated
20 that he had an issue to raise with the commission that he
21 believed needed to be addressed as it might dictate the way
22 forward during these two weeks.

23 He stated that only two hours prior to the 802

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1 conference he had received ten pages of documents from the
2 government related to statements of his client that the
3 government stated that it intended to introduce at the hearing
4 on personal jurisdiction during this July session of the
5 commission.

6 The commission inquired of Lieutenant Colonel Long as
7 to why the government was providing proffered evidence to the
8 defense less than a day before the jurisdictional hearing was
9 to commence, contrary to the commission's scheduling order
10 contained in Appellate Exhibit 020D.

11 Those deadlines had been reemphasized by the
12 commission at the 6 May R.M.C. 802 conference at which the
13 government, over two months ago, stated that it had already
14 provided the defense all of the discovery it intended to admit
15 at the personal jurisdiction hearing. The government's
16 response was that this same material had been provided to the
17 defense in discovery several weeks prior and
18 Lieutenant Colonel Long was simply providing the "pinpoint"
19 reference to matters the government now intended to introduce
20 at the personal jurisdiction hearing.

21 This still did not answer the question of the
22 commission as to why the government was proffering the
23 introduction of new evidence the day before hearings in this

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1 case were to commence, contrary to the commission's scheduling
2 order in Appellate Exhibit 020D and the government's prior
3 representations.

4 Lieutenant Colonel Jasper stated that addressing the
5 untimeliness of the proffered evidence would not address the
6 issue entirely in that the documents provided by the
7 government raised the issue of a possible conflict of interest
8 of one of the accused's previously detailed defense counsel,
9 Lieutenant Colonel Sean Gleason, along with conflicts of
10 interest with the currently detailed defense team due to the
11 fact that they too had been detailed by the same Office of the
12 Chief Defense Counsel as Lieutenant Colonel Gleason.

13 He stated that he needed to discuss the issue with
14 his client before moving ahead and that he may even want his
15 defense team's relationship with the Office of the Chief
16 Defense Counsel to be severed.

17 He further opined that his investigation into the
18 facts and research into the ethical canons may necessitate the
19 detailing of an independent counsel to advise his client on
20 the issue of conflicts of interest of Lieutenant Colonel
21 Gleason and conflicts of interest of his currently detailed
22 defense team.

23 The commission, after some deliberation, decided to

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1 give the defense two days to look into the issue and to talk
2 to their client, after which another 802 conference would be
3 conducted to determine the way ahead.

4 The government had previously indicated its intent to
5 file a notice requesting an ex parte hearing under
6 M.C.R.E. 505(d) related to the discovery provided to the
7 defense that had been the subject of that 802. The commission
8 directed the government to file its intended notice, but
9 informed the government that it would not grant the ex parte
10 hearing at least until after the commission's next 802
11 conference with the parties.

12 Do counsel for either side have anything to add or
13 modify to that summary of the commission's 802 conference?

14 TC [LTC LONG]: Not the government, Your Honor.

15 DDC [LtCol JASPER]: Nothing from defense, Your Honor.

16 MJ [CAPT WAITS]: All right.

17 Next is an 802 conference that we had last night, 21
18 May 2015, at which all counsel were present, once again, at
19 Building AV34 here at Guantanamo Bay.

20 The prosecution introduced Mr. Viti as a new trial
21 counsel in the case. The commission addressed the conflict
22 issue that Lieutenant Colonel Jasper had brought up on the
23 previous 802 conference on 19 July. Lieutenant Colonel Jasper

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1 stated that he and his defense team had met with Mr. Hadi
2 twice and that they were still counsel as of that time and
3 also that the accused had never released Lieutenant Colonel
4 Gleason from representing him.

5 The defense stated that they would like to put the
6 information regarding a potential conflict of issue on the
7 record at the next session of the commission. The military
8 judge agreed that the defense would have that opportunity, at
9 which point the military judge would inquire with the accused
10 regarding his rights to counsel and the way forward.

11 The defense requested the opportunity also to discuss
12 an issue with the security officer before argument on the
13 conflict issue. That was resolved before the commission -- or
14 before Lieutenant Colonel Jasper had to have this 802 this
15 morning.

16 The commission addressed the way ahead for this
17 personal jurisdiction hearing, which was the main purpose of
18 this July session, along with Military Commission Rule of
19 Evidence 505 hearings and arguments on law motions. The
20 commission stated that a decision to conduct proceedings
21 potentially on Saturday or to conduct evening sessions would
22 be made at the end of the day on Thursday after we see how
23 things are progressing.

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1 Finally, the commission discussed with counsel about
2 when the commission would hear arguments on outstanding law
3 motions and the commission stated that that decision will be
4 made at a later time.

5 Do counsel for either side have anything to add to
6 the commission's summary of that 802 conference of last night?

7 TC [LTC LONG]: For the government, Your Honor, the
8 understanding of the government in what was communicated by
9 the defense team that there was no conflict as to the current
10 defense team, Lieutenant Colonel Jasper, Major Stirk, is that
11 an accurate recollection of what was communicated?

12 MJ [CAPT WAITS]: I don't know. I'll let Lieutenant
13 Colonel Jasper characterize that.

14 DDC [LtCol JASPER]: Your Honor, I would request a
15 ten-minute argument on this entire matter. This has been an
16 evolving research analytical issue for us in determining the
17 true nature of the conflict of our team and that's why I
18 requested the time to address it with you this morning.

19 We are continually -- we have had the two and a half
20 days, we appreciate the extra time, but I would like to be
21 heard at the well, sir, about whether we think there is a
22 conflict with our team or not.

23 MJ [CAPT WAITS]: Very well. Okay. So I don't know that

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1 it's necessary to nail them down on that. We are going to let
2 Colonel Jasper talk about that in a few minutes.

3 Okay. So the last 802 conference that we had was
4 just right 15 minutes before coming on the record this
5 morning. That was really for the purpose of discussing one
6 issue the commission wanted to discuss in open court that the
7 government had given notice that they wanted to discuss at a
8 505(h) hearing. The government agreed that it was a subject
9 matter that was appropriate for addressing here in open court
10 and we will be doing that later this morning. It has to do
11 with the main issue that the commission has talked about in
12 these 802 conferences of the timing of discovery provided to
13 the defense.

14 Do counsel for either side have anything to add to
15 the commission's summary of that 802 conference?

16 TC [LTC LONG]: Nothing from the government, Your Honor.

17 DDC [LtCol JASPER]: Nothing from defense, Your Honor.

18 MJ [CAPT WAITS]: Thank you.

19 All right. As stated in the commission's summary of
20 the 802 conferences, the commission finds that it does now
21 have reason to address the accused regarding his rights to
22 counsel, so I am going to again speak to you, Mr. Hadi. Yes?

23 DDC [LtCol JASPER]: Your Honor, objection. Before doing

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1 so, Your Honor, can I be heard on the matter?

2 MJ [CAPT WAITS]: I would like to ask this one question
3 before I hear from you.

4 DDC [LtCol JASPER]: Thank you.

5 MJ [CAPT WAITS]: I want to ask if he wants to continue to
6 be represented by you before you stand here and represent him
7 in an argument.

8 DDC [LtCol JASPER]: Roger, sir. Thank you.

9 MJ [CAPT WAITS]: So, Mr. Hadi, my question to you -- it
10 is a statement and then a question. You have been represented
11 in this commission by your Detailed Defense Counsel,
12 Lieutenant Colonel Jasper and Major Stirk, through most of the
13 proceedings that I have presided over since your arraignment.

14 My question to you is: Do you wish to continue to be
15 represented by both Lieutenant Colonel Jasper and Major Stirk
16 in this commission?

17 ACC [MR. HADI]: Today, yes.

18 MJ [CAPT WAITS]: Very well, thank you.

19 At this time, Lieutenant Colonel Jasper, I will allow
20 you, pursuant to our conversation yesterday, to put on the
21 record the defense's position regarding the apparent conflict
22 of interest of Lieutenant Colonel Sean Gleason -- and I
23 haven't stated for the record, but that's United States Marine

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1 Corps -- who, for the record, is currently representing
2 Mr. Hawsawi in the Mohammad commission, correct?

3 DDC [LtCol JASPER]: That's correct, sir. May I approach
4 the well.

5 MJ [CAPT WAITS]: You may.

6 DDC [LtCol JASPER]: Good morning, Your Honor.

7 MJ [CAPT WAITS]: Good morning.

8 DDC [LtCol JASPER]: This particular hearing, Your Honor,
9 is about Hadi al-Iraqi and his right to a conflict-free
10 counsel. It's not about you, Your Honor, it's not about me or
11 his current defense team, and it's not about the government
12 counsel. Hadi al-Iraqi has a right to conflict-free counsel.

13 Your Honor, for the very first time on Sunday night
14 the defense learned at 1500 that we have a real conflict of
15 interest in our case. Lieutenant Colonel Sean Gleason was
16 detailed on April 30 of 2012 to serve as Hadi al-Iraqi's very
17 first defense counsel. Sometime in 2012 we have an undated
18 memo from Mikeal Clayton, who was the original Chief
19 Prosecutor on the Hadi al-Iraqi case, with a list of 25 names
20 of conflicts that existed at that time with Hadi al-Iraqi.
21 Hawsawi was never mentioned on that particular memo,
22 Your Honor, when it was given to the defense counsel in 2012.

23 Your Honor, what gave rise to the conflict in this

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1 case are the conversations between Hawsawi and Hadi al-Iraqi
2 back in 2007. There were three conversations that were given
3 to us containing statements that were adverse to our client
4 Hadi al-Iraqi and were between just Hawsawi and Hadi al-Iraqi.

5 The conflict is that Lieutenant Colonel Sean Gleason
6 now represents Hawsawi. The problem, Your Honor, is that we
7 are flying by the seat of our pants trying to figure out our
8 ethical obligations to provide Lieutenant Colonel Jasper,
9 Major Stirk, and Lieutenant Colonel Gleason, ethical
10 representation of Hadi al-Iraqi.

11 At this point, Your Honor, by looking at the rules,
12 analyzing the rules, as of even last night, it is clear that
13 Lieutenant Colonel Gleason, his very first counsel, was not
14 properly or legally released to represent Hadi al-Iraqi.
15 Through my interviews of both Hadi al-Iraqi and Lieutenant
16 Colonel Sean Gleason, I have determined that that is, in fact,
17 correct. Additionally, I have other information to confirm
18 that Hadi al-Iraqi [sic] was not properly released.

19 MJ [CAPT WAITS]: That Gleason was not properly released.

20 DDC [LtCol JASPER]: That Lieutenant Colonel Gleason was
21 not properly released to represent Hadi al-Iraqi.

22 Your Honor, what I am citing specifically is Rules
23 for Military Commissions 505(d), (b), and also Rules for

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1 Military Commission Rule 506. Clearly, Your Honor, it
2 outlines the responsibilities after the formation of an
3 attorney-client privilege how someone is properly and legally
4 released pursuant to these rules.

5 MJ [CAPT WAITS]: Okay. Hold on. Let me get to those
6 rules. Okay.

7 DDC [LtCol JASPER]: Your Honor, by reading the rule
8 verbatim, it clearly says after formation of attorney-client
9 relationship, after an attorney-client relationship has been
10 formed between the accused and detailed defense counsel or
11 associate or assistant defense counsel, an authority competent
12 to detail such counsel may excuse or exchange such counsel
13 only upon request of the accused or application for withdrawal
14 by such counsel under Rules of Military Commission 506(b) or
15 for good cause shown on the record.

16 So then referring to the rule, accused's rights to
17 counsel under rule 506(b), which is excusal or withdraw, it
18 provides, "Exempt as otherwise provided in Rules of Military
19 Commission 505(d)(2), defense counsel may be excused only with
20 the express consent of the accused or by military judge upon
21 application for withdraw by the defense counsel for good cause
22 shown. Neither of those things have occurred in this case,
23 Your Honor.

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1 Accordingly, Lieutenant Colonel Sean Gleason, who has
2 a conflict by representing both Hawsawi and Hadi al-Iraqi
3 simultaneously, is currently on the defense team.

4 MJ [CAPT WAITS]: Okay. I want you to go back and tell me
5 where you were reading from in 506 once again.

6 DDC [LtCol JASPER]: Okay. Yes, sir. Rule 506, accused's
7 right to counsel. 506(b) specifically.

8 MJ [CAPT WAITS]: 506(b)?

9 DDC [LtCol JASPER]: "B" as in boy, yes, sir.

10 MJ [CAPT WAITS]: Okay. Hold on one second.

11 Captain Blackwood, is this an outdated version of the
12 manual? Well, my copy of the Manual for Military Commissions
13 up on the bench, 506(b), the heading of 506(b) is "Capital
14 Offenses."

15 DDC [LtCol JASPER]: Your Honor, I think we are looking
16 now currently at the same one. The rules have changed.

17 MJ [CAPT WAITS]: So am I looking at the right one?

18 DDC [LtCol JASPER]: I believe you are, yes, sir.

19 MJ [CAPT WAITS]: All right.

20 DDC [LtCol JASPER]: So after formation of an
21 attorney-client relationship, it really doesn't change the
22 landscape of our argument or issue here.

23 MJ [CAPT WAITS]: The language you were just citing, is it

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1 contained in the new version?

2 DDC [LtCol JASPER]: For the most part. The first rule
3 was, sir, the second rule was not.

4 MJ [CAPT WAITS]: So where is it in 506 now?

5 DDC [LtCol JASPER]: 506(a), in general, and (b) for
6 capital offenses, which doesn't apply in this particular case.

7 MJ [CAPT WAITS]: So you said 506(a)?

8 DDC [LtCol JASPER]: Correct, yes, Your Honor.

9 MJ [CAPT WAITS]: Let me read it.

10 DDC [LtCol JASPER]: Accused's rights to counsel.

11 MJ [CAPT WAITS]: Okay. So (a) now does not talk about
12 excusal of detailed counsel.

13 DDC [LtCol JASPER]: Yes, sir. Now, 505(b)(1) and (2) is
14 what we are outlining, highlighting for you.

15 MJ [CAPT WAITS]: Okay. All right. Go ahead. I'm sorry.

16 DDC [LtCol JASPER]: So for good cause shown on the record
17 is one standard or upon request of the accused or application
18 of withdraw by such counsel. None of that has occurred in
19 this case, Your Honor.

20 Currently we now do have a conflict. Lieutenant
21 Colonel Sean Gleason has not been properly severed from this
22 case. He still has an existing attorney-client relationship
23 with Hadi al-Iraqi. Hadi al-Iraqi desires to have Lieutenant

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1 Colonel Gleason, to consult with Lieutenant Colonel Gleason on
2 this matter since a proper excusal of his attorney-client
3 relationship never occurred. Lieutenant Colonel Gleason, who
4 now represents al Hawsawi in the 9/11 case, represented Hadi
5 al-Iraqi for over a year where they had attorney-client
6 relationships and privileged communications on many, many
7 occasions.

8 Lieutenant Colonel Sean Gleason, Your Honor, is
9 currently on our defense team. Therefore, as lead counsel on
10 this case currently, we have a conflict of interest.
11 Lieutenant Colonel Gleason needs to be afforded the
12 opportunity to consult with Hadi al-Iraqi and with his other
13 client, al Hawsawi, on this matter, and he needs to do his own
14 conflict analysis, and whether waivers are appropriate,
15 whether he needs to contact his state bar, whether he needs to
16 talk to his learned counsel on the Hawsawi case and how that
17 impacts them.

18 Which case should Lieutenant Colonel Gleason be on?
19 Is this even a waivable conflict? Your Honor, the government
20 has had since -- through the conversations that were given to
21 us, since 2007, in June, to know that this conflict existed.
22 It was imputed to the prosecution office in 2012, as recently
23 as 2012, provided the OCDC, the defense commission, with

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1 notice that Hawsawi was not conflicted with al-Iraqi.

2 The defense didn't know, it had no way of knowing
3 until the unclassified transcripts of conversations between
4 Hawsawi and al-Iraqi even existed that I could even speak to
5 him, to Hadi about the matter. It couldn't even happen until
6 Sunday afternoon when I learned of it in my first meeting with
7 my client on Monday morning. This has eroded the confidence
8 of Hadi al-Iraqi on truly who he should speak to about this
9 matter. I am his third lead military counsel in three years.
10 He is learning now that his very first lead counsel is now
11 representing someone who is adverse to his interests, who has
12 information that can be used to attempt to convict him.

13 Imagine sitting where Hadi al-Iraqi sits right now.
14 And that's why he is requesting, we believe very reasonably,
15 given the circumstances of his defense counsel journey, at the
16 very least he be given the opportunity of conflict-free
17 counsel, someone outside of OCDC, someone not wearing the
18 uniform, that can give him independent advice on this
19 particular conflict matter.

20 If you don't agree with that, Your Honor, we are
21 asking at least that Lieutenant Colonel Sean Gleason have the
22 opportunity to consult with Hadi al-Iraqi on this matter to
23 explain whether he should continue to represent him, whether

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1 he should be excused, whether Hadi al-Iraqi wants him excused,
2 what impact this has on Hadi al-Iraqi's case potentially, and
3 any other questions that they want to discuss that will be
4 deemed confidential. That has not occurred.

5 We are asking for a reasonable amount of time before
6 we proceed any further in this commission to resolve this
7 conflict matter. Two and a half days is not enough time,
8 Your Honor. And this was not the defense counsel's doing.
9 This was not the defense team's cause of this conflict. Two
10 and a half days to ensure that Hadi al-Iraqi is given his
11 Sixth Amendment right and his rights to conflict-free counsel,
12 to ensure that occurs going forward is necessary, complete
13 resolution of that matter before we can continue any further
14 in these proceedings.

15 That is Hadi al-Iraqi's intent, that's what his
16 desires are, and that's, as an ethical attorney who brought
17 this issue up to you immediately, within two hours of getting
18 this information, we cannot -- his defense team cannot
19 continue to go forward in these proceedings until this matter
20 is resolved to the satisfaction of our ethical obligations to
21 represent Hadi al-Iraqi.

22 Thank you, Your Honor.

23 MJ [CAPT WAITS]: Okay. Explain to me how you and

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1 Major Stirk have a conflict.

2 DDC [LtCol JASPER]: Your Honor, I am the lead counsel on
3 the case. I now have valid information that Lieutenant
4 Colonel Gleason is part of our defense team. Our entire
5 defense team would have to go forward with a conflicted
6 defense counsel in Lieutenant Colonel Sean Gleason. He is not
7 present here today to discuss this issue with Hadi al-Iraqi or
8 be released by you, Your Honor, on the record. He hasn't had
9 the ability to even know about this conflict until I
10 interviewed him on Monday afternoon because you, Your Honor,
11 asked if he was properly released. We would have never known.
12 I am his third counsel.

13 You requested during the 802, Lieutenant Colonel
14 Jasper, has Lieutenant Colonel Gleason been released from the
15 case? I said that's a good question, I need to look at it. I
16 would assume he was. That's what we would think would occur.
17 But after looking into the matter, it is obvious it was not a
18 proper release. He was never released. Hadi al-Iraqi, in
19 fact, did not want him released, did not sign any waiver
20 forms; they don't exist.

21 MJ [CAPT WAITS]: Okay. I understand the conflict that
22 Lieutenant Colonel Gleason has. I don't understand any
23 conflict that you and Major Stirk have. I don't see a

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1 conflict based on what you -- or you and Major Stirk based on
2 what you proffered to the commission.

3 DDC [LtCol JASPER]: Your Honor, I have an ethical
4 obligation to my defense team that we proceed ethically and
5 give conflict-free counsel to Hadi al-Iraqi.

6 MJ [CAPT WAITS]: I understand that, but if you are
7 conflict free, you can give him conflict-free advice.

8 DDC [LtCol JASPER]: Yes, sir. My defense team is
9 conflicted until Lieutenant Colonel Gleason is properly
10 released from this case.

11 MJ [CAPT WAITS]: A member of your team is conflicted.

12 DDC [LtCol JASPER]: Yes, sir. And we have had two and a
13 half days to look at these complex counsel issues. Two and a
14 half days. The government has known about this for years.
15 Honestly, Your Honor, this is not an easy matter. As you
16 know, we have been talking about it at these 802s for several
17 hours. It is not clear. There is a lot of gray in this. We
18 need more time to properly flesh it out and do it right before
19 we proceed.

20 MJ [CAPT WAITS]: How much more time are you asking for?

21 DDC [LtCol JASPER]: Your Honor, we can't put a time limit
22 on this. We need many things to occur. We need Lieutenant
23 Colonel Gleason to have the opportunity to consult with Hadi

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1 al-Iraqi and to consult with his other client, Hawsawi. And
2 that at the very minimum has to occur. How long that takes, I
3 don't control government movements and logistics. I have no
4 control over that. I don't even know how they are going to
5 view that conflict and whether they want to waive the conflict
6 or what Hadi al-Iraqi is going to decide after hearing from
7 Lieutenant Colonel Gleason.

8 And, again, we are asking for an independent counsel
9 to come in and advise. This is a man from a foreign country
10 in a foreign system. These are complex legal issues, very
11 complicated for lawyers to understand. A lot of gray in this
12 area. And to ask for a reasonable amount of time to flesh it
13 out even further and ensure that he is getting conflict-free
14 counsel is paramount before going forward at all.

15 MJ [CAPT WAITS]: I haven't heard any conflict -- I
16 haven't heard any evidence of a conflict that you and
17 Major Stirk have. So I am going to hear from the government,
18 hear what their position is on the issue.

19 ATC [LCDR SPENCER]: Your Honor, may I approach the
20 lectern.

21 MJ [CAPT WAITS]: Yes. Lieutenant Colonel Spencer.

22 ATC [LCDR SPENCER]: Thank you, Your Honor. Lieutenant
23 Commander Vaughn Spencer for the government.

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1 Your Honor, as a threshold matter, the defense is
2 conflating two issues. First is the issue of is there a
3 conflict, and second, is there an issue -- the second issue is
4 does the accused desire continued representation by Lieutenant
5 Colonel Gleason, was there a release, and was that release
6 proper.

7 I would like to first address the release question.
8 So far all we have from defense are proffers. There is not an
9 actual motion. There is no affidavits from any of the
10 particular parties. So I would suggest it's difficult for the
11 commission to make a ruling based on proffers.

12 Secondarily, the defense represented at the 802
13 conference that Colonel Mayberry had in fact released
14 Lieutenant Colonel Gleason. I don't know whether that
15 representation has changed, but that was the representation
16 last night, that Colonel Mayberry had in fact released
17 Lieutenant Colonel Gleason. The representation by the defense
18 at the time and continued today was that the accused had not
19 released him. So that remains an open question. But
20 according to the defense, Lieutenant Colonel Mayberry had, in
21 fact, released him.

22 That begs the obvious question, which is: How was he
23 actually detailed and was he actually detailed pursuant to

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1 R.M.C. 503? I invite the court's attention to R.M.C. 503(c)
2 for counsel detailing under Rule for Military Commissions is
3 specific to charges sworn.

4 When Lieutenant Colonel Gleason was detailed in 2013,
5 there were no charges pending before the commission. There
6 were no preferred charges. There was obviously no referral.
7 So to the extent that there may have been an attorney-client
8 relationship authorized, which we also don't know -- we don't
9 know whether in fact Lieutenant Colonel Gleason was authorized
10 to form an attorney-client relationship with the accused. But
11 accepting the defense's representation that there was in fact
12 an attorney-client relationship, there is not any evidence or
13 representation by the defense that he was actually detailed.

14 Assume ----

15 MJ [CAPT WAITS]: Hold on one second. Lieutenant Colonel
16 Jasper, do you have any evidence that Lieutenant Colonel
17 Gleason was detailed?

18 DDC [LtCol JASPER]: Yes, sir. It's been marked as
19 Appellate Exhibit 047 dated 30 April 2012, as I said in my
20 argument.

21 MJ [CAPT WAITS]: Have you shown this to the government
22 before we came on the record?

23 DDC [LtCol JASPER]: No, sir.

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1 MJ [CAPT WAITS]: Okay. Do you have a copy to show the
2 government now and then we can get past this issue ----

3 DDC [LtCol JASPER]: Yes, sir. And additionally, we have
4 an Appellate Exhibit 048. This is in the government's
5 possession, they actually provided it to us with their
6 conflict analysis, back again to them.

7 ATC [LCDR SPENCER]: Thank you for clarifying that,
8 Your Honor.

9 MJ [CAPT WAITS]: So we can move off that that the defense
10 hasn't produced any evidence of Lieutenant Colonel Gleason's
11 detailing because it is right here in Appellate Exhibit 047.

12 ATC [LCDR SPENCER]: The government is in possession of
13 that.

14 The same detailing authority, Colonel Mayberry -- I'm
15 sorry, this was Colonel Caldwell that detailed him, the same
16 detail by title is the same detailing authority that,
17 according to the defense in the 802, released Lieutenant
18 Colonel Gleason. Additionally, when the accused was arraigned
19 last year, the court very specifically asked him by whom do
20 you wish to be represented. The accused's answers were, by
21 Lieutenant Colonel Jasper and Major Stirk.

22 MJ [CAPT WAITS]: Well, actually, I don't think Lieutenant
23 Colonel Jasper was here yet. He appeared at, I think, the

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1 second session of the commission. At arraignment there was a
2 Lieutenant Colonel ----

3 DDC [LtCol JASPER]: Callen, Your Honor, C-a-l-l-e-n. I
4 wasn't present during the arraignment.

5 ATC [LCDR SPENCER]: I misspoke. Excuse me.

6 MJ [CAPT WAITS]: He was properly detailed by the second
7 commission and Mr. Hadi did say he wanted to be represented by
8 Lieutenant Colonel Jasper and Major Stirk at that session.

9 ATC [LCDR SPENCER]: Correct, Your Honor. So then the
10 follow-along question to that in the arraignment was do you
11 wish to be represented by any other counsel at this time.
12 Mr. Hadi indicated that he did not. So to the extent that the
13 proper detailing authority did detail Lieutenant Colonel
14 Gleason and then did release Lieutenant Colonel Gleason from
15 his duties under 503, Mr. Hadi indicated he did not wish to be
16 represented by anyone other than Colonel Callen and
17 Major Stirk, later then Lieutenant Colonel Jasper and
18 Major Stirk. So the issue has already been addressed by the
19 accused. We have not yet heard from the accused if he still
20 wishes to be represented by Lieutenant Colonel Gleason.

21 MJ [CAPT WAITS]: That's my next step.

22 ATC [LCDR SPENCER]: Understood, Your Honor.

23 Coming to the conflict question, which is a separate

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1 question from whether Lieutenant Colonel Gleason was released
2 or not; the conflict in question ostensibly stems from
3 conversations between two detainees, conversations in 2007
4 between Hawsawi and the accused. At the time they were both
5 unrepresented by counsel. To my knowledge there were no
6 pending charges against either party. The fact that later one
7 of the accused was represented by Lieutenant Colonel Gleason
8 and then subsequently represented, although never in an actual
9 commission, but formed an attorney-client relationship doesn't
10 per se create a conflict.

11 The defense has asked that if -- they have stated
12 that Lieutenant Colonel Gleason is conflicted, but at the same
13 time they have asked that Lieutenant Colonel Gleason advise
14 their client, the accused, as to the conflict, which seems as
15 if he is conflicted then there would be potentially a problem
16 with him advising him on the conflict without waivers as the
17 defense discussed.

18 It's the government's position that there is no
19 conflict. There is certainly not a conflict, as the court
20 stated, between Colonel Jasper and Major Stirk. So to that
21 extent, Your Honor, the court -- the commission should rule as
22 a matter of law that there is no conflict with respect to
23 those counsel. As the commission stated, they are well

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1 equipped to advise their client as to the status of any
2 potential conflict with Lieutenant Colonel Gleason. And even
3 to that potential conflict, it would effectively be more of a
4 problem for Mr. Hawsawi in the 9/11 case potentially, if there
5 even is a conflict.

6 So for those reasons, Your Honor, we would request
7 that the government's position is that we could proceed. They
8 have had time to advise their client, they have had time to
9 advise their client on this issue for the last two days. To
10 the extent that the court would like to hear from Lieutenant
11 Colonel Gleason, he is active duty Marine Corps, Your Honor.
12 We can get him here as quickly as you direct us to and resolve
13 this issue or certainly take testimony from him as to whether
14 he was released, was he released, that process. And certainly
15 it's relevant to the process as to what defense counsel
16 represented last night, which was that the current Chief
17 Defense Counsel had released Lieutenant Colonel Gleason. All
18 of those facts we could easily obtain very quickly without
19 significant delay to the proceedings.

20 Thank you, Your Honor.

21 MJ [CAPT WAITS]: Very well. Thank you.

22 All right. The commission does not find evidence,
23 based on the defense's presentation, of a conflict between the

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1 accused and Colonel Jasper or Major Stirk. But at this time I
2 will inquire of the accused further regarding Lieutenant
3 Colonel Gleason.

4 Mr. Hadi, is it true that -- yes, I'm sorry, didn't
5 see you over there.

6 DDC [LtCol JASPER]: I apologize, Your Honor. But Hadi
7 just requests 30 seconds to discuss with his interpreter and I
8 a matter.

9 MJ [CAPT WAITS]: Take as much time as you need.

10 DDC [LtCol JASPER]: I appreciate it.

11 The defense is ready to proceed, Your Honor, if you
12 have questions for Mr. Al-Iraqi, if you have questions, he is
13 prepared to answer them.

14 MJ [CAPT WAITS]: Is there anything you need to tell me
15 before I talk with your client?

16 DDC [LtCol JASPER]: No, sir.

17 MJ [CAPT WAITS]: Very well. All right.

18 Mr. Hadi, is it true that at some point Lieutenant
19 Colonel Sean Gleason was assigned to represent you?

20 ACC [MR. HADI]: Yes.

21 MJ [CAPT WAITS]: And is it true, as proffered by
22 Lieutenant Colonel Jasper, that you did not release Lieutenant
23 Colonel Gleason from representing you?

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1 ACC [MR. HADI]: Repeat that question again.

2 MJ [CAPT WAITS]: Is it true that you did not release
3 Lieutenant Colonel Gleason from representing you?

4 ACC [MR. HADI]: I did not approve that he leave. I was
5 insisting that he stays with me.

6 MJ [CAPT WAITS]: And is it your understanding, based on
7 conversations with your counsel, I assume, that Lieutenant
8 Colonel Gleason is now representing Mr. Mustafa Ahmed Adam
9 al Hawsawi?

10 ACC [MR. HADI]: He is representing Hawsawi in addition to
11 representing me.

12 MJ [CAPT WAITS]: And do you understand, based on what
13 Lieutenant Colonel Jasper was saying earlier this morning,
14 that your interests and those of Mr. Hawsawi might be in
15 conflict?

16 ACC [MR. HADI]: Yes, very.

17 MJ [CAPT WAITS]: I assume that you and Lieutenant Colonel
18 Gleason had private conversations, or what we call privileged
19 communications; is that correct?

20 ACC [MR. HADI]: Yes, we had a lot of conversations
21 regarding the case.

22 MJ [CAPT WAITS]: Do you understand that Lieutenant
23 Colonel Gleason ethically cannot tell anyone else, including

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1 Mr. Hawsawi or anyone on Mr. Hawsawi's defense team, about
2 your conversations with him?

3 ACC [MR. HADI]: As far as I know, it is not supposed for
4 this to happen. But whether this happened or not, I do not
5 know.

6 MJ [CAPT WAITS]: Okay. All right. Lieutenant Colonel
7 Jasper stated a few moments ago that you would like to consult
8 with Lieutenant Colonel Gleason about his potential conflict
9 in representing you; is that correct?

10 ACC [MR. HADI]: Yes.

11 MJ [CAPT WAITS]: So at this time do you know if you
12 object to Lieutenant Colonel Gleason's continued
13 representation of Mr. Hawsawi or do you wish to talk to
14 Lieutenant Colonel Gleason before you make that objection?

15 ACC [MR. HADI]: I need to talk to -- I need to talk to
16 attorney Gleason.

17 MJ [CAPT WAITS]: Okay. All right.

18 The findings of the commission on this issue, based
19 on the evidence before it, are that there is a potential
20 conflict of interest between -- for Lieutenant Colonel Gleason
21 in representing Hawsawi and the accused in this case. The
22 commission does not find any evidence of a conflict between --
23 a conflict for Lieutenant Colonel Jasper or Major Stirk and

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1 their continued representation of Hadi al-Iraqi. The accused
2 is entitled to a conflict-free detailed counsel. He has two.
3 He has elected, at least for today, to proceed with his two
4 detailed counsel who are here and present with him. For those
5 reasons, the commission denies the defense's request for a
6 continuance of an unspecified time in the proceedings of this
7 commission because the commission finds that the accused is
8 represented adequately and in conformance with the Rules for
9 Military Commissions. Okay?

10 Mr. Hadi.

11 ACC [MR. HADI]: Well, if I may, I have a few things I
12 would like to say. Actually, I have some questions for you.

13 MJ [CAPT WAITS]: Very well. You may ask.

14 ACC [MR. HADI]: Jasper has been working with me now and
15 within a period of three years I have been working with three
16 different attorneys. Now, with regard to the first attorney,
17 Gleason, it was only today that I realized that he is still
18 working on my case, and that was based on what I heard about
19 Jasper today. But before that, I had the wrong information.
20 Before working with Jasper, no attorney gave me the right
21 legal advice, and I have been working with Jasper based on
22 wrong information.

23 MJ [CAPT WAITS]: Okay. I guess my question is what do

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1 you mean by you "have been working with Jasper based on wrong
2 information"?

3 ACC [MR. HADI]: That was based on the fact that Gleason
4 was officially detailed into my case.

5 MJ [CAPT WAITS]: There might be some -- and Colonel
6 Jasper, if you want to talk to Mr. Hadi after I make this next
7 statement, you are welcome to do so. There might be some
8 confusion about the reality of Lieutenant Colonel Gleason not
9 having been properly released from your case and Lieutenant
10 Colonel Gleason continuing to work on your case. If he ever
11 represented you, he is bound by what we call the
12 attorney-client privilege not to discuss your private
13 conversations or your case with anyone.

14 I would assume that when he stopped working with you,
15 he was no longer working on your case; however, he was still
16 bound by the attorney-client relationship that he had with you
17 and he was ethically required to maintain the confidences that
18 you shared with him. Do you understand -- do you see the
19 difference between being continued -- continually bound to
20 protect his privilege with you and actually working, actively
21 working on your case?

22 DDC [LtCol JASPER]: He wants to consult with me as you
23 suggested, Your Honor.

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1 MJ [CAPT WAITS]: Very well.

2 ACC [MR. HADI]: Your Honor, I understand the privilege
3 relationship between the attorney and his client, but there is
4 a very important issue as far as I am concerned right now, is
5 that I am hearing contradictory information. Attorney Gleason
6 has lots of information concerning me for the time being, and
7 I don't know if he is going to use this information in the
8 future, whether for me or against me. Right now in general I
9 can say that I have a very disturbed relationship with my
10 attorneys and I can give you many examples to express these
11 contradictory information and how much this is affecting the
12 case.

13 MJ [CAPT WAITS]: I'm not going to ask you to give me
14 examples, and I understand the concern that you have about
15 your representation. The commission has found that you have
16 conflict-free counsel representing you here, and it's not
17 going to delay the progress of this commission. However, the
18 issue of a potential conflict that you have with Lieutenant
19 Colonel Gleason needs to be resolved.

20 The way that you and Lieutenant Colonel Jasper have
21 stated that you would like to resolve this potential conflict
22 is to meet with and discuss this issue with Lieutenant Colonel
23 Gleason, and the commission is directing that -- Lieutenant

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1 Colonel Jasper, that you make that happen; that you contact
2 Lieutenant Colonel Gleason, you have him consult with Mr. Hadi
3 on the -- if that's the way ahead. I mean, if you want to get
4 independent counsel or if you want to get Lieutenant Colonel
5 Gleason, that's your prerogative. However, he is advised the
6 commission needs to be informed by a notice filing from the
7 defense of Mr. Hadi's decision on the issue of Lieutenant
8 Colonel Gleason's continued representation of either the
9 accused or Mr. Hawsawi, waivers -- whether it's waiver or
10 objection, you need to address that with Lieutenant Colonel
11 Gleason and by filing a notice pleading with the court of the
12 resolution of that conflict.

13 If it is necessary to protect any attorney-client
14 privileged communications, you are free to file that notice
15 ex parte and under seal.

16 Any questions? I mean, my ruling that we are going
17 to move forward with the counsel of record sitting here at
18 counsel table right now is not to minimize the apparent
19 conflict, but resolution of that apparent conflict does not
20 need to interfere with the future -- or the ongoing
21 proceedings of this commission, and that is the commission's
22 ruling, okay?

23 DDC [LtCol JASPER]: Your Honor, could I confer with my

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1 client?

2 MJ [CAPT WAITS]: You may.

3 ATC [LCDR SPENCER]: Your Honor, may the government be
4 heard on one recordkeeping matter?

5 MJ [CAPT WAITS]: Just a minute.

6 DDC [LtCol JASPER]: Your Honor, may Hadi al-Iraqi comment
7 and, if he has questions of you, proceed?

8 MJ [CAPT WAITS]: Yes.

9 DDC [LtCol JASPER]: Thank you.

10 MJ [CAPT WAITS]: Mr. Hadi?

11 ACC [MR. HADI]: Judge, I cannot confer with Mr. Grits
12 [sic] nor with Lieutenant Jasper.

13 MJ [CAPT WAITS]: Okay. Say that one more time.

14 ACC [MR. HADI]: According to what I heard today, I do not
15 want Colonel Jasper to represent me, nor Mr. Gritzer [sic].

16 MJ [CAPT WAITS]: What about Major Stirk?

17 ACC [MR. HADI]: I mean Adam Stirk, Major Stirk,
18 Mr. Stirk, too, I meant to say.

19 MJ [CAPT WAITS]: Okay. What you meant to say was you no
20 longer want to be represented by Lieutenant Colonel Jasper or
21 Major Stirk?

22 ACC [MR. HADI]: Yes.

23 MJ [CAPT WAITS]: Lieutenant Colonel Jasper and

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1 Major Stirk, do you want to -- I want to give you one more
2 opportunity to talk to Mr. Hadi before we move forward on that
3 representation.

4 ACC [MR. HADI]: (Inaudible) to confer at this point, I do
5 not want to confer with Colonel Jasper nor with Mr. Stirk,
6 with Colonel [sic] Stirk about this, at least temporarily,
7 till I have an independent counsel.

8 MJ [CAPT WAITS]: Okay. I want the interpreter to repeat
9 that because that was only partially transmitted to the
10 commission, if you can.

11 ACC [MR. HADI]: I do not want to confer with Colonel
12 Jasper nor with Major Stirk, at least temporarily, until I
13 have an option for an independent counsel. I do not want to
14 be represented -- I don't want them to represent me at this
15 time.

16 MJ [CAPT WAITS]: Okay. Government, where does that leave
17 us?

18 TC [LTC LONG]: Your Honor, as to decision for independent
19 counsel, I believe, based on the proffer and the facts, you
20 are still the appropriate individual to make the determination
21 as to whether that is necessary.

22 As to proceeding, if we can proceed pro se under Rule
23 for Military Commission 506(d), I didn't know whether that's

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1 something that at this time the court would entertain even if
2 at this time it would appear the accused does not wish to
3 confer or have representation. Would he be in a position to
4 proceed pro se and would the military judge be willing to
5 entertain that colloquy with the accused and have detailed
6 counsel present even if the accused waived, as he has done
7 temporarily, counsel to conduct -- further conduct the
8 proceedings?

9 MJ [CAPT WAITS]: Well, I don't have that colloquy in
10 front of me because I wasn't anticipating this eventuality, so
11 we are going to take a -- we are going to take a recess until
12 1055, a 20-minute recess at this time.

13 TC [LTC LONG]: Thank you, Your Honor.

14 MJ [CAPT WAITS]: All right. The commission is in recess
15 until 1055. Everyone please carry on.

16 [The R.M.C. 803 session recessed at 1037, 22 July 2015.]

17 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 0907, 22 July
2 2105.]

3 MJ [CAPT WAITS]: The commission will come to order. Let
4 the record reflect that all parties who were present when the
5 commission recessed are once again present.

6 All right. Mr. Hadi, I have a few other questions
7 that I want to ask you. First, I'm going summarize the result
8 of an R.M.C. 802 conference that we just had in chambers.
9 Pursuant to the government's request about a pro se inquiry
10 with the accused, I did ask Lieutenant Colonel Jasper if he
11 had an idea of what the accused's response to that question
12 would be and he stated that Mr. Hadi had asked him when we
13 went off the record about pro se representation, what that
14 meant, and stated that he was not interested in representing
15 himself before the commission.

16 Mr. Hadi, is that a correct statement?

17 ACC [MR. HADI]: Yes, it is.

18 MJ [CAPT WAITS]: So you do want to be represented by an
19 attorney?

20 ACC [MR. HADI]: Yes.

21 MJ [CAPT WAITS]: All right. Now, I know earlier this
22 morning we were talking about Lieutenant Colonel Gleason, and
23 I just want to clarify for the record, you stated at one point

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1 that you would like to confer with Lieutenant Colonel Gleason;
2 is that correct?

3 ACC [MR. HADI]: Yes.

4 MJ [CAPT WAITS]: Do you still want to do that?

5 ACC [MR. HADI]: Yes.

6 MJ [CAPT WAITS]: All right. Based on the meeting that I
7 just had with Lieutenant Colonel Jasper, Major Stirk and the
8 prosecution, they have represented that they will do what they
9 can to arrange that meeting as early as possible. They will
10 be getting back with the commission to let me know when that
11 meeting has been arranged.

12 One question I want to ask you: I understand that
13 you said that you do not at this time, and for purposes of the
14 currently scheduled proceedings, want to be represented by
15 Lieutenant Colonel Jasper and Major Stirk, correct?

16 ACC [MR. HADI]: Temporarily, yes.

17 MJ [CAPT WAITS]: Okay. My question to you is: In order
18 for there to be communications between the commission and
19 yourself, understanding that you temporarily do not want them
20 to represent you in the substantive proceedings of the
21 commission, would you consent to Lieutenant Colonel Jasper and
22 Major Stirk working on your behalf to arrange this meeting
23 with Lieutenant Colonel Gleason?

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1 ACC [MR. HADI]: I have no problem with that. Yes.

2 MJ [CAPT WAITS]: Okay. And also in the same vein, would
3 you have -- would you consent to Lieutenant Colonel Jasper and
4 Major Stirk filing notices with the commission as to the
5 results of your conversations with Lieutenant Colonel Gleason
6 ex parte and under seal; in other words, protecting any
7 confidences that they are still bound to uphold with you and
8 only for the purpose of keeping the commission informed of the
9 results of your meetings with Lieutenant Colonel Gleason, so
10 that the commission will know whether the conflict issue is
11 resolved?

12 ACC [MR. HADI]: I have no problem with that.

13 MJ [CAPT WAITS]: Very well. Then Trial Counsel, I would
14 ask for your good offices, your best efforts in arranging the
15 earliest possible meeting between the accused and Lieutenant
16 Colonel Gleason. I would ask that you keep the court, the
17 commission, along with Colonel Jasper and Major Stirk, who I
18 would also ask for your good offices and assistance in
19 arranging the meeting, of the success of your efforts. Once
20 we know how soon that can take place, then we will be able to
21 determine what the way ahead is for both this session and
22 future sessions of the commission. So ----

23 ATC [MAJ LONG]: We will do so, Your Honor.

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1 MJ [CAPT WAITS]: We may need to be having another 802
2 conference or more in order for the commission to be
3 completely informed of what's occurring on this front.

4 TC [LTC LONG]: Very well, Your Honor. We will do so.

5 MJ [CAPT WAITS]: All right. Mr. Hadi, do you have any
6 questions about what I just described about the way ahead,
7 about your meeting with Lieutenant Colonel Gleason or anything
8 else regarding your representation?

9 ACC [MR. HADI]: I don't have a question currently.

10 MJ [CAPT WAITS]: Very well. Since we don't know if and
11 when the meeting is going to be able to take place, the
12 commission is in recess until further notice from the
13 government and/or Lieutenant Colonel Jasper and Major Stirk as
14 to the next session. So regrettably, we are in a little bit
15 of a limbo.

16 Do counsel for either side have any questions or
17 anything else that they would like to put on the record at
18 this time?

19 TC [LTC LONG]: Nothing except for one very small
20 administrative matter. At the beginning of the proceeding,
21 Your Honor, I failed to put on the record the presence in the
22 proceedings of the trial team's lead paralegal, Sergeant First
23 Class Richard A. Lukas.

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