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**1**                                   **PROCEEDINGS OF A MILITARY COMMISSION**

**2**

**3** The military judge called the R.M.C. 803 session to order at  
**4** Guantanamo Bay, Cuba at 0900, 29 February 2012 pursuant to the  
**5** following orders:

**6**

**7** Military Commission Convening Order Number 12-01, dated  
**8** 15 February 2012.

**[END OF PAGE]**

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1 MJ [COL POHL]: Military Commission is called to order.

2 TC [MS. SULLIVAN]: Good morning, Your Honor. This  
3 Military Commission is appointed by convening order number  
4 12-01 dated 15 February 2012, copies of which have been  
5 furnished to the Military Judge, counsel and the accused and  
6 is attached to the record of trial. I would like to put on  
7 the record, Your Honor, that pursuant to Rule For Military  
8 Commissions 603, the trial counsel has made minor  
9 non-substantive changes to the charge sheet in pen and ink and  
10 that version of the charge sheet has been provided to the  
11 Court, the defense and the accused and will be attached to the  
12 record of trial.

13 These proceedings are being transmitted via closed  
14 circuit television to two remote viewing locations in the  
15 United States in accordance with the Military Judge's order  
16 dated February 21st, 2012, Appellate Exhibit No. 6.

17 The charges have been properly approved by the  
18 Convening Authority and referred to this Commission for trial.  
19 The prosecution is ready to proceed in the arraignment of  
20 United States versus Majid Shoukat Khan.

21 The accused and the following personnel detailed  
22 to this Commission are present:

23 Colonel James Pohl, Military Judge.

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1           Courtney A. Sullivan, United States Department of  
2 Justice, trial counsel.

3           Lieutenant Michael T. Hosang, U.S. Army, assistant  
4 trial counsel -- excuse me, Lieutenant Colonel Michael Hosang,  
5 U.S. Army, assistant trial counsel.

6           Lieutenant Nathaniel R. Gross, U.S. Navy,  
7 assistant trial counsel.

8           Lieutenant Colonel Jon Jackson, U.S. Army,  
9 detailed defense counsel.

10          Katya Jestin, civilian defense counsel,

11          And J. Wells Dixon, civilian defense counsel.

12          The court reporter -- a court reporter has been  
13 detailed as reporter for this Commission and has previously  
14 been sworn.

15          MJ [COL POHL]: The members are absent?

16          TC [MS. SULLIVAN]: Yes, sir.

17          MJ [COL POHL]: Go ahead.

18          TC [MS. SULLIVAN]: The Court security officer has also  
19 been detailed to this Military Commission and has previously  
20 been sworn.

21          MJ [COL POHL]: I have been detailed to this Commission  
22 by myself as Chief Judge of the Military Commission,  
23 previously sworn in accordance with Military Commissions 807.

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1 I'm certified and qualified in accordance Article 27 (Bravo)  
2 (Charlie) and 42 (Alpha), Uniform Code of Military Justice, as  
3 well as Rule For Military Commissions 503.

4 Trial counsel, please state by whom you have been  
5 detailed and your qualifications.

6 TC [MS. SULLIVAN]: All trial counsel have been  
7 detailed to this Military Commission by the chief trial  
8 prosecutor. All members of the prosecution are qualified  
9 under Rule for Military Commissions 502 and we have previously  
10 been sworn in accordance with Rule for Military Commissions  
11 807.

12 I appear as a representative from the Department  
13 of Justice as special trial counsel. No member of the  
14 prosecution has acted in any manner which might tend to  
15 disqualify us in this proceeding and the detailing document  
16 has been marked as Appellate Exhibit 3. The prosecution also  
17 has sitting at the prosecution table FBI Special Agents  
18 Michael Fregeau and Timothy Harvey and paralegals Sergeant  
19 First Class Latoya Gates and Ms. Rhonda Tony.

20 MJ [COL POHL]: Military defense counsel will announce  
21 his detailing and qualifications.

22 Colonel Jackson, you guys can do this from your  
23 table if you want to.

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1 DC [LTC JACKSON]: Be happy to do so, sir.

2 MJ [COL POHL]: Go ahead.

3 DC [LTC JACKSON]: Good morning, Your Honor. I'm  
4 Lieutenant Colonel Jon S. Jackson, I have been detailed to  
5 this Military Commission by Colonel Jeffrey P. Caldwell, the  
6 Chief Defense Counsel. I have previously been sworn and  
7 qualified under R.M.C. 503, previously sworn in accordance  
8 with R.M.C. 807. I have not acted in any manner which may  
9 tend to disqualify me in this Military Commission. My  
10 detailing document is attached as Appellate Exhibit 007.

11 MJ [COL POHL]: Mr. Dixon.

12 CDC2 [MR. DIXON]: Good morning, Your Honor, Jonathan  
13 Wells Dixon, licensed to practice law in the State of New  
14 York. I'm qualified in accordance with Rule of Military  
15 Commission 502(d), I provided my notice of appearance and  
16 agreement to the Military Judge and it is marked as AE 8 as  
17 required by the Military Commissions Act preliminary  
18 procedural instructions for United States versus Khan. I have  
19 previously been sworn. I have not acted in any manner that  
20 might tend to disqualify me in this proceeding.

21 MJ [COL POHL]: Please remain standing. Raise your  
22 right hand. Is it J. Wells Dixon?

23 CDC2 [MR. DIXON]: Correct.

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1 (Counsel was sworn.)

2 MJ [COL POHL]: Ms. Justin.

3 CDC1 [MS. JESTIN]: I'm Katya Justin, licensed to  
4 practice in the State of New York, qualified in accordance  
5 with Rule of Military Commission 502(d). I have provided my  
6 notice of appearance and agreement to the Military Judge and  
7 it is marked as Appellate Exhibit 9 as required by the  
8 Military Commissions Act and the preliminary procedural  
9 instructions for United States versus Khan. I have previously  
10 been sworn. I have not acted in any manner that might tend to  
11 disqualify me in this proceeding.

12 MJ [COL POHL]: You have been sworn in another case?

13 CDC1 [MS. JESTIN]: Previously sworn by Lieutenant  
14 Colonel Jackson.

15 MJ [COL POHL]: Okay. I need to swear you in each case.

16 (Counsel was sworn.)

17 MJ [COL POHL]: Thank you.

18 Colonel Jackson, who else do you have at defense table?

19 DC [LTC JACKSON]: Your Honor, we also have LN1 Petty  
20 Officer Steve Thaggard, our paralegal.

21 MJ [COL POHL]: Mr. Khan, before we go further, there  
22 are some questions I need to ask you. It is my understanding  
23 you speak English?

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1 ACC [MR. KHAN]: Yes, sir.

2 MJ [COL POHL]: Any need for an interpreter at all?

3 ACC [MR. KHAN]: I don't think so, sir.

4 MJ [COL POHL]: If sometimes it comes up you think you  
5 might, make sure you let me know, okay?

6 ACC [MR. KHAN]: Sure thing. I mean, if I don't  
7 understand you, I will ask my attorney to explain to me as we  
8 go through.

9 MJ [COL POHL]: Okay, good.

10 ACC [MR. KHAN]: Appreciate it, thanks.

11 MJ [COL POHL]: Mr. Khan, I want to talk to you now  
12 first of all, about your rights to counsel. Pursuant to the  
13 Manual For Military Commissions, you are represented by  
14 Colonel Jackson, your detailed defense counsel. Do you  
15 understand this?

16 ACC [MR. KHAN]: Yes, sir.

17 MJ [COL POHL]: Detailed Defense Counsel is provided to  
18 you free of charge, do you understand that?

19 ACC [MR. KHAN]: Yes, sir.

20 MJ [COL POHL]: In addition to Detailed Defense Counsel,  
21 you may be represented by qualified civilian lawyers. A  
22 civilian lawyer will represent you at no expense to the  
23 government. To be qualified, he or she must be a U.S.

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1 citizen, he or she must be admitted to the practice of law in  
2 a state, district, territory or possession of the United  
3 States or Federal Court, may not have been the subject of a  
4 disqualifying action by a bar or other competent authority, be  
5 eligible for secret clearance or higher as required, and agree  
6 in writing to comply with orders, rules and regulations of  
7 these military commissions. If a civilian lawyer represents  
8 you, Detailed Defense Counsel will continue to represent you  
9 unless you specifically waive the right to be represented by  
10 Detailed Defense Counsel. Do you understand what I just told  
11 you?

12 ACC [MR. KHAN]: Yes, sir I do.

13 MJ [COL POHL]: Any question about your rights to  
14 counsel before this Military Commission?

15 ACC [MR. KHAN]: No.

16 MJ [COL POHL]: Do you desire to be represented by  
17 Mr. Jackson, Mr. Dixon and Ms. Jestin?

18 ACC [MR. KHAN]: Yes.

19 MJ [COL POHL]: Those three alone?

20 ACC [MR. KHAN]: In this hearing, yes, sir, only three.

21 MJ [COL POHL]: No, the Commissions.

22 ACC [MR. KHAN]: Yes.

23 MJ [COL POHL]: You may have lawyers for other things,

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1 that is not what I'm talking about.

2 ACC [MR. KHAN]: As of today, these three lawyers, I'm  
3 satisfied with these three lawyers.

4 MJ [COL POHL]: So you don't -- do not want any other  
5 qualified counsel?

6 ACC [MR. KHAN]: Sir, my understanding is as of today  
7 I'm satisfied with the three lawyers. Down the road, I have  
8 been making request to -- for nine years I have been making  
9 request to speak with the Pakistani embassy. So far I haven't  
10 had a chance but I would like to have a Pakistani foreigner  
11 representative to represent me, not in this hearing but down  
12 the road in future years. As of today, I'm satisfied with  
13 these three lawyers. I would like to offer on the record,  
14 make request to have another attorney from the Pakistani  
15 government.

16 MJ [COL POHL]: So I'm clear, Mr. Khan, I think I am,  
17 for the purpose of this hearing today, these are your three  
18 lawyers you want, correct?

19 ACC [MR. KHAN]: Yes, sir.

20 MJ [COL POHL]: Now, down the road in some other  
21 proceeding or some other effort, you would like to have  
22 assistance from the Pakistani embassy and perhaps a Pakistani  
23 lawyer, correct?

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1 ACC [MR. KHAN]: Yes, sir, meaning -- down the road  
2 meaning we are talking about sentencing, which is hopefully  
3 within the Commission system.

4 MJ [COL POHL]: Just so it is clear, I think we are  
5 clear, so you and I understand each other, if you wish to add  
6 additional lawyers at subsequent hearings or subtract the ones  
7 you have, you have that right.

8 ACC [MR. KHAN]: Okay.

9 MJ [COL POHL]: Do you understand what I am saying?

10 ACC [MR. KHAN]: Yes, sir.

11 MJ [COL POHL]: So if down the road we have another  
12 hearing in this case, whether it is sentencing or something  
13 else, and you wish to have an additional lawyer, assuming they  
14 meet the qualifications, that's your choice and you certainly  
15 can have an additional lawyer.

16 So for today, these three; but if another hearing  
17 comes down, you say I want somebody else, they meet the  
18 qualifications, then that is your right. Do you understand  
19 that?

20 ACC [MR. KHAN]: Sure, I understand. I want it to be on  
21 the record that I made an official request to have Pakistani  
22 attorney down the road. That's what I want to do. Thank you,  
23 sir.

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1 MJ [COL POHL]: Okay, no problem.

2 One matter I need to go over with you about  
3 counsel, this will be the final matter. In the event counsel,  
4 Mr. Khan, may disagree on a matter concerning representation,  
5 I need you to designate who the lead counsel will be to speak  
6 for you on the defense team. So who do you designate as your  
7 lead defense counsel.

8 ACC [MR. KHAN]: That would be LTC Jon Jackson,  
9 Mr. Jon.

10 MJ [COL POHL]: Counsel understand -- defense counsel  
11 understand and agree to that definition?

12 TC [MS. SULLIVAN]: Yes, sir.

13 DC [LTC JACKSON]: Yes, sir.

14 MJ [COL POHL]: I'm not aware of any grounds for  
15 challenge against me to do this. Does either counsel desire  
16 to question me or challenge me?

17 TC [MS. SULLIVAN]: No, sir.

18 DC [LTC JACKSON]: No, sir.

19 MJ [COL POHL]: Counsel for both sides understand the  
20 provisions of the Military Commissions concerning safeguarding  
21 classified information?

22 TC [MS. SULLIVAN]: Yes, sir.

23 DC [LTC JACKSON]: Yes, sir.

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1 MJ [COL POHL]: Do you understand you must as soon as  
2 practicable notify me of any intent to offer evidence  
3 involving classified information so that I may consider the  
4 need to close the proceedings?

5 TC [MS. SULLIVAN]: Yes, sir.

6 DC [LTC JACKSON]: Yes, sir.

7 MJ [COL POHL]: As I am required by the Manual for  
8 Military Commissions to consider the safety of witnesses and  
9 others at these proceeding. Do counsel for both sides  
10 understand they must notify me of any issues regarding the  
11 safety of potential witnesses so I may determine appropriate  
12 ways in which testimony will be received and witnesses  
13 protected?

14 TC [MS. SULLIVAN]: Yes, sir.

15 DC [LTC JACKSON]: Yes, sir.

16 MJ [COL POHL]: On 24 February 2012, I had a telephonic  
17 802 conference with counsel. On the 27th of February, 2012, I  
18 had an in-person 802 with counsel. At both 802s, we discussed  
19 procedural issues primarily. I did express a certain amount  
20 of concern with the conspiracy specification, specifically the  
21 overt act provisions that was -- appear to predate the  
22 conspiracy, which I will discuss in a second.

23 Other than that, I don't believe anything of

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1 substance was discussed at the 802. As I told counsel at the  
2 802 and am telling them again, if any issue was raised at the  
3 802 that you wish to raise before the Commission at this time  
4 are, to do so at this time.

5 Trial counsel, anything you wish to raise at this  
6 time?

7 TC [MS. SULLIVAN]: No, Your Honor.

8 CDC2 [MR. DIXON]: We have one issue we wanted to put on  
9 the record, that is, it is our understanding that paragraph 13  
10 of the PTA has the same standard as paragraph 2 of the  
11 appendix as an issue we discussed at the second 802.

12 MJ [COL POHL]: Yes, I was going to go over that when we  
13 get to the PTA. Thank you.

14 Ms. Sullivan, you referenced changes in the charge  
15 sheet where you pen and inked some corrections on charge 1.  
16 What was previously the overt act provisions of 1 through 6  
17 are now just jurisdictional data; is that correct.

18 TC [MS. SULLIVAN]: Yes, sir, that's correct.

19 MJ [COL POHL]: Would it be fair to say because these  
20 overt acts -- these acts occurred prior to the agreement?

21 TC [MS. SULLIVAN]: Yes, sir.

22 MJ [COL POHL]: I have just one minor issue, paragraph 7  
23 would appear to be an overt act that occurred prior to the

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1 agreement?

2 TC [MS. SULLIVAN]: Yes, sir.

3 MJ [COL POHL]: So would it be fair to say that is not  
4 in furtherance of the conspiracy?

5 TC [MS. SULLIVAN]: Yes, sir.

6 MJ [COL POHL]: Okay. Defense, do you understand -- as  
7 I understand paragraphs now 1 through 7 are jurisdictional  
8 data, and perhaps a lot of it superfluous for specification,  
9 but they are not overt acts in furtherance of the charge of  
10 conspiracy.

11 DC [LTC JACKSON]: Yes, sir.

12 MJ [COL POHL]: The accused will be arraigned. All  
13 personnel appear to have the requisite qualifications. All  
14 persons requiring to be sworn have been sworn.

15 Defense counsel, have you and the accused been  
16 provided a copy of the charges?

17 DC [LTC JACKSON]: Yes, sir.

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: At this time, trial counsel will  
20 announce the general nature of the charges in this case.

21 TC [MS. SULLIVAN]: The general nature of the charges in  
22 this case are murder in violation of the law of war, attempted  
23 murder in violation of the law of war, material support for

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1 terrorism, spying, and conspiracy.

2 MJ [COL POHL]: Does defense desire the charges be read?

3 DC [LTC JACKSON]: No, Your Honor, defense waives  
4 reading.

5 MJ [COL POHL]: The charges may be admitted. Defense,  
6 any motion prior to entry of the plea?

7 DC [LTC JACKSON]: Your Honor, we have one pending  
8 motion.

9 MJ [COL POHL]: Is that, would it be fair to say, AE 11?

10 DC [LTC JACKSON]: Yes, sir.

11 MJ [COL POHL]: Okay. My intent is to, because I think  
12 it impacts on the plea, take the plea, announcement of the  
13 plea, address the motion and then proceed after that.

14 DC [LTC JACKSON]: I understand, Your Honor.

15 MJ [COL POHL]: Because without the plea, the motion  
16 really doesn't make any sense. So other than that motion, do  
17 you have any motions?

18 DC [LTC JACKSON]: No, Your Honor.

19 MJ [COL POHL]: Accused and Counsel, please rise.

20 [All persons did as directed.]

21 Mr. Majid Shoukat Khan, I now ask you, how do you  
22 plead?

23 Before receiving your plea, I advise you, any

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1 motions to dismiss appropriately should be made at this time.

2 The defense counsel will speak for you.

3 DC [LTC JACKSON]: Mr. Khan pleads as follows:

4 **To all charges and specifications: Guilty.**

5 MJ [COL POHL]: Please be seated. Defense, I understand  
6 there is a pretrial agreement in this case; is that correct?

7 DC [LTC JACKSON]: Yes, Your Honor.

8 MJ [COL POHL]: I also understand you have a motion that  
9 deals with the pretrial agreement?

10 DC [LTC JACKSON]: Yes, sir.

11 MJ [COL POHL]: I would like to litigate that motion now  
12 and then when that's done, discuss with your client, pending  
13 the result of that motion, whether or not he wishes to  
14 continue to plead guilty.

15 DC [LTC JACKSON]: I understand, Your Honor.

16 MJ [COL POHL]: Mr. Khan, is your plea of guilty as your  
17 counsel said, is that your plea in this case?

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: Defense, your motion is marked as AE 11.  
20 The government's response is AE 11 Alpha. And Trial Counsel,  
21 I believe you also provided supplemental response, which would  
22 be AE 11 Bravo.

23 Given the nature of this motion, I may be a little

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1 opaque until I rule on it as to what exactly it covers.

2 Defense, as I understand, you wish -- in your motion, you wish  
3 certain parts of the pretrial agreement to be sealed?

4 CDC2 [MR. DIXON]: Yes, Your Honor.

5 MJ [COL POHL]: Until when?

6 CDC2 [MR. DIXON]: Until such time as the government  
7 would be required by law to unseal and disclose that  
8 information.

9 MJ [COL POHL]: As I understand, your primary basis for  
10 this is concern about the welfare of Mr. Khan's family and  
11 perhaps friends in the United States and other areas, correct?

12 CDC2 [MR. DIXON]: Yes, that's true, Your Honor. And I  
13 don't believe there is any dispute as to the factual  
14 underpinning for that concern or the argument.

15 MJ [COL POHL]: And again, at this point I am going to  
16 be relatively cautious in what I say, but as I understand it  
17 from the motion is the defense's concern that if the entire  
18 document were released, that that would provide information  
19 that is currently not public knowledge -- or at least confirm  
20 information that may be?

21 CDC2 [MR. DIXON]: That is correct, Your Honor. I would  
22 add to that, in response to the government's supplemental  
23 submission, that precisely this form of relief was initially

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1 granted in the matter that is addressed in the supplemental  
2 submission. Ultimately that was not the conclusion of the  
3 Court there, but the Court there did recognize that under  
4 different circumstances the outcome there might have been  
5 different. And we respectfully submit that this case is the  
6 exceptional case that warrants a different conclusion from  
7 that reached in the supplemental submission.

8 MJ [COL POHL]: And would it be fair to say that this is  
9 a concern about a generic threat as opposed to a specifically  
10 identified threat? Are you are with me on that? You  
11 understand what I'm saying?

12 CDC2 [MR. DIXON]: I understand, your Honor, and I  
13 respectfully do not think that that is the case. I think that  
14 there is a specific historical basis for the concern and the  
15 concern is not generalized, it is a particular concern as to  
16 particular individuals in particular locations. So it is not  
17 a generalized concern in the nature of perhaps some other less  
18 extraordinary case, no.

19 MJ [COL POHL]: Now, I'm just saying -- now, I  
20 understand that, but I was saying there is no specifically  
21 identifiable individual threat that you are currently aware of  
22 except what you just said?

23 CDC 2 [MR. DIXON]: May I have a moment, Your Honor?

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1 MJ [COL POHL]: Sure.

2 CDC2 [MR. DIXON]: Your Honor, we've, I believe,  
3 identified in our brief ----

4 MJ [COL POHL]: Okay.

5 CDC2 [MR. DIXON] ---- with specificity the nature of  
6 the concern. It is also -- it is also identified in the  
7 charge sheet, the historical basis for the concern.

8 MJ [COL POHL]: -- but would it be fair to say the  
9 charge sheet is a public document now?

10 CDC2 [MR. DIXON]: Correct.

11 MJ [COL POHL]: So any information contained therein is  
12 already in the public domain?

13 CDC2 [MR. DIXON]: The charge sheet is in the public  
14 domain, yes, but that's not the nature of the -- that's not  
15 the request for relief.

16 MJ [COL POHL]: I got it.

17 CDC2 [MR. DIXON]: Relief is separate.

18 MJ [COL POHL]: But you said the threat is in the charge  
19 sheet -- the evidence of the threat can be inferred, let's use  
20 that term, from the nature of the charges in this case.

21 CDC2 [MR. DIXON]: Yes, but I don't think that resolves  
22 the issue, Judge.

23 MJ [COL POHL]: I didn't think it did.

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1 CDC2 [MR. DIXON]: Because we are asking for very  
2 specific relief that would prevent certain actions in the  
3 future that we believe are likely and specifically identified  
4 that are not merely theoretical. And as evidence of the fact  
5 that they are not merely theoretical, we point to the facts  
6 identified in our sealed brief and to the provision in the  
7 charge sheet. But that is -- that is, we respectfully submit,  
8 not a disclosure in the charge sheet that would moot our  
9 request for relief.

10 MJ [COL POHL]: Trial Counsel, you oppose this request?

11 TC [MS. SULLIVAN]: That's correct, Your Honor.

12 MJ [COL POHL]: Do you understand the defense's concern?

13 TC [MS. SULLIVAN]: Yes, sir.

14 MJ [COL POHL]: In your brief, you indicated that the  
15 government gave me examples of other cases where it was not  
16 sealed.

17 TC [MS. SULLIVAN]: Yes, sir.

18 MJ [COL POHL]: But there have been other commission  
19 cases where it was sealed at the request of the government?

20 TC [MS. SULLIVAN]: I'm aware of one case, sir, in which  
21 that was done, yes, sir. There are several others which it  
22 was not.

23 MJ [COL POHL]: So what is your position about?

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1 TC [MS. SULLIVAN]: Your Honor, our position is that  
2 Rule 806, which would permit Your Honor to seal portions of  
3 the documents and which is the provision under which the  
4 defense requested relief, articulates a presumption in favor  
5 of public trials and in favor of public proceedings, including  
6 the documents filed in connection with those proceedings. And  
7 in order to make the finding and grant the relief that the  
8 defense is requesting here, Your Honor, the Military Judge  
9 would have to find essential findings of fact on the record  
10 determining that the relief requested is necessary to ensure  
11 the safety of individuals. We don't feel the defense has met  
12 that burden here and we don't feel that sealing the provisions  
13 requested is in the public interest or enhances the safety of  
14 the individuals referenced in the defense's pleadings.

15 MJ [COL POHL]: Just so I'm clear on what the government  
16 position is here, because you are in the position -- I'm  
17 looking at you, but talking about the government here, you're  
18 in the position to determine whether or not there are -- what  
19 risk there is to other individuals about disclosing this  
20 information. And so what you are in the position as to  
21 whether or not how that risk can be addressed. And so you are  
22 telling me is that -- speaking for the big government, is that  
23 you do not believe that risk is sufficient to warrant granting

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1 the defense relief?

2 TC [MS. SULLIVAN]: Your Honor --

3 MJ [COL POHL]: I want to make sure because, you know,  
4 if down the road if something were to occur -- we can't  
5 predict the future, I got that.

6 TC [MS. SULLIVAN]: Correct.

7 MJ [COL POHL]: The defense motion, I'm assuming, is  
8 made in good faith and you are representing the government's  
9 position that this risk of the physical safety of other  
10 individuals is not sufficient to close this part of the PTA?

11 TC [MS. SULLIVAN]: Your Honor, we don't disagree with  
12 the defense's position that they have articulated a  
13 theoretical risk as said in our motions. Much of what the  
14 basis of the risk is is in the public domain, it has been the  
15 subject of speculation. We are not in a position, as your  
16 Honor has suggested, to go all over the world and run down  
17 every possible lead to every possible risk, particularly in  
18 other countries where United States -- so, we are not  
19 disputing a theoretical risk to individuals in foreign  
20 countries. We don't think, however, that on these facts the  
21 legal burden is met here and there is an overwhelming public  
22 interest given the facts, given what's already in the public  
23 domain in unsealing the documents in their entirety.

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1           As an alternative, your Honor, we believe that the  
2 relief the defense has requested is not narrowly tailored to  
3 effect what they are asking for. I will remain opaque that as  
4 well, sir, because you have not ruled yet. I believe we have  
5 made that clear in our briefs that the defense joined in some  
6 public filings that include some of the actions they are  
7 requesting now.

8           THE COURT: There was an issue neither side addressed in  
9 their briefs, and let me ask you this. Is disclosing the  
10 complete quantum portion of the pretrial agreement, does it  
11 cause you pause that the members may be aware of this prior to  
12 them coming into the court?

13          TC [MS. SULLIVAN]: Sir, we believe that, given the  
14 delay in sentencing, which is also in the public domain now as  
15 part of the agreement, as part of the motion that the defense  
16 joined, would permit the government to successfully obtain a  
17 panel of members at sentencing through voir dire who will not  
18 know about that or can be voir dired to successfully sit at a  
19 sentencing hearing on this matter.

20          MJ [COL POHL]: Thank you. Go ahead.

21          CDC2 [MR. DIXON]: I would like to say two more things.  
22 First, with respect to our request for relief, there are  
23 actually two requests for relief. If you look at page 1 of

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1 the motion, there is subpart A and subpart B. Subpart B  
2 concerns the sealing of the filings made in connection with  
3 the request to seal, and regardless of how Your Honor rules on  
4 the request to seal the PTA, or portions of it I should say,  
5 we do request the filings be sealed consistent with the case  
6 law cited in the brief, particularly the Ninth Circuit case  
7 cited there. We do not believe that there is a legal issue  
8 with respect to that. It is not the same legal standard.

9           Secondly, our client has one matter that he would  
10 like to have us address with respect to this issue of the  
11 sealed motion, but it is classified. We need to go into  
12 closed session in order to do so, so we make that request now  
13 on his behalf.

14           MJ [COL POHL]: Let me do those things in that order.  
15 Trial counsel, you oppose sealing AE 11?

16           TC [MS. SULLIVAN]: Yes, Your Honor, we do.

17           MJ [COL POHL]: Okay. One moment. Just so I'm clear,  
18 Defense, we need to close proceedings only to present what you  
19 believe to be classified information?

20           CDC2 [MR. DIXON]: Yes, Your Honor. We have a document  
21 we would like to introduce that is classified -- or I should  
22 say presumptively classified and we would like to do that and  
23 we hereby give notice pursuant to Rule 505.

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1 MJ [COL POHL]: If we don't discuss the document, do the  
2 proceedings need to be closed if I simply read it?

3 CDC2 [MR. DIXON]: If Your Honor will accept the  
4 document, then. No, we would not need to do that.

5 MJ [COL POHL]: Trial Counsel?

6 TC [MS. SULLIVAN]: Your Honor, we have no objection to  
7 you viewing the document in favor of keeping the proceedings  
8 open, but note we received no previous notice under 505 there  
9 would be classified materials.

10 MJ [COL POHL]: Do you know what document they are  
11 talking about?

12 TC [MS. SULLIVAN]: No.

13 MJ [COL POHL]: Let's do this, show it -- we will take a  
14 recess. Show it to the Trial Counsel. If there is no  
15 objection, then have the bailiff give it to me in chambers, I  
16 will read it in chambers, and that way it won't close the  
17 proceedings. If we need to do follow up on it, we will.  
18 Okay?

19 TC [MS. SULLIVAN]: Yes, Your Honor.

20 MJ [COL POHL]: The Commission is in recess.

21 [The Military Commission recessed at 1000,  
22 February 29, 2012.]

23 MJ [COL POHL]: Please be seated. The commission is

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1 called to order. All parties are again present after the  
2 commission recess.

3           During the recess I reviewed the document  
4 presented by the defense. The document will be labeled 11  
5 Charlie. Given its classification as classified, it will go  
6 into the classified part of the record of trial. Anything  
7 further from either side on this issue? Defense?

8           CDC 2 [MR. DIXON]: No, your Honor.

9           MJ [COL POHL]: Trial Counsel?

10          TC [MS. SULLIVAN]: Your Honor, we would just like to  
11 note for the record that we hadn't previously received the 505  
12 notice. The defense counsel just provided us with a copy of  
13 the document which we reviewed and Your Honor has before you.  
14 We would also just like to submit that the defense has not  
15 laid any foundation or authenticated that document.

16                 Also, Your Honor, I should probably note for the  
17 record that we are also -- while the proceedings are being  
18 have resumed, we are also being broadcast via  
19 closed-circuit television to Fort Meade as well.

20          MJ [COL POHL]: Didn't you hear me say that?

21          TC [MS. SULLIVAN]: I didn't.

22          MJ [COL POHL]: You don't need do it each time. Assume  
23 it is there.

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1 Defense, your motion to redact parts of the  
2 pretrial agreement is denied. Before I make findings, do you  
3 wish to consult with your client whether or not he wishes to  
4 continue with his guilty plea because the nature of the  
5 findings will disclose some of the information which you did  
6 not wish to be disclosed?

7 CDC2 [MR. DIXON]: Can we have a moment, Your Honor?

8 MJ [COL POHL]: Sure.

9 CDC2 [MR. DIXON]: Question with respect to your ruling,  
10 Your Honor. Is that as to both parts of the motion or is that  
11 simply as to the selected portions of the PTA and appendix?

12 MJ [COL POHL]: Your motion to redact parts of the OTP  
13 and the PTA is denied. Your motion to seal the document is --  
14 to seal AE 11 Alpha and 11 Bravo is provisionally granted at  
15 this time.

16 CDC2 [MR. DIXON]: Thank you.

17 MJ [COL POHL]: I will issue a written ruling on that  
18 later, but it is easier to seal it and unseal it than to try  
19 to unseal it and seal it. That part of your motion is granted  
20 at this time. You know, I will do a separate ruling on that  
21 all together, that is just a provisional ruling, but that is  
22 my inclination on that.

23 CDC2 [MR. DIXON]: Understood. Thank you, Your Honor.

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1 MJ [COL POHL]: I'm only talking about the redaction  
2 issue right now.

3 CDC2 [MR. DIXON]: Yes.

4 MJ [COL POHL]: Got it.

5 CDC2 [MR. DIXON]: Your Honor ----

6 MJ [COL POHL]: Would you like a short recess? Okay.

7 CDC2 [MR. DIXON]: Your Honor, we consulted with our  
8 client and we are ready to proceed.

9 MJ [COL POHL]: Concerning defense motion Appellate  
10 Exhibit 11, the Court makes the following findings. The  
11 Commission reserves the right to supplement these findings  
12 upon reviewing the record of trial.

13 First of all, much of the requested redacted  
14 information is in the public record. The Commission  
15 recognizes the fact it is in the public domain does not  
16 necessarily mean it has the same weight as if actually  
17 confirmed when released through the Commission process, but,  
18 in the larger scheme of things, the Commission finds that the  
19 issue with the accused pleading guilty before this Commission,  
20 that even if the redacted information were not released, the  
21 presumption, inference, thought that the accused was going to  
22 cooperate with the United States government in other areas is  
23 basically common knowledge.

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1           The defense's concern -- the Commission is aware  
2 of the defense's concern; however, it does not believe a  
3 redaction would be necessary to ensure the physical safety of  
4 other individuals since the nature of the plea itself and the  
5 nature of the information that is already in the public domain  
6 would be sufficient -- provide information to those who wish  
7 to threaten the safety of others without the redaction --  
8 without having the information that is being requested to be  
9 redacted. And, therefore, balancing that interest with the  
10 need for a public trial in accordance with Rule 806, the Court  
11 does -- the Commission does not find it is necessary to redact  
12 the information. As I said before, therefore, the defense  
13 motion to redact the information is denied. The defense  
14 motion to seal Appellate Exhibit 11 is, as I said before,  
15 provisionally granted.

16           Any question about the Commission's rulings?

17           TC [MS. SULLIVAN]: No, sir.

18           CDC2 [MR. DIXON]: No, sir.

19           MJ [COL POHL]: Now, Mr. Khan, your counsel has entered  
20 a plea of guilty for you and you told me earlier that that is  
21 your plea in this case. Is that still correct?

22           ACC [MR. KHAN]: Yes, sir.

23           MJ [COL POHL]: Okay. Now your plea of guilty will not

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1 be accepted unless you understand its meanings and effect.  
2 Now, at this time I will have probably a rather lengthy  
3 discussion with you about your guilty plea about the pretrial  
4 agreement, about the stipulations of fact. During the course  
5 of the discussion, I may use some legal terms or some other  
6 terms that you just don't understand.

7 ACC [MR. KHAN]: Okay.

8 MJ [COL POHL]: If you have any questions of me or you  
9 need to talk to your lawyer, just tell me and we will take  
10 whatever time it takes. This is your day at this Commission  
11 and, therefore, it is important that you understand completely  
12 everything that goes along. Do you understand that?

13 ACC [MR. KHAN]: Yes, sir.

14 MJ [COL POHL]: There is no time limit for how long this  
15 is to take. It is important that you understand it, and if it  
16 takes a long time, so be it. Do you understand that?

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: A plea of guilty is the strongest form  
19 of proof known to the law. On the basis of your plea alone,  
20 without receiving any evidence, this Commission can find you  
21 guilty of the offense to which you have pled guilty. Your  
22 guilty pleas will not be accepted by me unless you realize  
23 that by your pleas you admit every act and every element of

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1 the offense to which you have pled guilty. In addition, your  
2 pleas will not be accepted unless I am convinced that you're  
3 pleading guilty because you are, in fact, guilty under United  
4 States law. If you do not think that you are guilty under  
5 United States law, you should not plead guilty.

6 In addition, I cannot and will not accept your  
7 plea unless, after making my inquiry, I'm satisfied either  
8 there is a factual basis for the plea or that you voluntarily  
9 agree that, having viewed the evidence the government intends  
10 to introduce against you, you are personally convinced the  
11 prosecution could prove you guilty to the offense to which you  
12 are pleading guilty beyond a reasonable doubt. Do you  
13 understand that?

14 ACC [MR. KHAN]: Yes, sir, I do.

15 MJ [COL POHL]: Now, if at any time, as I said before,  
16 you are confused or have any questions, just stop me and talk  
17 it over with your lawyers. Do you understand that?

18 ACC [MR. KHAN]: Yes, sir, I do.

19 MJ [COL POHL]: By your plea of guilty, you waive three  
20 important rights. First of all, you waive the right of  
21 self-incrimination, that is the right to say nothing at all  
22 about these offenses. Second, you waive the right to a trial  
23 of the facts by the Military Commission, that is your right to

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1 have a commission decide whether or not you are guilty based  
2 upon evidence presented by the government and, if you choose  
3 to do so, by the defense. Third, you waive the right to  
4 confront the witnesses called against you and to call  
5 witnesses on your behalf in the findings portion of this  
6 Commission. Do you understand these rights?

7 ACC [MR. KHAN]: Yes, I do.

8 MJ [COL POHL]: If you plead guilty, there will not be a  
9 trial of any kind as to the offense to which you are pleading  
10 guilty. By pleading guilty, you give up the three rights I  
11 just described. Do you understand that?

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: Even if you believe you are guilty, you  
14 still have the legal and moral right to enter a plea of not  
15 guilty and require the government to prove its case against  
16 you, if it can, by legal and competent evidence beyond a  
17 reasonable doubt. If you were to plead not guilty, then you  
18 would be presumed under the law to be innocent and only by  
19 introducing evidence proving your guilt beyond a reasonable  
20 doubt could the government overcome this presumption of  
21 innocence. Do you understand this?

22 ACC [MR. KHAN]: Yes, sir.

23 MJ [COL POHL]: Have you discussed this with your

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1 lawyers?

2 ACC [MR. KHAN]: I have, sir.

3 MJ [COL POHL]: Do you agree to give up these three  
4 rights with regard to the offense to which you have pled  
5 guilty and to answer my questions?

6 ACC [MR. KHAN]: Yes, I do.

7 MJ [COL POHL]: If you continue with your guilty plea,  
8 you will be placed under oath and I will question you whether  
9 you are, in fact, guilty. Do you understand this?

10 ACC [MR. KHAN]: Yes, sir.

11 MJ [COL POHL]: You should also understand if you tell  
12 me anything that is untrue, your statements may be used  
13 against you later charging you with perjury or making false  
14 statements. Do you understand this?

15 ACC [MR. KHAN]: Yes.

16 MJ [COL POHL]: Trial Counsel, please place the accused  
17 under oath. Mr. Khan, please stand.

18 [The Accused was sworn.]

19 MJ [COL POHL]: Please be seated.

20 [The Accused and Counsel did as directed.]

21 MJ [COL POHL]: Now, as I said before, there is a  
22 pretrial agreement in this case. As part of the pretrial  
23 agreement, I understand there is a stipulation of fact. The

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1 stipulation of fact is marked what? Trial Counsel, what is  
2 the stipulation?

3 TC [MS. SULLIVAN]: Prosecution Exhibit 1 for  
4 identification, Your Honor.

5 MJ [COL POHL]: Do you have a copy of it?

6 Mr. Khan, do you have a copy of the stipulation of  
7 fact with you? Defense, do you have any objection to the  
8 admission of Prosecution Exhibit 1, the stipulation of fact?

9 CDC2 [MR. DIXON]: No objection, Your Honor.

10 MJ [COL POHL]: Mr. Khan, I'm going to ask you to turn  
11 to page 17, please.

12 ACC [MR. KHAN]: Yes, sir, I'm there.

13 MJ [COL POHL]: Did you sign this stipulation on this  
14 page?

15 ACC [MR. KHAN]: Yes, I did.

16 MJ [COL POHL]: Prior to signing the stipulation, did  
17 you read it, discuss it with your attorneys?

18 ACC [MR. KHAN]: Yes, I have, sir.

19 MJ [COL POHL]: Do you understand everything contained  
20 within the stipulation of fact?

21 ACC [MR. KHAN]: Pretty much, yes, sir. Yes, I do.

22 MJ [COL POHL]: Mr. Khan, I understand there will be  
23 some language that we would normally use. And so when you

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1 said pretty much, you notice it has to be -- it is all or  
2 nothing. Do you understand everything in the stipulation of  
3 fact?

4 ACC [MR. KHAN]: Yes, sir, I do.

5 MJ [COL POHL]: Counsel for both sides agree to the  
6 stipulation and those are your signatures?

7 TC [MS. SULLIVAN]: Yes, sir.

8 DC [LTC JACKSON]: Yes, sir.

9 MJ [COL POHL]: Mr. Khan, I want you to understand how a  
10 stipulation of fact is to be used. A stipulation of fact is  
11 an agreement between the Trial Counsel, the Defense Counsel  
12 and yourself that the counts in the stipulation are the  
13 uncontradicted facts in the case. You have the right not to  
14 enter into this stipulation and this stipulation will not be  
15 accepted without your consent. Do you understand?

16 ACC [MR. KHAN]: Yes, I understand that.

17 MJ [COL POHL]: If you have any questions about anything  
18 I'm stating or anything I'm asking you, please consult with  
19 your counsel. Now, Mr. Khan, this stipulation contains an  
20 introductory paragraph and 112 numbered paragraphs. Now, have  
21 you thoroughly reviewed this stipulation with your counsel?

22 ACC [MR. KHAN]: Yes, I have, sir.

23 MJ [COL POHL]: Are you voluntarily entering into this

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1 stipulation?

2 ACC [MR. KHAN]: Yes, sir.

3 MJ [COL POHL]: Do you think it is in your best interest  
4 to enter into the stipulation?

5 ACC [MR. KHAN]: No doubt, sir.

6 MJ [COL POHL]: In reviewing this document, is there any  
7 part of it to which you do not want to consent?

8 ACC [MR. KHAN]: Sorry. Repeat that, sir.

9 MJ [COL POHL]: Having reviewed the stipulation, is  
10 there any part you do not want to consent to?

11 ACC [MR. KHAN]: No.

12 MJ [COL POHL]: Has anyone forced or threatened you to  
13 enter this stipulation?

14 WIT: No.

15 MJ [COL POHL]: If I admit the stipulation into  
16 evidence, it will be used in two ways. First, I will use it  
17 to determine whether, in fact, you are guilty to the offense  
18 which you pled guilty. Second, it will be given later to  
19 court members, they will have it with them when they decide  
20 upon the sentence. Do you understand that?

21 ACC [MR. KHAN]: Yes, I do.

22 MJ [COL POHL]: Do you agree to these uses?

23 ACC [MR. KHAN]: Yes.

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1 MJ [COL POHL]: Do counsel for both sides agree?

2 TC [MS. SULLIVAN]: Yes, Your Honor.

3 DC [LTC JACKSON]: Yes, sir.

4 MJ [COL POHL]: Mr. Khan, ordinarily a stipulation of  
5 fact cannot be contradicted or questioned after it has been  
6 entered into evidence. That is, after it has been admitted  
7 into evidence, you cannot argue later the information  
8 contained in the stipulation is false. Do you understand  
9 that?

10 ACC [MR. KHAN]: Yes, sir, I do.

11 MJ [COL POHL]: If ----

12 ACC [MR. KHAN]: Your Honor, just give me a second.

13 MJ [COL POHL]: Sure.

14 ACC [MR. KHAN]: Yes, sir, we can go ahead.

15 MJ [COL POHL]: Now, if this stipulation should be  
16 questioned or contradicted after I accept your guilty pleas,  
17 then I would have to go back and reopen the inquiry into your  
18 pleas. This would mean you would need to let me know at this  
19 point in the hearing if there is anything at all you disagree  
20 with or anything you feel is untrue in the stipulation. Do  
21 you agree with that?

22 ACC [MR. KHAN]: Yes, I understand, sir. I have -- I  
23 don't disagree.

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1 MJ [COL POHL]: Do you admit the information contained  
2 in the stipulation is true and correct to the best of your  
3 knowledge and belief?

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: Defense Counsel, any objection to PE 1  
6 for identification?

7 DC [LTC JACKSON]: No objection.

8 [PE 1 for identification is admitted into  
9 evidence.]

10 MJ [COL POHL]: Subject to my acceptance of the  
11 accused's guilty plea, any objection?

12 DC [LTC JACKSON]: No objection.

13 MJ [COL POHL]: Mr. Khan, do you have a copy of the  
14 charge sheet, please?

15 ACC [MR. KHAN]: Give me a second, Your Honor.

16 MJ [COL POHL]: Take your time.

17 ACC [MR. KHAN]: I do have it right now, sir.

18 MJ [COL POHL]: What I'm going to do now is explain to  
19 you the elements of each of the offenses to which you pled  
20 guilty. When I use the term "elements," I'm referring to the  
21 facts the government would have to prove beyond a reasonable  
22 doubt before you could be found guilty if you had pled not  
23 guilty. After I list the elements for you, we will have a

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1 discussion regarding the circumstances surrounding the  
2 offenses.

3           Let's begin with Charge I and the Specification.  
4 In the Specification of Charge I, you have pled guilty to  
5 conspiracy to commit murder in violation of the law of war,  
6 providing material support for terrorism and spying. The  
7 elements of the offense are as follows: 1, that you, Majid  
8 Shoukat Khan, are a person subject to trial by military  
9 commission as an alien unprivileged enemy belligerent; two,  
10 that at various locations within the United States, Pakistan,  
11 Indonesia, Thailand and elsewhere from about January 2002 to  
12 about August 2003, you entered into an agreement with Usama  
13 bin Laden, Khalid Sheikh Mohammed, Ali Abdul al-Aziz Ali,  
14 Encep Nurjaman, Mohammed Nazir bin Lep, Mohammed Farik bin  
15 Amin, and other members and associates of the al Qaeda  
16 organization and its affiliated groups, known and unknown, to  
17 commit one or more substantive offenses triable by military  
18 commission, to wit: Murder in violation of the law of war,  
19 providing material support for terrorism and spying; 3, that  
20 you knew the unlawful purpose of the agreement, that is, with  
21 intent to further the unlawful purpose; and 4, that you  
22 knowingly committed one or more of the overt acts in order to  
23 accomplish some objective or purpose of the agreement or

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1 enterprise.

2                   The overt acts themselves are listed on the charge  
3 sheet beginning with paragraph 8 through paragraph 61.

4           ACC [MR. KHAN]:    Sorry, I was a little lost.

5           MJ [COL POHL]:    That is okay.   Take your time.

6           ACC [MR. KHAN]:    The part -- you said something about  
7 Usama bin Laden, I just assume you were saying that I have a  
8 personal association with Usama bin Laden.  I never met him,  
9 obviously.  I want to make it clear there was no conspiracy  
10 with him.

11           MJ [COL POHL]:    Okay.  I may need to give you a break.  
12 Mr. Khan, the law of conspiracy, there are other elements I  
13 will talk to you about later on, is a relatively potentially  
14 complicated legal concept.  Okay?  So, take time with your  
15 lawyers to make sure you understand.  What I'm saying is, for  
16 example, you need not to know every other member of the  
17 conspiracy under the law of conspiracy.  That is just one  
18 example.  Go ahead and talk to your lawyers.  They will  
19 explain.

20           ACC [MR. KHAN]:    Even the name there, that doesn't mean  
21 I have personal association with the person and ----

22           MJ [COL POHL]:    It just means that he was part of the  
23 conspiracy even if you never talked to him.

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1 ACC [MR. KHAN]: Never talked to him, okay. Even you  
2 could be part of the conspiracy, you may not even know that  
3 there is going to be conspiracy or just ----

4 MJ [COL POHL]: Talk it over with your lawyers.

5 ACC [MR. KHAN]: All right.

6 Sorry, Your Honor, where were we?

7 MJ [COL POHL]: Do you understand that, at least on that  
8 part of it, you need not know -- actually meet all the other  
9 conspirators as long as they were all in conspiracy together?  
10 Do you understand that?

11 ACC [MR. KHAN]: I understand now, sir.

12 MJ [COL POHL]: I'm going to discuss a little bit about  
13 what a conspiracy is. Two or more persons are required in  
14 order to have a conspiracy. Knowledge of the identity of the  
15 co-conspirators and their particular connection with the  
16 agreement or enterprise need not be shown. A person may be  
17 guilty of conspiracy even though incapable committing the  
18 intended offense. Additionally, the agreement or conspiracy  
19 doesn't have to be written or in any specific form or even put  
20 into formal words. It is sufficient if the minds of the  
21 parties reach a common understanding to accomplish the object  
22 of the conspiracy, and this may be proved by the conduct of  
23 the parties. The agreement does not have to express the

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1 manner in which the conspiracy is to be carried out or what  
2 part each conspirator is to play.

3           In a conspiracy, the agreement must, at least in  
4 part, include the commission or intended commission of one or  
5 more offenses triable by military commission. A single  
6 conspiracy may embrace several criminal offenses. The  
7 agreement in a conspiracy doesn't have to include knowledge  
8 that the intended offense is, in fact, triable by military  
9 commission.

10           The elements of the offense which you are charged  
11 with conspiracy to commit, namely, murder in violation of the  
12 law of war, material support to terrorism and spying are as I  
13 will explain later to you for charges II, IV and V. Proof  
14 that the offense of murder in violation of the law of war,  
15 material support to terrorism and spying actually occurred is  
16 not required for conspiracy. However, the agreement must  
17 include every element of the offenses of murder in violation  
18 of the law of war, material support to terrorism and spying.

19           Even though you as the accused must be subject to  
20 the Military Commissions Act, other co-conspirators need not  
21 be. After the agreement, an overt act must be committed by  
22 you and must have been done for the purpose of bringing about  
23 the intended end result of the conspiracy. The overt act

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1 itself need not be a criminal act, but it must have been done  
2 to bring about the purpose of the conspiracy.

3           Mr. Khan, I'm about to go through what is called  
4 vicarious liability of co-conspirators because this will come  
5 up later on. Each conspirator is liable for the offenses  
6 committed pursuant to or in furtherance of the conspiracy by  
7 any of the co-conspirators after such conspirator has joined  
8 the conspiracy while the conspiracy continues and such  
9 conspirator remains party to it. That the object of the  
10 conspiracy wasn't possible to effect is not a defense to this  
11 offense. In other words, you are criminally liable for crimes  
12 committed by other co-conspirators in furtherance of the  
13 conspiracy even though you didn't commit the other crimes or  
14 know what the crime was as long as the crime was part of the  
15 conspiracy. Do you understand that?

16           ACC [MR. KHAN]: Yes, sir.

17           MJ [COL POHL]: Mr. Khan, I will discuss in greater  
18 detail later on, but I am going to give you the biggest  
19 example of this. According to the stipulation of fact, you  
20 were apprehended by law enforcement in March of '03, correct?

21           ACC [MR. KHAN]: Your Honor, March 1, '03, yes, sir.

22           MJ [COL POHL]: If you look at the charge sheet,  
23 specifically Charge II, specification 1 of Charge II deals

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1 with the bombing of the Marriott hotel in Jakarta, Indonesia.

2 ACC [MR. KHAN]: Yes, sir.

3 MJ [COL POHL]: Now, that bombing occurred after you had  
4 been apprehended. It occurred in August of '03, correct?

5 ACC [MR. KHAN]: Yes, that was in August.

6 MJ [COL POHL]: Now, even though at that time you were  
7 not free to participate since you were in custody, because you  
8 were still part of the conspiracy, you are still criminally  
9 responsible for that bombing that occurred months after you  
10 were incarcerated. Do you understand that?

11 ACC [MR. KHAN]: Yeah.

12 MJ [COL POHL]: So later on when I say -- when I talk  
13 about the murder offense, for example, when I say you did  
14 commit the bombing, what I mean is not you personally but you  
15 in a legal sense because you were part of a conspiracy that  
16 did the bombing. Do you understand that?

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: I just want to stop at this point to  
19 discuss that part of it because it's -- a lot of people -- it  
20 is difficult for nonlawyers to understand, but even though you  
21 are in -- since March of '03 are in custody, you are still  
22 criminally responsible for the acts of your co-conspirators  
23 that occurred in August of '03. Do you understand that?

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1 ACC [MR. KHAN]: I do, sir.

2 MJ [COL POHL]: Understanding you weren't there.

3 ACC [MR. KHAN]: No, let me speak, please. I ----

4 MJ [COL POHL]: It is kind of a complicated legal issue  
5 I want to make sure you understand.

6 ACC [MR. KHAN]: Sure, I want to speak a little bit.  
7 I'm scared. I'm using common sense in a lot of sense, but I  
8 think during the stipulation of facts, if you read through,  
9 the fact of the matter is, even though I delivered the money,  
10 the fact of the matter is that I did not know where the money  
11 was going. But I voluntarily did that. I was not aware of  
12 any conspiracy that was going to happen. I was going to carry  
13 out attacks, but I did that voluntarily, but that's part of  
14 the conspiracy, correct?

15 MJ [COL POHL]: I want to make sure we are back to what  
16 the agreement says. When you joined this conspiracy in  
17 January of '02, although you may not have known exactly the  
18 specific acts -- the specific incidents that were going to  
19 occur, did you agree to participate in as part of the  
20 conspiracy to commit murder in violation of the law of war, to  
21 provide material support to terrorism and to spy, even though  
22 you didn't necessarily know about the Marriott bombing at any  
23 time?

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1 ACC [MR. KHAN]: All I can say, sir, I volunteered to  
2 do that. I ----

3 MJ [COL POHL]: It is a very specific question. I will  
4 give you a recess. It is critical to the whole charge.

5 ACC [MR. KHAN]: Yes, sir.

6 MJ [COL POHL]: Part of the agreement in this case that  
7 you are pleading guilty to says you agreed to commit -- to  
8 join with others to commit murder in violation of the law of  
9 war, to commit material support to terrorism and to commit  
10 spying. And my question is, I will give you a break if you  
11 need time, is when you -- in January of '02, wherever you were  
12 at, did you agree to do those things, although you may not  
13 have known exactly how they were going to be carried out,  
14 either at that time or subsequent to it?

15 Before you answer that, talk to your lawyers.

16 ACC [MR. KHAN]: January of '02? That would be -- are  
17 we talking about probably January '03? This is when I went to  
18 Thailand.

19 [The Accused confers with counsel.]

20 ACC [MR. KHAN]: Judge -- Your Honor, if you can  
21 rephrase it, your question, in a sense that easier -- is easy  
22 for me -- for me to say, you know, exactly what you are  
23 asking.

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1 MJ [COL POHL]: Okay.

2 ACC [MR. KHAN]: Please.

3 MJ [COL POHL]: I'm going to go back, Defense. If you  
4 think I'm misstating either the law or the specification, stop  
5 me. You are charged with a conspiracy that ran from January  
6 '02 through August of '03.

7 ACC [MR. KHAN]: Yes, I got that now. And anything in  
8 between.

9 MJ [COL POHL]: Exactly. Now, part of a conspiracy is  
10 an agreement between the co-conspirators, two or more people,  
11 to commit an illegal act, a crime. Okay? Do you understand  
12 that?

13 ACC [MR. KHAN]: Yes, sir.

14 MJ [COL POHL]: Now, as charged in this case, they are  
15 saying that you agreed to join this conspiracy, the people I  
16 named, you notice also it says people known and unknown so, it  
17 could be other people in the conspiracy not named, and that  
18 this conspiracy of those named and unnamed conspirators had an  
19 agreement to commit three crimes: Murder in violation of the  
20 law of war, providing material support for terrorism, and  
21 spying. Do you understand that?

22 ACC [MR. KHAN]: Yes, sir, I understand. But we are  
23 not talking about a specific event here, we are talking about

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1 the whole -- about one area in general.

2 MJ [COL POHL]: Well ----

3 ACC [MR. KHAN]: You are not talking specifically about  
4 Marriott bombing overall.

5 MJ [COL POHL]: What I'm saying, we are not talking  
6 about the Marriott bombing at all at this point. What I'm  
7 saying, beginning in January of '02 when you traveled, I  
8 believe, to Pakistan or ----

9 ACC [MR. KHAN]: Yes, sir.

10 MJ [COL POHL]: ---- you joined these people that I  
11 talked about to commit those crimes. That agreement that you  
12 made was started in January of '02 even though the crimes  
13 themselves did not occur -- at least for them, for the  
14 bombing, didn't occur until August of '03. So the conspiracy  
15 begins with the agreement to commit those crimes, with me, and  
16 then continues for another approximately year and a half?

17 ACC [MR. KHAN]: I wish it was that straightforward  
18 answer because I fully understand what you are trying to say.  
19 The words you are trying to use "joined" as if I took an oath,  
20 you know ----

21 MJ [COL POHL]: No, no.

22 ACC [MR. KHAN]: Yes, I started doing things in  
23 January, not beginning of January -- January of 2002 until

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1 March of 2003. Yes, I volunteered to do a lot of things. The  
2 word "joined" to me is like you actually take an oath under  
3 Sheikh. So that is why -- yes, I understand I volunteered all  
4 these three things that you mentioned. I do agree on this,  
5 sir.

6 MJ [COL POHL]: I'm just using "join" in a colloquial  
7 American sense, not that you took an oath or -- actually you  
8 don't have to say anything. You just said I agreed to do  
9 these things with these other people ----

10 ACC [MR. KHAN]: Yes.

11 MJ [COL POHL]: ---- some of which -- like, for example,  
12 you never met Usama bin Laden. But if he was part of it, then  
13 he is just -- you know, he is part of the same conspiracy.  
14 Are you with me on that?

15 ACC [MR. KHAN]: Yes, sir.

16 MJ [COL POHL]: Let me just clarify one other thing.  
17 You were arrested or apprehended in March of '03.

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: Okay. But did you withdraw from the  
20 conspiracy between March of '03 and August of '03?

21 ACC [MR. KHAN]: Repeat that, sir.

22 MJ [COL POHL]: What I'm saying is you just said  
23 something that from January of '02 until March of '03 you were

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1 part of the conspiracy.

2 ACC [MR. KHAN]: Yes, sir.

3 MJ [COL POHL]: Now, the bombing in Jakarta occurred in  
4 August of '03.

5 ACC [MR. KHAN]: Yes, sir.

6 MJ [COL POHL]: In August of '03, were you still part of  
7 the conspiracy? Were you still part of this group to do this?  
8 Even though you couldn't do anything, I got that.

9 ACC [MR. KHAN]: Exactly, I was captured. You know  
10 what happened to us.

11 MJ [COL POHL]: I got that part, but I'm saying were you  
12 still part of the conspiracy so you are still criminally  
13 liable for the bombing in August even though, obviously, you  
14 were not there you may not have even known about it. Do you  
15 understand?

16 ACC [MR. KHAN]: Yes, sir.

17 MJ [COL POHL]: So were you still part of the conspiracy  
18 in August of '03?

19 ACC [MR. KHAN]: Yes, sir.

20 MJ [COL POHL]: Do you understand -- physically I  
21 understand you weren't there anymore, you were somewhere else.

22 ACC [MR. KHAN]: I mean ----

23 MJ [COL POHL]: I got that part, but under the law you

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1 are still part of the conspiracy.

2 ACC [MR. KHAN]: Even if a person wants to withdraw, he  
3 cannot possibly withdraw from the conspiracy because he is  
4 illegally kidnapped even if he wants to change his mind. Not  
5 that I'm saying I did change my mind.

6 MJ [COL POHL]: Let's not talk about what didn't happen,  
7 it will be confusing enough as we talk about what did happen.  
8 I'm saying in August of '03 you believe you were still part of  
9 the conspiracy?

10 ACC [MR. KHAN]: Yes, sir. Because during -- after  
11 August -- March '03 when I was captured, you know, they asked  
12 me information ----

13 MJ [COL POHL]: Don't go down -- I want to be careful we  
14 don't slide into some classified areas. It is a simple  
15 question. In August of '03 do you believe and admit you were  
16 still part of the conspiracy?

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: Mr. Khan, this confuses lawyers, so  
19 don't -- so I understand the difficulty. But again, like I  
20 said, we have got all the time in the world so make sure you  
21 understand this.

22 Now, what I have just told you, do you now believe  
23 you understand the elements and definition as I read them to

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1 you that constitute the offense of conspiracy in this case?

2 Do you feel you understand them?

3 ACC [MR. KHAN]: I'm sorry, sir. Would you repeat  
4 that?

5 MJ [COL POHL]: Do you feel you now understand the  
6 elements and definitions of the crime of conspiracy as charged  
7 in this case?

8 ACC [MR. KHAN]: Yes, sir, I do now.

9 MJ [COL POHL]: I want you to go -- at this point to go  
10 look at -- take the stipulation of fact, Prosecution  
11 Exhibit 1.

12 ACC [MR. KHAN]: Where are we?

13 MJ [COL POHL]: Do you have it in front of you?

14 ACC [MR. KHAN]: Yes, sir, I got it.

15 MJ [COL POHL]: I just want to go over what is called  
16 the jurisdictional element of all these offenses. Look at  
17 paragraph 1 and 2.

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: Basically what it says you admitted that  
20 you are an enemy unprivileged -- alien unprivileged enemy  
21 belligerent as defined by the Commissions Act of 2009. Is  
22 that correct?

23 ACC [MR. KHAN]: Yes, sir.

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1 MJ [COL POHL]: And as you look in paragraph 2 of the  
2 stipulation of fact.

3 ACC [MR. KHAN]: Yes, sir, I'm there.

4 MJ [COL POHL]: You read all through that, we talked  
5 about it earlier, right?

6 ACC [MR. KHAN]: Yes, sir. Stipulation of fact, yes.

7 MJ [COL POHL]: And in each of these offenses one of the  
8 elements are, as I stated before, you are an alien  
9 unprivileged enemy belligerent as defined by the Military  
10 Commissions Act as discussed in paragraphs 1 and 2 of the  
11 stipulation of fact. And my question is, do you agree both  
12 the stipulation of fact and as explained by your attorneys  
13 that you are an alien unprivileged belligerent subject to  
14 trial by military commissions?

15 ACC [MR. KHAN]: Yes, sir, I do.

16 MJ [COL POHL]: I am not going to go over that for each  
17 offense but it applies to each offense. Do you understand  
18 that's an element of each offense? So you agree for all these  
19 offenses you meet that definition of an alien unprivileged  
20 enemy belligerent?

21 ACC [MR. KHAN]: Meaning I'm not part of armed forces or  
22 something.

23 MJ [COL POHL]: No, but it is more complicated than

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1 that.

2 ACC [MR. KHAN]: Yes, I understand, sir.

3 MJ [COL POHL]: Good. Okay. Now, have you had an  
4 opportunity to read the conspiracy specification? The  
5 Charge I, have you had an opportunity to read that?

6 ACC [MR. KHAN]: Either the whole -- yes, sir.

7 MJ [COL POHL]: Okay. It is a rather lengthy charge.  
8 Now, after reviewing it, and this includes the specification  
9 and the 61 paragraphs, seven of which are ----

10 ACC [MR. KHAN]: 61?

11 MJ [COL POHL]: There are 61 paragraphs to it.

12 ACC [MR. KHAN]: 61.

13 MJ [COL POHL]: The only legally significant ones are  
14 paragraphs 8 through 61.

15 ACC [MR. KHAN]: Paragraph 61. Paragraph 61.

16 MJ [COL POHL]: I want to make sure you understand that  
17 Charge I, the conspiracy, is the specification, the little  
18 paragraph to start, and the 61 follow-on paragraphs.

19 ACC [MR. KHAN]: Yes, sir.

20 MJ [COL POHL]: You have had an opportunity to read that  
21 and review all that?

22 ACC [MR. KHAN]: Yes, sir.

23 MJ [COL POHL]: Do you believe and admit the elements,

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1 definitions, all of what is in there, including the 61  
2 paragraphs, accurately describe what you did or accurately  
3 describe what you, having reviewed the evidence, believe can  
4 be proven against you beyond a reasonable doubt?

5 ACC [MR. KHAN]: Yes.

6 MJ [COL POHL]: Now, I want to take a look at  
7 specification -- excuse me, The Specification of Charge II.  
8 In The Specification of Charge II, you have pled guilty to the  
9 offense of murder in violation of the law of war. The  
10 elements of this offense are as follows: 1, that you, Majid  
11 Shoukat Khan, are a person subject to trial by military  
12 commissions as an alien unprivileged enemy belligerent; 2,  
13 that the eleven persons shown at Appendix A of the charge  
14 sheet are dead; 3, that the death of these persons resulted  
15 from your act in detonating a vehicle laden with explosives in  
16 front of the J.W. Marriott Hotel on or about August 5, 2003 at  
17 or near Jakarta, Indonesia; 4, that the killing was unlawful;  
18 5, that you intended to kill the person or persons; 6, the  
19 killing was in violation of the law of war; and 7, the killing  
20 took place in the context of and was associated with  
21 hostilities.

22 Now, I want to start out by saying you detonated a  
23 vehicle laden with explosives. Do you understand when I say

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1 "you," I mean in the legal sense that we talked about earlier  
2 about conspiracy, because obviously you were not there, you  
3 were somewhere else. But your fellow co-conspirators did blow  
4 up the Marriott on that day, correct?

5 ACC [MR. KHAN]: Yeah.

6 MJ [COL POHL]: And the 11 people who are listed in  
7 Appendix A -- do you have that in front of him, Colonel  
8 Jackson?

9 DC [LTC JACKSON]: I do.

10 ACC [MR. KHAN]: Those people I assume died?

11 MJ [COL POHL]: Well, let's change the word "assume."

12 ACC [MR. KHAN]: Okay.

13 MJ [COL POHL]: Based on the evidence presented, you  
14 have no idea who these people are, I'm sure ----

15 ACC [MR. KHAN]: I have no way of knowing.

16 MJ [COL POHL]: ---- you are convinced these are the 11  
17 people who died during the bombing?

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: I am going to explain some legal terms  
20 here. "In the context of and in association with hostilities"  
21 means there is a connection between your actions and armed  
22 hostilities. "Hostilities" means any conflict subject to the  
23 laws of war. The term "kill" includes intentionally causing

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1 death, directly or indirectly, without legal justification or  
2 excuse recalling what I told you earlier about your legal  
3 culpability as a co-conspirator for the crimes of other  
4 co-conspirators committed in furtherance of the conspiracy.  
5 You may be convicted in a military commission for this offense  
6 if the person intentionally attacked a protected person. The  
7 term "protected person" means any person entitled to  
8 protection under one or more of the Geneva Conventions,  
9 including persons who are not members of enemy armed forces  
10 not otherwise engaged in hostile acts, meaning those acts,  
11 which, by their nature and purpose, are intended to cause  
12 actual harm to the personnel and equipment of an enemy's armed  
13 forces.

14                   Do you understand the elements and definitions as  
15 I read them to you?

16           ACC [MR. KHAN]: Yes, sir.

17           MJ [COL POHL]: Now, you have had an opportunity to read  
18 the specification of Charge II. Have you done that?

19           ACC [MR. KHAN]: Yes, sir.

20           MJ [COL POHL]: After reviewing The Specification of  
21 Charge II, do you believe and admit that these elements and  
22 definitions either accurately describe what you did or  
23 accurately describe what you, having reviewed the evidence,

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1 admit could be proven against you beyond a reasonable doubt?

2 ACC [MR. KHAN]: Yes, sir.

3 MJ [COL POHL]: Please look at Charge III. In  
4 Specification 1 of Charge III, you are charged with the  
5 offense of attempted murder in violation of the law of war.  
6 The elements of this offense are as follows: 1, that you,  
7 Majid Shoukat Khan, are a person subject to trial by military  
8 commission as an alien unprivileged enemy belligerent; 2, that  
9 you did intentionally detonate a vehicle laden with explosives  
10 in front of the J.W. Marriott Hotel on or about August 5, 2003  
11 at or near Jakarta, Indonesia; 3, that these acts were done  
12 with the specific intent to commit murder in violation of the  
13 law of war, that is, to kill protected persons, an offense  
14 under Chapter 47 Alpha of Title 10, United States Code; 4,  
15 that your acts amounted to more than mere preparation; and 5,  
16 that your acts apparently tended to effect the commission of  
17 the intended offense.

18 Look at Specification 2 of Charge III. Again you  
19 are charged with the offense of attempted murder in violation  
20 of the law of war. In this offense the following elements  
21 apply: 1, that you, Majid Shoukat Khan, are a person subject  
22 to trial by military commission as an alien unprivileged enemy  
23 belligerent; 2, that on or about March 8, 2002 at or near

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1 Karachi, Pakistan, you did certain acts, that is, wear a vest  
2 containing an improvised explosive device and traveling to a  
3 mosque where you expected Pakistani President Pervez Musharraf  
4 to be with the intention of detonating the vest and killing  
5 President Musharraf; 3, that these acts were done with the  
6 specific intent to intentionally and unlawfully kill Pakistani  
7 President Pervez Musharraf in violation of the law of war; 4,  
8 that your acts amounted to more than mere preparation; 5, that  
9 your acts apparently tended to effect the commission of the  
10 intended offense.

11 At this time I want to explain some terms that are  
12 relevant to these definitions. An act, done with specific  
13 intent to commit an offense under this chapter, amounting to  
14 more than mere preparation and tending, even though failing,  
15 to effect its commission, is an attempt to commit that  
16 offense.

17 What that means is that the act -- intended  
18 offense is murder here. The act would have caused the murder  
19 except for something else, in this case at the J.W. Marriott  
20 the people listed in Appendix B were not killed, rather they  
21 were injured by the explosion. Do you agree with that?

22 ACC [MR. KHAN]: Yes, sir.

23 MJ [COL POHL]: As far as the Pakistani president, is

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1 that you went there and did what was described here with a  
2 suicide vest with intent to kill him but he just didn't happen  
3 to show up that day.

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: So therefore that is why it didn't occur  
6 but your acts were more than mere preparation. Do you  
7 understand?

8 ACC [MR. KHAN]: Yes, sir.

9 MJ [COL POHL]: Preparation consists of devising or  
10 arranging means or measures apparently necessary for the  
11 commission of the offense. The act need not be the last act  
12 essential to the consummation of the offense. The combination  
13 of specific intent to commit an offense, plus the commission  
14 of an act apparently tending to further its accomplishment,  
15 constitutes the offense of attempt. If the facts were as you  
16 believed them, and under those facts your conduct would  
17 constitute the offense of murder in violation of the law of  
18 war, you are guilty of attempted murder in violation of the  
19 law of war even though under the facts as they actually  
20 existed it may have been impossible for you to complete the  
21 offense of murder in violation of the law of war.

22 What that means with President Musharraf is he  
23 just happened not to be there. That is the thing that

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1 prevented you from doing more than talk about it. You  
2 actually had gone there and done some things with the intent  
3 to kill him; is that correct?

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: To constitute an attempt there must be a  
6 specific intent to commit the offense accompanied by an act  
7 that tends to accomplish the unlawful purpose. The intent  
8 need not involve knowledge that the offense is, in fact,  
9 triable by military commission.

10 Mr. Khan, do you understand the elements and  
11 definitions as I read them to you as they apply to each  
12 specification?

13 ACC [MR. KHAN]: Yes, sir, I understand.

14 MJ [COL POHL]: Have you had the opportunity to read  
15 Specifications 1 and 2 of Charge III?

16 ACC [MR. KHAN]: Yes, I have.

17 MJ [COL POHL]: After reviewing Specifications 1 and 2  
18 of Charge III, do you admit these elements and definitions  
19 accurately describe what you did or accurately describe what  
20 you, having reviewed the evidence, admit could be proven  
21 against you beyond a reasonable doubt?

22 ACC [MR. KHAN]: Yes, sir.

23 MJ [COL POHL]: Do you have any questions about the

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1 elements and definitions or anything else I said regarding  
2 Specifications 1 or 2 of Charge III?

3 ACC [MR. KHAN]: No, sir.

4 MJ [COL POHL]: Let's now look at Charge IV. In  
5 Charge IV you pled guilty to two specifications of providing  
6 material support for terrorism. In Specification 1 of  
7 Charge IV the following elements apply: 1, that you, Majid  
8 Shoukat Khan, are a person subject to trial by military  
9 commission as an alien unprivileged enemy belligerent; 2, that  
10 from on or about January 2002 to about March of '03 at various  
11 locations within the United States, Pakistan, Thailand and  
12 elsewhere you did provide material support or resources to be  
13 used in preparation for or in carrying out an act of terrorism  
14 as set forth in 10 U.S. Code 950t(24); to wit, property,  
15 including currency or monetary instruments, and services,  
16 including financial services and personnel, including  
17 yourself; 3, that you knew or intended that the material  
18 support or resources were to be used for those purposes; and  
19 4, the conduct took place in the context of and was associated  
20 with hostilities.

21 Specification 2 of Charge IV. That is again  
22 providing material support to terrorism. In this case there  
23 are five elements. 1, that you, Majid Shoukat Khan, are a

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1 person subject to trial by military commission as an alien  
2 unprivileged enemy belligerent; 2, that from about January  
3 2002 to about March 2003 at various locations within the  
4 United States, Pakistan, Thailand and elsewhere, you provided  
5 material support or resources in the form of property,  
6 including currency or monetary instruments, services,  
7 including financial services, lodging, false documentation or  
8 identification, communications equipment, explosives,  
9 personnel, including yourself, and transportation to an  
10 international terrorist organization engaged in hostilities  
11 against the United States, to wit: al Qaeda and Jemaah  
12 Islamiyah; 3, that you intended to provide such material  
13 support or resources to such an international terrorist  
14 organization; 4, that you knew that such organizations had  
15 engaged in or engages in terrorism as set forth in 10 U.S.  
16 Code 950t(24); and 5, the conduct took place in the context of  
17 and was associated with hostilities.

18           Again, at this time I will explain to you some of  
19 the definitions that apply to these elements. The term  
20 "material support or resources" has the meaning given that  
21 term in Section 2339 Alpha (bravo) of Title 18. The term  
22 "material support or resources" means currency or monetary  
23 instruments or financial securities, financial services,

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1 lodging, training, expert advice or assistance, safehouses,  
2 false documentation or identification, communications  
3 equipment, facilities, weapons, lethal substances, explosives,  
4 personnel, transportation, and other physical assets, except  
5 medicine or religious materials.

6 "In the context of and in association with  
7 hostilities" means that there is a connection between the  
8 conduct and armed hostilities. "Hostilities" means any  
9 conflict subject to the laws of war.

10 An "act of terrorism" as defined in 10 U.S. Code  
11 950 tango(24) is: The intentional killing or infliction of  
12 great bodily harm on one or more protected persons or engaging  
13 in an act that evidences a wanton disregard for human life;  
14 done in such a manner calculated to influence or affect the  
15 conduct of government or civilian population by intimidation  
16 or coercion, or to retaliate against government conduct; and  
17 the killing, harm or wanton disregard for human life took  
18 place in the context and was associated with hostilities.

19 Now, Mr. Khan, do you understand the elements and  
20 definitions as I have read them to you?

21 ACC [MR. KHAN]: I fully understand, sir.

22 MJ [COL POHL]: Now, I will give you an opportunity to  
23 read Specification 1 and 2 of Charge IV.

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1 ACC [MR. KHAN]: Yes, sir.

2 MJ [COL POHL]: After reviewing Specification 1 and 2 of  
3 Charge IV do you believe and admit that these elements and  
4 definitions either accurately describe what you did or  
5 accurately describe what you, having reviewed the evidence,  
6 admit can be proven against you beyond a reasonable doubt?

7 ACC [MR. KHAN]: Yes, sir.

8 MJ [COL POHL]: Now, I want you to look at the last  
9 charge and specification, or Charge V, spying.

10 The elements of the offense of spying are as  
11 follows: That you, Majid Shoukat Khan, are a person subject  
12 to trial by military commission as an alien unprivileged enemy  
13 belligerent; 2, that from about January 2002 to about March  
14 2003 at or near Karachi, Pakistan and Baltimore, Maryland you  
15 collected or attempted to collect certain information by  
16 clandestine means or while acting under false pretenses; 3,  
17 that you intended or had reason to believe the information  
18 collected would be used to injure the United States or to  
19 provide advantage to a foreign power; 4, that you intended to  
20 convey such information to an enemy of the United States or  
21 one of the co-belligerents of the enemy; 5, the conduct was in  
22 violation of the law of war; and 6, the conduct took place in  
23 the context of and was associated with hostilities as I

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1 defined that term for you earlier.

2           At this time again I am going to explain what some  
3 of the elements mean. For this offense a spy does not include  
4 members of a military organization or others who carry out  
5 their missions openly; even though they may have resorted to  
6 concealment, they have not acted under false pretenses.  
7 However, a member of a military organization who hides their  
8 status or affiliation by wearing a disguise or civilian  
9 clothing may be acting under false pretenses.

10           The term "clandestinely" means in disguise,  
11 secretary, covertly, or under concealment. A "false pretense"  
12 is any misrepresentation of a past or existing fact by a  
13 person knows it to be untrue.

14           "Enemy" includes any entity with which the United  
15 States or allied forces may be engaged in armed conflict, or  
16 which is preparing to attack the United States. It is not  
17 limited to foreign nations or foreign military organizations  
18 or members thereof.

19           "Enemy" specifically includes any organization of  
20 terrorists with international reach.

21           It is not essential that you obtain the  
22 information sought or that you actually communicate it.  
23 However, this offense requires some form of clandestine

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1 action, lurking about, false pretenses or deception with the  
2 intent to provide the information to the enemy.

3 Mr. Khan, do you understand the elements and  
4 definitions as I have read them to you?

5 ACC [MR. KHAN]: Yes, sir, I do.

6 MJ [COL POHL]: Did you have an opportunity to read  
7 Section V?

8 ACC [MR. KHAN]: Did I have the opportunity?

9 MJ [COL POHL]: To read this charge.

10 ACC [MR. KHAN]: Yes, sir, I have.

11 MJ [COL POHL]: After reading the charge and reviewing  
12 it, do you believe and admit that these elements and  
13 definitions either accurately describe what you did or  
14 accurately describe what you, having viewed the evidence,  
15 believe can be proven against you beyond a reasonable doubt?

16 ACC [MR. KHAN]: Yes, sir.

17 MJ [COL POHL]: Mr. Khan, I also reviewed the  
18 stipulation of fact and how these relate to all these  
19 offenses. Do you agree the stipulation of facts accurately  
20 lists the facts as it relates to all the offenses I just  
21 discussed with you?

22 ACC [MR. KHAN]: To the best of my knowledge, yes, sir.

23 MJ [COL POHL]: Do either side believe there is a need

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1 for further inquiry on the part of the accused?

2 TC [MS. SULLIVAN]: No, Your Honor.

3 DC [LTC JACKSON]: No, sir.

4 MJ [COL POHL]: I calculate the maximum punishment  
5 authorized based solely on the accused's plea to be  
6 confinement for life and a fine. Both sides agree?

7 TC [MS. SULLIVAN]: Yes, sir.

8 DC [LTC JACKSON]: Yes, sir.

9 MJ [COL POHL]: Mr. Khan, do you understand based on  
10 your plea alone the maximum penalty authorized is life  
11 imprisonment and a fine. Do you understand that?

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: Counsel, before I discuss the pretrial  
14 agreement, would you like a comfort break?

15 TC [MS. SULLIVAN]: The government is fine. I don't  
16 know if Mr. Khan would like a break.

17 MJ [COL POHL]: I will ask both sides. Would you like a  
18 break?

19 ACC [MR. KHAN]: No, sir, I want to continue.

20 MJ [COL POHL]: You want to continue?

21 ACC [MR. KHAN]: Yes.

22 MJ [COL POHL]: What is the number of the pretrial  
23 agreement?

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1 [Military Judge conferred with court reporter.]

2 MJ [COL POHL]: I have before me what is marked as the  
3 pretrial agreement in this case. The offer portion of the  
4 pretrial agreement is marked as Appellate Exhibit 12 and the  
5 quantum portion as Appellate Exhibit 13.

6 Mr. Khan, do you have a copy of both of these  
7 documents in front of you?

8 ACC [MR. KHAN]: Sorry, sir. The pretrial agreement I  
9 do have, and what was the second copy?

10 MJ [COL POHL]: The second one is the appendix. I'm not  
11 sure if you separated, we have them labeled two separate ones.

12 ACC [MR. KHAN]: Yes, sir I do.

13 MJ [COL POHL]: Looking at the first one, the pretrial  
14 agreement, a 7-page document, is that your signature on  
15 page 7?

16 ACC [MR. KHAN]: Page 7?

17 MJ [COL POHL]: Yes.

18 ACC [MR. KHAN]: Yes, that is my signature, sir.

19 MJ [COL POHL]: And on page 2 of Appendix A, the other  
20 document, that's also your signature?

21 ACC [MR. KHAN]: That is also my signature, sir.

22 MJ [COL POHL]: Now, did your counsel explain both these  
23 documents to you?

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1 ACC [MR. KHAN]: Yes, sir, they have.

2 MJ [COL POHL]: Did you thoroughly read them before you  
3 signed them?

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: Again, you speak very good English, so  
6 these are in English, you understood everything that was in  
7 here; is that correct?

8 ACC [MR. KHAN]: Yes, sir.

9 MJ [COL POHL]: Anyone force you in any way to enter  
10 this agreement?

11 ACC [MR. KHAN]: No, sir.

12 MJ [COL POHL]: Does this agreement contain all the  
13 understandings or agreements you have in the case?

14 ACC [MR. KHAN]: Sorry, I didn't hear you. Would you  
15 repeat that?

16 MJ [COL POHL]: Sure. Does this agreement contain all  
17 the understandings or agreements you have in this case?

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: By that I mean there is nothing that you  
20 think might happen in your case that aren't written down here?

21 ACC [MR. KHAN]: Like side deals? No. No.

22 MJ [COL POHL]: Now, you may hope for other things to  
23 happen, but that is just not part of the agreement.

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1 ACC [MR. KHAN]: Yes, sir.

2 MJ [COL POHL]: Side deals is what I was talking about.

3 Counsel, Appellate Exhibits 12 and 13 are the full  
4 and complete agreement in this case. Are you satisfied there  
5 are no other agreements? Trial Counsel?

6 TC [MS. SULLIVAN]: Yes, Your Honor, we agree.

7 MJ [COL POHL]: Defense?

8 DC [LTC JACKSON]: Yes, sir.

9 MJ [COL POHL]: Mr. Khan, as a general rule in a  
10 pretrial agreement, you agree to enter pleas of guilty and, in  
11 return, the Convening Authority agrees to take action in your  
12 case, usually in the form of limiting the sentence he will  
13 approve. Do you understand that?

14 ACC [MR. KHAN]: Yes, sir.

15 MJ [COL POHL]: Now, Mr. Khan, I know you are talking to  
16 Colonel Jackson when I ask you a question. If you don't hear  
17 the question, I will repeat it. Don't think you have to say  
18 yes because it is your time to talk.

19 ACC [MR. KHAN]: Sir, would you repeat that then?

20 MJ [COL POHL]: Okay. I'm not sure you heard that. As  
21 general rule, a pretrial agreement -- in a pretrial agreement  
22 you agree to enter pleas of guilty; in return, the Convening  
23 Authority agrees to take favorable action in your case even in

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1 the sentence he will approve. Do you understand that?

2 ACC [MR. KHAN]: Yes.

3 MJ [COL POHL]: The law -- and I have to go over the  
4 agreement with you. This is lengthy. You told me you read it  
5 thoroughly?

6 ACC [MR. KHAN]: Yes, sir, I have.

7 MJ [COL POHL]: You believe you understand the whole  
8 thing?

9 ACC [MR. KHAN]: Yes, sir.

10 MJ [COL POHL]: I will go over some of the provisions  
11 with you but not all of them. Do you understand that?

12 ACC [MR. KHAN]: Yes, sir. Give me a second, sir.

13 I'm ready.

14 MJ [COL POHL]: Just because I don't mention a  
15 particular paragraph, if you have a question, we can discuss  
16 it, but the agreement is everything, even if I don't mention  
17 it. Do you understand that?

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: The first paragraph talks about how you  
20 have had an opportunity to discuss it with your counsel, you  
21 read the charges against you. Have you had enough opportunity  
22 to talk this over with your lawyers?

23 ACC [MR. KHAN]: Yes, sir.

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1 MJ [COL POHL]: And they have talked it over with you.  
2 You understand you could plead not guilty if you wanted to.  
3 Do you understand that?

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: After talking it over with your lawyers,  
6 thinking about it, understanding the evidence, you do  
7 voluntarily enter in this pretrial agreement?

8 ACC [MR. KHAN]: Yes, sir. Give me a second, sir. I  
9 understood you will talk to me about Appendix A as well.

10 MJ [COL POHL]: I will get to that.

11 ACC [MR. KHAN]: Thank you.

12 MJ [COL POHL]: I try to do these things in order, but I  
13 may go slightly out of order.

14 First of all, I want to talk about -- since things  
15 have been changed, is paragraph 8. We will discuss later what  
16 is called the quantum portion of the agreement.

17 ACC [MR. KHAN]: Paragraph number 8?

18 MJ [COL POHL]: Yes.

19 ACC [MR. KHAN]: Yes, sir.

20 MJ [COL POHL]: There has been a pen and ink change on  
21 here and I want to make sure everybody understands.

22 ACC [MR. KHAN]: Approved.

23 MJ [COL POHL]: Approved.

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1 ACC [MR. KHAN]: Yes, sir.

2 MJ [COL POHL]: Again, some of these things will be  
3 taken out of order, there is no other of way of doing it.  
4 Part of the agreement is that the sentence in your case,  
5 instead of starting tomorrow or sooner, is going to be  
6 scheduled for four years from today.

7 ACC [MR. KHAN]: Yes, sir.

8 MJ [COL POHL]: You understand that?

9 ACC [MR. KHAN]: Yes.

10 MJ [COL POHL]: I will talk to you about that in a  
11 second.

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: But any period of confinement credit  
14 will begin today off what is called the approved sentence. By  
15 that I mean -- let's assume four years from now we do  
16 sentencing. Those four years will count against your sentence  
17 of confinement for what the Convening Authority finally  
18 approves. So if that is less than what the members give you,  
19 it comes off the lesser sentence. Do you understand that?

20 ACC [MR. KHAN]: Yes, sir.

21 MJ [COL POHL]: It's kind of a term of art, but it is an  
22 important distinction. Because as we talk about later on what  
23 the years will be, if it came off the adjudged sentence, you

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1 may not get as much credit as we talk about later on. It  
2 comes off the approved sentence, understand that?

3 ACC [MR. KHAN]: Yes.

4 MJ [COL POHL]: It's a technical legal term your counsel  
5 can explain to you in detail. I want to make sure everybody  
6 understands because there is a change in this coming off that  
7 part not the adjudged sentence.

8 ACC [MR. KHAN]: Yes. Okay.

9 MJ [COL POHL]: And then, Trial Counsel, you agree to  
10 that change, correct?

11 TC [MS. SULLIVAN]: Yes, sir, that is correct.

12 MJ [COL POHL]: Go ahead.

13 ACC [MR. KHAN]: I understand.

14 MJ [COL POHL]: Let me do it this way.

15 ACC [MR. KHAN]: Sorry, I was suggesting if you are  
16 talking about numbers, it will just make more sense, like  
17 okay ----

18 MJ [COL POHL]: Let me do it this way. Let's talk about  
19 Appendix A. Go to Appendix A.

20 ACC [MR. KHAN]: Yes, sir.

21 MJ [COL POHL]: Let's deal with real numbers. We will  
22 talk about other provisions later on. But the first paragraph  
23 of Appendix A -- remember I told you earlier the maximum

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1 sentence in this case based on a guilty plea is confinement  
2 for life? Remember I told you that earlier ----

3 ACC [MR. KHAN]: Okay.

4 MJ [COL POHL]: ---- without a pretrial agreement.

5 ACC [MR. KHAN]: Give me a second, please.

6 MJ [COL POHL]: Sure.

7 ACC [MR. KHAN]: Please.

8 MJ [COL POHL]: Look at Appendix A. This is what the  
9 Convening Authority promises to do for you. The first thing  
10 is he says approved sentence will not exceed 25 years, okay?  
11 Let's move on beyond that. If you read down later in  
12 paragraphs 3 ----

13 ACC [MR. KHAN]: Yes, sir.

14 MJ [COL POHL]: ---- 2 and 3, basically what it says,  
15 assuming you provide full and truthful cooperation substantial  
16 assistance, a provision which is also in your pretrial  
17 agreement, assuming you do that, he will approve no sentence  
18 to exceed 19 years. Do you understand that?

19 ACC [MR. KHAN]: Nineteen years from today.

20 MJ [COL POHL]: Okay. That is what we got to, exactly.

21 ACC [MR. KHAN]: Exactly.

22 MJ [COL POHL]: Therefore, that, we talked about it  
23 earlier, 19 years is the most he can approve. Now, he has the

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1 discretion to approve anything less than that. He can do  
2 that. Let's assume he approves the 19 years for our  
3 discussion now, all right? If the approved sentence is 19  
4 years confinement, that four years, four year sentencing, that  
5 starts today and that comes off the 19 ----

6 ACC [MR. KHAN]: I understand.

7 MJ [COL POHL]: ---- assuming you meet the requirements  
8 of the pretrial agreement. You understand that?

9 ACC [MR. KHAN]: Yes, sir.

10 MJ [COL POHL]: It is not coming off what the members  
11 may adjudge, it's what the Convening Authority will approve.

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: Both sides agree with the interpretation  
14 of that provision?

15 TC [MS. SULLIVAN]: Yes, Your Honor, yes.

16 MJ [COL POHL]: Okay.

17 DC [LTC JACKSON]: Yes.

18 ACC [MR. KHAN]: Excuse me, sir. Just one second.

19 MJ [COL POHL]: Sure.

20 TC [MS. SULLIVAN]: May I make one clarification, Your  
21 Honor?

22 MJ [COL POHL]: Sure.

23 TC [MS. SULLIVAN]: To clarify what you said, approved

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1 sentence not to exceed 25 years, the Convening Authority will  
2 approve no more than 19, provided the cooperation provision.

3 MJ [COL POHL]: Yes, exactly. I understand there is the  
4 possibility it could be 25 as opposed to 19. I will get back  
5 to that when I get to that provision. I wanted to explain the  
6 four-year thing.

7 TC [MS. SULLIVAN]: Thank you.

8 MJ [COL POHL]: Ready, Mr. Khan, to continue?

9 ACC [MR. KHAN]: Yes, sir, I'm ready.

10 MJ [COL POHL]: Again, on paragraph 9 you agree to waive  
11 that, give up all rights to appeal this conviction except as  
12 provided in the agreement under the narrow circumstances. Do  
13 you agree with that?

14 ACC [MR. KHAN]: Yes, sir.

15 MJ [COL POHL]: Paragraph 10 is kind of the same thing,  
16 you give up the right to collaterally attack the conviction  
17 and/or sentence except as provided in the agreement. You  
18 understand that?

19 ACC [MR. KHAN]: I got it.

20 MJ [COL POHL]: Basically you give up your rights to  
21 appeal the findings and/or sentence except under those narrow  
22 circumstances. Do you understand that?

23 ACC [MR. KHAN]: Yes.

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1 MJ [COL POHL]: Okay. And paragraph 11 talks about you  
2 give up -- you would not initiate any litigation, challenge in  
3 any form against the United States or any issue with regard to  
4 capture, detention, prosecution, conviction or postconviction  
5 confinement, except you still retain the right to seek release  
6 from the appropriate United States authorities through writ of  
7 habeas corpus or other available remedies. Do you understand  
8 that?

9 ACC [MR. KHAN]: One moment, sir.

10 MJ [COL POHL]: Sure.

11 ACC [MR. KHAN]: Sir, yes, I understand -- would you  
12 summarize the last ----

13 MJ [COL POHL]: Let me just go back. Defense Counsel,  
14 did I misstate it? You guys want to make sure ----

15 DC [LTC JACKSON]: Your Honor ----

16 CDC2 [MR. DIXON]: Repeat it.

17 MJ [COL POHL]: Okay. Paragraph 11 talks about that you  
18 will not initiate any litigation or challenge in any form  
19 against the United States with regard to your capture, initial  
20 detention, prosecution, conviction or postconviction  
21 confinement, except that after you have served any unsuspended  
22 portion of an approved sentence, you retain the right to seek  
23 release from the appropriate United States authorities through

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1 a petition for a writ of habeas corpus or any other available  
2 remedy.

3 Let me see if I can explain. What this means is  
4 that, as you are probably painfully aware of, you are detained  
5 by the United States Government ----

6 ACC [MR. KHAN]: Yes, sir.

7 MJ [COL POHL]: ---- currently and have been for quite a  
8 while. That is one status of detention, for want of a better  
9 term. You will, when the sentence is announced, go to another  
10 status of postconviction sentence.

11 ACC [MR. KHAN]: Right.

12 MJ [COL POHL]: When that sentence runs, whether it's 19  
13 years, 25 years, whatever it is, you will no longer be serving  
14 a postconviction sentence. Do you understand that?

15 ACC [MR. KHAN]: Yes.

16 MJ [COL POHL]: Your sentence will be done.

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: But you still may be a detainee. Do you  
19 understand that?

20 ACC [MR. KHAN]: Yes, sir.

21 MJ [COL POHL]: So after the sentence is run, it may  
22 look very similar to you, that you are in a very similar type  
23 of confinement facility, I don't know. What this says is

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1 after your sentence is run, then you may file for relief for  
2 release from your detainee status, that is what this is  
3 saying, because you are going to be kind of in two different  
4 statuses.

5 Yes, ma'am?

6 TC [MS. SULLIVAN]: I think it is better explained that  
7 once he has served any sentence for confinement pursuant to  
8 his guilty plea in this Commission, if he continues to be  
9 detained in any respect, then he reserves the right to file a  
10 habeas petition.

11 MJ [COL POHL]: I thought that is what I just said. I  
12 understand, but I -- I got you. Do you understand that?

13 ACC [MR. KHAN]: What I understood basically you are  
14 saying I can't sue the CIA or any government agency about what  
15 happened to me in past, I can't talk about. Second is, even  
16 though I do my time, the government can still consider me  
17 enemy combatant and they can keep me for the rest of my life.  
18 There is no guarantee it will happen. I can always go to  
19 habeas, you know how habeas corpus helped me so far.  
20 Basically I do my time. There is no guarantee. This  
21 agreement does not guarantee me I will ever get free even  
22 though I do my time.

23 MJ [COL POHL]: Exactly.

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1 ACC [MR. KHAN]: I understand, sir.

2 MJ [COL POHL]: This has nothing to do with your status  
3 as a detainee, just your status as a postconviction sentence  
4 detainee.

5 ACC [MR. KHAN]: I'm making a leap of faith here, sir.

6 MJ [COL POHL]: I got it.

7 ACC [MR. KHAN]: That is all I can do.

8 MJ [COL POHL]: So you do have this right for this type  
9 of -- to file this kind of suit once your sentence is done.

10 ACC [MR. KHAN]: Yes, sir.

11 MJ [COL POHL]: Okay. And also this provision says you  
12 agree to move to withdraw or dismiss without prejudice any  
13 presently pending direct or collateral attack challenging your  
14 capture, detention, prosecution and/or alien unlawful enemy  
15 combatant status.

16 Defense, let me ask you a question. Is there any  
17 such pending issues in this case?

18 CDC2 [MR. DIXON]: Your Honor, Mr. Khan does have a  
19 habeas corpus petition pending in District Court in  
20 Washington, D.C.

21 MJ [COL POHL]: And the way I read the next one is he is  
22 going to submit a motion to withdraw and dismiss without  
23 prejudice said habeas corpus?

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1 CDC2 [MR. DIXON]: To dismiss or withdraw without  
2 prejudice, yes.

3 MJ [COL POHL]: Let me just -- so we get the time  
4 sequence here, do you believe -- what is your understanding  
5 when said motion has got to be filed, after today or after  
6 sentencing?

7 CDC2 [MR. DIXON]: A moment, Your Honor.

8 ACC [MR. KHAN]: Your Honor.

9 MJ [COL POHL]: Sure.

10 CDC2 [MR. DIXON]: Once the guilty plea is accepted.

11 MJ [COL POHL]: Okay. That is the government's  
12 understanding also?

13 TC [MS. SULLIVAN]: Yes, sir.

14 ACC [MR. KHAN]: Last question, Your Honor. Going back  
15 to the paragraph, you know, just to be on the record, I can't  
16 sue the United States Government, CIA, whatever, but I can  
17 always have the right to sue --

18 [The security classification button was pushed in the  
19 courtroom which caused the video feed to terminate at 1120,  
20 February 29, 2012.]

21 [The Military Commission resumed at 1121, February 29, 2012.]

22 MJ [COL POHL]: The reason the red light went off is  
23 there is information disclosed that should not have been. I'm

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1 not blaming you -- well, just don't discuss any individual  
2 agencies of any government. Okay?

3 ACC [MR. KHAN]: Sir, talking about public record,  
4 talking about public record ----

5 MJ [COL POHL]: No, no.

6 [The security classification button was pushed in the  
7 courtroom which caused the video feed to terminate at 11:22,  
8 February 29, 2012.]

9 [The Military Commission resumed at 1122, February 29, 2012]

10 MJ [COL POHL]: Okay. Just -- so we are sliding away  
11 from that area. As I understand the PTA, it talks about  
12 mitigation against the United States only, it does not talk  
13 about other potential defendants. Is that the government's  
14 understanding?

15 TC [MS. SULLIVAN]: That is correct, Your Honor. As  
16 drafted, as our understanding of the PTA is Mr. Khan is  
17 limited from suing officials or agencies of the United States  
18 Government. The PTA does not bind him in any respect with  
19 respect to foreign governments.

20 MJ [COL POHL]: Okay.

21 DC [LTC JACKSON]: We agree, sir.

22 MJ [COL POHL]: Mr. Khan, basically what that says,  
23 without discussing other possible defendants, this only

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1 applies to the United States and its agencies as defendants.

2 ACC [MR. KHAN]: Thank you, sir.

3 MJ [COL POHL]: Paragraph 18, as we discussed earlier,  
4 you agree to join the government in requesting delaying  
5 sentencing proceedings in this case until four years from  
6 today.

7 ACC [MR. KHAN]: Yes, sir, I understand that.

8 MJ [COL POHL]: Okay. Defense Counsel, do you also  
9 agree in requesting this delay in the sentencing proceedings?

10 DC [LTC JACKSON]: Yes, sir.

11 MJ [COL POHL]: Do you expressly waive any type of  
12 speedy trial right from whatever source you may have  
13 concerning the delay in sentencing?

14 DC [LTC JACKSON]: Yes, sir.

15 MJ [COL POHL]: Trial Counsel, it is my understanding  
16 you also agree to this delay?

17 TC [MS. SULLIVAN]: Yes, we do, Your Honor.

18 MJ [COL POHL]: Let me ask a question. If it turns out  
19 that -- is it not more than four years or exactly four years?  
20 Or on or about four years?

21 TC [MS. SULLIVAN]: I think it is written four years  
22 from the date Your Honor accepts the plea.

23 MJ [COL POHL]: But if -- if both sides can agree on an

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1 earlier date, I'm assuming that will work.

2 TC [MS. SULLIVAN]: Yes, we can accelerate the  
3 sentencing, Your Honor.

4 MJ [COL POHL]: But if nothing changes, it is not later  
5 than four years from today?

6 TC [MS. SULLIVAN]: That's correct.

7 MJ [COL POHL]: It will be leap year in 2016?

8 TC [MS. SULLIVAN]: Correct, sir.

9 MJ [COL POHL]: Got it. Now, paragraph 21 and 22 deal  
10 with witnesses at your sentencing hearing. And you understand  
11 that you may present -- the government may present witnesses  
12 and present evidence regarding matters in aggravation and  
13 mitigation for sentencing. However, you agree not to offer  
14 the live testimony of any detainee held in United States Naval  
15 Station Guantanamo Bay. Do you agree with those rights with  
16 regard to the sentencing portions of this hearing?

17 ACC [MR. KHAN]: Yes, sir, I understand and agree.

18 MJ [COL POHL]: Now, you understand when the Convening  
19 Authority accepted the pretrial agreement, it became a binding  
20 agreement, you asserted in your pretrial agreement that you  
21 are in fact, guilty of the offenses to which you pled guilty  
22 and that you have been apprised of the evidence against you  
23 and that you agree the evidence -- government could prove the

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1 evidence, the evidence could prove you guilty beyond a  
2 reasonable doubt of the offense to which you are pleading  
3 guilty? Do you agree to all those things?

4 ACC [MR. KHAN]: Yes, sir.

5 MJ [COL POHL]: And the pretrial agreement states you  
6 also understand that the pretrial agreement permits the  
7 government to avoid presentation in court of sufficient  
8 evidence to prove your guilt, that your offer to plead guilty  
9 is in part because it will be in your best interest that the  
10 Convening Authority grants you relief set out in the  
11 agreement; and that you waive your right to a trial of the  
12 facts and to be confronted by witnesses against you and waive  
13 the right to avoid self-incrimination insofar as a plea of  
14 guilty will incriminate you. Do you agree -- understand and  
15 agree to these terms?

16 ACC [MR. KHAN]: Yes, sir, I do.

17 MJ [COL POHL]: With this offer to plead guilty you have  
18 also agreed you are satisfied with your defense counsel and  
19 their advice regarding this offer; that you consider your  
20 counsel competent to represent you in this Military Commission  
21 and that no person or persons made any attempt to force or  
22 coerce you into making this offer to plead guilty. Do you  
23 understand and agree to this provision of your pretrial

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1 agreement?

2 ACC [MR. KHAN]: Yes, sir.

3 MJ [COL POHL]: This agreement also states that your  
4 counsel have fully advised you of the nature of the charges  
5 against you; of the possibility of your defending against  
6 them; of any defenses that might apply, of the effect of the  
7 guilty plea that you have offered to make, and that you fully  
8 understand their advice and the meaning, effect and  
9 consequences of this plea. Do you still agree with those  
10 provisions?

11 ACC [MR. KHAN]: Yes, sir, I do.

12 MJ [COL POHL]: Do you understand that under the  
13 military commissions that the Convening Authority's signature  
14 and your signature on these documents make this offer and  
15 agreement binding upon the United States Government and  
16 binding upon you?

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: Now, as set forth in paragraph 5 of the  
19 PTA, do you understand that you may request to withdraw your  
20 guilty pleas at any time before the sentence is announced and  
21 that if you have good reason for doing so, your request will  
22 be granted and this agreement will be cancelled. Do you  
23 understand that?

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1 ACC [MR. KHAN]: Sir, would you repeat that?

2 MJ [COL POHL]: Do you understand in paragraph 5 of the  
3 PTA -- I'm looking at Appellate Exhibit 12 -- it has a number  
4 of provisions that talks about what could cancel your pretrial  
5 agreement.

6 First of all, you may withdraw your plea of guilty  
7 and you would have a good reason for the withdrawal if you  
8 change your plea to not guilty, but you lose your pretrial  
9 agreement. Do you understand that?

10 ACC [MR. KHAN]: Yes, sir. That is within four years,  
11 yes, sir?

12 MJ [COL POHL]: Before sentence is announced.

13 ACC [MR. KHAN]: Okay.

14 MJ [COL POHL]: So right now let's say four years. Now,  
15 if you also look at paragraph 5 alpha, bravo, charlie, delta,  
16 echo.

17 ACC [MR. KHAN]: I'm looking at it, sir.

18 MJ [COL POHL]: If any of those events occurred, you  
19 would lose your pretrial agreement.

20 ACC [MR. KHAN]: I understand.

21 MJ [COL POHL]: Delta and echo talk about the Military  
22 Judge, me, if I were to refuse to delay sentencing proceedings  
23 under four years from today, you lose your pretrial agreement.

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1 We are not going to do that. Also ----

2 ACC [MR. KHAN]: I'm sorry, I didn't understand that  
3 part.

4 MJ [COL POHL]: Delta and echo deal with actions that I  
5 may take. And delta deals with that if I refuse to accept the  
6 delay in the sentencing until four years from today, you lose  
7 your pretrial agreement.

8 ACC [MR. KHAN]: Okay.

9 MJ [COL POHL]: If I were to do that. But I'm telling  
10 you right now, I'm not going to do that. Both sides agree to  
11 go four years from today, this is an agreement between you and  
12 the Convening Authority. It doesn't violate public policy in  
13 my mind. It doesn't violate any right that would cause me not  
14 to enforce that provision; therefore, I don't intend to do it.

15 Paragraph 5 echo talks about something else I may  
16 or may not do. In this particular case is that I -- both  
17 sides requested me to instruct the panel members who will  
18 sentence you that the range of permissible punishment in this  
19 case is 25 to 40 years.

20 ACC [MR. KHAN]: Okay.

21 MJ [COL POHL]: And if I don't do that or don't agree to  
22 that, then that also would cancel the pretrial agreement. But  
23 as I'm telling you now, that provision is fine with me.

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1 That's negotiated between you and the Convening Authority,  
2 that is what the agreement is and both sides voluntarily  
3 entered into. Nothing in that violates any public policy or  
4 has any reason for me to not to agree to that. Therefore,  
5 that won't occur either. 5 delta and 5 echo won't happen.  
6 I'm telling you, though, because I would have to do them and  
7 I'm not going to do them. You got that?

8 ACC [MR. KHAN]: I understand.

9 MJ [COL POHL]: Any question about anything else that  
10 might cancel your pretrial agreement?

11 ACC [MR. KHAN]: No.

12 MJ [COL POHL]: Now, do you understand the Convening  
13 Authority has an obligation to approve a sentence no greater  
14 than the one provided in this agreement, including Appendix A;  
15 that it may be cancelled if you commit any offense under the  
16 Military Commissions Act or fail to otherwise fulfill the  
17 terms of this agreement between the day sentence is announced  
18 and sentence is approved.

19 What happens here, Mr. Khan, is today -- the  
20 findings portion, the guilty plea, four years from now is  
21 sentencing, when sentencing is completed, there is another  
22 period of time before the Convening Authority takes action on  
23 your sentence on your case. If you commit an offense in that

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1 little period, you can still lose your pretrial agreement; do  
2 you understand?

3 ACC [MR. KHAN]: That little period you are talking  
4 about.

5 MJ [COL POHL]: The period between the sentence being  
6 announced here and when the Convening Authority finally signs  
7 off on your case.

8 ACC [MR. KHAN]: So approximately four years.

9 MJ [COL POHL]: Yes. What I'm basically saying, if you  
10 commit any offense between now and then, you may lose your  
11 pretrial agreement.

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: If the agreement were cancelled, got to  
14 this point, we would go over this in detail. What you told me  
15 today, the fact you offered to plead guilty, the stipulation  
16 of fact, all that also will be cancelled and the case would  
17 return and start from the beginning as a not guilty case. Do  
18 you understand that?

19 ACC [MR. KHAN]: Basically from scratch as if nothing  
20 happened?

21 MJ [COL POHL]: As if we never met today.

22 ACC [MR. KHAN]: Okay. I just ask you to give me a  
23 second, sir.

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1 MJ [COL POHL]: Now, I want to talk about the parts  
2 about place of confinement. Now, do you agree that authority  
3 of the Convening Authority is limited by the Military  
4 Commissions Act of 2009, The Rules for Military Commissions  
5 and the regulation for trial for Military Commissions, that is  
6 basically what he is bound by; do you understand?

7 ACC [MR. KHAN]: Sorry, sir, I was not able to hear you.

8 MJ [COL POHL]: That is okay.

9 DC [LTC JACKSON]: We are having trouble hearing you,  
10 sir.

11 MJ [COL POHL]: I will move the mic up and see if that  
12 works. Is that better?

13 DC [LTC JACKSON]: Yes, sir.

14 MJ [COL POHL]: Okay. That where you serve your  
15 confinement is not -- the Convening Authority doesn't have  
16 authority over that. Do you understand that, where you  
17 physically serve it; not the length, the physical location.

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: That is done by somebody else.

20 ACC [MR. KHAN]: Okay.

21 MJ [COL POHL]: In a sense the Convening Authority does  
22 not have authority to control the location of confinement, the  
23 conditions of confinement, or whether such confinement is

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1 served in military or federal institutions. Your release from  
2 military or federal confinement, after taking formal action of  
3 the findings and sentence of the Military Commissions or by  
4 the government of the United States to release you from lawful  
5 detention.

6                   What this means, Mr. Khan, is the Convening  
7 Authority cannot say where you would serve your confinement  
8 pursuant to this Commission. Do you understand that?

9           ACC [MR. KHAN]: Yes, sir.

10           MJ [COL POHL]: Similarly, he also has -- remember I  
11 talked about earlier once you serve confinement you still may  
12 be detained?

13           ACC [MR. KHAN]: Yes, sir.

14           MJ [COL POHL]: Again, that continued detention, or lack  
15 thereof, is not controlled by the Convening Authority, it is  
16 controlled by somebody else. Do you understand that?

17           ACC [MR. KHAN]: Would you be more specific? The  
18 somebody else would be?

19           MJ [COL POHL]: The best I can say is initially the  
20 Executive Branch of the United States Government.

21           ACC [MR. KHAN]: I get the idea.

22           MJ [COL POHL]: I'm saying it is easier probably to say  
23 it is not the Convening Authority.

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1 ACC [MR. KHAN]: Okay.

2 MJ [COL POHL]: He can't say release you from your  
3 detained status, just from your sentence status. Do you  
4 understand what I'm saying on that?

5 ACC [MR. KHAN]: I got it.

6 MJ [COL POHL]: I want to talk briefly about Appendix A.  
7 I want you to look at, and we talked about it briefly, I just  
8 want to say so there is no misunderstandings between the  
9 parties, in the pretrial agreement there is paragraph 13 which  
10 talks about what -- what they ----

11 ACC [MR. KHAN]: I'm sorry.

12 MJ [COL POHL]: Paragraph 13 which talks about what you  
13 agree to do with the United States Government.

14 ACC [MR. KHAN]: Okay.

15 MJ [COL POHL]: Okay. Paragraphs 2 and 3 also discuss  
16 the same thing using different language.

17 ACC [MR. KHAN]: I understand.

18 MJ [COL POHL]: I believe as your counsel told me  
19 earlier, it is both sides' understanding that there is no  
20 conflict between 2 and 3 in paragraph 13, correct?

21 TC [MS. SULLIVAN]: That's correct, Your Honor.

22 MJ [COL POHL]: Even though there is different language  
23 being used.

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1 DC [LTC JACKSON]: Yes, Your Honor, we agree.

2 MJ [COL POHL]: So would it be fair to say that since  
3 paragraph 13 is really more detailed as to the action the  
4 accused takes, that really constitutes what the definition of  
5 full and truthful cooperation, substantial assistance is in  
6 this case. Is that what the defense understands?

7 DC [LTC JACKSON]: Yes, sir.

8 MJ [COL POHL]: Is Trial Counsel with me?

9 TC [MS. SULLIVAN]: Yes, sir.

10 MJ [COL POHL]: Mr. Khan, do you understand what I'm  
11 saying?

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: Paragraph 13 talks about all the  
14 specific acts. Paragraphs 2 and 3 in the appendix talk about  
15 generic qualifications. If you do that, then, as we talked  
16 about earlier, the Convening Authority will approve a sentence  
17 not to exceed -- if it determines you completed, not to exceed  
18 19 years.

19 ACC [MR. KHAN]: If I keep my side of the bargaining,  
20 they will keep their side of the bargaining?

21 MJ [COL POHL]: Exactly, keeping your side of the  
22 bargain. If you look at paragraph 13, that is what you agree  
23 to do?

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1 ACC [MR. KHAN]: Yes, sir, referring to paragraph 13,  
2 yes, sir.

3 MJ [COL POHL]: Okay.

4 ACC [MR. KHAN]: Can you give me one second, sir?

5 MJ [COL POHL]: Sure. Okay. I know it has been a long  
6 morning. We are almost there.

7 DC [LTC JACKSON]: Your Honor, he just -- Mr. Khan would  
8 like you to ask about the recommendation of the Convening  
9 Authority. I don't know if you will get into that. Although  
10 he cannot control the confinement location, he has made a  
11 recommendation in accordance with the PTA.

12 MJ [COL POHL]: Which paragraph are you referring to?

13 DC [LTC JACKSON]: Let me find it for you.

14 TC [MS. SULLIVAN]: I believe it's paragraph 27, sir.

15 MJ [COL POHL]: Okay. Mr. Khan, do you have the  
16 pretrial agreement there?

17 ACC [MR. KHAN]: Yes, sir.

18 MJ [COL POHL]: It's kind of a long paragraph. Look at  
19 paragraph 27.

20 ACC [MR. KHAN]: Yes, sir.

21 MJ [COL POHL]: Remember I told you earlier the  
22 Convening Authority cannot control where you are physically  
23 kept or the conditions you are kept under?

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1 ACC [MR. KHAN]: Uh-huh.

2 MJ [COL POHL]: What this paragraph says is he will make  
3 a recommendation to those people who do have that decision  
4 currently, which I think is currently the Commander of  
5 JTF-GTMO, that you be confined in accordance with this  
6 recommendation here.

7 ACC [MR. KHAN]: I got it, sir.

8 MJ [COL POHL]: But understanding this, it is only a  
9 recommendation. If not followed by, assuming I'm correct, the  
10 Commander of JTF-GTMO or whoever is in charge, then that is  
11 the way it goes.

12 ACC [MR. KHAN]: Yes, sir.

13 MJ [COL POHL]: If that -- if they don't follow your  
14 recommendation, you are still bound by the pretrial agreement.  
15 Do you understand that?

16 ACC [MR. KHAN]: Yes, sir.

17 MJ [COL POHL]: Does that answer the question, Colonel  
18 Jackson?

19 DC [LTC JACKSON]: Yes, sir. Thank you.

20 MJ [COL POHL]: No problem.

21 Now, back to Appendix A. Do you have any  
22 questions about Appendix A on Exhibit 13?

23 ACC [MR. KHAN]: Yes, sir.

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1 MJ [COL POHL]: Okay.

2 ACC [MR. KHAN]: After four years, if things go the way  
3 we planned, when the sentence -- when I start my doing -- like  
4 rest of my 15 years, nothing here in the agreement tells me  
5 how and where I'm going to do my time; is that correct?

6 MJ [COL POHL]: That's right.

7 ACC [MR. KHAN]: So -- okay.

8 MJ [COL POHL]: One other thing at this point I want to  
9 go through, because it is a little bit different than what is  
10 before.

11 Look at paragraph 4 of Appendix A. Remember I  
12 said earlier you can't basically sue the United States  
13 Government for the nature of your capture, detention or  
14 confinement? Your counsel will explain this to you.

15 At the time the Convening Authority takes action  
16 in your case, okay, you will be able to submit matters to him  
17 to lessen your sentence, if you can. You are not  
18 prohibited -- well, you are authorized at that time to raise  
19 those issues to him. Do you understand what I'm saying?

20 If you want to -- and don't -- let me kind of  
21 explain it -- the examples, because I don't know -- we don't  
22 want the red light turned back on.

23 If you want to say I deserve some consideration

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1 because of my detention or whatever, you can't sue the  
2 government for that anymore, but you can raise that with the  
3 Convening Authority as a matter of mitigation. Do you  
4 understand that?

5 ACC [MR. KHAN]: Yes, sir. You're referring to  
6 clemency.

7 MJ [COL POHL]: Yes.

8 ACC [MR. KHAN]: I got that.

9 MJ [COL POHL]: Okay. Do you understand and agree to  
10 all the terms of your pretrial agreement in the appendix?

11 ACC [MR. KHAN]: Yes, sir.

12 MJ [COL POHL]: Defense Counsel, are you satisfied that  
13 Mr. Khan understands both the pretrial agreement and Appendix  
14 (Alpha)?

15 DC [LTC JACKSON]: Yes, sir.

16 MJ [COL POHL]: And do you believe the terms contained  
17 in both are in his best interest?

18 DC [LTC JACKSON]: I do, sir.

19 MJ [COL POHL]: Mr. Khan, are you satisfied with your  
20 defense counsel's advice concerning this pretrial agreement?

21 ACC [MR. KHAN]: Yes, sir, I am.

22 MJ [COL POHL]: Did you enter the agreement of your own  
23 free will?

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1 ACC [MR. KHAN]: Yes, I have.

2 MJ [COL POHL]: Has anybody tried to force you to make  
3 this pretrial agreement?

4 ACC [MR. KHAN]: No, sir.

5 MJ [COL POHL]: Do you have any questions about your  
6 pretrial agreement?

7 ACC [MR. KHAN]: No, sir.

8 MJ [COL POHL]: Do you fully understand the terms of the  
9 pretrial agreement and how they affect your case?

10 ACC [MR. KHAN]: Yes, sir, I do.

11 MJ [COL POHL]: Mr. Khan, are you pleading guilty not  
12 only because you hope to receive a lighter sentence, but also  
13 because are you convinced you are in fact guilty under United  
14 States law of the offense to which you have pled guilty?

15 ACC [MR. KHAN]: Yes, sir.

16 MJ [COL POHL]: Do counsel for both sides agree with the  
17 Commission's interpretation of the pretrial agreement?

18 TC [MS. SULLIVAN]: Yes, we do, Your Honor.

19 DC [LTC JACKSON]: Yes, sir.

20 MJ [COL POHL]: Defense Counsel, have you had enough  
21 time and opportunity to discuss this case with Mr. Khan?

22 DC [LTC JACKSON]: Yes.

23 MJ [COL POHL]: Mr. Khan, have you had enough time and

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1 opportunity to discuss this case, not just the pretrial  
2 agreement, but the entire case, with your defense counsel?

3 ACC [MR. KHAN]: Yes, sir, over the years I have.

4 MJ [COL POHL]: Have you in fact fully consulted with  
5 them and received the full benefit of their advice?

6 ACC [MR. KHAN]: I'm sorry, would you repeat that?

7 MJ [COL POHL]: Have you in fact consulted fully with  
8 your defense counsel and received the full benefit of their  
9 advice?

10 ACC [MR. KHAN]: Yes, sir.

11 MJ [COL POHL]: Are you satisfied that your defense  
12 counsel advice has been in your best interest?

13 ACC [MR. KHAN]: Yes, sir.

14 MJ [COL POHL]: Are you satisfied with your defense  
15 counsel?

16 ACC [MR. KHAN]: Yes, sir.

17 MJ [COL POHL]: Are you pleading guilty voluntarily?

18 ACC [MR. KHAN]: Yes, sir.

19 MJ [COL POHL]: Are you pleading guilty of your own free  
20 will?

21 ACC [MR. KHAN]: Yes, sir.

22 MJ [COL POHL]: Has there been any threat -- are you  
23 pleading guilty of your own free will?

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1 ACC [MR. KHAN]: Yes, sir.

2 MJ [COL POHL]: I thought I heard a no. Has anybody  
3 made any threat or attempted to try to force you to plead  
4 guilty?

5 ACC [MR. KHAN]: No, sir.

6 MJ [COL POHL]: Do you have any questions of me as to  
7 meaning and effect of your plea of guilty?

8 ACC [MR. KHAN]: Would you repeat that?

9 MJ [COL POHL]: Do you have any questions as to the  
10 meaning and effect of your plea of guilty?

11 ACC [MR. KHAN]: No.

12 MJ [COL POHL]: Do you still wish to plead guilty?

13 ACC [MR. KHAN]: Yes, sir.

14 MJ [COL POHL]: Mr. Khan, I find your pleas of guilty  
15 have been made voluntarily and with full knowledge of their  
16 meaning and effect. I further find that you have knowingly,  
17 intelligently and consciously waived your rights against  
18 self-incrimination, that you have waived your rights to a  
19 trial of the facts by a Military Commission and you've waived  
20 your rights to be confronted by the witnesses called against  
21 you in the findings portion of your commission.

22 Accordingly, your pleas of guilty are provident  
23 and I accept them. As I told you earlier, you may request to

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1 withdraw your guilty plea any time before sentence is  
2 announced and I receive your request, I will grant it. Do you  
3 understand that?

4 ACC [MR. KHAN]: Yes.

5 MJ [COL POHL]: Accused and Counsel, please rise.

6 [The Accused and his Counsel did as directed.]

7 MJ [COL POHL]: Mr. Majid Shoukat Khan, in  
8 accordance with your pleas of guilty, the Commission finds  
9 you:

10 **Of all charges and specifications: Guilty.**

11 Please be seated.

12 [The Accused and his Defense Counsel did as  
13 directed.]

14 MJ [COL POHL]: Mr. Khan, I want to go over one  
15 other thing that hopefully won't apply, but you need to know  
16 it.

17 The further progress of the trial to and including  
18 the return to sentencing in this case, if necessary, shall not  
19 be prevented and the accused shall be considered to have  
20 waived the right to be present whenever an accused initially  
21 present is voluntarily absent after arraignment. What we did  
22 today is called an arraignment; we went beyond that. After  
23 today if you are voluntarily absent, the Commission can

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1 proceed in your absence. Do you understand that?

2 ACC [MR. KHAN]: Just give me a second, Your Honor.

3 MJ [COL POHL]: Sure.

4 ACC [MR. KHAN]: Be more clear. I got confused.

5 MJ [COL POHL]: I want you to understand something  
6 before I go to the next part. This is standard advice I give  
7 in every case, so it is not -- so it is not -- understand it  
8 is not me thinking you won't be back here next time. Let me  
9 just go again.

10 What this means as follows: You have been  
11 arraigned and found guilty on the charges before the Court.  
12 We are going to recess now until a time and date to be  
13 determined later. It may be four years from now, it may be  
14 sooner. If this Commission is called back to order and you  
15 are not present, I may find your absence voluntary on your  
16 part. Then the Commission may go ahead and proceed without  
17 your presence and determine appropriate sentence. Again, this  
18 is standard that I give everybody. But you understand that if  
19 you voluntarily are not here, they can go ahead and sentence  
20 you without you being here.

21 ACC [MR. KHAN]: Yes, sir.

22 MJ [COL POHL]: I understand given your current  
23 conditions how unlikely that event probably is. I understand

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1 it. Again, go with me here. This is standard advice I give  
2 in every case.

3 ACC [MR. KHAN]: I got a little confused because  
4 hypothetically anything could happen, I'm sick or, you  
5 know ----

6 MJ [COL POHL]: No, it has to be voluntary. If you are  
7 sick or not due to your fault you can't be here, that wouldn't  
8 be a voluntary absence and we would wait until you got better.

9 ACC [MR. KHAN]: I was thinking about a hypothetical  
10 situation it could happen, that happen, you know.

11 MJ [COL POHL]: Exactly. I understand that. But I'm  
12 saying if you can't come here due to a physical ailment, for  
13 example, we wouldn't start without you.

14 ACC [MR. KHAN]: Right. Got it, sir.

15 MJ [COL POHL]: The last thing I want to address to both  
16 sides, although we set sentencing for four years from now, the  
17 Commission is available to address any outstanding issue that  
18 may arise in this case between now and sentencing.

19 Any other matters to take up from either side at  
20 this time? Trial Counsel?

21 TC [MS. SULLIVAN]: No, Your Honor.

22 MJ [COL POHL]: Defense?

23 DC [LTC JACKSON]: No, sir.

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1 MJ [COL POHL]: The Commission is in recess.

2 [The Military Commission recessed at 1149, February 29, 2012.]

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