

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 [The R.M.C. 803 session was called to order at 1047,
2 22 September 2015.]

3 MJ [CAPT WAITS]: This commission will come to order. Let
4 the record reflect that not all parties who were present when
5 the commission last recessed are again present. There are
6 only two representatives of the government here today. The
7 same detailed defense counsel are present.

8 Colonel Long, could you please state for the record
9 who is representing the government at this session of the
10 commission.

11 DTC [LTC LONG]: Yes, Your Honor. For the government
12 present at counsel table, Lieutenant Colonel David Long,
13 Lieutenant Commander Vaughn Spencer, Sergeant First Class
14 Lukas, Ms. Lindsey Spitler. Absent from government table,
15 Mr. Felice Viti, Commander Kevin Flynn, Major Joshua Bearden.

16 Your Honor, I would also add at this time the
17 proceedings are being simultaneously broadcast remotely by
18 closed circuit TV to Fort Meade, Maryland, and Fort Devens,
19 Massachusetts.

20 MJ [CAPT WAITS]: Thank you, Colonel Long. As I just
21 stated, Lieutenant Colonel Jasper and Major Stirk are here,
22 despite the last session of the commission in which the
23 accused put them in a -- I guess a suspended status, status to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 be determined as far as their further representation of the
2 accused in this commission.

3 At this time, the commission will summarize several
4 R.M.C. 802 conferences that have been held since the last
5 session of the commission.

6 The first one was held during the last scheduled
7 session of the Hadi commission, and that was at 0830 on the
8 23rd of July 2015. That was held in building AV 34, all
9 counsel were present. At that time, the government had filed
10 a motion for the commission to order Lieutenant Colonel
11 Gleason to talk to the accused by secure telephone, and then
12 to hold an ex parte hearing of the commission with just the
13 defense that same day. That's Appellate Exhibit 049.

14 Mr. Little, who was the acting chief defense counsel,
15 was present also for that R.M.C. 802 conference. It was
16 ascertained by the commission that Lieutenant Colonel Gleason
17 was on leave at that time, and would be on leave until the
18 25th of July, and thereafter was scheduled to go directly to a
19 temporary duty assignment for death penalty litigation
20 training in California on the 26th of July.

21 Given those circumstances, it was clear to the
22 commission that the issue of determining Lieutenant Colonel
23 Gleason's status of whether there was any conflict of interest

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 would not be able to be resolved during the proceedings of the
2 July commission. Accordingly, the commission ordered
3 Lieutenant Colonel Gleason to meet with Mr. Hadi and/or
4 Mr. Hawsawi to resolve the conflict and report back to the
5 commission by notice filing via Lieutenant Colonel Jasper no
6 later than 25 August 2015.

7 Things turned out different after that. Lieutenant
8 Colonel Gleason filed a motion to file an ex parte notice to
9 the court. He did not meet with Mr. Hadi.

10 Does counsel for either side have anything they want
11 to add to the commission's summary of that R.M.C. 802
12 conference?

13 DTC [LTC LONG]: Nothing from the government.

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

15 MJ [CAPT WAITS]: Very well.

16 The next one -- next R.M.C. 802 conference was held
17 on 1 September 2015. That was a telephonic 802 conference at
18 which all parties were present telephonically; the military
19 judge was in Naples, Italy. At that R.M.C. 802 conference,
20 the -- well, first of all, the government had requested that
21 conference. The commission agreed that one was prudent, given
22 the ruling of the commission contained in Appellate Exhibit
23 049I of 28 August 2015. The government requested that the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 commission's September hearing dates remain in place, if for
2 no other reason than to settle the representational status of
3 the accused, given his request at the last hearing of the
4 commission.

5 If that issue were settled, the government proposed
6 that Appellate Exhibit 045, the defense motion to suppress
7 out-of-court statements of the accused, and that
8 M.C.R.E. 505(h) hearings, with respect to government motions
9 to preadmit, could then be heard.

10 On the issue of the accused's ongoing representation
11 in the commission, the government also expressed its concerns
12 that on at least two prior occasions in hearings of the
13 commission, the accused has expressed some indication that he
14 would like to be represented by civilian counsel.

15 The government stated that they wanted to put that
16 issue to rest on the record of the commission, everyone
17 recognizing that the accused does have a right to civilian
18 counsel at no expense to the United States, pursuant to Rule
19 for Military Commission 506(a). Pursuant to the commission's
20 ruling in Appellate Exhibit 049I, Lieutenant Colonel Jasper
21 stated that he had a meeting scheduled with the accused on
22 9 September 2015, and would inform the commission of his
23 status by no later than September 11 of 2015, in accordance

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 with the commission's order.

2 In addition, Lieutenant Colonel Jasper agreed with
3 the proposed scheduling order proposed by the government in
4 the event that Major Stirk and he were restored to full
5 representation by the accused.

6 In addition, the commission was informed that Major
7 Kincaid, United States Army, was awaiting his clearances and
8 read-ons in order to be detailed to the Hadi case and, until
9 that were accomplished, he would not be able to actively
10 represent the accused in the commission.

11 All parties agreed that based upon the tentatively
12 agreed-upon matters to be addressed, the September hearing
13 could be abbreviated to conclude by the 23rd of September, and
14 a docketing order was later promulgated accordingly.

15 In addition, both sides agreed to extend the November
16 hearing dates to 9 to 20 November, two weeks, in order to have
17 the in personam jurisdiction hearing if other circumstances
18 all permitted that possibility.

19 Do counsel for either side have anything to add to
20 the commission's summary of that R.M.C. 802 conference?

21 DTC [LTC LONG]: Nothing from the government.

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

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

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 The last two conferences I'm going to summarize are
2 from yesterday, and then this morning immediately before
3 coming on the record.

4 Yesterday in AV 34, Lieutenant Colonel Jasper, Major
5 Stirk, Lieutenant Colonel Long and Lieutenant Colonel Spencer
6 were present. The commission was informed that in addition to
7 the accused not having agreed to meet with Major Stirk and
8 Lieutenant Colonel Jasper prior to 11 September, he had not
9 agreed to meet with them anytime prior to yesterday.

10 In addition, the commission was provided with a
11 declaration from the chief defense counsel, General Baker,
12 that proffered several facts about General Baker having met
13 with the accused in this case to discuss his counsel rights
14 with him, and that the accused had agreed to meet with General
15 Baker again before coming on the record today in order to
16 attempt to resolve the issues of representation of the accused
17 in the ongoing proceedings of this commission. We agreed that
18 we would have another R.M.C. 802 conference after General
19 Baker met with the accused this morning to discuss the
20 accused's elections of counsel.

21 Does counsel for either side have anything they want
22 to add to the commission's summary of that conference of
23 yesterday?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DTC [LTC LONG]: Your Honor, from the government, the only
2 thing we would add is that the affidavit has now become
3 Appellate Exhibit 053, and the parties were made aware of that
4 last evening.

5 MJ [CAPT WAITS]: Very well.

6 And it's actually entitled a declaration, I think.
7 Yeah. Declaration of Brigadier General John G. Baker.

8 Okay. So this morning, pursuant to our agreement of
9 yesterday, here in chambers in Courtroom 2, with the same
10 counsel present, the commission was provided with what has
11 been marked as Appellate Exhibit 053A. It is a document from
12 the accused releasing Lieutenant Colonel Jasper and Major
13 Stirk from further representation of the accused in this
14 commission. It was also accompanied by a letter from the
15 chief defense counsel which states, pursuant to certain
16 references, that Lieutenant Colonel Jasper and Major Stirk
17 will be excused from their duties of representing Mr. al-Iraqi
18 upon a properly detailed counsel forming an attorney-client
19 relationship with Mr. al-Iraqi.

20 So this is something else we discussed in the 802
21 immediately before coming on the record, that until another
22 counsel is detailed, Lieutenant Colonel Jasper and Major Stirk
23 will continue to represent the accused in this case for the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 limited purpose of facilitating a transition to another
2 detailed military defense.

3 So, Mr. Hadi, I'm going to ask you: Is that your
4 wish at this time, that Colonel Jasper and Major Stirk
5 continue to represent you in the limited capacity of
6 facilitating the assignment of a new counsel?

7 ACC [MR. HADI]: My understanding is that their
8 continuance for working with me is for continuing with the
9 court or for another assignment?

10 MJ [CAPT WAITS]: Is that a question?

11 ACC [MR. HADI]: I'm just inquiring whether their working
12 with me now, is it for the purpose of communicating with the
13 court?

14 MJ [CAPT WAITS]: Predominantly for the purpose of
15 communicating with the court, yes.

16 ACC [MR. HADI]: For the purpose of communicating with the
17 court, I do not mind.

18 MJ [CAPT WAITS]: Very well. I think we have an
19 understanding, then.

20 Okay. Now, getting back to the summary of this
21 morning's R.M.C. 802 conference, the commission was informed
22 that the intended -- the identified prospective detailed
23 defense counsel is a Major Kincaid, United States Army, Judge

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Advocate General's Corps, and that he is in the process of
2 getting clearances and appropriate read-ons in order that he
3 can be officially detailed to Mr. Hadi for purposes of this
4 commission.

5 In addition, as stated in Brigadier General Baker's
6 declaration of yesterday, he is pursuing a person of interest,
7 a civilian attorney, that it is his intent to also detail to
8 Mr. Hadi's case. And that's pursuant to a provision in the
9 Regulation for Trials by Military Commission.

10 There is another prospective defense counsel, another
11 military defense counsel that apparently is potentially in the
12 wings, but has not been discussed, and no military defense
13 counsel has actually been detailed at this point.

14 Any meeting between Major Kincaid and the accused is
15 contingent on, again, clearances and appropriate read-ons
16 being completed.

17 The commission will issue an order directing, through
18 Major Stirk and Lieutenant Colonel Jasper, updates on the
19 progress of the detailing of Major Kincaid; namely, to include
20 the status of his clearance and appropriate read-ons, when the
21 detailing memo will be issued and provided to the commission,
22 when Major Kincaid will meet and has met with the accused, and
23 then, finally, when detailed defense counsel will be prepared

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to move forward with the further proceedings of this
2 commission. Okay?

3 So, do counsel for either side have anything to add
4 to the commission's summary of this morning's 802 conference?

5 DTC [LTC LONG]: Nothing from the government, Your Honor.

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

7 MJ [CAPT WAITS]: All right.

8 So we have a tentative way ahead for the assignment
9 of military counsel to Mr. Hadi, but at this time I need to
10 again conduct another colloquy with Mr. Hadi regarding his
11 understandings of his counsel elections and the way ahead of
12 this commission regarding who's going to represent him.

13 All right, Mr. Hadi, I've been informed that you have
14 seen the commission's ruling, Appellate Exhibit 049I,
15 concerning the release of Lieutenant Colonel Gleason as a
16 member of your defense team. The commission has found that
17 his status with respect to you as a former attorney and you as
18 a former client of his, while he is no longer a member of your
19 defense team, as I told you during our last session of this
20 commission, he is ethically bound to maintain the confidences
21 that you and he shared about your case. Since Lieutenant
22 Colonel Gleason was properly released upon his own application
23 for withdrawal, he is not reasonably available to represent

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 you in this case, and that's pursuant to Rule For Military
2 Commission 506(a).

3 You have been represented for about almost -- well,
4 over the past year, by your detailed counsel, Lieutenant
5 Colonel Jasper and Major Stirk. They were detailed to
6 represent you by the chief defense counsel. And, as I've
7 already stated on the record, the commission is in receipt of
8 your revocation of their ongoing representation of you at this
9 time.

10 I want to remind you once again that under the
11 Military Commissions Act, you have the right to be represented
12 by one detailed military counsel. It's my understanding that
13 you have been notified that Major Kincaid, once he has been --
14 once appropriate clearances and read-ons have been
15 accomplished, will be detailed, and you will be meeting with
16 him.

17 Is that your understanding?

18 ACC [MR. HADI]: I understand now.

19 MJ [CAPT WAITS]: Okay.

20 Now, one other issue that I want to lay to rest. At
21 various points during the last session of this commission,
22 either you or Lieutenant Colonel Jasper have raised the
23 possibility of you being appointed some type of what was

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 referred to as independent counsel to advise you about your
2 rights to counsel, okay? Independent counsel is provided when
3 an accused needs to be advised about potential legal or
4 ethical conflicts between himself and his counsel.

5 As I advised you at the last proceedings of this
6 commission, and as reiterated in Appellate Exhibit 049I, the
7 commission has found that no conflict exists between you and
8 Lieutenant Colonel Jasper or between you and Major Stirk, so
9 the commission will not be ordering the appointment of
10 so-called independent counsel. That's what I'm here for, is
11 to advise you of your rights to counsel. Do you understand
12 that?

13 ACC [MR. HADI]: Yes.

14 MJ [CAPT WAITS]: Now, I know that this is probably at
15 least the third time that I have done what I'm about to do,
16 and that is to go back with you through your rights to counsel
17 before this military commission. I want to put to rest the
18 issue of civilian counsel at no expense to the United States.
19 Do you recall me having advised you in the past of your right
20 to civilian counsel?

21 ACC [MR. HADI]: Yes, I understood.

22 MJ [CAPT WAITS]: Okay. And do you recall that I advised
23 you, and do you understand, that civilian counsel can only

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 represent you if it is at no cost to the United States?

2 ACC [MR. HADI]: Yes.

3 MJ [CAPT WAITS]: And do you understand that any such
4 counsel has got to be a United States citizen? Do you
5 understand that?

6 ACC [MR. HADI]: Yes.

7 MJ [CAPT WAITS]: All right. So my question to you is:
8 Are you aware of anyone -- well, my first question is: Do you
9 have the financial resources to hire a civilian counsel so
10 that you can pay for that person and it would be, therefore,
11 at no expense to the United States?

12 ACC [MR. HADI]: Personally, I do not have the
13 capabilities.

14 MJ [CAPT WAITS]: Very well. Are you aware of anyone --
15 well, let me ask you -- I guess, first, I should ask: At that
16 point, do you understand that someone would have to do this in
17 what we refer to as in a pro bono capacity; that is, free to
18 you?

19 ACC [MR. HADI]: This alternative is -- or choice is
20 existent, but I do not have it now.

21 MJ [CAPT WAITS]: So what you're saying is right now you
22 do not have anyone, that you're aware of, who has come forward
23 and agreed to represent you at no cost to you?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ACC [MR. HADI]: Yes.

2 MJ [CAPT WAITS]: Very well.

3 And, Colonel Jasper, can you state for the record if
4 there have been any efforts to explore the possibility of a
5 pro bono option?

6 DDC [LtCol JASPER]: The current detailed defense counsel,
7 we have made limited efforts, and we have not been able to
8 obtain a pro bono counsel to the satisfaction of
9 Mr. Hadi al-Iraqi.

10 MJ [CAPT WAITS]: Very well.

11 Then, Mr. Hadi, the commission finds that this is
12 apparently not a viable option for you to pursue at this time.
13 You would agree with that?

14 ACC [MR. HADI]: This possibility is not available to me,
15 but I have had talks with the chief defense counsel, and they
16 have the possibility to facilitate that, and they are trying.

17 MJ [CAPT WAITS]: Okay. Well, that brings me to the next
18 type of defense counsel that I wanted to address with you, and
19 I want to make sure that you understand there's a difference
20 between the civilian counsel at no expense to the United
21 States that we have been talking about and what is provided by
22 the Regulation for Trials by Military Commission under
23 Section 9.1A, which allows the chief defense counsel to hire

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 at government expense what we call a GS employee, who would
2 actually be getting paid by the government, and who could
3 be -- if hired, could be detailed to a commissions case as
4 assistant defense counsel.

5 Is that the option that you're talking about?

6 ACC [MR. HADI]: Yes.

7 MJ [CAPT WAITS]: Okay. So this is a little bit different
8 provision than the types of defense counsel -- civilian
9 defense counsel that I've been advising you in previous
10 sessions of this commission.

11 The commission has a declaration, again, from
12 Brigadier General Baker that that option is being pursued.
13 Now, as I've told you, in order for the civilian defense
14 counsel that we're talking about, that Lieutenant Colonel --
15 or that General Baker talked to you about, you have to have a
16 detailed military defense counsel first, because the civilian
17 would only be able to be detailed as an assistant defense
18 counsel under our regulations. Do you understand that?

19 ACC [MR. HADI]: Yes.

20 MJ [CAPT WAITS]: All right. And I want to make one
21 distinction here, make it clear to you, and this is something
22 that I talked about with counsel in our conference yesterday
23 and everyone agrees that this is the case: Despite the fact

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that a person, a civilian is -- at government expense that
2 General Baker has talked to you about, is detailed to your
3 case under the title of assistant defense counsel, does not
4 mean that you do not still have the authority and the
5 prerogative of deciding what each person assigned to your
6 defense team does and who should be the person who takes the
7 lead. Do you understand that?

8 ACC [MR. HADI]: Yes.

9 MJ [CAPT WAITS]: That is an issue that is internal to
10 whatever defense team you have; that is, you get the final
11 decision on the roles and responsibilities of the members of
12 your defense team. Do you understand that?

13 ACC [MR. HADI]: Yes, I understand.

14 MJ [CAPT WAITS]: All right. So do you have any questions
15 about this type of civilian defense counsel that we're talking
16 about, and that General Baker has talked to you about?

17 ACC [MR. HADI]: I don't have any questions.

18 MJ [CAPT WAITS]: All right. Now, one other thing I want
19 to make clear is that the hiring of anyone, military or
20 civilian, can become a lengthy process. And I am putting you
21 on notice that in the event that General Baker continues with
22 his stated goal of hiring a civilian attorney to detail to
23 your case, the commission will not, for that reason alone,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 allow the delay of these proceedings. Okay? Once you have
2 military defense counsel detailed, that will be occurring
3 consecutively with the ongoing proceedings of this commission,
4 assuming that your detailed counsel have been given adequate
5 time to prepare and move forward with the proceedings of this
6 commission.

7 Do you understand what I just explained?

8 ACC [MR. HADI]: Yes, I understand that.

9 MJ [CAPT WAITS]: All right. Now, the last type of
10 counsel, or the last way that you can elect to be represented,
11 is by another method that I've explained to you in the past,
12 and that's what we call your right to request what's called
13 individual military counsel; that is, military counsel of your
14 own selection.

15 Under the Military Commissions Act and the Rules for
16 Military Commissions, specifically Rule For Military
17 Commission 506(a), you may request a specific military lawyer
18 to represent you. If the person you request is reasonably
19 available, then that person would be appointed to represent
20 you. Again, this is within General Baker's purview.

21 If you are represented by a military lawyer of your
22 own selection, then you would normally lose the services of
23 whatever military lawyers were detailed to you at the time.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 However, you could request that one or more of your detailed
2 counsel, whoever they were, remain on your case in addition to
3 the specific military lawyer that you request and was detailed
4 to you.

5 Do you understand your rights to individual military
6 counsel as I've just explained them?

7 ACC [MR. HADI]: Yes, I understood.

8 MJ [CAPT WAITS]: Okay.

9 All right. There's one other thing I want to also
10 put you on notice of, to make clear for the record, and that
11 is, the commission understands that, assuming that Major
12 Kincaid is detailed to your case and becomes your new detailed
13 military counsel, that that will be, by the commission's count
14 and based on the knowledge that I have, based on the history
15 of this case, the fifth lawyer that would be detailed to you,
16 military lawyer that would be detailed to you.

17 I also want to state for the record that I have not
18 heard -- based on my finding that there is no conflict between
19 you and Major Stirk or Lieutenant Colonel Jasper, the
20 commission is not aware of any cause, good cause, for you to
21 have released them from your case.

22 I'm addressing this because this affects the ongoing
23 proceedings of this commission. I'm taking into account the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 fact that you have had several lawyers assigned to you, and
2 the commission finds that it's within its discretion to
3 address this issue with you now so that your expectations are
4 real, and that is, that, as I told you before, you're entitled
5 to conflict-free, competent counsel. There's no evidence
6 before this commission that Lieutenant Colonel Jasper and
7 Major Stirk do not meet those criteria.

8 Typically, reasons for counsel to be excused from a
9 case are, most importantly, conflicts of interest, of which I
10 find there have been none with Jasper and Stirk, or a complete
11 breakdown in your communications between yourself and your
12 attorneys, and I have not been told that that's the case,
13 either.

14 Your right to counsel does not include, according to
15 case law, a, quote, meaningful relationship, between yourself
16 and your counsel. You don't have to like them. And just
17 because you don't -- just because you disagree or don't like
18 rulings of the commission is not a grounds, within itself,
19 it's not good cause for excusal of your counsel. So I'm not
20 going to inquire of you exactly why it is that you've excused
21 Colonel Jasper and Major Stirk. Just be aware that you may
22 not like any new counsel that are detailed to you any more
23 than you like them. Most importantly ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DDC [LtCol JASPER]: Your Honor?

2 MJ [CAPT WAITS]: Yes.

3 DDC [LtCol JASPER]: I got permission to talk on the basic
4 issue for clarification of the record.

5 MJ [CAPT WAITS]: Okay.

6 DDC [LtCol JASPER]: Just so it's known, yes, I am his
7 third military counsel and Major Stirk is his fourth.

8 MJ [CAPT WAITS]: Right.

9 DDC [LtCol JASPER]: The first military counsel was
10 released against Hadi al-Iraqi's desires.

11 MJ [CAPT WAITS]: Not somebody besides Gleason? Or is
12 that Gleason?

13 DDC [LtCol JASPER]: Lieutenant Colonel Gleason, Your
14 Honor, against his desires. And ----

15 MJ [CAPT WAITS]: All right.

16 DDC [LtCol JASPER]: ---- the second counsel left due to
17 military orders. So yes, he is coming upon what would be a
18 fifth military counsel, but ----

19 MJ [CAPT WAITS]: Right.

20 DDC [LtCol JASPER]: But for clarity, that is totally
21 beyond his control for number one and number two.

22 MJ [CAPT WAITS]: Understood. And that was the first
23 thing I said, and that is what is militating in favor of my

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 allowing the release of you and Major Stirk, is because I
2 think, based on the fact that these other counsel have been
3 provided and then released, against his wishes, I assume, that
4 he gets at least this one bite at the apple. But I don't want
5 it to be perceived as this is a way of affecting the ongoing
6 proceedings of the commission.

7 It has to be -- I'm not asking for good cause in this
8 instance. I'm basically giving Hadi a free pass, fire his
9 counsel one time. It can't become something that can be done
10 lightly, on a whim, because it would be impossible for the
11 ongoing proceedings of the commission if the chief defense
12 counsel could just release counsel, could excuse counsel,
13 based on the request of the accused for no cause.

14 From the commission's perspective -- I understand
15 what the rule says, but from the commission's perspective and
16 based on case law, once counsel have made an appearance before
17 a tribunal, the military judge gets the final say on whether
18 they should be released or not. I'm releasing you-all. I'm
19 going to allow you to be released in this instance, based on
20 these circumstances and for the reasons you just stated,
21 without getting into why. I'm not going to get into that. It
22 won't be that way next time, if there is a next time.

23 Do you understand that, Mr. Hadi?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DDC [LtCol JASPER]: Again, I have permission to address
2 this particular question, Your Honor.

3 We understand the rationale, sir, that you just
4 cited. However, the defense' position is that really, it's
5 the chief defense counsel, it's his authority and sole
6 discretion to detail and excuse defense counsel, not the
7 military judge's. So we just object to your understanding of
8 the rule, Your Honor.

9 MJ [CAPT WAITS]: Okay. Well, we'll have that food fight
10 if we get to it. But it is inconceivable -- based on that
11 reading of the rule, we could be in the middle of a -- we can
12 be on -- at instructions, prior to sending members back to
13 deliberate in a commission, and based on that reading of the
14 rule, if the accused said, "I don't want these lawyers
15 anymore," the chief defense counsel could excuse them. And
16 that is an absurd reading of that rule.

17 So the commission, with all respect to the chief
18 defense counsel, takes exception to that reading, and it's
19 inconsistent with case law and the practice of military
20 tribunals and civilian courts in our system.

21 So I hear what you're saying. Hopefully, this will
22 be a non-issue. Hopefully, counsel will be detailed to
23 Mr. Hadi, and this commission will proceed forthwith. But if

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 it comes to that, there's going to be some hurdles that have
2 to be overcome in order for any future counsel to be released
3 once they've made an appearance before this commission.

4 All right. So, Mr. Hadi, do you have any questions
5 about any of the rights to counsel that I have explained to
6 you?

7 ACC [MR. HADI]: I don't have a question, but I want to
8 add I have been here six years and seven months without a
9 trial and it took the government a whole year, and ----

10 MJ [CAPT WAITS]: Okay. Okay.

11 ACC [MR. HADI]: ---- with accusations and challenges ----

12 MJ [CAPT WAITS]: Please stop. Mr. Hadi ----

13 ACC [MR. HADI]: It's not me who's causing the delay of
14 the trial.

15 MJ [CAPT WAITS]: I need the interpreter to stop talking,
16 too. Thank you.

17 Okay. That was unintelligible, okay? You are going
18 to have your opportunity -- I'm going to hear everything you
19 have to say right now, but right now you're talking and the
20 interpreter is talking over you. So what I need you to do is
21 make a statement in snippets, in one or two sentences at a
22 time, pause, allow the interpreter to interpret what you say.
23 After she's finished, you can do it again. Right now, I can't

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 understand anything you're saying because you're talking and
2 the interpreter is talking over you. Do you understand?

3 ACC [MR. HADI]: Yes, I understand.

4 MJ [CAPT WAITS]: Okay.

5 ACC [MR. HADI]: Thank you.

6 MJ [CAPT WAITS]: So I will hear everything that you have
7 to say, you but I need to you speak -- I need you to make
8 short statements, allow the interpreter to interpret. After
9 she's finished, you can make another statement. Let her
10 interpret; when she's finished, you can talk again. Okay?
11 Right now, I have no idea what you just said because of the
12 way it was going. Okay? Go.

13 ACC [MR. HADI]: I was saying -- talking about the delay
14 of the procedures. I stayed here in Guantanamo six years and
15 seven months without any trial ----

16 MJ [CAPT WAITS]: Okay. Stop. Stop. Interpreter, please
17 do not talk over the accused. Wait for him to finish his
18 statement and then you can interpret his statement.

19 INT: Okay.

20 MJ [CAPT WAITS]: Mr. Hadi.

21 ACC [MR. HADI]: I stayed here in Guantanamo for seven
22 years and six months without trial, and then after that, my
23 case was sent to court.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 It took a long time. First, I received -- I was --
2 the charges were stated to me, and then they were changed, and
3 then my meetings with my defense were spied on. And then
4 three times after meetings and after my trial went to court,
5 then at the last time it went to court. All the delay that
6 happened in the past wasn't because of me.

7 I only opened the topic about the release of my
8 defense after a long thinking about this, and only now I took
9 this decision about releasing the defense.

10 MJ [CAPT WAITS]: I understand.

11 All right. So, this is the point at which I would
12 normally ask by whom do you want to be represented in your
13 commission. In this case, I have been apprised by the -- as I
14 stated in the R.M.C. 802 conference, and pursuant to Appellate
15 Exhibit 053A, that the way ahead is -- at least as proposed by
16 counsel who currently represent you for this limited purpose,
17 for Major Kincaid to meet with you as soon as possible based
18 on his being given appropriate clearances and read-ons.

19 So is that what you -- is that your desire at this
20 point regarding your representation in this commission?

21 ACC [MR. HADI]: Up till now, I have not met with the new
22 counselor. Once I meet him, I will present my opinion
23 regarding this.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [CAPT WAITS]: Does the government require any further
2 or request any further inquiry on this issue? I mean, I think
3 that's a reasonable position to take. I don't know what more
4 can be done at this point.

5 DTC [LTC LONG]: The government agrees, Your Honor.
6 There's nothing.

7 MJ [CAPT WAITS]: Okay. I mean, the one thing that can be
8 done and, as I stated, will be done, is the commission will
9 issue an order directing Major Stirk and Lieutenant Colonel
10 Jasper, as the accused's mouthpiece for the Military
11 Commissions Defense Office and the accused regarding, you
12 know, a clearance for Major Kincaid, his clearance and
13 appropriate read-ons, obviously providing a detailing memo and
14 notice as to when and after the accused has met with Major
15 Kincaid, and again, when the defense will be prepared to move
16 forward in the commission. So that will be coming forthwith.

17 All right. Now, Trial Counsel, in our 802s, you
18 raised some issues that you wanted to have put to bed, if
19 possible, during this session. Are there any other issues
20 that you would like for me to address on the issue of counsel
21 for this accused?

22 DTC [LTC LONG]: No, Your Honor. There's nothing. We
23 believe it's been covered.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [CAPT WAITS]: All right. And, Lieutenant Colonel
2 Jasper, any other issues that you would like for the
3 commission to address on the issue of counsel?

4 DDC [LtCol JASPER]: No, sir, thank you.

5 MJ [CAPT WAITS]: Okay. All right. Given the fact that
6 the accused, as we sit here right now, is not substantively
7 represented by counsel for any other issue than obtaining new
8 counsel, I don't think that the commission can take up any
9 other business at this point, contrary to the docketing order
10 that was promulgated for this session of the commission.

11 Do counsel for both sides concur with that?

12 DTC [LTC LONG]: The government concurs, Your Honor.

13 DDC [LtCol JASPER]: Defense agrees as well. Yes, sir.

14 MJ [CAPT WAITS]: All right. So are there any other
15 issues that the commission can take up at this time in that
16 light?

17 DTC [LTC LONG]: Nothing from the government.

18 DDC [LtCol JASPER]: Nothing from the defense.

19 MJ [CAPT WAITS]: Very well.

20 This commission is in recess until a time to be
21 determined based on the detailing of counsel for this accused.

22 Commission is in recess.

23 [The R.M.C. 803 session recessed at 1146, 22 September 2015.]

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT