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1 **[The R.M.C. 803 session was called to order at 0903, 08 January**
2 **2025.]**

3 MJ [Col McCALL]: The commission's called to order.

4 Good morning, Mr. Trivett. Could you please identify who's
5 here on behalf of the United States.

6 MTC [MR. TRIVETT]: Yes, sir. Good morning.

7 Representing the United States today in the courtroom in
8 Guantanamo is myself, Mr. Clay Trivett; Colonel Joshua Bearden. Also
9 present, Supervisory Intelligence Analyst Kimberly Waltz, Mr. Rudolph
10 Gibbs, Navy Legalman Chief Trevis Howard, Navy Legalman Second Class
11 Matthew Estes, and DoD Analyst Megan Gentry, paralegals Karissa
12 Grippando, and Mr. John Cox.

13 We have no one currently in the Remote Hearing Facility.

14 And, Your Honor, these proceedings are being transmitted via
15 closed-circuit television to sites in the continental United States
16 pursuant to the commission's orders.

17 MJ [Col McCALL]: All right. Thank you, Mr. Trivett.

18 Good morning, Mr. Sowards.

19 LDC [MR. SOWARDS]: Good morning, Your Honor. And Happy New
20 Year.

21 MJ [Col McCALL]: Happy New Year.

22 LDC [MR. SOWARDS]: I'm Gary Sowards appearing on behalf of
23 Mr. Mohammad, who is present in court, joined by Nicholas McCue,

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1 Gabriela McQuade, Denise LeBoeuf. We will be joined shortly by Major
2 Elspeth Theis. She's attending to a matter for me. And we're also
3 joined by Major Michael Leahy, also United States Air Force major.

4 MJ [Col McCALL]: All right.

5 LDC [MR. SOWARDS]: And we have no one, as far as I know,
6 viewing us from the Remote Hearing Room.

7 MJ [Col McCALL]: All right. Thank you, Mr. Sowards.

8 LDC [MR. SOWARDS]: You're welcome, sir. Thank you.

9 MJ [Col McCALL]: Good morning, Lieutenant Ridgeway. It looks
10 like you have the stick for team Bin'Attash.

11 DC [LT RIDGEWAY]: By process of elimination, sir, that's
12 right. Appearing in the courtroom today on behalf of Mr. Bin'Attash
13 is myself. In the RHR we have Mr. Edwin Perry and Lieutenant Colonel
14 Daniel Goldberg.

15 MJ [Col McCALL]: All right. Thank you.

16 Good morning, I see Mr. Connell up in the RHR.

17 LDC [MR. CONNELL]: Good morning, sir. Appearing in
18 Courtroom 2 on behalf of Mr. al Baluchi is Rita Radostitz. Appearing
19 from the Remote Hearing Room is myself, James Connell, and Defne
20 Ozgediz.

21 MJ [Col McCALL]: All right. Thank you, Mr. Connell.

22 Good morning Mr. Gleason.

23 DC [MR. GLEASON]: Good morning, Your Honor. I hope you had a

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1 good holiday.

2 MJ [Col McCALL]: I did.

3 DC [MR. GLEASON]: Appearing on behalf of Mr. Hawsawi is
4 myself, Sean Gleason. In the RHR we have Ms. Lachelier. We are
5 appearing as observers pursuant to your order in AE 970A.

6 Mr. Hawsawi is not present today and he has waived his
7 appearance so that he can attend a separate legal meeting.

8 MJ [Col McCALL]: All right. Understood.

9 All right. Well, let's lead off from that. I did note that
10 we have Mr. Mohammad and Mr. Bin'Attash and Mr. Ali present but
11 Mr. al Hawsawi is not present.

12 Just going through our normal procedures, though,
13 Government, do you have a witness to account for the absence?

14 MTC [MR. TRIVETT]: We do, sir.

15 Please raise your right hand.

16 **LIEUTENANT COLONEL, U.S. Army, was called as a witness for the**
17 **prosecution, was sworn, and testified as follows:**

18 MTC [MR. TRIVETT]: Please be seated.

19 **DIRECT EXAMINATION**

20 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

21 Q. Have you testified previously in these military
22 commissions proceedings under the alias Russell?

23 A. I have.

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1 Q. Okay.

2 MTC [MR. TRIVETT]: Your Honor, may I approach?

3 MJ [Col McCALL]: You may.

4 MTC [MR. TRIVETT]: Okay. I'm going to be handing the witness
5 what has been marked as Appellate Exhibit 972 (MAH).

6 A. Thank you.

7 Q. Now, sir, do you recognize AE 972 (MAH)?

8 A. I do.

9 Q. And what do you recognize it as?

10 A. It is the Statement of Understanding for the Right to Be
11 Present At Commission Hearings. It was the information I read to
12 Mr. Hawsawi this morning.

13 Q. Okay. And at what time did you approach Mr. Hawsawi about
14 his interest in attending?

15 A. 0650.

16 Q. Okay. And what did he indicate?

17 A. He indicated that he was going to attend his legal
18 meetings and that he would not be attending commissions today.

19 Q. Okay. And did you read him his rights in Arabic or
20 English?

21 A. In English. A linguist was present. He did not indicate
22 a preference for the linguist.

23 Q. Okay. Did you have any doubt that he understood that he

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1 had the right to be here today?

2 A. None.

3 Q. Okay. Do you have any doubt that he chose instead to go
4 to his legal meeting?

5 A. None.

6 MTC [MR. TRIVETT]: Your Honor, we have no other questions.

7 MJ [Col McCALL]: All right. Thank you.

8 Do any defense counsel have questions for this witness?

9 Apparently not.

10 All right. Thank you. You're excused. You can step off
11 the witness stand.

12 WIT: Thank you.

13 **[The witness was excused and withdrew from the courtroom.]**

14 MJ [Col McCALL]: The commission finds that Mr. al Hawsawi has
15 knowingly and voluntarily waived his right to be present at today's
16 session.

17 MTC [MR. TRIVETT]: Sir, briefly?

18 MJ [Col McCALL]: Yes.

19 MTC [MR. TRIVETT]: Staff Sergeant Samantha Resendiz is now
20 present in the Remote Hearing Room.

21 MJ [Col McCALL]: All right. Thank you, Mr. Trivett.

22 All right. Just because it's the first day of a session, I
23 do just want to remind everyone, as we go through things today,

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1 please just be cognizant that we have the court reporters,
2 stenographers, and linguists that are attempting to make sure we get
3 a good record and a good translation for the accused. So please
4 speak slowly and just be aware of that. And don't be startled if you
5 hear a voice, as the translators might let us know that
6 we're -- they're having a problem with something.

7 All right. So for this session, my understanding is that
8 there are a few prayer times that occur during the normal court
9 hours. Those are at approximately 1210, 1515, and 1740. And in
10 order to accommodate meal time and prayer time, I intend to take a
11 lunch recess at our normal time, 1200 to 1330. And then we'll take
12 an afternoon break from 1515 to 1545. And then if we're going late
13 into the evening, we'll have a break around 1745.

14 I assume that will suffice?

15 Apparently so. All right.

16 So we were originally scheduled to start the session
17 yesterday. However, we delayed a day due to the winter weather that
18 hit the National Capital Region and closed some of those facilities
19 such as the Remote Hearing Room, the RHR, and some of the other
20 remote sites in the U.S.

21 A little bit of housekeeping. I did get a request in
22 through my staff for the benefit of those counsel who have requested
23 to be excused from attending the commission proceedings on this

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1 coming Saturday, that's 11 January 2025, so that they can travel
2 either to Guantanamo or back.

3 I want to note that I don't anticipate us being in session
4 on Saturday, so there's no need to excuse them. If that changes,
5 obviously we'll work it. But, again, I don't anticipate that.

6 All right. As of right now, it's the commission's intent to
7 make use of today to discuss with the prosecution and Mr. Mohammad's
8 defense team some of those preliminary issues related to
9 Mr. Mohammad's providence inquiry, which is currently scheduled for
10 Friday, 10 January 2025. Specifically, the commission will be
11 discussing the contents of the commission's TCO in AE 955U.

12 At an appropriate time, I would like to confer with the
13 prosecution and defense counsel for Mr. al Hawsawi and Mr. Bin'Attash
14 as to the scheduling of court time during this session to discuss
15 similar issues with their respective providence inquiries if we're
16 able to go forward.

17 I'm in the process of drafting up something similar to that
18 TCO that I put out in AE 955U for those respective pleas. I'm
19 anticipating I'll probably have something out, this afternoon is my
20 goal for the al Hawsawi defense team and then something shortly
21 thereafter, maybe tomorrow, for the Bin'Attash defense team.

22 At some point during this week I would like to confer with
23 the prosecution and counsel for Mr. Ali about scheduling the oral

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1 argument on Mr. Ali's motion to suppress the LHM. I know it's
2 currently scheduled for the third week that we're down here. But now
3 that we've added on these initial two weeks primarily to handle the
4 potential providence inquiries, seeing as how there is a potential
5 that we might not be able to do the providence inquiries, I'm open to
6 trying to move that oral argument up to maybe next week, Thursday,
7 Friday. That way we go ahead and get it accomplished while we're
8 down here.

9 And also, the following week, that third week that we're
10 going to be down here, we're actually going to be double billeted
11 with the Nashiri commission. And, again, I think everybody's
12 tracking -- I put this out in some of the docket orders -- that we
13 might not have access to the RHR every day as we're trying to
14 accommodate the other commission.

15 So, again, it's something I'd like to have a discussion with
16 the counsel, but we don't have to do it today.

17 All right. That's all the administrative matters I have.
18 Any housekeeping to take up before we get into discussing the
19 providence inquiry?

20 Apparently not. All right. I think that might be a first.

21 All right. So, Mr. Sowards, Mr. Trivett, are you prepared
22 to discuss AE 955U?

23 MTC [MR. TRIVETT]: Yes, sir.

1 **[Pause.]**

2 MJ [Col McCALL]: And my thoughts were I would go through
3 those questions that were set out in 955U first, and I think they're
4 pretty straightforward. I think you probably had a chuckle over some
5 of them. I think they're -- I assume I know what the answer is, but
6 I didn't want to make assumptions. I've seen how some of the other
7 commissions have been on the record and all of a sudden there were
8 exceptions and substitutions and problems. So I just wanted to hash
9 those out.

10 And then, Mr. Sowards, my understanding from my staff is
11 that you have some proposed edits for a trial guide. Did you want to
12 have that marked as an in-court submission?

13 LDC [MR. SOWARDS]: Sure. That would be helpful, Your Honor.
14 I can provide that to the clerk now. I have -- and copies for
15 counsel.

16 **[Counsel conferred.]**

17 MJ [Col McCALL]: You can proceed.

18 **[Counsel conferred.]**

19 MJ [Col McCALL]: All right. Mr. Sowards, it looks like
20 that's going to be marked as AE 955X.

21 All right. So, again, let me go through some of these
22 questions from 955 ----

23 LDC [MR. SOWARDS]: And if ----

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1 MJ [Col McCALL]: Go ahead, Mr. Sowards.

2 LDC [MR. SOWARDS]: Let me ask. I'm sorry, Your Honor. Yeah,
3 because what I had done was I mentioned this to Mr. Sims earlier.
4 And as you can see, these are some, for the most part, fairly simple
5 sorts of edits or suggestions. But I just conferred with
6 Mr. Trivett, and our suggestion, if it's acceptable to you, since
7 this is kind of a dialogue on the questions you had ----

8 MJ [Col McCALL]: That's exactly what it is.

9 LDC [MR. SOWARDS]: ---- I'll repair to Mr. Mohammad's end of
10 the table so I can confer with him, and then we can take them from
11 where we sit. Is that good?

12 MJ [Col McCALL]: That's perfect.

13 LDC [MR. SOWARDS]: Okay. All right. Thank you, sir.

14 **[Counsel conferred with the accused.]**

15 MJ [Col McCALL]: Take your time, Mr. Sowards.

16 **[Counsel conferred with the accused.]**

17 LDC [MR. SOWARDS]: Excuse me, Your Honor. Mr. Mohammad just
18 wanted me to clarify that this portion of the discussion will be in
19 open session?

20 MJ [Col McCALL]: That's correct.

21 LDC [MR. SOWARDS]: Good. Thank you very much.

22 **[Counsel conferred with the accused.]**

23 MJ [Col McCALL]: Are you ready, Mr. Sowards?

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1 LDC [MR. SOWARDS]: Yes, sir, we are. Thank you.

2 MJ [Col McCALL]: All right. So, again, let's go to those
3 questions listed out in AE 955U.

4 So first, can you confirm that Mr. Mohammad is pleading
5 guilty to all charges and specifications without exceptions or
6 substitutions?

7 LDC [MR. SOWARDS]: Yes, we can, Your Honor.

8 MJ [Col McCALL]: All right. Can you confirm that
9 Mr. Mohammad ----

10 MTC [MR. TRIVETT]: Sir?

11 MJ [Col McCALL]: Yes, Mr. Trivett?

12 MTC [MR. TRIVETT]: Are we going to have government
13 concurrences on the questions?

14 MJ [Col McCALL]: Sure.

15 MTC [MR. TRIVETT]: Only because that's what I was expecting
16 to ----

17 MJ [Col McCALL]: And that's fine. Yeah. That one in
18 particular I was a little more concerned that sometimes you get
19 defense is not on the same page. I assumed that the government had
20 been very clear that that was the intention, but yeah, please.

21 MTC [MR. TRIVETT]: Yes, sir.

22 MJ [Col McCALL]: I'll give you a chance to ----

23 MTC [MR. TRIVETT]: Yeah, at least in that regard we had

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1 identified, through a scrub of our -- in comparing the list of the
2 2,976 victims with the spellings of the names on the death
3 certificates, that there were five -- what we would believe would
4 need to be minor changes which I believe the defense agrees to ----

5 MJ [Col McCALL]: Okay.

6 MTC [MR. TRIVETT]: ---- that we would cause in pen and ink to
7 occur, and we'll file an appellate exhibit to that extent. It's
8 really just initials, middle names, those types of things, but we
9 wanted to make sure that it was accurate.

10 MJ [Col McCALL]: Okay. Perfect. No, that's good on you for
11 doing that. Other than that, though, no exceptions or substitutions?

12 MTC [MR. TRIVETT]: Correct.

13 MJ [Col McCALL]: All right.

14 Mr. Sowards, can you confirm that Mr. Mohammad is admitting
15 that there is both a factual basis for each plea of guilty and that,
16 having reviewed the evidence the prosecution intends to introduce,
17 Mr. Mohammad is personally convinced that the prosecution could prove
18 him guilty beyond a reasonable doubt of each offense?

19 LDC [MR. SOWARDS]: We can confirm both of those, Your Honor.

20 MJ [Col McCALL]: All right.

21 LDC [MR. SOWARDS]: And that's, for clarification, with
22 reference to United States law consistent with the rest of the ----

23 MJ [Col McCALL]: Understood.

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1 LDC [MR. SOWARDS]: ---- rest of the ----

2 MJ [Col McCALL]: And, Mr. Trivett, that was your
3 understanding?

4 MTC [MR. TRIVETT]: Yes, sir.

5 MJ [Col McCALL]: All right.

6 From paragraph 103 of the Stipulation of Fact, specifically
7 and the totality of the Stipulation of Fact generally, the commission
8 understands that Mr. Mohammad is pleading guilty to the charged
9 offenses under subparagraph -- 1, subparagraph 950q(1) of Title 10 of
10 the United States Code, as a principal has committed an offense or
11 aided, abetted, counseled, commanded, or procured the commission of
12 an offense.

13 And then possibly under 2, subparagraph 950q(2), as a
14 principal who is vicariously liable for causing the acts of another.
15 The commission does not understand Mr. Mohammad to be pleading guilty
16 under subparagraph 950q(3) as one who is liable for the actions of
17 subordinates as a superior commander.

18 Based on the Stipulation of Fact, the commission understands
19 the government to be using the term "directs" or "commands" under the
20 first theory of principal liability, that is to aid, abet, command,
21 counsel, procure, or cause, rather than the third theory of principal
22 liability related to superior, command, or liability.

23 So are these commission understandings correct?

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1 LDC [MR. SOWARDS]: Yes, they are, Your Honor.

2 MTC [MR. TRIVETT]: The government concurs.

3 MJ [Col McCALL]: All right. And I know that was typical
4 lawyer question with multiple questions buried in there and I got one
5 answer, but on that subparagraph 950q(2), is Mr. Mohammad pleading
6 guilty for causing the acts of another?

7 LDC [MR. SOWARDS]: He is, Your Honor.

8 MJ [Col McCALL]: All right.

9 All right. And, again, I think you all understand just
10 where I was going. I explained this a little bit in the trial guide
11 that I provided to the parties but in various places throughout the
12 Stipulation of Fact where the parties have agreed that Mr. Mohammad
13 directed and they use that term, the parties are using the term
14 "directed" to basically, again, be that Mr. Mohammad is liable as a
15 principal who committed an offense of aided, abetted, counseled,
16 commanded, or procured the commission of offense, or possibly is also
17 caused; is that correct?

18 LDC [MR. SOWARDS]: That is correct, Your Honor. Although, I
19 believe -- and I'm not holding Mr. Trivett to it -- he mentioned that
20 there may be, from the government's perspective, not as much emphasis
21 on procure, but I'll let him speak to that. But otherwise that's
22 absolutely right.

23 MJ [Col McCALL]: All right.

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1 MTC [MR. TRIVETT]: That's correct. We pled in the
2 conjunctive. We can prove and he can plead guilty in the
3 disjunctive. So to the extent that there's any procurement, I'm not
4 aware of any of the evidence of that, but there's nothing improper
5 about having pled it that way.

6 MJ [Col McCALL]: All right. That's fine. And, again, just
7 to be absolutely clear, the one I was I think most concerned on was
8 "caused." And that -- the parties are in agreement that Mr. Mohammad
9 would plead guilty to having caused ----

10 MTC [MR. TRIVETT]: Correct.

11 MJ [Col McCALL]: ---- the offenses? All right.

12 It looked like there was a scrivener's error on
13 paragraph 114 listing as Charge VIII and it should be Charge VII; is
14 that correct? And, again, I think you certainly found scrivener
15 errors in my proposed trial guide, so I'm not surprised, but am I
16 correct on that?

17 LDC [MR. SOWARDS]: That was my reading of it after you
18 brought that to our attention, sir.

19 MJ [Col McCALL]: Okay. Mr. Trivett?

20 MTC [MR. TRIVETT]: Agreed. It should be Charge VII vice
21 Charge VIII.

22 MJ [Col McCALL]: All right. We'll fix that.

23 All right. Paragraph 9.h. of the PTA states the maximum

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1 punishment for the additional charge is confinement for life.

2 Please confirm that the parties understand the maximum
3 punishment for that offense includes only 20 years of confinement
4 unless one of the individuals alleged to have suffered serious bodily
5 injury is further alleged to have died as a result of those injuries.
6 Where are we at on this? I'm assuming maybe there's information that
7 I'm not tracking.

8 MTC [MR. TRIVETT]: So when Your Honor issued this, we went
9 back and looked and the statute authorizes life. However, the
10 statute also authorizes the Secretary of Defense to set the maximums,
11 not inconsistent with that, and have done so for intentionally bodily
12 injured who have not died at 20 years.

13 So we agree that that is the maximum.

14 MJ [Col McCALL]: Okay. And you agree, Mr. Sowards?

15 LDC [MR. SOWARDS]: Yes, I do, Your Honor.

16 MJ [Col McCALL]: All right.

17 All right. In paragraph 7 of the PTA, the parties agree
18 that the Stipulation of Fact can be used in two ways, to determine
19 the guilt and to determine the sentence. However, the introductory
20 paragraph of the Stipulation of Fact states that the stipulation can
21 be used in five ways. So I just want to make sure the parties agree
22 that the commission can use the Stipulation of Fact in those five
23 ways that are listed; is that correct?

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1 LDC [MR. SOWARDS]: Yes, Your Honor.

2 MJ [Col McCALL]: Mr. Trivett?

3 MTC [MR. TRIVETT]: Prosecution concurs.

4 MJ [Col McCALL]: All right.

5 All right. And then I think you saw the lengthy footnote at
6 the end of -- I think it was 955U, where the parties in their
7 response in 955M, talking about being that -- the defense would not
8 be bound by the PTA if the commission set earlier deadlines for
9 pretrial matters than those which the parties have agreed to in the
10 PTA.

11 Again, I probably will not be the judge dealing with that
12 but I do think it makes sense if this is going forward as a guilty
13 plea that the parties have some flexibility to allow the commission
14 to have some earlier deadlines to hash out some of the inevitable
15 issues with evidence and witnesses and procedures that are going to
16 come up and allow the commission to go forward with that guilty plea
17 at the date that is agreed to in the PTA.

18 So, again, I'm putting this out there to the parties to
19 think about it. If we get past the providence inquiry, it's going to
20 be something I or my successor will raise to -- again, I think it
21 just makes sense for an orderly process in this commission.

22 All right. That's -- those are the questions I have. Let's
23 go on to the questions you have about the trial guide that I had

1 proposed.

2 **[Pause.]**

3 LDC [MR. SOWARDS]: Just one moment, Your Honor.

4 MJ [Col McCALL]: Take your time.

5 LDC [MR. SOWARDS]: Mr. ----

6 **[Counsel conferred.]**

7 LDC [MR. SOWARDS]: Thank you for that. We just had dedicated
8 copies of everything, and I'm trying to make sure no one's poaching.

9 As you can see from the not-too-long, about three- or
10 four-page list of questions, as I say, some are suggested textual
11 changes. Others may be a little more substantive, but not much.

12 But the first one begins at page -- the numbering that I was
13 following was page 2 of 103. There's another reference to 110 of the
14 overall document, but it's of the -- your trial guide itself is 103
15 pages, and so this is the second page of the 103.

16 And the portion we're focusing on says
17 Mr. Mohammad -- actually, maybe if I come to the ----

18 MJ [Col McCALL]: That's fine.

19 LDC [MR. SOWARDS]: ---- podium, I won't have to keep my
20 finger on the button.

21 MJ [Col McCALL]: That's fine.

22 **[Pause.]**

23 MJ [Col McCALL]: And, Mr. Sowards, why don't we do this.

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1 Because I think some of your catches, some of the edits are easy
2 scrivener errors that I don't have a problem with. So ----

3 LDC [MR. SOWARDS]: Did you want to jump down to something
4 that then ----

5 MJ [Col McCALL]: Well, here. Let me -- I'll go through and
6 then we'll slow it down when there's more of a discussion that I
7 need. So ----

8 LDC [MR. SOWARDS]: Very good.

9 MJ [Col McCALL]: ---- that first one you mention on page 2 of
10 103, changing "with" to "among," I don't have a problem with that.

11 Mr. Trivett?

12 MTC [MR. TRIVETT]: Yes, sir. Could I have a second to
13 consult with Mr. Sowards?

14 MJ [Col McCALL]: Sure.

15 **[Counsel conferred.]**

16 MTC [MR. TRIVETT]: Right. So within page 2, it includes the
17 CA as well, and then in page 3 we asked to strike the convening
18 authority. So we were the representatives for the convening
19 authority, and at no time did Mr. Mohammad speak directly with the
20 convening authority. So we just wanted to clarify that for the
21 record.

22 MJ [Col McCALL]: That's a good clarification. Again, I
23 wasn't privy to that, so that's the kind of input that's very useful

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1 for me.

2 LDC [MR. SOWARDS]: Right. And just so we're clear, Your
3 Honor had asked about only page 2, and what Mr. Trivett is referring
4 to is on 103. But that's right, that's how we resolved this.

5 The issue was there were a lot of round robin discussions.
6 And, actually, Mr. Mohammad was afforded the opportunity to speak
7 directly with the chief prosecutor and Mr. Trivett, but at no time
8 did he get a face-to-face with the convening authority.

9 MJ [Col McCALL]: Okay. And that's fine. That's not unusual.

10 MTC [MR. TRIVETT]: Right. Yes. And that would be both on
11 page 2 and page 3.

12 LDC [MR. SOWARDS]: Exactly.

13 MJ [Col McCALL]: All right. I'll make those changes.

14 I see on page 3 of 103 -- again, old habits die hard -- we
15 had R.C.M., Rule of Court-Martial, versus Rule of Military
16 Commission. So we'll make those changes for R.M.C. 705 and
17 R.M.C. -- well, that's my own. Got it. For that one change,
18 R.M.C. 705.

19 And then taking out the convening authority, again, that
20 makes sense.

21 Next edit is page 4 of 103. "The Stipulation of Fact cannot
22 be understated," changing it to "overstated."

23 Yeah, that's correct. The importance of Mr. Mohammad's

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1 understanding of the guilty plea, the Pretrial Agreement, and the
2 Stipulation of Fact cannot be overstated. I'll make that change.

3 And any objection to that, Mr. Trivett?

4 MTC [MR. TRIVETT]: No, sir.

5 MJ [Col McCALL]: All right. Going to the next one, page 5,
6 "If you plead guilty, there will not be a trial," and you're striking
7 out "of any kind."

8 That's more accurate. I will -- you propose taking out "of
9 any kind" and adding in "to establish your criminal responsibility."
10 That is correct. I don't have a problem with that.

11 Mr. Trivett?

12 MTC [MR. TRIVETT]: No problem, sir.

13 MJ [Col McCALL]: All right. Page 8. All right, changing
14 "the accused's native language" to "primary language." I'm fine with
15 that.

16 Mr. Trivett?

17 MTC [MR. TRIVETT]: No issues, sir.

18 LDC [MR. SOWARDS]: And just a heads-up, Your Honor, later on
19 in this list we will get to the fact that, as Mr. Trivett and I have
20 discussed, there's some misunderstanding as to there being a
21 comprehensive Arabic translation of any of the attachments in the
22 record.

23 MJ [Col McCALL]: Okay.

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1 LDC [MR. SOWARDS]: It's actually a much more modest
2 translation.

3 MJ [Col McCALL]: Okay. And that's the perfect thing to hash
4 out today.

5 LDC [MR. SOWARDS]: Exactly.

6 MJ [Col McCALL]: So -- all right.

7 All right. Moving to page 2 of 955X, this is in the trial
8 guide at page 21 to 22.

9 And, again, this goes to that question I just asked. I was
10 assuming that "causing" was not one of the means of liability that
11 the -- Mr. Mohammad is going to be pleading to, but I'll take that
12 out. It's just the "superior commander" that he is not pleading to.

13 LDC [MR. SOWARDS]: Right. And I think, depending on what the
14 order of composition was, we -- at least I think I convinced
15 Mr. Trivett that we believe that in response to your AE 955U
16 questions, we had resolved this issue in that fashion, that we would
17 actually be ----

18 MJ [Col McCALL]: Pleading to that?

19 LDC [MR. SOWARDS]: ---- pleading to the cause, yeah.

20 MJ [Col McCALL]: Understood.

21 Mr. Trivett?

22 MTC [MR. TRIVETT]: Yes, sir. And I'm generally in agreement
23 but we -- this document followed a almost-two-hour meeting that I had

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1 with Mr. Sowards and his team a couple of nights ago. However, there
2 are other issues not identified in this ----

3 MJ [Col McCALL]: Oh, I imagine.

4 MTC [MR. TRIVETT]: ---- that we had identified. So I wasn't
5 sure if you were just going to go through this paper first and then
6 ask if there's any additional ones or if we're just going to go page
7 by page.

8 MJ [Col McCALL]: I figured we'd go through this first. This
9 is a nice, easily laid-out ----

10 MTC [MR. TRIVETT]: Yes, sir. Understood.

11 MJ [Col McCALL]: ---- way to address it and then address any
12 additional concerns.

13 LDC [MR. SOWARDS]: Sure. Yes. And I will confirm, Your
14 Honor, that at different points Mr. Trivett indicated he had some
15 tangential or collateral issues with some of the changes, and we were
16 good with those.

17 MJ [Col McCALL]: Okay. Perfect.

18 All right. Moving to the next proposed edit, it's on
19 page 26. And that's a good catch. Not Alexandria, Virginia, but
20 Arlington, Virginia, for the location of the Pentagon.

21 LDC [MR. SOWARDS]: And I'm indebted to our military counsel
22 for catching that.

23 MJ [Col McCALL]: And then what is your proposed edit here

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1 on -- it says page 28?

2 LDC [MR. SOWARDS]: Yes. That was sort of a trigger to remind
3 me, but this is a slightly more substantive. There are a number of
4 pages that are in the brackets at the end of these two paragraphs.

5 And the issue is, which I believe Mr. Trivett joins us in,
6 and that is while Mr. Mohammad is prepared to plead guilty as a
7 matter of fact and, as he believes, can be proven beyond a reasonable
8 doubt to virtually everything that's in the charging sheet and the
9 Stipulation of Facts, what is in neither charging sheet or
10 Stipulation of Facts because of the sequence of events of the tragedy
11 of 9/11, there -- it was due to the heroic efforts of the passengers
12 on United Airlines Flight 93 that that plane crashed in
13 Shanksville -- I'm sorry -- Shanksville, Pennsylvania. And so
14 technically the wording is inaccurate in asking him to say that he
15 intentionally crashed different aircraft, including this one, in
16 Pennsylvania.

17 The way it is laid out in the Stipulation of Facts that were
18 proposed by the prosecution, and we thought captured this, was that
19 Mr. Mohammad is prepared, if given the chance, to forthrightly admit
20 that he intentionally crashed four airplanes and then the language is
21 "comma, which crashed at these different sites."

22 So yes, definitely intentionally crashed four aircraft where
23 one of them actually unfortunately went down, was not something he

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1 intended.

2 MJ [Col McCALL]: Okay.

3 LDC [MR. SOWARDS]: So that's -- it's just to clarify it that
4 way. So what we proposed doing was amending the script to -- or the
5 trial guide to track the Stipulation of Facts.

6 MJ [Col McCALL]: I'll make those changes. I think that makes
7 sense.

8 LDC [MR. SOWARDS]: Okay.

9 MJ [Col McCALL]: All right. The next one is at page 33 where
10 it says, "the government alleges that you intended to use" -- so
11 taking out "to use."

12 So, yeah, that's fine. I think the meaning is still the
13 same. So that the government alleges that you intended the World
14 Trade Center and the four civilian aircraft to be the civilian
15 objects of your attack. I don't have a problem taking out "to use."

16 Mr. Trivett?

17 MTC [MR. TRIVETT]: No issue, sir.

18 MJ [Col McCALL]: All right. Page 35, "a killing is in
19 violation of the law of war if the killing is done by employing a
20 means or method that is prohibited by the law of war such as when a
21 killing is carried out by intentionally attacking a protected person
22 or protected property under the law of war."

23 Tell me about this one.

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1 LDC [MR. SOWARDS]: Yes, sir. And, again, this was a
2 discussion Mr. Trivett and I had, so I hope I'm recalling his
3 position correctly.

4 What we note is that the trial guide attempts to reflect and
5 be rooted to the charge sheet, the definition of the crimes, and the
6 specific factual stipulation to which Mr. Mohammad pled guilty and
7 admitted. And the reference, or the discussion, which, you know, may
8 or may not be correct -- I'm assuming it is because it's Your Honor's
9 discretion or discussion -- is that in violation of the law of war
10 can be or is done by employing a means or a method that is prohibited
11 by the law of war.

12 MJ [Col McCALL]: Right.

13 LDC [MR. SOWARDS]: And throughout -- if that is the case,
14 okay? If that is the case, which we don't dispute, that element or
15 requirement is amply satisfied throughout the trial guide by
16 Mr. Mohammad's willingness to acknowledge the attacks on civilians,
17 attacks on non-military targets, all of those things.

18 And so we were -- we, frankly, you know, I'll say and we
19 went over this very, very carefully with Mr. Mohammad, and -- as
20 you'll see through this -- that was sort of a -- a little irritant,
21 you know, stressful point that we hadn't seen -- he hadn't seen this
22 language before, didn't quite know what it was and all of that. And
23 so it was with my consultation with Mr. Trivett that I understood the

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1 parties were agreeable to have those references, I think there were,
2 like, three of them, removed from the trial guide.

3 MJ [Col McCALL]: All right. So you're asking to delete the
4 portion that's in red there?

5 LDC [MR. SOWARDS]: Yes, sir. Only because it's nowhere else.
6 And, as I say, sounds sort of like a -- sort of like a surprise. And
7 frankly, I was concerned in terms of, you know, the providence
8 inquiry and sufficiency and all of that, that somebody down the line,
9 not me, might wonder whether I should have said something about
10 "notice" or something.

11 So I thought given the congruence of the Stipulation of
12 Facts, the charge sheet, and the definition of the offenses in the
13 MCA, we have that all nailed down.

14 MJ [Col McCALL]: All right. And you're fine with
15 that -- those changes, Mr. Trivett?

16 MTC [MR. TRIVETT]: We're sort of indifferent to them.

17 MJ [Col McCALL]: Okay.

18 MTC [MR. TRIVETT]: So just to be clear for purposes of the
19 record, the prosecution's theory of how the attacks violated the law
20 of war was that they were perfidious in that the hijackers feigned
21 civilian status and used that civilian status for surprise purposes
22 on their attack, and that the targets for the attack were civilian
23 objects and civilians themselves.

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1 We actually did not charge murder of protected persons, we
2 kept it separate as to civilian. It's attacking civilians and murder
3 in violation of the law of war. So we distinguished those two just
4 based on the status of those who were killed.

5 So we believe that he can providently plead to the fact that
6 it was done in violation of the law of war based on the prosecution's
7 two theories. But whether or not you'd state those specific things
8 to him, we're indifferent. We do believe that he's able to
9 providently plead simply by acknowledging that it was in violation of
10 the law of war.

11 MJ [Col McCALL]: All right. And I'm pretty familiar with the
12 government argument. In preparing this, I've looked back at -- I
13 know, I think it was Mr. Mohammad had a motion for, I believe it was
14 a bill of particulars. I forget the AE number. But where the
15 government then set out their theory and explained exactly what you
16 just said, and then I believe we actually had oral argument on, I
17 believe it was, Mr. al Hawsawi's where Colonel Bearden presented
18 arguments on those theories.

19 All right. So I'm fine with those changes. I'll make
20 those.

21 LDC [MR. SOWARDS]: Thank you, sir.

22 MJ [Col McCALL]: All right. Page 57. What is the proposed
23 change on this?

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1 LDC [MR. SOWARDS]: I think we have an agreement, and just a
2 question of how the commission would like to handle it. In
3 the -- when we get to -- as it says here, around page 62 and going on
4 to 67 or so, discussing overt acts, there are some individuals named
5 who may be having their own cases still to litigate.

6 And our concern was that in the -- there's a provision,
7 there are provisions which you actually go over with with
8 Mr. Mohammad in the Stipulation of Facts that says anything he says
9 about his involvement with co-conspirators cannot be used for any
10 purpose in any other context or any other case.

11 MJ [Col McCALL]: I'm tracking.

12 LDC [MR. SOWARDS]: Only used against him. My concern, just
13 out of an abundance of caution, was that it wasn't clear that that
14 would also apply -- and this is, perhaps, Mr. Trivett goes on to do
15 bigger and better things and someone steps in his -- you know, his
16 shoes, someone decides that what they can do is to use the transcript
17 of the providence hearing -- again, if we get to have it -- they can
18 use that because it's not technically the Stipulation of Facts, if
19 when you go over this you say some of those same facts or names or
20 whatever.

21 So what we're offering was either to change those
22 individuals to "co-conspirators" or "conspirators," or Mr. Trivett is
23 prepared to bind the government to not use the transcript or anything

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1 Mr. Mohammad says in a similar fashion.

2 MJ [Col McCALL]: Okay. I prefer the latter method, and
3 if -- we can actually highlight it when we get to the overt acts and
4 say, hey, this is something that came up on Wednesday when we were in
5 court, and then I'll just ask the government that we're all in
6 agreement that this would not be used in a different case.

7 LDC [MR. SOWARDS]: Okay.

8 MTC [MR. TRIVETT]: Yes, sir. And the government will concur.
9 I'll concur again during the colloquy if necessary but based on the
10 pretrial agreement and the Stipulation of Fact, if you're asking him
11 about the Stipulation of Fact and he's answering questions that
12 indicate there's other people involved in his overt acts, that we
13 agree that -- we have agreed that that can't be used against anyone
14 else in their other trial.

15 MJ [Col McCALL]: Perfect.

16 All right. The next proposed edit is on page 67. And this
17 goes a bit, I believe, into what you're raising, Mr. Sowards, about
18 translation.

19 LDC [MR. SOWARDS]: Correct. Correct, Your Honor.

20 MJ [Col McCALL]: Tell me about that.

21 LDC [MR. SOWARDS]: Sure. When Mr. Trivett put together the
22 filing of 955 (Gov) with the Pretrial Agreement, and then there's an
23 attachment of the Stipulation of Facts, the letterhead memorandum,

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1 and also the CSRT transcript, all of those were bound together, in
2 the course of having Mr. Mohammad and then apparently also
3 Mr. Bin'Attash sign their various documents to include the Pretrial
4 Agreement and the Stipulation of Facts, they chose to also write in
5 both -- at least Mr. Mohammad -- in both English and Arabic a short
6 passage, a suras from the Quran and just, you know, sort of noting
7 all of our faith being in the hands of God.

8 And the prosecution, complying with what is actually a rule
9 of court, says that anytime a document is submitted to you with a
10 foreign language, there has to be a certified translation of it.

11 So what -- and if you go back and look at the two pages
12 together, what exhibit -- or I'm sorry -- Attachment C is is the
13 prosecutor's translator saying -- and I think the problem was there
14 was an unfortunate misuse of words.

15 He says I've looked at all of these documents, and he refers
16 globally to the Pretrial Agreement and the Stipulation of Facts and I
17 think also the letterhead memorandum. And what he's saying is I
18 looked at them in terms of the sura passages.

19 MJ [Col McCALL]: Okay.

20 LDC [MR. SOWARDS]: And then he says, "I have faithfully and
21 accurately corrected them." But then the next page, is what he
22 refers to as the next page, just has those three little passages ----

23 MJ [Col McCALL]: All right.

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1 LDC [MR. SOWARDS]: ---- in Arabic and English. So that's all
2 we really have.

3 MJ [Col McCALL]: All right. Understood. And so will
4 there -- I assume there is a translation of the PTA, the stipulation?
5 I mean, is there going to be one that is ----

6 LDC [MR. SOWARDS]: Well, that's a ----

7 MJ [Col McCALL]: ---- included or is it needed?

8 LDC [MR. SOWARDS]: Yeah.

9 MJ [Col McCALL]: Again, I've had conversations with
10 Mr. Mohammad in English, so I'm aware of his language abilities, but
11 tell me, what are the parties' intention on this?

12 LDC [MR. SOWARDS]: Sure. We're satisfied. What we did early
13 on, lo those many years ago when we started negotiating this case,
14 Mr. Trivett sent us -- or offered to send us an Arabic translation of
15 the -- I believe, both, yeah, the Pretrial Agreement and the
16 other -- but certainly the Stipulation of Facts and said he would
17 prepare that. And we asked how long, and he thought it would take a
18 couple of weeks, and we thought we could probably get it faster
19 in-house.

20 But for whatever reason, we used the translator pool that
21 was available to the Military Commissions Defense Organization and
22 they produced one. And then our team translator decided to look at
23 it for some of the idiosyncrasies of the particular dialect and

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1 whatnot that Mr. Mohammad was most comfortable with and sort of did a
2 pass of that.

3 And then the two of them went over it to read the English
4 version and the Arabic version and then have Mr. Mohammad ask us if
5 he had any questions about what it meant. Not so much the accuracy,
6 but what all those words meant, and then we could talk about whether
7 they were accurate or not.

8 And since then, in the times that we have gone over these
9 documents, we've had either the translator available, and/or
10 Mr. Mohammad has a very impressive English to Arabic, and vice versa,
11 dictionary that he has if we're not making something understandable
12 to him.

13 MJ [Col McCALL]: All right. All right. So I will change
14 that language. Yeah, that's fine. I think I can make that work.

15 LDC [MR. SOWARDS]: Okay.

16 MJ [Col McCALL]: All right. Any concerns with that,
17 Mr. Trivett?

18 MTC [MR. TRIVETT]: No, sir. I believe we had provided an
19 initial draft. But in negotiations, you know, things were changing,
20 provisions were changing. It was impossible to continue to certify.

21 MJ [Col McCALL]: Sure.

22 MTC [MR. TRIVETT]: We did provide the most recent Stipulation
23 of Fact to the defense counsel, but we'll defer to them on it. They

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1 were the ones communicating with their client. And if they're
2 comfortable that he understands the nature of it, then we'll defer to
3 him.

4 MJ [Col McCALL]: Sure. And if we get to that point and I
5 have any concerns, we'll slow it down and -- but I know that you're a
6 zealous counsel, Mr. Sowards, and so I'm -- I trust that Mr. Mohammad
7 understands what he -- the agreement and will be able to discuss it
8 with me. And, yeah, I don't have concerns at this point.

9 LDC [MR. SOWARDS]: Okay.

10 MJ [Col McCALL]: All right. I can make changes to that.

11 All right. Next proposed edit is on page 71. And just
12 changing the pages, instead of 30 to 58, it's 31 to 58 of AE 955.
13 All right.

14 LDC [MR. SOWARDS]: And the suggestion in 72 is rather than
15 referring to that as paragraph 1, you refer to it as the opening
16 paragraph. Because on the same page, the document then begins to use
17 numbered paragraphs. So there's another paragraph 1.

18 MJ [Col McCALL]: All right.

19 LDC [MR. SOWARDS]: If that makes sense.

20 MJ [Col McCALL]: That makes sense.

21 Any issues with that, Mr. Trivett?

22 MTC [MR. TRIVETT]: No, sir.

23 MJ [Col McCALL]: All right. Next correction, page 72, going

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1 into those five ways the stipulation may be used. Let me just reread
2 it for a second.

3 LDC [MR. SOWARDS]: Sure.

4 **[Pause.]**

5 MJ [Col McCALL]: So you're proposing taking out "or for other
6 reasons," which I agree that injects a little bit of a -- I'm not
7 sure why that was originally put in. I'll take that out.

8 LDC [MR. SOWARDS]: Okay.

9 MJ [Col McCALL]: All right. Next proposed edit is on
10 page 74. "Mr. Mohammad, do you agree that" -- and that, again, goes
11 towards the serious bodily injury ----

12 LDC [MR. SOWARDS]: Yes.

13 MJ [Col McCALL]: ---- offense.

14 LDC [MR. SOWARDS]: That was which? I'm sorry, Your Honor.

15 MJ [Col McCALL]: This is on page 74.

16 LDC [MR. SOWARDS]: Yes.

17 MJ [Col McCALL]: It originally was -- said, "Mr. Mohammad, do
18 you agree that no death of one or more persons later occurred as a
19 result of the serious bodily injury charged in this offense?"

20 LDC [MR. SOWARDS]: Correct.

21 MJ [Col McCALL]: Go ahead.

22 LDC [MR. SOWARDS]: Yes. Well, the -- yeah, after being
23 educated by the commission's question, Mr. Trivett and I now

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1 understand that there was no one who, luckily, relatively speaking,
2 passed away as a result of their injuries.

3 So rather than ask him to agree that -- that death of one or
4 more persons occurred, we should say, "No death of the injured
5 occurred."

6 MJ [Col McCALL]: That's fine.

7 LDC [MR. SOWARDS]: And then we would accordingly change the,
8 as the commission indicated, the maximum penalty.

9 MJ [Col McCALL]: Right. From life to 20 years?

10 LDC [MR. SOWARDS]: Yes. And ----

11 MJ [Col McCALL]: Mr. Trivett?

12 LDC [MR. SOWARDS]: Then, also, I was trying to find -- I beg
13 your pardon. There's a -- you also have a chart.

14 MJ [Col McCALL]: Right. I'll make sure that they're all on
15 the ----

16 LDC [MR. SOWARDS]: Okay. So that should be ----

17 MJ [Col McCALL]: ---- there's no inconsistency on that.

18 Mr. Trivett?

19 MTC [MR. TRIVETT]: Yes, sir. And just for the record, the
20 serious bodily injury charge became an additional charge because we
21 added additional individuals.

22 MJ [Col McCALL]: Right.

23 MTC [MR. TRIVETT]: We only put those individuals who were

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1 willing to testify.

2 MJ [Col McCALL]: Sure.

3 MTC [MR. TRIVETT]: And so I didn't want the record to reflect
4 that those were the only people that were injured or that there was
5 no one who was injured who would later -- did die as a result of
6 those injuries. So we were limited to the referral period.

7 MJ [Col McCALL]: Honestly, maybe I'll just take that question
8 out. I don't know that that question's important seeing as how
9 Mr. Mohammad is getting the benefit of what was charged.

10 MTC [MR. TRIVETT]: Yes, sir.

11 MJ [Col McCALL]: All right.

12 All right. Moving on to page 76, let me just read it.

13 **[Pause.]**

14 Ah, thank you for the good catch. Caught a scrivener error.
15 I'll throw that "d" in there to make it "replaced" ----

16 LDC [MR. SOWARDS]: Thank you.

17 MJ [Col McCALL]: ---- not "replace." All right.

18 LDC [MR. SOWARDS]: And then may I have just one moment, Your
19 Honor, to confer with co-counsel?

20 MJ [Col McCALL]: Sure. Go ahead. Take your time.

21 **[Counsel conferred.]**

22 LDC [MR. SOWARDS]: Thank you, Your Honor. I'm -- thank you
23 for suggesting I'm diligent, but I'm not infallible.

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1 And Ms. LeBoeuf had been kind enough to point out one other
2 issue. And that is on page 32, there is a paragraph that begins, "Do
3 you admit as true," and then near the end of that sentence, it should
4 be "attacked or not." And then the article "a" should be removed.

5 MJ [Col McCALL]: All right.

6 LDC [MR. SOWARDS]: Because it makes plural singular. Is it
7 33?

8 MJ [Col McCALL]: Page 32?

9 LDC [MR. SOWARDS]: Oh, I'm sorry. It's 33, sir.

10 MJ [Col McCALL]: Page 33.

11 LDC [MR. SOWARDS]: More evidence of lack of infallibility.
12 33, yes, sir. What is it? Just below the middle of the page.

13 MJ [Col McCALL]: Yeah, I see it.

14 LDC [MR. SOWARDS]: Okay.

15 MJ [Col McCALL]: So taking out the "a" before lawful,
16 correct?

17 LDC [MR. SOWARDS]: Correct.

18 MJ [Col McCALL]: That it's multiple and not singular. All
19 right.

20 LDC [MR. SOWARDS]: Correct.

21 MJ [Col McCALL]: That makes sense to me.

22 Are you on the same page, Mr. Trivett?

23 MTC [MR. TRIVETT]: Yes, sir.

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1 MJ [Col McCALL]: All right. And then was there another
2 change, or is that it on that one?

3 LDC [MR. SOWARDS]: No, sir. That's it.

4 MJ [Col McCALL]: Okay. Too easy.

5 LDC [MR. SOWARDS]: Apologies for being persnickety.

6 MJ [Col McCALL]: No, I would rather catch it now than when
7 I'm ----

8 LDC [MR. SOWARDS]: Exactly.

9 MJ [Col McCALL]: Reading out loud is usually when I catch
10 ones that don't make sense.

11 LDC [MR. SOWARDS]: Thank you, sir.

12 MJ [Col McCALL]: I appreciate that.

13 LDC [MR. SOWARDS]: Thank you, sir.

14 MJ [Col McCALL]: All right. Mr. Trivett, what do you have?
15 We can -- and we can take a recess. We've been going about an hour
16 if you want to kind of gather your thoughts and ----

17 MTC [MR. TRIVETT]: Exactly.

18 MJ [Col McCALL]: That works for me.

19 MTC [MR. TRIVETT]: If we have a 10- or 15-minute recess, I
20 think I'll actually save the commission some time.

21 MJ [Col McCALL]: I like that. All right. So it's almost
22 10:00. Let's take a recess. We'll be back on the record at 1015.
23 The commission's in recess.

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1 [The R.M.C. 803 session recessed at 0958, 08 January 2025.]

2 [The R.M.C. 803 session was called to order at 1019, 08 January
3 2025.]

4 MJ [Col McCALL]: The commission's called to order. Parties
5 are again present.

6 Give me one second, Mr. Trivett. I've just got to unlock my
7 computer.

8 All right. Mr. Trivett, what do you have for me?

9 MTC [MR. TRIVETT]: All right. Thank you, sir.

10 So the first issue on page 6 of 103 of the script, which for
11 the record is Appellate Exhibit 955U, page 13 of 110. I just wanted
12 to in advance let the commission know what the parties' intention is
13 on the oath.

14 Mr. Mohammad plans on swearing an oath. I plan on
15 administering it from here ----

16 MJ [Col McCALL]: Okay.

17 MTC [MR. TRIVETT]: ---- and he'll administer it from his
18 chair.

19 MJ [Col McCALL]: All right.

20 MTC [MR. TRIVETT]: All right. So the second issue is on
21 page 7 of 103 and it regards the Stipulation of Fact. So we
22 currently have a motion to preadmit the death certificates as
23 Prosecution Exhibit No. 1 in AE 391, and we bargained for the

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1 permission to use that in the sentencing and we would prefer, for
2 lots of different reasons, that that be the first prosecution
3 exhibit.

4 MJ [Col McCALL]: That's fine.

5 MTC [MR. TRIVETT]: And so we would ask this one be the next
6 one in order, the Stipulation of Fact be Prosecution Exhibit 2 for
7 identification.

8 MJ [Col McCALL]: All right. That's fine.

9 MTC [MR. TRIVETT]: And I'm just trying to find my last dog
10 ear, but this was the last one I had. It regards changing the
11 language -- and I don't have the page yet. I'm going to fumble
12 through it while I talk.

13 Changing the language from "appendices" to "attachments"
14 regarding the Pretrial Agreement. They're all internally referred to
15 in the Pretrial Agreement as attachments and you list appendices.
16 I'm going to try to find the page. I had it and I dog-eared it and
17 now I can't find it.

18 Here it is. So page 66 of 103, it's currently Appendix A of
19 your Pretrial Agreement. We think that's just more accurate to be
20 Attachments A, B, and C.

21 And lower on that page, additional charge for BI, which we
22 take to be serious bodily injury, still lists death or confinement
23 for 20 years. As charged, it would be confinement for 20 years.

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1 MJ [Col McCALL]: All right.

2 MTC [MR. TRIVETT]: All right. And then I just wanted to flag
3 the footnote issue right now. I'm not going to argue it, I just
4 wanted to sort of put a line in the sand on it for the government.

5 The second most important thing for the government in
6 agreeing to these Pretrial Agreements was guaranteeing that we could
7 present all of the evidence that we thought was necessary to
8 establish a historical record of the accused's involvement in what
9 happened on September 11th.

10 MJ [Col McCALL]: Sure.

11 MTC [MR. TRIVETT]: That was followed only by his agreement to
12 plead guilty to all of the charges on the charge sheet as written,
13 and so we were able to accomplish that in the negotiations. And we
14 don't envision a lot of motions to preadmit or, quite frankly, a lot
15 of objections that couldn't occur from the defense before the actual
16 presentation of the evidence, right? So they've carved out the 1001B
17 exception for information outside the scope of mitigation, as well as
18 eventually a 403-type objection, which are all contextual,
19 right? They're all at the time when we attempt to present it whether
20 or not that's within the scope and whether at some point it becomes
21 unduly prejudicial.

22 So we believe that most of those objections that they have
23 certainly carved out in the Pretrial Agreement have to happen at

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1 trial anyway. So that's one of our -- I wanted to flag that as soon
2 as I saw it in the first opportunity I had to stand before Your Honor
3 is that that's how we envision seeing this.

4 Now, there may be certain categories of information, like
5 with the family members, and if we do do any recordings of their
6 victim impact statements, ensuring that those are within the proper
7 scope of 1001B.

8 But I think we've all seen over the last several months
9 there is renewed interest in the prosecution of these individuals
10 that may have waned a bit over the 12 years we were in pretrial
11 litigation.

12 And the prosecution is going to need more time. We're going
13 to need more time to go out to the victim family members. There's
14 now hundreds of people that are now interested and on the list of
15 those who our Victim/Witness Assistance Program reaches out to on a
16 daily basis for updates that we're going to now talk to and determine
17 whether or not they do want to give any victim impact testimony,
18 whether that's in a video form, whether that's in written form.

19 And that's simply going to take us past September,
20 especially if all three of the Pretrial Agreements are accepted. We
21 have a lot of work to do. And having it fully complete and in the
22 bag 10 months before we're going to present it I just don't think is
23 realistic, and I think it's inconsistent with what we bargained for.

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1 So I wanted to carve that out right now, understanding that
2 Your Honor indicated it might not be you who makes those decisions.
3 I just wanted to put our marker out right away on that.

4 MJ [Col McCALL]: No, I think that makes sense to put on the
5 record. And I certainly didn't mean to imply that I see issues or
6 ambiguities with the agreement. If I saw those, I would go ahead and
7 flag them and we'd hash them out now. I think it's actually very
8 well crafted and pretty clear on, you know, what evidence is supposed
9 to come in and what objections are being reserved.

10 It's just I know litigation and I know how complicated this
11 case is in particular. And so I just -- again, that's why I didn't
12 ask for an answer from the parties. I'm not putting out any type of
13 earlier deadlines right now. But I wanted the parties to start
14 thinking we're going to need some flexibility, I imagine, just to get
15 this to trial, because even as a guilty plea it's still complicated.

16 MTC [MR. TRIVETT]: Yes, sir. And, you know, we envision a
17 several-month presentation with all of this evidence to establish the
18 historical record. That was always our intention.

19 And we committed, I think, to the 90 days prior to providing
20 certain information. We'll recommit to that. But the 10 months, I
21 think, is just, based on where we're at and the renewed interest, is
22 going to -- that would be pushing it.

23 MJ [Col McCALL]: Understood.

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1 MTC [MR. TRIVETT]: All right. Thank you, sir.

2 MJ [Col McCALL]: All right. Mr. Sowards.

3 LDC [MR. SOWARDS]: Just very quickly, I wanted to join with
4 Mr. Trivett's -- in his -- what he envisions is the trial that we're
5 going to be planning to put together, and particularly the emphasis
6 on the historical record.

7 And I think, as you noted, from the something like 12 pages
8 of evidence that they've outlined that they intend to put in, but
9 also that Mr. Mohammad -- and we've said this to Mr. Trivett and to
10 particularly the victim family witness coordinators, that we envision
11 giving maximum opportunity to any victim witness, individuals, family
12 members, or survivors who are interested in being heard, irrespective
13 of how they feel about Mr. Mohammad, but we think after all this
14 time, the one thing folks who want to be heard deserve is a chance to
15 be heard.

16 What I would ask -- and I know -- I mean, and I apologize in
17 advance that I'm never quite sure how the transcript preparation and
18 dissemination with the classification restrictions and all that are,
19 but I think in fairness to Mr. Mohammad and also to this commission,
20 it is extremely important that we be able to send to the D.C. Circuit
21 what Mr. Trivett just said about the scope of this public trial that
22 we are all committed to, because ----

23 And I do not blame Mr. Trivett. I know this is something

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1 he's been saddled with. But even as we speak, I'm also eyeing the
2 clock because I have to respond to a petition for writ of mandate and
3 an emergency stay by none other than the Solicitor General's Office,
4 who are telling the D.C. Circuit that what you're trying to do and
5 what we're trying to do is shut down a public trial. And what
6 Mr. Trivett has just told us is that that's exactly the opposite of
7 what's going on.

8 So what I would request, and perhaps I can speak with the
9 staff as soon as we recess, is the opportunity to get that transcript
10 and be able to give it as proof-positive that there is no harm to the
11 public and, if anything, it goes the other way in terms of whether
12 they should interfere with what we're doing.

13 MJ [Col McCALL]: All right. And I'll ask as well that that
14 be expedited. I do know that it goes through ----

15 LDC [MR. SOWARDS]: Sure.

16 MJ [Col McCALL]: ---- certain reviews that it just may not be
17 possible, but I agree. I'm not going to talk on the record.

18 LDC [MR. SOWARDS]: Sure.

19 MJ [Col McCALL]: I am tempted to say something, but I won't.
20 So, but yeah, I understand why you would want to make -- present that
21 to the D.C. Circuit.

22 LDC [MR. SOWARDS]: Thank you, sir. I appreciate it.

23 MJ [Col McCALL]: All right. So before we recess, then, for

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1 the day and await to see if we can be on the record on
2 Friday -- Mr. Connell, I see that you're in the RHR. I know
3 Mr. Groharing is not present. At least if I could get your
4 position -- and I know the government will probably talk with
5 Mr. Groharing -- but thoughts on the idea of potentially moving up
6 the LHM suppression hearing to next Thursday?

7 LDC [MR. CONNELL]: Sir, my hot take is that I'm afraid that I
8 don't think we'll be able to accomplish that, and that's simply
9 because we won't have the right people in the right locations in
10 Guantanamo because of travel and the lack of a Tuesday rotator now.
11 We just can't get the right people into the right places for that.
12 But we would be ready to go on Monday of week three.

13 MJ [Col McCALL]: Sure.

14 LDC [MR. CONNELL]: I haven't talked to the government about
15 that, but that's -- you know, over the break we were trying to figure
16 out, can we change travel and get people to the right places? And I
17 don't think it is possible with the resources that are available to
18 us.

19 MJ [Col McCALL]: All right. Understood. But that's why I
20 asked, just to find out.

21 All right. Any other housekeeping matters to take up?

22 LDC [MR. CONNELL]: Sir, just ----

23 MJ [Col McCALL]: Mr. Connell.

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1 LDC [MR. CONNELL]: ---- just so I know whether to keep
2 working on that question, is it we're good for week three or is that
3 question still under debate?

4 MJ [Col McCALL]: We're good for week three for some of it.
5 At least as things stand now, I think the Nashiri commission will
6 need the RHR for potentially three days for their witnesses, which
7 would just give us two days.

8 I know, based on the government's -- I believe it was their
9 reply, or it might have been their initial motion, but that they had
10 anticipated that the oral argument would be similar to sort of a
11 closing argument. It would be very comprehensive. I certainly know
12 that the briefings and the amount of evidence is -- there's quite a
13 bit of it, and so I can imagine to connect all those dots to make the
14 argument it's going to be long.

15 I just -- I wasn't sure if -- I didn't want to try to hem us
16 in on two days, break for several days, and then again, we know how
17 it is down here. A storm is going to roll in down here or at the RHR
18 or somebody is going to get sick and then we're kicking it down the
19 road farther. So -- but right now we are good for that third week
20 for at least a few days.

21 LDC [MR. CONNELL]: All right. Sir, could I make a couple of
22 observations about that?

23 MJ [Col McCALL]: Go ahead.

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1 LDC [MR. CONNELL]: The first one is I wanted to say, you
2 know, in the shifting -- and obviously there have been many reasons
3 why schedules had to be flexible, as always. One of the -- at one
4 point there was a suggestion, we kind of thought, actually, that was
5 the direction it was going, that the argument would take place week
6 four. That's fine with us if that's something that the military
7 commission wants to do.

8 MJ [Col McCALL]: I think week four is completely wide open.
9 I believe we might be still double booked with the Nurjaman
10 commission. But, again, we do have time then as well. It's just,
11 again -- I think you know me, I'm always trying to move things
12 up ----

13 LDC [MR. CONNELL]: Sure.

14 MJ [Col McCALL]: ---- just to get it accomplished before
15 things go sideways on us.

16 LDC [MR. CONNELL]: Yes, sir. And that's the last observation
17 that I wanted to make. I very much agree with the idea that the
18 briefing, both the two supplements from us and -- the reply from us
19 and the response from the government, were very comprehensive.

20 And, in fact, in our final reply we suggested, you know, is
21 it really -- after a 250-page response from the government and that
22 much cumulatively from -- or more from the defense, is it really
23 necessary to say all this orally?

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1 I just put that out there as, you know, we're on record as
2 saying that there has been a comprehensive closing argument that's
3 been made by both sides. It was just done on paper instead of
4 orally. So I ----

5 MJ [Col McCALL]: Sure.

6 LDC [MR. CONNELL]: ---- I do want to be clear that we would
7 be fine with not having an oral argument because it's all been said
8 so extensively.

9 The last thing I just wanted to ----

10 MJ [Col McCALL]: Well, and just on that point before you move
11 on but ----

12 LDC [MR. CONNELL]: Yes.

13 MJ [Col McCALL]: And I appreciate your flexibility on that.
14 I believe you raised that same issue or took that position at the
15 last session. I get it. I think the government does want to have a
16 chance to argue.

17 And even though I think the parties know I'm not the biggest
18 fan of oral argument, I do see it being useful in this situation
19 where I certainly know the facts well. I've spent quite a bit of
20 time delving through the evidence, the testimony, the briefings, but
21 I think it could still be useful. So I think oral argument will be
22 good, even if just to consolidate the key points and point out what
23 counsel think is the most important evidence.

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1 LDC [MR. CONNELL]: Yes, sir. And we're certainly prepared to
2 do that.

3 The last thing that I just wanted to note, and hopefully
4 this is a 5 percent issue, but I note that in the government's
5 application for emergency stay, they asked to stay the entire case,
6 not just the -- not just the portion of it related to pleas. And so
7 that raised the concern for me that we might be swept into that.

8 MJ [Col McCALL]: Well, that was -- and I appreciate you
9 raising that. As we were talking I was thinking that that was
10 another point that I had wanted to raise, that -- I know we discussed
11 this at the last session and I asked whether the parties thought it
12 was an appropriate time to sever Mr. Ali's case from the other three,
13 and the parties' position was no, not the time, that it was clear
14 that the CMCR would not stay any Ali proceedings, but I still have
15 that concern because I noticed the same thing in the pleadings that
16 it's not clear, and I really don't want to -- for all of us to get
17 stayed and then have to go to the D.C. Circuit and try to get them to
18 let us argue the LHM.

19 Mr. Trivett, does the government have a position on that?

20 MTC [MR. TRIVETT]: Yes, sir. We would certainly oppose
21 severance, just until the resolution. It looks like we're close to
22 the end on resolution. We don't know what that resolution is going
23 to be. The Department of Justice and the Solicitor General's Office

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1 were the drafters of that brief. I'll talk to the chief prosecutor
2 and determine what it is that we are interpreting our request to be
3 just so that's clear for all of the parties.

4 MJ [Col McCALL]: But the government's position is that the
5 Ali LHM suppression hearing should be allowed to go forward. It has
6 nothing to do with the issues that are before the D.C. Circuit,
7 correct?

8 MTC [MR. TRIVETT]: I don't know -- sir, I don't want to speak
9 only because we didn't write that. So I can confirm that for you,
10 but I would like to talk to the chief prosecutor first and we'll get
11 communication back to Mr. Sims as to what that request was.

12 MJ [Col McCALL]: How long would it take to get that
13 confirmation?

14 MTC [MR. TRIVETT]: I can certainly get it by this afternoon,
15 sir.

16 MJ [Col McCALL]: All right. Let's come back on the record,
17 then, this afternoon. 1400?

18 MTC [MR. TRIVETT]: That's fine, sir. And I could
19 probably -- if I learn of it earlier, I can simply send it to
20 Mr. Sims.

21 MJ [Col McCALL]: All right. All right.

22 Anything else, Mr. Connell?

23 LDC [MR. CONNELL]: No, thank you, sir.

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1 MJ [Col McCALL]: All right. So the commission is in recess
2 until 1400 this afternoon.

3 We'll just rely on the -- an e-mail from you. So what we'll
4 do is we'll go ahead and recess until Friday. And so, again, we will
5 wait to see if we get stayed, but my intention at this point is we'll
6 be on the record at 0900 Friday and see where we're at.

7 MTC [MR. TRIVETT]: Yes, sir. Thank you.

8 MJ [Col McCALL]: All right. The commission's in recess.

9 **[The R.M.C. 803 session recessed at 1036, 08 January 2025.]**

10 **[END OF PAGE]**