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1 [The R.M.C. 803 session was called to order at 0936,
2 13 June 2022.]

3 MJ [Lt Col ROSENOW]: The commission is called to order.
4 All parties present at our last open session held on
5 10 June 2022 are again present both here in the courtroom and
6 in the Remote Hearing Room. I also note that the accused is
7 present.

8 Trial Counsel, would you please note for the record
9 where these proceedings are being transmitted by
10 closed-circuit television?

11 TC [MR. SHORT]: Yes, Your Honor. These proceedings are,
12 again, being transmitted stateside via CCTV to remote viewing
13 sites at Fort Meade, Maryland, The Pentagon, and Fort Devens,
14 Massachusetts, Your Honor.

15 I would like to note that Mr. Michael Hayes is not
16 present and Ms. Samantha Brown is present, Your Honor.

17 MJ [Lt Col ROSENOW]: Thank you for that.

18 Defense Counsel, did I accurately reflect who on the
19 defense team is present or not present?

20 LDC [MS. HENSLER]: Yes, Your Honor. Good morning, first
21 of all.

22 MJ [Lt Col ROSENOW]: Good morning.

23 LDC [MS. HENSLER]: Today everyone who was present on

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1 Tuesday is still present with the addition of Ms. Meghan
2 Skelton, who I believe wasn't in the Remote Hearing Room on
3 Tuesday. It's also my understanding that the chief defense
4 counsel and the deputy chief defense counsel are in the Remote
5 Hearing Room today.

6 MJ [Lt Col ROSENOW]: And you referenced Tuesday,
7 Ms. Hensler. Do you mean Friday?

8 LDC [MS. HENSLER]: Excuse me, yes, I do mean Friday.

9 MJ [Lt Col ROSENOW]: Thank you for that.

10 Before we move along, I would like to summarize some
11 developments over the weekend.

12 First, the commission, consistent with its promise
13 that was made on the record last Friday, issued Appellate
14 Exhibit 217D, a notice to the parties' discussion of the
15 pretrial agreement and stipulation of fact, again, dated
16 11 June 2022, as was forecast. As well, over the weekend,
17 there have been provided updates through my staff and then
18 this morning I've been handed copies of some additional
19 filings related to the pretrial agreement and the stipulation
20 of fact that we had discussed last week. Those will be
21 attached to the record as well. They are reflected in the
22 Appellate Exhibit 217 series and the prosecution exhibit
23 series.

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1 I understand there have been some pen-and-ink changes
2 to what we had discussed on Friday, Prosecution Exhibit 37 for
3 identification as well, and that will be covered here on the
4 record.

5 Last, I'll note there were no R.M.C. 802 conferences
6 requested by the parties and none were conducted over the
7 weekend.

8 Trial Counsel, anything to add, change, or amend to my
9 description of developments since we were last in an open
10 session on 10 June 2022?

11 TC [MR. SHORT]: Nothing from the government, Your Honor.

12 MJ [Lt Col ROSENOW]: Defense Counsel?

13 LDC [MS. HENSLER]: Nothing to add, Your Honor.

14 MJ [Lt Col ROSENOW]: Thank you. We are starting a little
15 bit later than expected because of a series of requests from
16 the parties for additional time to put together the materials
17 I had just mentioned. All of those requests were granted,
18 through my staff.

19 Defense Counsel, is the accused prepared to enter
20 pleas?

21 LDC [MS. HENSLER]: Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: Thank you. You're standing up,
23 Lieutenant Commander? Okay, sorry.

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1 I'm not going to go right into it. I have a couple of
2 questions for you, but I am trying to reset the bench, since I
3 am going to be focused on you today, Mr. Hadi.

4 Mr. Hadi, I expect that we may be in for a long day in
5 the courtroom. Though the nature of our discussion may limit
6 your ability to move away from your position at the defense
7 table without interrupting the flow of the proceedings, I want
8 to remind you that you are nevertheless authorized to take
9 advantage of certain accommodations with respect to your
10 health and ability to physically participate in these
11 proceedings.

12 These accommodations include that, as a general rule,
13 you may adjust your position in your seat or stand up. You
14 may leave your seat and move about the defense area of the
15 courtroom during sessions on the record, though for today I
16 ask you that -- I ask that you request my permission before
17 doing so. You may also access approved medical devices or
18 other items that are available for you. And then, finally,
19 you may, of course, and as always, inform your counsel if at
20 any time you would like to utilize any of these additional
21 accommodations.

22 Do you understand what I have explained to you?

23 ACC [MR. HADI]: [Speaking in English] I understand, Your

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1 Honor.

2 MJ [Lt Col ROSENOW]: Thank you. The parties are familiar
3 with the procedural history in this case, which includes a
4 decision from the United States Court of Appeals for the
5 D.C. Circuit dated 9 April 2021. This decision has been a
6 central focus in this commission since it was delivered and
7 throughout the entirety of my time as the detailed military
8 judge. The citation is available in the record, but I note
9 the following language for the purposes of questions I have
10 for the parties and you, Mr. Hadi.

11 "Although the disqualifying conflict in this case
12 arose far earlier in the proceedings, we are convinced, for
13 the reasons described above, that the government's de novo
14 reconsideration remedy rather than a more draconian approach
15 suffices to scrub the case of judicial bias. In sum, Al-Tamir
16 has, at least with respect to Judge Waits' conflict, an
17 adequate alternative remedy to mandamus."

18 Counsel, understanding the relief promised by the
19 government and the relief directed by a Superior Court, do you
20 agree that the accused may properly enter pleas of guilty
21 today?

22 TC [MR. SHORT]: Absolutely, Your Honor.

23 MJ [Lt Col ROSENOW]: Defense Counsel? Oh.

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1 LDC [MS. HENSLER]: Yes.

2 MJ [Lt Col ROSENOW]: Thank you. And that was a yes as
3 well.

4 LDC [MS. HENSLER]: Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Did you have something to add,
6 Ms. -- no. Negative response. Thanks.

7 Defense Counsel, regarding the extent to which the
8 accused will waive the relief directed by the D.C. Circuit by
9 entering a plea of guilty today, if it is accepted, and the
10 extent to which he will waive relief directed by the
11 D.C. Circuit in accordance with any relevant terms of the
12 pretrial agreement, if it is accepted, have you had sufficient
13 time and opportunity to discuss these matters with your
14 client?

15 LDC [MS. HENSLER]: Yes, Your Honor.

16 MJ [Lt Col ROSENOW]: To the extent such waivers will
17 occur if we proceed as planned today, does the defense enter
18 those waivers?

19 LDC [MS. HENSLER]: Yes, Your Honor.

20 MJ [Lt Col ROSENOW]: Mr. Hadi, have you had enough time
21 and opportunity to discuss these matters, including the timing
22 of today's proceeding, set against the relief directed by your
23 appeal to the D.C. Circuit, with your Defense Counsel?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Mr. Hadi, have you, in fact,
3 consulted fully with your defense counsel and received the
4 full benefit of their advice?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: Are you satisfied that your defense
7 counsel's advice on this matter has been in your best
8 interest?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: Do you wish to proceed with a guilty
11 plea today?

12 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

13 MJ [Lt Col ROSENOW]: It has been some time since all of
14 these questions were posed to Mr. Hadi on the record,
15 particularly in one place, so I would like to confirm a few
16 matters before proceeding.

17 Mr. Hadi, you are currently represented by the four
18 individuals sitting next to you: Ms. Hensler, Lieutenant
19 Commander Meusch, Captain Casciola, and Ms. Kissiah, as well
20 as Major Engling, who is joining us from the RHR.
21 Lieutenant Ball remains your detailed counsel, too, though you
22 previously agreed to excuse him throughout this session of the
23 commission.

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1 Understanding what we are planning to discuss today,
2 do you still consent to Lieutenant Ball's absence?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Do you wish to be represented by the
5 ladies and gentlemen I mentioned and by them alone?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: And, finally, understanding that
8 Major Engling is in the RHR and Lieutenant Ball is not
9 present, are you comfortable proceeding today?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Thank you.

12 Trial Counsel, as it has been some time since this was
13 stated on the record, would you please announce the general
14 nature of the charges in this case.

15 TC [MR. SHORT]: Yes, Your Honor. The accused, Your
16 Honor, and his coconspirators are accused of participating in
17 a common plan and agreement and aiding, abetting, counseling,
18 commanding, and procuring the commission of offenses subject
19 to the military commissions, Your Honor.

20 The accused is a person subject to trial by military
21 commissions as an alien unprivileged enemy belligerent between
22 1996 and 1 November 2006 in multiple locations, conspired to
23 commit terrorism, denying quarter, using treachery or perfidy,

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1 murder of protected persons, attacking protected property,
2 attacking civilians, attacking civilian objects, and employing
3 poison or similar weapons.

4 Specifically, Your Honor, the accused is charged with
5 law of war violation 10 U.S.C. 950t(6), denying quarter,
6 Charge I; violation of 10 U.S.C. 954, attacking protected
7 property; 1050 [sic] 950t(17), using treachery or perfidy and
8 three specifications thereunder, Your Honor; and 10 U.S.C.
9 950t(28), attempted use of treachery or perfidy; as well as
10 950t(29), conspiracy, Your Honor.

11 MJ [Lt Col ROSENOW]: Thank you, Trial Counsel.

12 Defense Counsel, does the accused want the charges
13 read?

14 LDC [MS. HENSLER]: No, Your Honor. He waives reading.

15 MJ [Lt Col ROSENOW]: Thank you. And the reading may be
16 omitted.

17 Defense Counsel, are you prepared to enter pleas?

18 LDC [MS. HENSLER]: Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Thank you. Mr. Hadi, this is one of
20 those times where I would request that you stand and all
21 defense counsel, if you would rise as well. I'll give you a
22 moment.

23 LDC [MS. HENSLER]: Your Honor, may Lieutenant

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1 Commander Meusch approach the podium?

2 MJ [Lt Col ROSENOW]: Yes.

3 Mr. Hadi, at this time how do you plead? I advise you
4 that any motion addressed under Rule for Military Commissions
5 905(b) must be made prior to the entry of pleas. Your defense
6 counsel will speak for you.

7 DDC [LCDR MEUSCH]: Your Honor, Mr. Al-Tamir pleads as
8 follows:

9 To Charge I and its specification, not guilty;

10 To Charge II and its specification, guilty except to
11 the words "knew and," to the excepted words "not guilty," to
12 the charge as excepted, guilty;

13 To Charge III, Specification 1, guilty;

14 To Charge III, Specification 2, guilty;

15 To Charge III, Specification 3, guilty;

16 To Charge III, guilty;

17 To Charge IV and its specification, guilty;

18 To Charge V and its specification, guilty except the
19 words, "to commit the following substantive offenses triable
20 by military commission: Terrorism, denying quarter, using
21 treachery or perfidy, murder of protected persons, attacking
22 protected property, attacking civilians, attacking civilian
23 objects, and employing poison or similar weapons in order to

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1 force the United States, its allies, and non-Muslims out of
2 the Arabian Peninsula, Afghanistan, and Iraq." Substituting,
3 therefore, the words, "to commit the following substantive
4 offenses triable by military commission using treachery or
5 perfidy, attacking protected property, and attacking civilian
6 objects in order to force the United States and its allies out
7 of Afghanistan and Iraq," to the excepted words "not guilty,"
8 to the substituted words, "guilty," to the charge, "guilty."

9 MJ [Lt Col ROSENOW]: Thank you, Defense Counsel.

10 Mr. Hadi and Defense Counsel, you can be seated.

11 Trial Counsel, were you oriented to the change, I will
12 call it, in the anticipated pleas of the accused entered in a
13 moment ago?

14 TC [MR. SHORT]: Yes, Your Honor.

15 MJ [Lt Col ROSENOW]: Do you have anything in writing --
16 or maybe I should ask the defense if they have anything in
17 writing that reflects the pleas? Do you, Defense Counsel?

18 LDC [MS. HENSLER]: No, Your Honor.

19 MJ [Lt Col ROSENOW]: Understood.

20 Government, I want to look over the horizon just a
21 moment here. The pretrial agreement requires the accused to
22 enter into a plea of guilty to the two charges where I've
23 heard a plea of guilty with exceptions, or guilty with

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1 exceptions and substitutions. What does that mean with
2 respect to Appellate Exhibit 217 and any of the follow-on
3 filings?

4 TC [MR. SHORT]: Your Honor, per 217, the not guilty
5 Charge I will ripen upon acceptance -- or upon the sentencing,
6 as will the exceptions and substitutions, Your Honor.

7 MJ [Lt Col ROSENOW]: I'm asking a more fundamental
8 question than that. The convening authority has negotiated
9 pleas that were not entered. The pleas that were entered a
10 moment ago do not match the language inside of Appellate
11 Exhibit 217. And inside the negotiated deal, under
12 paragraph 5.a. -- and I know we are going out of order here,
13 but I want to make sure that we're going out of order in a
14 deliberate way -- 5.a., if we got to the point of talking
15 about this agreement states, "refusal of the military judge to
16 accept my plea of guilty as set forth above or modification of
17 the plea."

18 This, combined with the preceding introductory
19 paragraph in 5., which holds that any such agreement will also
20 be canceled and of no effect if any of the following occurs,
21 would, on a plain reading, tend to suggest that these pleas
22 are not in compliance or accord with the negotiated pleas of
23 the pretrial agreement. And that's absolutely fine if the

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1 accused is pleading guilty without this agreement. But if
2 it's within the context of this agreement, it's something to
3 be sorted out before he starts answering my questions.

4 TC [MR. SHORT]: Yes, Your Honor. And the addendum to the
5 pretrial agreement, I believe.

6 MJ [Lt Col ROSENOW]: Can you orient me?

7 TC [MR. SHORT]: Just in the ----

8 MJ [Lt Col ROSENOW]: This is Appellate Exhibit 217E ----

9 TC [MR. SHORT]: 217E.

10 MJ [Lt Col ROSENOW]: ---- that we got this morning. Go
11 ahead.

12 TC [MR. SHORT]: Your Honor. I'm trying to find my copy
13 of it, Your Honor. And I'm not sure this is as specific as
14 Your Honor would like; however -- it doesn't go into it
15 specifically, Your Honor, but it is, I believe, addressed ----

16 MJ [Lt Col ROSENOW]: Right.

17 TC [MR. SHORT]: ---- and it was the intent of the
18 parties, Your Honor.

19 MJ [Lt Col ROSENOW]: Okay. It's really less about
20 parties' intent, right, and it's more about convening
21 authority's intent with respect to the addendum to the
22 pretrial agreement. And what I'm reading on page 1 of
23 Appellate Exhibit 217 is a restatement of 5.a. without change,

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1 which says, as I had described before, modification of the
2 plea ----

3 TC [MR. SHORT]: I think we lost audio, Your Honor.

4 Your Honor, the pretrial agreement as a whole with the
5 addendum incorporates the stipulation of facts. The
6 stipulation of facts reflects the changes and substitutions,
7 the exceptions and substitutions as put on the record. And it
8 is silent as to those words, Your Honor.

9 MJ [Lt Col ROSENOW]: First, can I get a confirmation from
10 someone that we are recording? I'm getting a confirmation
11 from many people. Thank you.

12 Second, besides a quantum, I would say one of the --
13 one of the most central terms that exists inside of a
14 negotiated pretrial or plea agreement is what will the accused
15 plead to. And in this instance, I'm reading the plain
16 language which says he will plead guilty to Charges II, III,
17 IV, and V, and I've just heard a plea that is not that. I've
18 heard a plea that is in part not guilty to charges that I just
19 mentioned.

20 If the convening authority agrees that the plea just
21 entered meets the requirements of the negotiated pleas to be
22 entered in 217, if that's the case, it is not reflected on the
23 document. Is that the case? Can you represent on behalf of

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1 the convening authority ----

2 TC [MR. SHORT]: That is the case, Your Honor.

3 MJ [Lt Col ROSENOW]: That is the case. Very well.

4 I need two things before we can proceed forward, as
5 this was not expected based on the military judge's review of
6 the pretrial agreement's language, most recently affirmed as
7 of the amendment entered this morning.

8 The first is some indication in writing of the
9 representation that was just provided by the government. That
10 can be affixed to the record, but I need some indication in
11 writing that the convening authority supports the pleas just
12 entered as meeting the demands of the negotiated pretrial
13 agreement.

14 I also need a written copy of the pleas entered by the
15 defense. Now, it's possible that stenographers working with
16 us can do that very quickly and turn it to me or the defense
17 can do it, but I need that plea written down so that I can
18 adjust the questions that I have to surround that plea and so
19 that I can define the elements of the offenses more carefully
20 and closely to the excepted language that's been entered and
21 the substituted language that's been provided. I believe I
22 can do this very rapidly. It's just a matter of getting that
23 information.

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1 Now, in terms of ordering events, if the defense is
2 inclined to proceed, understanding that that representation
3 from the convening authority is inbound but it's not certain
4 until it's certain, we can do that without waiting on that
5 response from the convening authority. That's a
6 have-to-have-it-today thing, and before we turn towards the
7 pretrial agreement inquiry, which, as you know, is at the end
8 of today's work.

9 But before I can turn to the stipulation of fact, I do
10 need to see and understand precisely the plea that was entered
11 so that I understand what, if anything, in my questioning
12 needs to be adjusted.

13 Does that make sense to you, Trial Counsel?

14 TC [MR. SHORT]: It does, Your Honor.

15 MJ [Lt Col ROSENOW]: Defense Counsel?

16 LDC [MS. HENSLER]: Yes, Your Honor. Your Honor requested
17 a copy of the plea that was entered. We have a paper copy we
18 can provide to the court right now.

19 MJ [Lt Col ROSENOW]: I will welcome that, please. Thank
20 you.

21 Is this, Lieutenant Commander Meusch, precisely what
22 you had just read to me?

23 DDC [LCDR MEUSCH]: Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: Is there anything else on that,
2 other than what you had read to me?

3 DDC [LCDR MEUSCH]: There's -- at the beginning there's
4 projected script language, but the pleas appear after that
5 verbatim as I read them.

6 MJ [Lt Col ROSENOW]: Thank you.

7 **[Counsel conferred.]**

8 MJ [Lt Col ROSENOW]: I have the original of what I
9 understand will be included in the record as Appellate
10 Exhibit 217G with me here. I believe we can proceed a little
11 bit further without requiring a break at this point.

12 Mr. Hadi, you have entered a plea of guilty to
13 Charges II, III, IV, and V as well as all of their
14 specifications, with the exceptions and the exceptions and
15 substitutions noted when Lieutenant Commander Meusch entered
16 your plea for you. Your plea of guilty will not be accepted
17 by me unless you understand both its meaning and effect.

18 I am going to discuss your plea of guilty with you.
19 You may consult with your defense counsel prior to answering
20 any of my questions. If you have questions, feel free to ask
21 them.

22 Do you understand what I have said so far?

23 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: A plea of guilty is equivalent to a
2 conviction. It is the strongest form of proof known to the
3 law. On your plea alone, and without receiving any evidence,
4 this court can find you guilty of the offenses to which you
5 have pled guilty. Your plea will not be accepted unless you
6 realize that, by your plea, you admit every act or omission
7 and every element of the offenses to which you have pled
8 guilty.

9 Do you understand what I have said so far?

10 **[Accused conferred with counsel.]**

11 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.
12 Your Honor, I understand.

13 MJ [Lt Col ROSENOW]: Thank you. In addition, your plea
14 will not be accepted unless I am convinced that you are
15 pleading guilty because you actually are, in fact, guilty
16 under United States law. If you do not think you are guilty
17 under United States law, then you should not plead guilty.

18 In addition, I cannot and will not accept your plea
19 unless, after making my inquiry, I am satisfied that either
20 there is a factual basis for the plea or that you voluntarily
21 agree that, having viewed the evidence the government intends
22 to introduce against you, you are personally convinced that
23 the prosecution could prove your guilt of the offenses to

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1 which you are pleading guilty beyond a reasonable doubt.

2 Do you understand this?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: If at any time during this inquiry
5 process you are confused or have any questions, please stop me
6 and I will give you a chance to talk things over with your
7 attorneys. That can be done here in the courtroom or we can
8 take a break. Do you understand that?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.
10 Thank you.

11 MJ [Lt Col ROSENOW]: To be clear, there is no time limit
12 for how long this process will take. It is critical that you
13 understand what you are doing with respect to your guilty
14 plea, the pretrial agreement, and the stipulation of fact.
15 For that reason we will take as long as we need.

16 Mr. Hadi, by your plea of guilty, you waive or, in
17 other words, you give up certain important rights. First of
18 all, you give up the right against self-incrimination; that
19 is, the right to say nothing at all about these offenses. Do
20 you understand that you have this right?

21 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: Second, you give up the right to a
23 trial of the facts by the military commission; that is, your

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1 right to have the commission decide whether or not you are
2 guilty based on evidence presented by the government and, if
3 you choose to do so, by the defense. Do you understand that
4 you have this right?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: Third, you give up the right to
7 confront the witnesses called against you and to call
8 witnesses on your behalf in the findings portion of the trial.
9 Do you understand this right as well?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: If you plead guilty, there will not
12 be a trial of any kind as to the offenses to which you are
13 pleading guilty; and by pleading guilty you will give up those
14 three rights that I just described with respect to those
15 offenses. Do you understand that as well?

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Even if you believe you are guilty,
18 you still have a legal and a moral right to enter a plea of
19 not guilty and to require the government to prove its case
20 against you, if it can, by legal and competent evidence beyond
21 a reasonable doubt. If you were to plead not guilty, then you
22 would be presumed under the law to be innocent, and only by
23 introducing evidence and proving your guilt beyond a

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1 reasonable doubt could the government overcome this
2 presumption of innocence. Do you understand that?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Mr. Hadi, have you discussed all of
5 this with your Defense Counsel?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: Do you agree to give up these rights
8 with regard to the offenses to which you have pled guilty and
9 to answer my questions concerning your plea?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: If you continue with your guilty
12 plea, you will be placed under oath and I will question you to
13 determine whether your plea is accurate. That is to say,
14 there is either a factual basis for your plea or you
15 voluntarily agree that, having viewed the evidence the
16 government intends to introduce against you, you are
17 personally convinced the government could prove you guilty of
18 the offenses to which you are pleading guilty beyond a
19 reasonable doubt. Do you understand that?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: You should also understand that if
22 you tell me anything that is untrue, you may be charged with
23 perjury or making false statements, and your statements may be

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1 used against you in any resulting prosecution. Do you
2 understand that.

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Trial Counsel, if you would, please
5 place the accused under oath. Mr. Hadi, we will need you to
6 stand for this as well.

7 INT: Your Honor, I can't hear what the prosecutor is
8 saying.

9 MJ [Lt Col ROSENOW]: Thank you for the note.

10 **[Accused was sworn.]**

11 MJ [Lt Col ROSENOW]: Thank you, Mr. Hadi. You can please
12 be seated.

13 Trial Counsel, I understand there is a stipulation of
14 fact in this case and that the version of the stipulation that
15 we will be discussing today is Prosecution Exhibit 39 for
16 identification and that's the proposed final form; is that
17 correct?

18 TC [MR. SHORT]: Correct, Your Honor.

19 MJ [Lt Col ROSENOW]: Defense Counsel, do you agree?

20 LDC [MS. HENSLER]: Correct, Your Honor.

21 MJ [Lt Col ROSENOW]: I understand an Arabic translation
22 of Prosecution Exhibit 39 for identification has also been
23 accomplished. Trial Counsel, is that document also in its

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1 proposed final form, and if so, how has it been marked for
2 identification?

3 TC [MR. SHORT]: Your Honor, it is in its final form. It
4 has been provided to the court reporters. I don't know if we
5 have a prosecution exhibit, but I assume it's Prosecution
6 Exhibit 40 for identification, Your Honor.

7 MJ [Lt Col ROSENOW]: Thank you. Defense Counsel, do you
8 agree that Prosecution Exhibit 40 for identification provides
9 an accurate translation of Prosecution Exhibit 39 for
10 identification?

11 LDC [MS. HENSLER]: Yes, Your Honor.

12 MJ [Lt Col ROSENOW]: Thank you. Mr. Hadi, if you would,
13 please, look at page 18 of Prosecution Exhibit 39 for
14 identification, a stipulation of fact. My question for you,
15 when you've been oriented to that page, is: Did you sign this
16 stipulation?

17 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Did you read this document or its
19 Arabic translation thoroughly before you signed it?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Do counsel for both sides agree to
22 the stipulation and that your signatures appear on the
23 document?

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1 TC [MR. SHORT]: Yes, Your Honor. There are also some
2 initialled paragraphs, Your Honor.

3 MJ [Lt Col ROSENOW]: Thank you.

4 LDC [MS. HENSLER]: Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Thank you.

6 Mr. Hadi, prior to signing this stipulation, did you
7 read it and discuss it with your attorneys?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Do you understand everything
10 contained within this stipulation of fact?

11 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

12 MJ [Lt Col ROSENOW]: Mr. Hadi, at this point we are going
13 to discuss the stipulation of fact to ensure that you
14 understand it and agree to its uses. A stipulation of fact is
15 an agreement between the trial counsel, the defense counsel,
16 and you, that the contents of the stipulation are the
17 uncontradicted facts in this case.

18 You have the right not to enter into this stipulation,
19 and this stipulation will not be accepted, without your
20 consent. You should enter into this stipulation only if you
21 truly want to do so. Do you understand this?

22 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

23 MJ [Lt Col ROSENOW]: Mr. Hadi, this stipulation contains

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1 an introductory paragraph and 124 numbered paragraphs in 21
2 pages. Have you thoroughly reviewed this stipulation with
3 your counsel?

4 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Are you voluntarily entering into
6 this stipulation?

7 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: Mr. Hadi, do you think it is in your
9 best interest to enter into this stipulation?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Having reviewed the document, is
12 there any part to which you do not wish to consent?

13 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

14 MJ [Lt Col ROSENOW]: Has anyone forced or threatened you
15 to enter into this stipulation?

16 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

17 MJ [Lt Col ROSENOW]: If I admit this stipulation into
18 evidence, it will be used in two ways: First, I will use it
19 to determine if you are guilty of the offenses to which you
20 have pled guilty; second, the trial counsel may read it to the
21 court members and they will have it with them when they decide
22 your sentence. Do you understand this?

23 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: Do you agree to those uses?

2 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Do both counsel also agree to these
4 uses?

5 TC [MR. SHORT]: The government agrees, Your Honor.

6 LDC [MS. HENSLER]: The defense agrees, Your Honor.

7 MJ [Lt Col ROSENOW]: Ordinarily a stipulation of fact
8 cannot be contradicted or questioned after it has been
9 admitted into evidence; that is, after it has been admitted
10 into evidence you cannot later argue that the information
11 contained in the stipulation is false. Do you understand
12 this?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

14 MJ [Lt Col ROSENOW]: If this stipulation should be
15 questioned or contradicted after I have accepted your guilty
16 plea, I will reopen this inquiry into your pleas. This means
17 you need to let me know at this point if there is anything at
18 all that you disagree with or anything that you feel is untrue
19 in the stipulation. Do you understand that?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: At this time I want you to take a
22 moment to review the stipulation and ensure it is precisely
23 what you signed and what you agreed to submit. When you have

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1 accomplished that review, you can let me know or your defense
2 counsel can let me know.

3 **[Accused conferred with counsel.]**

4 ACC [MR. HADI]: Yes, Judge. These are the modifications
5 I reviewed this morning and that I have signed.

6 MJ [Lt Col ROSENOW]: Thank you. As the parties are
7 aware, the commission issued Appellate Exhibit 217D, a notice
8 to the parties that highlighted potential areas of inquiry and
9 questions the military judge may have as applied to what was
10 then the focus of the potential stipulation of fact inquiry,
11 Prosecution Exhibit 37 for identification, which was filed on
12 10 June 2022.

13 I've had the opportunity this morning to review
14 Prosecution Exhibit 39 for identification which resolves some
15 of those questions such that I don't have any follow-up
16 inquiry. There are a handful of follow-up questions I have
17 for the counsel and Mr. Hadi.

18 First, as I had put on page 4 of Appellate
19 Exhibit 217D, and understanding that we had a bit of
20 conversation on this matter last Friday, Trial Counsel, is the
21 conflict between the sum stated in paragraph 24 of the common
22 allegations included with the charges in paragraph 72 of the
23 stipulation of fact reconcilable within the rules directing

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1 guilty plea inquiries and the meaning of a stipulation under
2 Rule for Military Commission 811? And if the answer is yes,
3 please explain.

4 TC [MR. SHORT]: Your Honor, the answer is yes. Your
5 Honor, the parties are in a general agreement that the
6 government basically charges in the conjunctive and proves in
7 the disjunctive.

8 The common allegations do not need to be proven in
9 their entirety, Your Honor. There are some minor changes
10 pursuant to R.M.C. 603 that could be made, will be made; but
11 for that purpose, Your Honor, it is our understanding that the
12 accused agrees with the common allegations and the stipulation
13 of facts and the reconciliation that is required between them,
14 Your Honor.

15 MJ [Lt Col ROSENOW]: When you say minor changes could be
16 made, will be made, we've -- we've had pleas entered. So if
17 there were changes after this, there's going to be follow-on
18 procedures that will be required or at least clarification put
19 on the record.

20 Let me ask you, has there been a pen-and-ink change to
21 the original charge sheet on Common Allegation 24 to line out
22 one of those zeros and make it 10,000? Is there going to be?
23 And there's no recommendation one way or the another from the

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1 commission.

2 TC [MR. SHORT]: Yes, Your Honor, the -- we'll line out
3 one of the zeros to make it \$10,000 vice \$100,000, Your Honor.

4 MJ [Lt Col ROSENOW]: Is that something that can be
5 accomplished at the next break and you can confirm for me that
6 the charge sheet has been so amended?

7 TC [MR. SHORT]: Your Honor, the only -- I can absolutely
8 do that, Your Honor. It's just I'm not -- I believe the court
9 reporters are in possession of the original charge sheet,
10 so I ----

11 MJ [Lt Col ROSENOW]: Is that here?

12 TC [MR. SHORT]: I'm going to double-check that. That's
13 what I want to double-check, Your Honor.

14 MJ [Lt Col ROSENOW]: Understood. So give me an update
15 when we come back, please, on whether or not that has
16 happened.

17 Defense Counsel, in the event the government does wish
18 to line out one of those zeros, as I put it, or line out the
19 entirety and write instead a lesser sum of 10,000 instead of
20 100,000 U.S. dollars in Common Allegation 24, would there be
21 any objection from the defense?

22 DDC [LCDR MEUSCH]: No, Your Honor.

23 MJ [Lt Col ROSENOW]: Additionally, Defense Counsel, do

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1 you believe there is any requirement for the accused to
2 announce his pleas again, given that change, which the
3 government is pointing out would be, in their measure, a minor
4 change after the entry of pleas?

5 DDC [LCDR MEUSCH]: Your Honor, may I go to the podium,
6 please?

7 No, Your Honor. We do not believe that pleas need to
8 be entered again. In part, that understanding is that the
9 common allegations, with the exception of the overt act in
10 Charge V, are not elements, they're a theory of liability. So
11 it explains -- we stated the plea as to the charge, and beyond
12 that there's a theory of liability.

13 In terms of the factual basis for Your Honor's inquiry
14 and finding a sufficient factual basis, Mr. Al-Tamir's
15 position is that there is a sufficient factual basis based on
16 the stipulation of fact, but he does not agree to anything
17 beyond the stipulation of fact. So that where there is a
18 difference between the two, he's not agreeing that the
19 government could prove beyond a reasonable doubt the
20 difference between the two.

21 Does that make sense, Your Honor?

22 MJ [Lt Col ROSENOW]: I -- I hear what you're explaining
23 as, we are not pleading guilty to the second paragraphs under

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1 Charges II, III, and IV, which include the explanation of "as
2 asserted." That's what I hear back from that in terms of
3 drawing a line between what the stipulation says and what the
4 common allegations allege and then connecting that with the
5 pleas entered. But we can cross all of these things as we get
6 to them. I have specific questions on that.

7 The immediate question is: Would the defense require,
8 such that there might be a right that you would waive, the
9 reentry of pleas to avoid any ambiguity, given the expected
10 change that the government has promised will happen here
11 shortly on Common Allegation 24?

12 DDC [LCDR MEUSCH]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: And to the extent that there would
14 be any concern with this, do you waive any concern with this
15 order of events?

16 DDC [LCDR MEUSCH]: We waive, Your Honor.

17 MJ [Lt Col ROSENOW]: Thank you for that clarification.
18 That will be something that the government will provide an
19 update on and will be something we'll need to clarify as we
20 move along today.

21 I would note that in Prosecution Exhibit 30 [sic] for
22 identification, there has been a pen-and-ink change that's
23 noted on page 2 in paragraph 5 that reflects offenses. That

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1 satisfies the concerns of the commission with respect to 2.
2 Similarly, if I don't cover any of these questions, the
3 commission has been satisfied as to its concerns that are
4 reflected in Appellate Exhibit 217D.

5 I had asked the parties, is the conspiracy mentioned
6 in paragraph 118 of the stipulation of fact the same one
7 alleged in the specification of Charge V? Government?

8 TC [MR. SHORT]: Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Defense Counsel, is that correct?

10 LDC [MS. HENSLER]: Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Thank you. And then I had asked a
12 question in subparagraph 10 of 3.d. regarding the omission of
13 language inside the stipulation of fact that did exist inside
14 the allegations in this case I understand based on the pleas
15 that were entered here and can resolve any apparent conflict
16 or, put better, the meaning of that omission.

17 Mr. Hadi, we've had a few clarifications here about
18 Prosecution Exhibit 39 for identification. With those
19 clarifications as to the meaning of terms provided, is
20 everything in the stipulation of fact true?

21 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: Thank you. And similarly, with
23 those clarifications provided, is there anything in the

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1 stipulation of fact reflected in Prosecution Exhibit 39 for
2 identification that you do not wish to admit is true?

3 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

4 MJ [Lt Col ROSENOW]: With those clarifications included,
5 do you agree and admit that the information contained in the
6 stipulation is true and correct to the best of your knowledge
7 and belief?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Is there anything in the stipulation
10 that you do not wish to admit is true?

11 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

12 MJ [Lt Col ROSENOW]: Defense Counsel, with those
13 clarifications noted for the record, do you have any objection
14 to Prosecution Exhibit 39 for identification?

15 LDC [MS. HENSLER]: No, Your Honor.

16 MJ [Lt Col ROSENOW]: Prosecution Exhibit 39 for
17 identification, the stipulation of fact, is admitted into
18 evidence as Prosecution Exhibit 39, subject to my acceptance
19 of the accused's guilty plea.

20 Defense Counsel, with those clarifications that have
21 been noted in the English version of the stipulation of fact
22 included in the record, do you have any objection to
23 Prosecution Exhibit 40 for identification?

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1 LDC [MS. HENSLER]: No, Your Honor.

2 MJ [Lt Col ROSENOW]: Prosecution Exhibit 40 for
3 identification, the stipulation of fact written in Arabic, is
4 admitted into evidence as Prosecution Exhibit 40, subject to
5 my acceptance of the accused's guilty plea.

6 I want to go a little bit longer, if I can, with
7 everyone, understanding that in about ten or so minutes we'll
8 likely require a comfort break.

9 Mr. Hadi, do you have a copy of the charge sheet in
10 front of you?

11 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor, I
12 have.

13 MJ [Lt Col ROSENOW]: I recommend that you keep that
14 document with you as well as the stipulation of fact during
15 the next portion of the trial so that you can easily refer to
16 the charges against you as we proceed through the care
17 inquiry -- excuse me, the plea inquiry.

18 Mr. Hadi, I am going to cover the offenses to which
19 you have entered a plea of guilty in the order they are
20 written on the charge sheet. That means that the first
21 offense we will cover in depth will be Charge II. Even though
22 I will separate my questions for you into different sections,
23 I would like to rely on your answers to all of my questions

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1 today in determining whether or not you are guilty of each
2 offense, regardless of when those questions are posed. For
3 instance, I might ask you questions while we are focused on
4 Charge II that are relevant to determining whether you are
5 guilty of Charge V.

6 Do you agree to my consideration of all of your
7 responses today in determining whether you are guilty of any
8 offense to which you have entered a plea of guilty?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: I am going to explain the elements
11 of the offenses to which you have pled guilty. And when I use
12 the term "elements," I mean those facts which the prosecution
13 would have to prove beyond a reasonable doubt before you could
14 be found guilty if you had pled not guilty.

15 When I state each element, ask yourself two things:
16 First, is the element true; and, second, do you wish to admit
17 that it is true? After I list the elements for you, we will
18 have a discussion regarding the circumstances surrounding
19 these offenses.

20 Do you have any questions about this process as I have
21 described it?

22 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

23 MJ [Lt Col ROSENOW]: There is an element common to all

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1 the offenses to which you are pleading guilty. That element
2 is that you are a person subject to trial by military
3 commission as an alien unprivileged enemy belligerent.

4 An alien is an individual who is not a citizen of the
5 United States.

6 An unprivileged enemy belligerent is an individual
7 other than a privileged belligerent who, A, has engaged in
8 hostilities against the United States or its coalition
9 partners; B, has purposefully and materially supported
10 hostilities against the United States or its coalition
11 partners; or C, was a part of al-Qaeda at the time of the
12 alleged offense under Chapter 47(a) of Title 10, United States
13 Code.

14 Trial Counsel, any objection to those definitions?

15 TC [MR. SHORT]: No, Your Honor.

16 MJ [Lt Col ROSENOW]: Defense Counsel?

17 LDC [MS. HENSLER]: No, Your Honor.

18 MJ [Lt Col ROSENOW]: Mr. Hadi, do you understand these
19 definitions?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Do you understand this element and
22 its terms are common to all the charges and specifications to
23 which you are pleading guilty?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Do you admit and agree that within
3 the context of this military commission these terms and their
4 definitions describe who you are?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: Let's look at the provisions in the
7 stipulation of fact which address this jurisdictional issue.
8 Mr. Hadi, please look at paragraphs 4, 5, and 6 of the
9 stipulation. These paragraph describe and explain how you fit
10 within the definition of an alien unprivileged enemy
11 belligerent. Once again, that particular element, being an
12 alien unprivileged enemy belligerent, is an element of all the
13 offenses, so we are only going to discuss this particular
14 element this one time, recognizing it applies to each offense
15 to which you are pleading guilty.

16 Now, based on your agreement that the stipulation of
17 fact is true and the explanation I have provided, do you admit
18 that you meet the definition of an alien unprivileged enemy
19 belligerent?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Do you agree and admit that the
22 military commission has jurisdiction both over you and all of
23 the offenses to which you have entered a plea of guilty?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Thank you for that.

3 The commission would like to take a 15-minute comfort
4 break. Please return to the courtroom on time. That's a
5 15-minute comfort break with the understanding that because of
6 some scheduling issues associated with travel to and from
7 Naval Station Guantanamo Bay, there will likely be a lengthy
8 break starting around 11:30 until we come back from lunch and
9 everyone being able to accommodate those things. So our next
10 session should last just about that long.

11 Anything from the government?

12 TC [MR. SHORT]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: Defense Counsel?

14 LDC [MS. HENSLER]: No, Your Honor.

15 MJ [Lt Col ROSENOW]: The commission is in recess.

16 **[The R.M.C. 803 session recessed at 1039, 13 June 2022.]**

17 **[The R.M.C. 803 session was called to order at 1103,**
18 **13 June 2022.]**

19 MJ [Lt Col ROSENOW]: The military commission is called to
20 order. Same parties who were present before the recess are
21 again present. Mr. Hadi remains with us here present in the
22 courtroom.

23 Mr. Hadi, I would like to discuss with you now

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1 liability. In Charges II, III, and IV, and their
2 specifications, you are charged with liability for substantive
3 criminal acts committed by a person other than yourself. Are
4 you aware of this?

5 [Accused conferred with counsel.]

6 ACC [MR. HADI]: [Speaking in English] Yes, sir.

7 MJ [Lt Col ROSENOW]: Thank you for your patience.

8 Do you understand, Mr. Hadi, that you may be held
9 criminally responsible for acts of others on a theory of
10 vicarious liability?

11 [Accused conferred with counsel.]

12 ACC [MR. HADI]: [Speaking in English] Yes, Your Honor, I
13 understand.

14 MJ [Lt Col ROSENOW]: Under the Military Commissions Act
15 there are two forms of vicarious liability: One, the law of
16 principals; and, two, conspiratorial liability. I will first
17 discuss with you the law of principals. After we have
18 discussed the law of principals, I will then discuss
19 conspiratorial liability.

20 Under a theory of principal liability for the acts of
21 another, you may be held criminally responsible if you, one,
22 commit, aid, abet, counsel, command, or procure the commission
23 of an offense punishable under the Military Commissions Act;

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1 two, cause an act to be done which, if it were directly
2 performed by you, would be punishable under the Military
3 Commissions Act; or, three, are a superior commander who, with
4 regard to acts punishable under the Military Commission Act,
5 knew, had reason to know, or should have known that a
6 subordinate was about to commit such acts, or had done so, and
7 you failed to take the necessary and reasonable measures to
8 prevent such acts or to punish the perpetrators thereof.

9 Do you understand this?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

11 MJ [Lt Col ROSENOW]: Have you discussed these legal
12 concepts with your defense counsel?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, sir, I do.

14 MJ [Lt Col ROSENOW]: Thank you. Mr. Hadi, the first
15 theory of principal liability involving vicarious liability
16 applies to one who aids, abets, counsels, commands, or
17 procures the commission of a substantive criminal act. I will
18 discuss aiding and abetting at the start.

19 Any person who actually commits an offense is a
20 principal. Anyone who knowingly and willfully aids or abets
21 another in committing an offense is also a principal and
22 equally guilty of the offense. An aider or abettor must
23 knowingly and willfully participate in the commission of the

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1 crime as something he wishes to bring about and must aid,
2 encourage, or incite the person to commit the criminal act.

3 Presence at the scene of the crime is not enough, nor
4 is failure to prevent the commission of an offense. There
5 must be an intent to aid or encourage the person or persons
6 who commit the crime. Also, if he witnessed the commission of
7 the crime and had a duty to interfere but did not because he
8 wanted to protect or encourage the actual perpetrator, he is a
9 principal.

10 Although you must consciously share in the actual
11 perpetrator's criminal intent to be an aider or abettor, there
12 is no requirement that you agree with or even have knowledge
13 of the means by which the perpetrator is to carry out that
14 criminal intent.

15 Do you understand this concept?

16 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

17 MJ [Lt Col ROSENOW]: If the finder of fact were satisfied
18 beyond a reasonable doubt that you aided or abetted the
19 commission of Charge II, Charge III, Charge IV, and all of
20 their specifications and that you specifically intended the
21 commission of the underlying offenses in each instance, you
22 could be found guilty of the underlying offenses even though
23 you were not the person who actually committed the crimes.

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1 Do you understand this?

2 ACC [MR. HADI]: [Speaking in English] Yes, sir.

3 MJ [Lt Col ROSENOW]: I will next discuss principal
4 liability with respect to one who counsels, commands, or
5 procures another to commit an offense.

6 As I have explained, any person who commits an offense
7 is a principal. Any person who knowingly and willfully
8 counsels, commands, or procures another to commit an offense
9 is also a principal and is just as guilty as the person who
10 actually committed the offense. Again, presence at the scene
11 of the crime is not required.

12 Counsel means to advise, recommend, or encourage.
13 Command means an order given by one person to another who,
14 because of the relationship of the parties, is under an
15 obligation or sense of duty to obey the order. Procure means
16 to bring about or cause.

17 If the offense is committed, even if it is
18 accomplished in a different manner from that counseled,
19 commanded, or procured, the person who counseled, commanded,
20 or procured the commission of the offense is guilty of the
21 offense. Once the act counseled, commanded, or procured by a
22 person is done, he is criminally responsible for all the
23 likely results that may occur from the doing of that act.

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1 Do you understand this concept?

2 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

3 MJ [Lt Col ROSENOW]: Thank you. The second theory of
4 principal liability involving vicarious liability applies to
5 one who causes an act to be done. As I have explained, any
6 person who commits an offense is a principal. Anyone who
7 willfully causes an act to be done, which, if actually
8 performed by him, would be a criminal offense, is a principal
9 and is just as guilty of the offense as if he had done the act
10 himself.

11 Once an act is done, a principal is criminally
12 responsible for all the likely results that may occur from the
13 doing of that act.

14 Do you understand this?

15 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

16 MJ [Lt Col ROSENOW]: I have one additional explanation
17 for you with regard to vicarious liability under principal
18 liability. When an offense charged requires proof of a
19 specific intent or particular state of mind as an element, the
20 evidence must also prove that you had that intent or state of
21 mind, whether you're charged as a perpetrator or an other
22 party to the crime.

23 Do you understand this?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

2 MJ [Lt Col ROSENOW]: The third theory of principal
3 liability involving vicarious liability is command liability.
4 Under this theory, a superior commander is liable for offenses
5 committed by his subordinates if that commander knew, had
6 reason to know, or should have known that a subordinate was
7 about to commit the underlying offense or had done so and
8 under the circumstances where the superior commander failed to
9 take the necessary and reasonable measures to prevent the
10 underlying offense or to punish the actual perpetrators
11 thereof.

12 Do you understand this?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

14 MJ [Lt Col ROSENOW]: One may be criminally responsible as
15 a principal even if the actual perpetrator is not identified,
16 is not prosecuted, or is acquitted of the underlying offense.

17 Do you understand this and everything else I have
18 described concerning principal liability?

19 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

20 MJ [Lt Col ROSENOW]: Counsel, do you agree with the
21 definitions and explanations of principal liability that I
22 have provided?

23 TC [MR. SHORT]: Yes, Your Honor.

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1 LDC [MS. HENSLER]: Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Thank you.

3 Mr. Hadi, now I will discuss conspiratorial liability
4 with you. This is also referred to as the rule of
5 coconspirators.

6 The rule of coconspirators allows conviction of an
7 accused for a substantive offense upon a showing that he was a
8 member of an unlawful conspiracy and that, while he continued
9 to be a member of that conspiracy, the offense charged was
10 committed in furtherance of the conspiracy or was an object of
11 the conspiracy. A conspiracy may also be referred to as a
12 common plan or agreement. While an accused need not be
13 formally charged with conspiracy, the existence of the
14 conspiracy must be shown before the accused may be convicted
15 of a substantive offense under this theory.

16 Unlike the law of principals, a person need not play
17 any role in the commission of the substantive offense, nor
18 must he have any particular state of mind regarding the
19 offense, nor must he be aware of the commission of the
20 offense.

21 Although I will provide these explanations again later
22 when we discuss the specific crimes to which you have pled
23 guilty, you are advised that the agreement in a conspiracy

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1 does not have to be in any particular form or expressed in
2 formal words. It is sufficient if the minds of the parties
3 reach a common understanding to accomplish the object of the
4 conspiracy, and this may be proved by the conduct of the
5 parties. The agreement does not have to express the manner in
6 which the conspiracy is to be carried out or what part each
7 conspirator is to play.

8 Do you understand this?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

10 MJ [Lt Col ROSENOW]: Thank you.

11 To be clear then, a member of a conspiracy is
12 criminally responsible under the law for any offense which was
13 committed by any member of the conspiracy, in furtherance of
14 the conspiracy or as an object of the conspiracy, even if he
15 was neither a principal nor an aider and abettor in the
16 offense.

17 Do you understand that as well?

18 ACC [MR. HADI]: **[Speaking in English]** Yes, sir.

19 MJ [Lt Col ROSENOW]: Finally, before you could be found
20 guilty of Charge II, Charge III, Charge IV, and any of their
21 specifications under the rule of coconspirators, the finder of
22 fact must also be satisfied beyond a reasonable doubt either,
23 one, that the substantive offense was committed in furtherance

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1 of the conspiracy; or two, that the substantive offense was an
2 object of the conspiracy.

3 If the finder of fact were satisfied beyond a
4 reasonable doubt that, at the time of the substantive offense
5 being committed, you had entered into and continued to be a
6 member of an unlawful conspiracy, as I have defined that term,
7 and if the finder of fact determined beyond a reasonable doubt
8 that the substantive offense was committed while the
9 conspiracy continued to exist and in furtherance of that
10 unlawful conspiracy or was an object of that conspiracy, then
11 the finder of fact would be able to find you guilty of this
12 offense as a coconspirator.

13 This is true even though, under these circumstances,
14 you were not the person who actually committed the criminal
15 offense, that is, a principal, and even though you were not an
16 aider and abettor of the person who committed the substantive
17 offense.

18 However, if the finder of fact were not satisfied
19 beyond a reasonable doubt that you were a continuing member of
20 an unlawful conspiracy or that this substantive offense was
21 committed in furtherance of an unlawful conspiracy or was an
22 object of that conspiracy, then the finder of fact would be
23 required to find you not guilty under the rule of

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1 coconspirators. That said, the finder of fact could still
2 find beyond a reasonable doubt that you were an aider and
3 abettor or a principal as I have otherwise defined that term
4 and, therefore, criminally responsible.

5 Do you understand these concepts, Mr. Hadi?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: Thank you. Next, I would like to
8 explain to you the affirmative defense of withdrawal as it
9 applies to conspiratorial liability.

10 As I have previously explained, each conspirator is
11 liable for all offenses committed pursuant to or in
12 furtherance of the conspiracy by any of the coconspirators
13 after such conspirator has joined the conspiracy and while the
14 conspiracy continues and such conspirator remains a party to
15 it.

16 A party to a conspiracy who withdraws from or abandons
17 the agreement before the commission of the underlying offense
18 by any conspirator is not guilty under the rule of
19 coconspirators. An effective withdrawal or abandonment must
20 consist of affirmative conduct that is wholly inconsistent
21 with adherence to the unlawful agreement or common criminal
22 purpose and that shows that the party has severed all
23 connection with the conspiracy.

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1 A conspirator who effectively withdraws from or
2 abandons the conspiracy after the performance of an overt act
3 by one of the conspirators remains guilty of conspiracy and of
4 any offenses committed pursuant to the conspiracy up to the
5 time of the withdrawal or abandonment. The withdrawal of a
6 conspirator from a conspiracy does not affect the status of
7 the remaining members.

8 Last, the finder of fact could only find you guilty of
9 an underlying offense through the rule of coconspirators if it
10 was proven beyond a reasonable doubt that you did not abandon
11 or withdraw from the conspiracy before the commission of the
12 underlying offense by any of your coconspirators.

13 Do you understand these requirements for the
14 affirmative defense of withdrawal as it applies to
15 conspiratorial liability?

16 **[Accused conferred with counsel.]**

17 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Trial Counsel, do you request
19 further explanation of the concepts that I have addressed so
20 far with the accused?

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

22 MJ [Lt Col ROSENOW]: Defense Counsel?

23 LDC [MS. HENSLER]: No, Your Honor.

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1 MJ [Lt Col ROSENOW]: Mr. Hadi, do you have any questions
2 for me at this time, understanding that you will be provided
3 the opportunity to ask questions along the way as well?

4 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor, I
5 haven't.

6 MJ [Lt Col ROSENOW]: Thank you for that.

7 Counsel, we're a few minutes ahead of when I had
8 planned on a break, but this might be the time for such a
9 break in the proceedings.

10 Trial Counsel, I had asked over the break you to
11 pursue, if you decided to do so, the course you had described
12 involving the potential modification to a common allegation.
13 Can you provide an update on that process?

14 TC [MR. SHORT]: Your Honor, in the 15-minute break, I was
15 able to send out an e-mail, and I do know that somebody that
16 was observing in The Pentagon had beaten me to it anyway. So
17 it's in the works to get some kind of written affirmation as
18 to the intent of the parties on that, Your Honor.

19 MJ [Lt Col ROSENOW]: Thank you. So ----

20 TC [MR. SHORT]: Intent of the convening authority, Your
21 Honor.

22 MJ [Lt Col ROSENOW]: Understood. I asked a slightly
23 different question, but I appreciate the update on that.

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1 I want to be plain again, that written representation
2 of these pleas as answering the plain requirements of the
3 pretrial agreement, that must be provided prior to me being
4 able to pursue any kind of investigation or inquiry involving
5 the pretrial agreement. It does not preclude us from moving
6 through the rest of this process so long as the defense agrees
7 to move forward with this process.

8 TC [MR. SHORT]: Your Honor, we provided the convening
9 authority with a copy of the pleas as they were entered.

10 MJ [Lt Col ROSENOW]: Thank you for that.

11 Now, the question that I had originally posed related
12 to this division between approximately 10,000 and
13 approximately 100,000. Recommending again and discouraging
14 again no specific course, I had heard that the government
15 intended to make a pen-and-ink change to Common Allegation 24
16 so that it was recorded as approximately \$10,000.

17 TC [MR. SHORT]: Yes, Your Honor. After consulting with
18 the court administration, we are trying to locate the original
19 charge sheet, which may not be on island. I believe the
20 course of action is to make all the necessary ink -- on a
21 new -- on a charge sheet that we all agree is a -- reflects
22 the original charge sheet, make those pen-and-ink changes,
23 Your Honor, as we go forward, and either, you know, make those

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1 corrections on the original, when located, or enter that into
2 the court as Appellate Exhibit 008 series.

3 MJ [Lt Col ROSENOW]: Thank you. It's something we'll
4 need to come back to before I talk through any of the
5 definitions and elements involving the substantive offenses.
6 So that will be something when -- I believe we're planning to
7 come back at 1330 once we go into a break. Is that right,
8 Government?

9 TC [MR. SHORT]: That's my understanding, Your Honor.

10 MJ [Lt Col ROSENOW]: Does that work for you as well,
11 Defense Counsel?

12 LDC [MS. HENSLER]: Yes, thank you.

13 MJ [Lt Col ROSENOW]: Okay. So over that break that would
14 be something to examine.

15 I would also orient the parties, based on what
16 Lieutenant Commander Meusch had provided to me a moment ago,
17 to what I had said to you on Friday with regard to how this
18 commission interprets the charge sheet that the government has
19 used in the prosecution of this case since preferral in 2014.

20 What I would orient you to, Government, is that second
21 paragraph on Charge II, on Charge III, and on Charge IV.

22 I am not orienting you to that paragraph, which is a
23 slightly different paragraph on Charge V. One of the reasons

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1 being the charged language at the bottom of the first
2 paragraph involving Charge V, which ends with "purpose of the
3 agreement," has above that, "commit one or more of the
4 following overt acts." That qualifier of "one or more," at
5 least as an intellectual matter, permits this commission to
6 accept the plea with exceptions and substitutions as entered
7 by Mr. Hadi if the legal standards are otherwise met.

8 I am focusing you on Charges II, III, IV, and their
9 second paragraph because my interpretation of this language is
10 different than I believe the representation I received from
11 Lieutenant Commander Meusch, which I also interpreted as
12 indicating the government's consensus on that point. That's
13 how I heard it.

14 Is that right?

15 TC [MR. SHORT]: That is correct, Your Honor.

16 MJ [Lt Col ROSENOW]: All right. So the parties have made
17 manifest, both in the pleadings leading up to Friday, the
18 positions that were staked on Friday, and the consistency of
19 the positions that were staked on Friday leading into today,
20 Monday, through the weekend, these including supplements to
21 the pretrial agreement, these including modifications or
22 updates to the stipulation of fact that this is an agreement
23 both parties are interested in maintaining.

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1 At the same time, this court must be forever conscious
2 of abandoning its role as not an advocate for or against
3 negotiations between the parties reaching any particular
4 result or never reaching any particular result and, instead,
5 allowing these matters to be adjudicated within a litigated
6 setting.

7 That said, I want to highlight that if the language in
8 those second paragraphs of Charges II, III, and IV remains in
9 place, I have concerns about accepting the plea as described
10 by the accused for the following reasons:

11 This language reads, "The accused is liable for the
12 above-alleged offense as a principal, a coconspirator, and a
13 participant in a common plan as set forth in the section
14 entitled Common Allegations, which is hereby realleged and
15 incorporated by reference as if set forth fully herein."

16 There are several ways in which that second clause
17 communicate to this commission and any reviewing authority
18 that if the accused were found guilty as he has entered a plea
19 of guilty with one exception and no substitution to Charge II
20 and its specification, that would mean the commission is
21 finding him guilty of all of the common allegations, too.

22 I do not believe you could be plainer if you had
23 attempted to be plainer, government, in writing as set forth,

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1 one; in the section entitled Common Allegations, which is
2 hereby realleged, two; and incorporated by reference, three;
3 as is set forth fully herein, four. That clause is what
4 drives this commission's concern about accepting that plea as
5 entered.

6 Now, there are any number of ways in which different
7 pleas could be entered or modifications could be made to the
8 charge sheet or pleas could be withdrawn, so on and so forth.

9 Without ruling, suggesting, ordering, directing,
10 procuring, anything, I would note that if the second clause
11 "as set forth" continuing through "fully herein" were lined
12 out, on the second paragraph of Charge II, on the second
13 paragraph, if you want to call it that, but really it falls
14 under all the specifications on Charge III, and on the second
15 paragraph under Charge IV -- that clause were lined out, it
16 would not drive the same concerns. In fact, they would be
17 avoided and I would understand the position of the parties as
18 not being in conflict or disagreement with the language that's
19 been preferred against the accused, referred against the
20 accused, and now that we've had a plea entered addressing.

21 Trial Counsel, before we go into this about two-hour
22 recess for people to respond to some of the things that I have
23 asked for involving the pretrial agreement, notice from the

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1 convening authority involving potential pen-and-ink changes to
2 the charge sheet, do you have any questions for the commission
3 with respect to the matter I've explained on the record, here
4 again, or any other matter?

5 TC [MR. SHORT]: No, Your Honor.

6 MJ [Lt Col ROSENOW]: Thank you.

7 Defense Counsel, same?

8 LDC [MS. HENSLER]: No, Your Honor, we understand.

9 MJ [Lt Col ROSENOW]: Thank you. And then, Ms. Hensler,
10 if you can just confirm for me that 1330 works for Mr. Hadi as
11 well based on his needs?

12 LDC [MS. HENSLER]: Yes, we appreciate your consideration
13 of his needs. Thank you.

14 MJ [Lt Col ROSENOW]: Thank you. Anything else,
15 Government, to take up until this commission is in recess
16 until 1330?

17 TC [MR. SHORT]: No, Your Honor.

18 MJ [Lt Col ROSENOW]: Defense Counsel?

19 LDC [MS. HENSLER]: No, Your Honor.

20 MJ [Lt Col ROSENOW]: Commission is in recess.

21 [The R.M.C. 803 session recessed at 1131, 13 June 2022.]

22 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1410,
2 13 June 2022.]

3 MJ [Lt Col ROSENOW]: This commission is called to order.
4 The same parties are present as were present before. Mr. Hadi
5 is with us as well. We're getting started a little bit later
6 through a combination of some time that the commission
7 required and some of the time that was requested by some of
8 our support staff.

9 I was provided over the break Appellate Exhibit 217H
10 and Appellate Exhibit 217I. The former is an unredacted
11 version of the latter. And the purpose of these exhibits, as
12 I understand it, is to answer the commission's questions
13 regarding the position of the convening authority on whether
14 or not the accused's pleas as entered satisfy terms of the
15 pretrial agreement that say something different.

16 And what I take this to mean and what I understand it
17 to mean is that the parties have reached an agreement in
18 writing that the pleas as earlier entered into meet each and
19 every condition and requirement of the pretrial agreement, its
20 appendix, such that that treats these things, as well as its
21 addendum.

22 Trial Counsel, is that correct?

23 TC [MR. SHORT]: That is correct, Your Honor.

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1 MJ [Lt Col ROSENOW]: Defense Counsel, do you agree?

2 LDC [MS. HENSLER]: Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Thank you. I think I have the
4 originals of these two documents, so I'm going to hand them
5 down to the court reporter.

6 Trial Counsel, were there any revisions elected to be
7 made by the parties on the charge sheet during that break?

8 TC [MR. SHORT]: Yes, Your Honor, and I have a request
9 with the commission's indulgence. So Your Honor had --
10 without ruling, had indicated that the words as beginning with
11 "as set forth" in the section entitled Common Allegations and
12 that the language within that full -- full sentence provides
13 the commission with concern that it incorporates in totem the
14 allegation -- you know, the common allegations.

15 MJ [Lt Col ROSENOW]: Can we come right back to that and
16 just answer the question first. Were there any changes to any
17 portion of the charge sheet, just yes or no first?

18 TC [MR. SHORT]: Yes. I mean, with the court's
19 indulgence, I'd like ----

20 MJ [Lt Col ROSENOW]: Go ahead, please.

21 TC [MR. SHORT]: So I am authorized to change the charge
22 sheet. And so I suggest, however, after the word "plan" and
23 beginning with the word "as" that we don't strike the entirety

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1 of that second clause, that we just strike after the word
2 "as," strike the words "set forth," leaving all the way to
3 "common allegations," basically putting the period there and
4 striking the rest of it, in other words, removing the language
5 that Your Honor pointed out as making it so inclusive of the
6 common allegations.

7 And I think that that would get us to the point
8 where -- where it is kind of telling us where the common plan
9 is, so in case, you know, the future appellate courts or
10 higher authority needs to look and say, well, where is this
11 common plan, they can see that that is part of -- it is -- the
12 63 overt acts is the common plan as alleged, Your Honor.

13 MJ [Lt Col ROSENOW]: Thank you for that, Trial Counsel.
14 Could you read out loud the proposed modification as that
15 section would now read, starting with "The accused is liable"?

16 TC [MR. SHORT]: Yes, Your Honor. It would read: The
17 accused is liable for the above -- I'm sorry -- the
18 above-alleged offense as a principal, comma, a coconspirator,
19 comma, and a participant in a common plan, comma, as in the
20 section entitled Common Allegations, period.

21 MJ [Lt Col ROSENOW]: Again, making no ruling and ordering
22 no particular course from the parties, that's a proposal,
23 Defense Counsel, that I have heard from the trial counsel as

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1 to a potential modification of this language under Charge II,
2 Charge III, and Charge IV, as I understand the government's
3 position. We are, of course, after arraignment, as we have
4 been for some time, but we're also after the entry of pleas.

5 Is there any objection to the pen-and-ink changes that
6 have been proposed by the government?

7 LDC [MS. HENSLER]: Your Honor, based on the concern that
8 you put on the record earlier, we think it more prudent to
9 strike the sentence after the word -- the rest of the sentence
10 after the word -- the phrase "common plan."

11 MJ [Lt Col ROSENOW]: So the defense's counter position or
12 counterproposal for the government -- which, again, I have not
13 ruled. There is an ongoing -- I won't say jockeying, but an
14 ongoing conversation about positions that everyone's taking,
15 and I'm not directing anything and I'm not ruling against or
16 for anyone.

17 Government, back over to you. There's a
18 counterproposal as I hear it.

19 TC [MR. SHORT]: Your Honor, the government's position is,
20 is that the way I've read the complete sentence with the
21 strikethroughs alleviates the commission's concern. I will
22 say we want to move forward. We're not -- you know, I will
23 leave Your Honor with the either/or. I can -- I can -- I have

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1 authority to knock it all out, and just make sure that we --
2 you know, the intent of that -- that paragraph, there was an
3 intent to the paragraph, and I think it loses the intent by
4 losing the antecedent -- or the second phrase.

5 MJ [Lt Col ROSENOW]: Let me ask you this, Government, and
6 I'm going a little bit into the history of the case. Are you
7 familiar with the positions taken by the United States back in
8 the Appellate Exhibit 019 series where there was earlier
9 litigation about striking the common allegations?

10 TC [MR. SHORT]: I am -- I am familiar with it, Your
11 Honor. I couldn't cite it chapter and verse.

12 MJ [Lt Col ROSENOW]: Understood. I've had the benefit of
13 being oriented to those filings and paying some attention to
14 them.

15 One of the other observations that might be useful is
16 across those filings it seemed like the government had taken
17 positions that were consistent with the common allegations
18 being integrated as elements essentially because they're overt
19 acts on Charge V and its specification. So that would be a
20 reason why, of course, the common allegations, the
21 government's argument went, could not be struck and should
22 not.

23 And there was some division drawn in the government's

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1 position about what the meaning or effect of this language was
2 on the earlier charges. Now we're narrowing down to
3 Charge II, III, and IV. The defense had raised different
4 arguments and concerns along the way. I just mention that in
5 case that bears on the position that you take.

6 What I will let you all know is, from the commission's
7 perspective, having reviewed the statute again during the
8 break, having reviewed the Manual for Military Commissions and
9 the Regulation for Trial by Military Commissions, and
10 understanding as well how this case has developed across time,
11 including filings, the way that I understand remedying the
12 concerns that I have, directing no course, is either to strike
13 after the word "common plan" the remainder, or there be an
14 agreement between the parties.

15 Not that this is surplusage, but it's almost like that
16 three-line paragraph or section is a bill of particulars in a
17 way that's been combined as part of the 458. That's somewhat
18 consistent with some of the earlier positions that were taken
19 and reaches out to international tribunal settings and maybe
20 these being more common approaches inside of a federal court
21 setting as compared to a military court-martial setting.

22 Those are the two approaches, Trial Counsel, that
23 would allow me to go forward without further inspection of

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1 this issue. Again, not ruling yet, but understanding that
2 those two choices make it so that I fully understand the
3 accused's pleas, I can explain back to him how he's pled, and
4 I can enter into findings potentially consistent with his
5 pleas. It will be a different conversation, depending on how
6 these things develop, about what goes to the members and in
7 what form, if there is ever a sentencing proceeding in this
8 case.

9 I'll give you time, if you need it, Trial Counsel, if
10 you want to consult; or if you already have your position
11 known, we can move in that direction as well.

12 TC [MR. SHORT]: Your Honor, as I noted, we do have the --
13 I do have the authority from the convening authority to strike
14 the rest of that paragraph. And I didn't mean to raise, you
15 know, an alternative plan and enter into litigation. So I
16 think we'll strike that language, pen and ink it from the
17 word-- after the word "common plan," Your Honor.

18 MJ [Lt Col ROSENOW]: Is that going to be the same for
19 Charge III as well as Charge IV?

20 TC [MR. SHORT]: Yes, II, III, and IV, Your Honor.

21 MJ [Lt Col ROSENOW]: Any objection from the defense if
22 that's the government's goal?

23 LDC [MS. HENSLER]: No objection, Your Honor.

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1 MJ [Lt Col ROSENOW]: Would the defense agree again that,
2 even with that modification, the accused's pleas have been
3 properly entered and can be determined by the commission?

4 LDC [MS. HENSLER]: Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Trial Counsel, any other pen-and-ink
6 changes since we last spoke?

7 TC [MR. SHORT]: Well, we have the -- the zero on the
8 10,000. Depending on Your Honor's colloquy regarding Charge V
9 and how you treat that, there may be some pen and ink, but as
10 to II, III, and IV, no pen and ink.

11 MJ [Lt Col ROSENOW]: Thank you. To recapitulate, has it
12 happened or has it not happened that there's been a line
13 through and an initial on what we're going to call the
14 original charge sheet and which will be included in the record
15 on Common Allegation 24?

16 TC [MR. SHORT]: It has not happened, Your Honor. I've
17 been advised by the court reporter that she's going to allow
18 us to use her copy now. She's also got a copy of the Arabic
19 version, and we can -- we can kind of follow along. If you
20 would like that to happen now, maybe at the next break,
21 but ----

22 MJ [Lt Col ROSENOW]: If there is agreement between the
23 parties, we can proceed. And the agreement I'm looking for

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1 is, one, the government will make that pen-and-ink change
2 without objection from the defense; and, two, the government
3 will make the three pen-and-ink changes without objection from
4 the defense. That's not an order. That's an observation of
5 where we would need agreement to be able to proceed.

6 And I appreciate that, during one of these comfort
7 breaks, those pen-and-ink changes can be made as long as I
8 know the left and right limits and Mr. Hadi knows the left and
9 right limits of what his plea is and what the government's
10 alleging.

11 Does that work for the government?

12 TC [MR. SHORT]: That works for the government, Your
13 Honor. We can proceed as though those have been pen and inked
14 and deleted -- or pen and inked.

15 MJ [Lt Col ROSENOW]: Thank you, Trial Counsel.

16 Defense Counsel, does that work for you as well?

17 LDC [MS. HENSLER]: Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Thank you.

19 Mr. Hadi, are you prepared to proceed in the inquiry I
20 have for you regarding Charge II and its allegations?

21 **[Accused conferred with counsel.]**

22 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor,
23 I'm ready.

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1 MJ [Lt Col ROSENOW]: Thank you. In the specification of
2 Charge II, you are charged with the offense of attacking
3 protected property in violation of 10 United States Code
4 Section 950t(4). By pleading guilty to this offense under the
5 theory of principal liability, you are admitting that the
6 following elements are true and accurately describe what you
7 did and that you are personally convinced that the government
8 could prove beyond a reasonable doubt:

9 One, that on or about 29 September 2003 at or near
10 Shkin, Afghanistan, the actual perpetrators engaged in an
11 attack by intentionally firing at a military medical
12 helicopter as it attempted to evacuate a United States
13 military casualty from the battlefield;

14 Two, that the object of the attack was protected
15 property under the laws of war, to wit, a military medical
16 helicopter bearing the emblem and distinctive sign of the
17 medical service of armed forces, particularly the red cross on
18 a white ground;

19 Three, that the actual perpetrators intended such
20 protected property to be an object of the attack;

21 Four, that the actual perpetrators should have known
22 of the factual circumstances that established the property's
23 protected status;

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1 Five, that the attack took place in the context of and
2 was associated with hostilities and either;

3 Six, that you aided, abetted, counseled, commanded,
4 procured, or caused the actual perpetrators to commit the
5 offense of attacking protected property by the means described
6 in the stipulation of fact, or;

7 Seven, that as a superior commander who had reason to
8 know or should have known that a subordinate was about to
9 commit the offense of attacking protected property by the
10 means described in the stipulation of fact or had done so, you
11 failed to take the necessary and reasonable measures to
12 prevent such acts or to punish the actual perpetrators.

13 The first through fifth elements above describe the
14 underlying offense and come from the Manual for Military
15 Commissions. The sixth and seventh elements address the types
16 of vicarious liability applying to a principal within the
17 facts of this case.

18 Trial Counsel, any objection to the elements as I have
19 defined them for the specification of Charge II under the
20 theory of principal liability?

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

22 MJ [Lt Col ROSENOW]: Defense Counsel?

23 LDC [MS. HENSLER]: No objection, Your Honor.

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1 MJ [Lt Col ROSENOW]: Thank you.

2 Mr. Hadi, as I previously explained, the government
3 has also alleged that you are separately liable for the
4 underlying offense in the specification of Charge II based on
5 the rule of coconspirators. By pleading guilty to this
6 offense under the theory of conspiratorial liability, you are
7 admitting again the first through fifth elements I provided a
8 moment ago.

9 You are further admitting that the following elements
10 are true and accurately describe what you did and that you
11 were personally convinced that the government could prove
12 beyond a reasonable doubt:

13 One, that from in or about 1996 to on or about
14 29 September 2003 you entered into an agreement with the
15 individuals named in Charge V and its specification to commit
16 the substantive offenses triable by military commission named
17 in your plea to Charge V and its specification;

18 Two, that while the agreement continued to exist and
19 while you remained a party to the agreement, you or another
20 individual named in Charge V and its specification performed
21 one or more overt acts stated in the common allegations for
22 the purpose of bringing about the object of the agreement;

23 Three, that the actual perpetrators of the attack on

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1 protected property were members of the conspiracy, and;

2 Four, that the underlying offense was committed in
3 furtherance of the conspiracy or that the underlying offense
4 was an object of the conspiracy.

5 Trial Counsel, do you have any objection to the
6 elements as I have defined them for the specification of
7 Charge II under the theory of conspiratorial liability?

8 TC [MR. SHORT]: No, Your Honor.

9 MJ [Lt Col ROSENOW]: Defense Counsel?

10 LDC [MS. HENSLER]: No objection, Your Honor, but may I
11 have a moment to speak with my client?

12 MJ [Lt Col ROSENOW]: Certainly.

13 [Accused conferred with counsel.]

14 ACC [MR. HADI]: [Speaking in English] Yes, I understand,
15 Your Honor.

16 MJ [Lt Col ROSENOW]: Thank you.

17 In order to ensure you fully understand the elements,
18 I will provide the following definitions:

19 "Hostilities" means any conflict subject to the laws
20 of war.

21 "In the context of and associated with hostilities"
22 requires that there be a connection or nexus between
23 hostilities and the conduct at issue. This connection or

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1 nexus may be determined in a number of ways and could involve,
2 but is not limited to, time, location, or purpose of the
3 conduct at issue in relation to hostilities. Mere closeness
4 of conduct in time or location to hostilities does not satisfy
5 the necessary nexus.

6 For example, murder committed between members of the
7 same armed force for reasons of personal gain unrelated to
8 hostilities, even if associated with hostilities in time and
9 location, is not in the context of hostilities; however,
10 conduct that is undertaken or organized with knowledge or
11 intent to contribute to hostilities to include by advantaging
12 or disadvantaging a party to hostilities with respect to that
13 party's position in hostilities would satisfy the nexus
14 requirement.

15 The term "protected property" means any property
16 specifically protected by the law of war, including buildings
17 dedicated to religion, education, art, science, or charitable
18 purposes, historic monuments, hospitals, and places where the
19 sick and wounded are collected, but only if and to the extent
20 such property is not being used for military purposes or is
21 not otherwise a military objective. The term includes objects
22 properly identified by one of the distinctive emblems of the
23 Geneva conventions, but does not include civilian property

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1 that is a military objective.

2 Do you understand all of the definitions that I have
3 just read to you?

4 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: And do you understand that these
6 elements and definitions constitute the offense of attacking
7 protected property?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Mr. Hadi, I want you to take one
10 moment to reread the specification of Charge II and tell me or
11 have your counsel tell me when you are done rereading it.

12 **[Did as directed.]**

13 LDC [MS. HENSLER]: Your Honor, he's done.

14 MJ [Lt Col ROSENOW]: Thank you, Defense Counsel.

15 Mr. Hadi, after reviewing the specification of
16 Charge II again, do you still admit that the elements are true
17 and accurately describe what you did and that you are
18 personally convinced that the government could prove your
19 guilt beyond a reasonable doubt with the exception of the
20 language, quote, knew and, end quote?

21 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: Understanding that you have admitted
23 every element we have discussed regarding this offense, I have

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1 a few more specific questions for you.

2 Do you agree that you are criminally responsible for
3 the attack on protected property alleged in the specification
4 of Charge II?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: Thank you. I had asked you before
7 to keep a copy of the stipulation of fact with you. I would
8 ask you to turn your attention to the stipulation of fact, and
9 I will orient you to paragraphs 95, 96, 97, as well as 119.

10 Earlier you indicated that you agreed with each
11 paragraph of the stipulation of fact. Once you've had a
12 moment to review paragraphs 95, 96, 97, and 119, I ask you:
13 Is that still true, that you agree with each of those
14 paragraphs.

15 **[Accused conferred with counsel.]**

16 ACC [MR. HADI]: **[Speaking in English]** I completed it,
17 yes.

18 MJ [Lt Col ROSENOW]: Thank you. And are those paragraphs
19 still admitted by you to be true?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Thank you.

22 We also previously discussed the affirmative defense
23 of withdrawal as it applies to conspiratorial liability and,

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1 in turn, how it connects to Charge II, Charge III, Charge IV,
2 and all of their specifications.

3 Do you request that I provide you these definitions
4 again?

5 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor. I
6 understand.

7 MJ [Lt Col ROSENOW]: Thank you.

8 Do you still understand, then, that this is an
9 affirmative defense as I have explained it to you?

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Do you agree and admit that you did
12 not effectively withdraw from the conspiracy before the
13 offense described in Charge II and its specification was
14 committed?

15 **[Accused conferred with counsel.]**

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Thank you.

18 Do counsel for either side believe that any further
19 inquiry is required with regard to Charge II and its
20 specification? Defense Counsel?

21 LDC [MS. HENSLER]: No, Your Honor.

22 MJ [Lt Col ROSENOW]: Trial Counsel?

23 TC [MR. SHORT]: No, Your Honor.

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1 MJ [Lt Col ROSENOW]: Thank you.

2 In Specification 1 of Charge III, you are charged with
3 the offense of using treachery or perfidy in violation of
4 10 United States Code Section 950t(17). By pleading guilty to
5 this offense under the theory of principal liability, you are
6 admitting that the following elements are true and accurately
7 describe what you did and that you are personally convinced
8 that the government could prove, beyond a reasonable doubt:

9 One, that on or about 7 June 2003 at or near Kabul,
10 Afghanistan, the actual perpetrators invited the confidence
11 and belief of at least one person that a vehicle appearing to
12 be a civilian vehicle was entitled to protection under the law
13 of war;

14 Two, that the actual perpetrators intended to use and
15 betray that confidence and belief;

16 Three, that the actual perpetrators killed and injured
17 at least one German military member;

18 Four, that the actual perpetrators made use of that
19 confidence and belief in killing and injuring such person or
20 persons by detonating explosives in said vehicle, thereby
21 attacking a bus carrying members of the German military;

22 Five, that the conduct took place in the context of,
23 and was associated with, hostilities and, either;

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1 Six, that you aided, abetted, counseled, commanded,
2 procured, or caused the actual perpetrators to commit the
3 offense of using treachery or perfidy by the means described
4 in the stipulation of fact; or that as a superior commander
5 who knew, had reason to know, or should have known that a
6 subordinate was about to commit the offense of using treachery
7 or perfidy by the means described in the stipulation of fact,
8 or had done so, you failed to take the necessary and
9 reasonable measures to prevent such acts or to punish the
10 actual perpetrators.

11 The first through fifth elements above describe the
12 underlying offense and come from the Manual for Military
13 Commissions. The sixth and seventh elements address the types
14 of vicarious liability applying to a principal within the
15 facts of this case.

16 Trial Counsel, any objection to the elements as I have
17 defined them for Specification 1 of Charge III under the
18 theory of principal liability?

19 TC [MR. SHORT]: No, Your Honor.

20 MJ [Lt Col ROSENOW]: Defense Counsel?

21 LDC [MS. HENSLER]: No objection, Your Honor.

22 MJ [Lt Col ROSENOW]: As I previously explained, Mr. Hadi,
23 the government has also alleged that you are separately liable

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1 for the underlying offense in Specification 1 of Charge III
2 based on the rule of coconspirators. By pleading guilty to
3 this offense under the theory of conspiratorial liability, you
4 are admitting again the first through fifth elements I
5 provided a moment ago.

6 You are further admitting that the following elements
7 are true and accurately describe what you did and that you are
8 personally convinced that the government could prove beyond a
9 reasonable doubt:

10 One, that from in or about 1996 to on or about
11 7 June 2003, you entered into an agreement with the
12 individuals named in Charge V and its specification to commit
13 the substantive offenses triable by military commission named
14 in your plea to Charge V and its specification;

15 Two, that while the agreement continued to exist and
16 while you remained a party to the agreement, you or another
17 individual named in Charge V and its specification performed
18 one or more overt acts stated in the common allegations for
19 the purpose of bringing about the object of the agreement;

20 Three, that the actual perpetrators of the use of
21 treachery or perfidy were members of the conspiracy, and;

22 Four, that the underlying offense was committed in
23 furtherance of the conspiracy or that the underlying offense

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1 was an object of the conspiracy.

2 Trial Counsel, any objection to the elements as I have
3 defined them for Specification 1 of Charge III under the
4 theory of conspiratorial liability?

5 TC [MR. SHORT]: No, Your Honor.

6 LDC [MS. HENSLER]: No, Your Honor.

7 MJ [Lt Col ROSENOW]: Thank you.

8 Mr. Hadi, in order to ensure you fully understand the
9 elements, I will provide the following definitions:

10 "Hostilities" and "in the context of and associated
11 with hostilities" have the same meaning as I previously
12 explained.

13 Ruses of war are legitimate so long as they do not
14 involve treachery or perfidy on the part of the belligerent
15 resorting to them. They are, however, forbidden if they
16 contravene any generally accepted rule. The line of
17 demarcation between legitimate ruses and forbidden acts of
18 perfidy is sometimes indistinct, but the following examples
19 indicate the correct principles:

20 It would be improper practice to secure an advantage
21 of the enemy by deliberate lying or misleading conduct which
22 involves a breach of faith or when there is a moral obligation
23 to speak truth. For example, it is improper to feign

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1 surrender so as to secure an advantage over the opposing
2 belligerent thereby; so similarly, to broadcast to the enemy
3 that an armistice had been agreed upon when such is not the
4 case would be treacherous.

5 On the other hand, it is perfectly -- it is a
6 perfectly proper ruse to summon a force to surrender on the
7 ground that is surrounded and thereby induce such surrender
8 with a small force.

9 Treacherous or perfidious conduct in war is forbidden
10 because it destroys the basis for a restoration of peace short
11 of the complete annihilation of one belligerent by the other.

12 One may commit an act of treachery or perfidy by, for
13 example, feigning an intent to negotiate under a flag of truce
14 or a surrender or feigning incapacitation by wounds or
15 sickness or feigning a civilian noncombatant status or
16 feigning a protected status by the use of signs, emblems or
17 uniforms of the United Nations or a neutral state or a state
18 not party to the conflict.

19 Do you understand all of the definitions that I have
20 just read to you?

21 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: And do you understand that these
23 elements and definitions constitute the offense of using

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1 treachery or perfidy?

2 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Mr. Hadi, I'd like you to take a
4 moment to reread Specification 1 of Charge III, and when
5 you're done reviewing it, you can let me know or your counsel
6 can let me know.

7 **[Did as directed.]**

8 ACC [MR. HADI]: I read it, Your Honor.

9 MJ [Lt Col ROSENOW]: Thank you. Having reviewed
10 Specification 1 of Charge III again, do you still admit that
11 the elements are true and accurately describe what you did and
12 that you are personally convinced that the government could
13 prove your guilt beyond a reasonable doubt?

14 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

15 MJ [Lt Col ROSENOW]: Let's look now at some of the
16 provisions in the stipulation of fact which address this
17 offense. If you would, turn your attention to paragraphs 103
18 and 120 of the stipulation of fact.

19 Earlier you indicated that you agreed with each
20 paragraph of the stipulation of fact. After reviewing
21 paragraphs 103 and 120, please let me know if that is still
22 true.

23 **[Accused conferred with counsel.]**

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1 ACC [MR. HADI]: Yes, I have read it, Your Honor.

2 MJ [Lt Col ROSENOW]: Thank you.

3 And do you still agree that those paragraphs are true?

4 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Do counsel for either side believe
6 that any further inquiry is required with regard to
7 Specification 1 of Charge III, understanding I will separately
8 cover the affirmative defense of withdrawal as it applies to
9 conspiratorial liability at the end of my discussion of
10 Charge III?

11 TC [MR. SHORT]: Nothing from the government, Your Honor.

12 LDC [MS. HENSLER]: Nothing further is necessary, Your
13 Honor.

14 MJ [Lt Col ROSENOW]: Thank you.

15 In Specification 2 of Charge III, you are charged with
16 the offense of using treachery or perfidy in violation of
17 10 United States Code, Section 950t(17). By pleading guilty
18 to this offense under the theory of principal liability, you
19 are admitting that the following elements are true and
20 accurately describe what you did and that you are personally
21 convinced that the government could prove beyond a reasonable
22 doubt:

23 One, that on or about 27 January 2004 at or near

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1 Kabul, Afghanistan, the actual perpetrators invited the
2 confidence and belief of at least one person that an
3 individual appearing to be a noncombatant civilian was
4 entitled to protection under the law of war;

5 Two, that the actual perpetrators intended to use and
6 betray that confidence and belief;

7 Three, that the actual perpetrators killed and injured
8 at least one Canadian military member;

9 Four, that the actual perpetrators made use of that
10 confidence and belief in killing and injuring such person or
11 persons by detonating explosives concealed beneath said
12 individual's civilian clothing, thereby attacking a coalition
13 convoy carrying members of the Canadian military;

14 Five, that the conduct took place in the context of,
15 and was associated with, hostilities, and, either;

16 Six, that you aided, abetted, counseled, commanded,
17 procured, or caused the actual perpetrators to commit the
18 offense of using treachery or perfidy by the means described
19 in the stipulation of fact or that as a superior commander who
20 knew, had reason to know, or should have known that a
21 subordinate was about to commit the offense of using treachery
22 or perfidy by the means described in the stipulation of fact
23 or had done so, you failed to take the necessary and

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1 reasonable measures to prevent such acts or to punish the
2 actual perpetrators.

3 The first through fifth elements above describe the
4 underlying offense and come from the Manual for Military
5 Commissions. The sixth and seventh elements address the types
6 of vicarious liability applying to a principle within the
7 facts of this case.

8 Trial Counsel, any objection to the elements as I have
9 defined them for Specification 2 of Charge III under the
10 theory of principal liability?

11 TC [MR. SHORT]: No, Your Honor.

12 MJ [Lt Col ROSENOW]: Defense Counsel?

13 LDC [MS. HENSLER]: No, Your Honor.

14 MJ [Lt Col ROSENOW]: Mr. Hadi, as I previously explained,
15 the government has also alleged that you are separately liable
16 for the underlying offense in Specification 2 of Charge III
17 based on the rule of coconspirators.

18 By pleading guilty to this offense under the theory of
19 conspiratorial liability, you are admitting again the first
20 through fifth elements I provided a moment ago. You are
21 further admitting that the following elements are true and
22 accurately describe what you did and that you are personally
23 convinced that the government could prove beyond a reasonable

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1 doubt:

2 One, that from in or about 1996 to on or about
3 27 January 2004 you entered into an agreement with the
4 individuals named in Charge V and its specification to commit
5 the substantive offenses triable by military commission named
6 in your plea to Charge V and its specification;

7 Two, that while the agreement continued to exist and
8 while you remained a party to the agreement, you or another
9 individual named in Charge V and its specification performed
10 one or more overt acts stated in the common allegations for
11 the purpose of bringing about the object of the agreement;

12 Three, that the actual perpetrators of the use of
13 treachery or perfidy were members of the conspiracy, and;

14 Four, that the underlying offense was committed in
15 furtherance of the conspiracy or that the underlying offense
16 was an object of the conspiracy.

17 Trial Counsel, any objection to the elements as I have
18 defined them for Specification 2 of Charge III under the
19 theory of conspiratorial liability?

20 TC [MR. SHORT]: No objections, Your Honor.

21 MJ [Lt Col ROSENOW]: Defense Counsel?

22 LDC [MS. HENSLER]: No objections.

23 MJ [Lt Col ROSENOW]: Mr. Hadi, all relevant definitions

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1 involving Specification 2 of Charge III were covered with my
2 discussion of Specification 1 of Charge III. Would you like
3 me to provide them again?

4 ACC [MR. HADI]: It's not necessary, Your Honor.

5 MJ [Lt Col ROSENOW]: Thank you.

6 To confirm, then, is it correct that you still
7 understand all of the definitions relevant to this offense?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: And do you understand that these
10 elements and definitions constitute the offense of using
11 treachery or perfidy?

12 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

13 MJ [Lt Col ROSENOW]: Mr. Hadi, I would like you to reread
14 Specification 2 of Charge III; and when you're done reading,
15 either let me know or your counsel can let me know.

16 **[Did as directed.]**

17 ACC [MR. HADI]: I have read it, Your Honor.

18 MJ [Lt Col ROSENOW]: Thank you.

19 Having reviewed Specification 2 of Charge III once
20 again, do you still admit that the elements are true and
21 accurately describe what you did and that you are personally
22 convinced that the government could prove your guilt beyond a
23 reasonable doubt?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Let's turn our attention now to some
3 of the provisions in the stipulation of fact which address
4 this offense. If you would, please take a moment and review
5 paragraphs 104, 105, 107, and 121.

6 Earlier you indicated that you agreed with each
7 paragraph of the stipulation of fact. After reviewing
8 paragraphs 104, 105, 107, and 121, let me know if that is
9 still true.

10 **[Accused conferred with counsel.]**

11 ACC [MR. HADI]: I've read it, Your Honor.

12 MJ [Lt Col ROSENOW]: Thank you.

13 Do you still agree that each of those paragraphs is
14 true?

15 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

16 MJ [Lt Col ROSENOW]: Do counsel for either side believe
17 that any further inquiry is required with regard to
18 Specification 2 of Charge III, understanding I will separately
19 cover the affirmative defense of withdrawal as it applies to
20 conspiratorial liability at the end of my discussion of
21 Charge III?

22 TC [MR. SHORT]: Not from the government, Your Honor.

23 LDC [MS. HENSLER]: No, Your Honor.

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1 MJ [Lt Col ROSENOW]: Thank you.

2 My preference would be to cover Specification 3 of
3 Charge III and then poll the parties and see whether or not we
4 could also cover Charge IV. And if not, we would take a break
5 at that point.

6 Does that work as a way ahead for the United States?

7 TC [MR. SHORT]: Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: Defense Counsel? If you need a
9 comfort break now, that's why I'm polling you, just in case.

10 LDC [MS. HENSLER]: May I consult with my client briefly?
11 **[Accused conferred with counsel.]**

12 LDC [MS. HENSLER]: Your Honor, would it be possible to do
13 a comfort break now? He needs to take some medication.

14 MJ [Lt Col ROSENOW]: Does 15 minutes suffice?

15 LDC [MS. HENSLER]: Yes, that would be fine. Thank you.

16 MJ [Lt Col ROSENOW]: For the United States, does that
17 work as well?

18 TC [MR. SHORT]: Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: The commission will be in recess for
20 15 minutes.

21 **[The R.M.C. 803 session recessed at 1505, 13 June 2022.]**

22 **[END OF PAGE]**

23

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1 [The R.M.C. 803 session was called to order at 1530,
2 13 June 2022.]

3 MJ [Lt Col ROSENOW]: The commission is called to order.
4 All parties who were present before the last recess are here
5 again present, including the accused.

6 Over the break I was permitted a bit more time with
7 Appellate Exhibits 217G, 217H, and 217I. There appears to be
8 a typographical error on page 2 of Appellate Exhibit 217G
9 indicating the excepting of language like "attacking civilian
10 objections" rather than "attacking civilian objects." That
11 typographical error was carried over into the memorandum that
12 was accomplished by the convening authority in both 217H as
13 well as 217I.

14 My staff polled the court reporter. We believe that
15 it was -- properly announced the plea as attacking civilian
16 objects, but it is indicated there as something slightly
17 different. I wanted to make that plain for the record.

18 Government, any concerns before moving ahead?

19 TC [MR. SHORT]: I think that covers it, Your Honor. And,
20 Your Honor, if I may, also, we have made the line-outs in the
21 charge sheet, both the English and Arabic, the three,
22 Charge II, Charge III, Charge IV, as well as the zero in the
23 \$100,000.

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1 MJ [Lt Col ROSENOW]: Thank you for that. Is that with
2 the court reporter?

3 TC [MR. SHORT]: Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Could I take a moment and review?
5 [Pause.]

6 MJ [Lt Col ROSENOW]: Thank you. Returning the charge
7 sheet.

8 Defense Counsel, any concerns about how the pleas were
9 entered, given the note that I just made for the record?

10 LDC [MS. HENSLER]: No concern, Your Honor.

11 MJ [Lt Col ROSENOW]: Thank you for that.

12 Mr. Hadi, we will turn our attention now to
13 Specification 3 of Charge III. In Specification 3 of
14 Charge III you are charged with the offense of using treachery
15 or perfidy in violation of 10 United States Code,
16 Section 950t(17).

17 By pleading guilty to this offense under the theory of
18 principal liability, you are admitting that the following
19 elements are true and accurately describe what you did and
20 that you are personally convinced that the government could
21 prove beyond a reasonable doubt:

22 One, that on or about 28 January 2004, at or near
23 Kabul, Afghanistan, the actual perpetrators invited the

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1 confidence and belief of at least one person that a vehicle,
2 appearing to be a civilian vehicle, was entitled to protection
3 under the law of war;

4 Two, that the actual perpetrators intended to
5 betray -- excuse me, to use and betray that confidence and
6 belief;

7 Three, that the actual perpetrators killed and injured
8 at least one military member of either the British or Estonian
9 militaries;

10 Four, that the actual perpetrators made use of that
11 confidence and belief in killing and injuring such person or
12 persons by detonating explosives in said vehicle, thereby
13 attacking a coalition convoy carrying members of the British
14 and Estonian militaries;

15 Five, that the conduct took place in the context of,
16 and was associated with, hostilities, and either;

17 Six, that you aided, abetted, counseled, commanded,
18 procured, or caused the actual perpetrators to commit the
19 offense of using treachery or perfidy by the means described
20 in the stipulation of fact, or;

21 Seven, that as a superior commander who knew, had
22 reason to know, or should have known that a subordinate was
23 about to commit the offense of using treachery or perfidy by

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1 the means described in the stipulation of fact or had done so,
2 you failed to take the necessary and reasonable measures to
3 prevent such acts or to punish the actual perpetrators.

4 The first through fifth elements above describe the
5 underlying offense and come from the Manual for Military
6 Commissions. The sixth and seventh elements address the types
7 of vicarious liability applying to a principal within the
8 facts of this case.

9 Trial Counsel, any objection to the elements as I have
10 defined them for Specification 3 of Charge III under the
11 theory of principal liability?

12 TC [MR. SHORT]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: Defense Counsel?

14 LDC [MS. HENSLER]: No, Your Honor.

15 MJ [Lt Col ROSENOW]: As I previously explained, the
16 government has also alleged that you are separately liable for
17 the underlying offense in Specification 3 of Charge III based
18 on the rule of coconspirators.

19 By pleading guilty to this offense under the theory of
20 conspiratorial liability, you are admitting again the first
21 through fifth elements I provided you a moment ago. You are
22 further admitting that the following elements are true and
23 accurately describe what you did and that you are personally

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1 convinced that the government could prove beyond a reasonable
2 doubt:

3 One, that from in or about 1996 to on or about
4 28 January 2004 you entered into an agreement with the
5 individuals named in Charge V and its specification to commit
6 the substantive offenses triable by military commission named
7 in your plea to Charge V and its specification;

8 Two, that while the agreement continued to exist and
9 while you remained a party to the agreement, you or another
10 individual named in Charge V and its specification performed
11 one or more overt acts stated in the common allegations for
12 the purpose of bringing about the object of the agreement;

13 Three, that the actual perpetrators of the use of
14 treachery or perfidy were members of the conspiracy, and;

15 Four, that the underlying offense was committed in
16 furtherance of the conspiracy or that the underlying offense
17 was an object of the conspiracy.

18 Trial Counsel, any objection to the elements as I have
19 defined them for Specification 3 of Charge III under the
20 theory of conspiratorial liability?

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

22 MJ [Lt Col ROSENOW]: Defense Counsel?

23 LDC [MS. HENSLER]: No objection.

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1 MJ [Lt Col ROSENOW]: Mr. Hadi, all relevant definitions
2 involving Specification 3 of Charge III were covered with my
3 discussion of Specification 1 of Charge III. Would you like
4 me to provide them again?

5 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

6 MJ [Lt Col ROSENOW]: Do you still understand all the
7 definitions relevant to this offense?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Thank you.

10 And do you understand that these elements and
11 definitions constitute the offense of using treachery or
12 perfidy?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

14 MJ [Lt Col ROSENOW]: Mr. Hadi, I want you to please
15 reread Specification 3 of Charge III and tell me when you're
16 done reading it or your counsel can inform me.

17 **[Did as directed.]**

18 ACC [MR. HADI]: I read it, Your Honor.

19 MJ [Lt Col ROSENOW]: Thank you.

20 Having reviewed it again, do you still admit that the
21 elements are true and accurately describe what you did and
22 that you are personally convinced that the government could
23 prove your guilt beyond a reasonable doubt?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: Let's turn our attention to some of
3 the provisions in the stipulation of fact which address this
4 offense. If you would, please review paragraphs 104, 106,
5 107, and 122.

6 Earlier you indicated that you agreed with each
7 paragraph of the stipulation of fact. After reviewing
8 paragraphs 104, 106, 107, and 122, let me know if that is
9 still true.

10 ACC [MR. HADI]: I have read it, Your Honor.

11 MJ [Lt Col ROSENOW]: And do you agree that those
12 paragraphs are true?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

14 MJ [Lt Col ROSENOW]: Mr. Hadi, we previously discussed
15 the affirmative defense of withdrawal as it applies to
16 conspiratorial liability and, in turn, how it connects to
17 Charge II, Charge III, Charge IV, and all of their
18 specifications.

19 Do you request that I provide these definitions again?

20 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

21 MJ [Lt Col ROSENOW]: Do you understand this affirmative
22 defense as I have explained it to you?

23 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: Do you agree and admit that you did
2 not effectively withdraw from the conspiracy before the
3 offenses described in Charge III and its specifications were
4 committed?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: Do counsel for either side believe
7 that any further inquiry is required with regard to any of the
8 specifications of Charge III?

9 TC [MR. SHORT]: Nothing further from the government, Your
10 Honor.

11 MJ [Lt Col ROSENOW]: Thank you.

12 LDC [MS. HENSLER]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: Thank you.

14 In the specification of Charge IV, you are charged
15 with the offense of attempted use of treachery or perfidy in
16 violation of 10 United States Code, Section 950t(28).

17 By pleading guilty to this offense under the theory of
18 principal liability, you are admitting that the following
19 elements are true and accurately describe what you did and
20 that you are personally convinced that the government could
21 prove beyond a reasonable doubt:

22 One, that on or about 29 March 2004 at or near
23 Jalalabad, Afghanistan, you did a certain overt act; that is,

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1 providing a suicide bomber to attack coalition forces;

2 Two, that the act was done with specific intent to
3 commit the offense of treachery or perfidy;

4 Three, that the act amounted to more than mere
5 preparation; that is, it was a substantial step and a direct
6 movement toward the commission of the intended offense, and;

7 Four, that the act apparently tended to bring about
8 the commission of the offense of use of treachery or perfidy;
9 that is, the act apparently would have resulted in the actual
10 commission of the offense of use of treachery or perfidy
11 except for an unexpected intervening circumstance that
12 prevented completion of that offense.

13 Mr. Hadi, I advise you that preparation consists of
14 devising or arranging the means or measures necessary for the
15 commission of the attempted offense. To find you guilty of
16 this offense, the finder of fact must find, beyond a
17 reasonable doubt, that you went beyond preparatory steps and
18 your act amounted to a substantial step and a direct movement
19 toward the commission of the intended offense. A substantial
20 step is one that is strongly corroborative of your criminal
21 intent and is indicative of your resolve to commit the
22 offense.

23 Proof that the offense of use of treachery or perfidy

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1 actually occurred or was completed is not required; however,
2 it must be proved beyond a reasonable doubt that at the time
3 of the overt act you intended every element of the offense.

4 The elements of the attempted offense which was not
5 completed are:

6 One, that on or about 29 March 2004 at or near
7 Jalalabad, Afghanistan, the actual perpetrators invited the
8 confidence and belief of at least one person that a vehicle
9 appearing to be a civilian vehicle was entitled to protection
10 under the law of war;

11 Two, that the actual perpetrators intended to use and
12 betray that confidence and belief;

13 Three, that the actual perpetrators killed and injured
14 at least one person;

15 Four, that the actual perpetrators made use of that
16 confidence and belief in killing and injuring such person or
17 persons by detonating explosives in said vehicle, thereby
18 attacking a convoy carrying United States military members;

19 Five, that the conduct took place in the context of,
20 and was associated with, hostilities, and either;

21 Six, that you aided, abetted, counseled, commanded,
22 procured, or caused the actual perpetrators to commit the
23 offense of using treachery or perfidy by the means described

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1 in the stipulation of fact, or;

2 Seven, that as a superior commander who knew, had
3 reason to know, or should have known that a subordinate was
4 about to commit the offense of using treachery or perfidy by
5 the means described in the stipulation of fact or had done so,
6 you failed to take the necessary and reasonable measures to
7 prevent such acts or to punish the actual perpetrators.

8 The first through fifth elements above describe the
9 underlying offense, which was not completed, and come from the
10 Manual for Military Commissions. The sixth and seventh
11 elements address the types of vicarious liability applying to
12 a principal within the facts of this case.

13 Trial Counsel, any objection to the elements as I have
14 defined them or the definitions so far provided for the
15 specification of Charge IV under the theory of principal
16 liability?

17 TC [MR. SHORT]: No, Your Honor.

18 MJ [Lt Col ROSENOW]: Defense Counsel?

19 LDC [MS. HENSLER]: No, Your Honor.

20 MJ [Lt Col ROSENOW]: Mr. Hadi, as I previously explained,
21 the government has also alleged that you are separately liable
22 for the underlying offense in the specification of Charge IV
23 based on the rule of coconspirators.

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1 By pleading guilty to this offense under the theory of
2 conspiratorial liability, you are admitting again the elements
3 of an attempted offense under 10 United States Code,
4 Section 950t(28) I provided to you a moment ago.

5 You are further admitting that the following elements
6 are true and accurately describe what you did and that you are
7 personally convinced that the government could prove beyond a
8 reasonable doubt:

9 One, that from in or about 1996 to on or about
10 29 March 2004 you entered into an agreement with the
11 individuals named in Charge V and its specification to commit
12 the substantive offenses triable by military commission named
13 in your plea to Charge V and its specification;

14 Two, that while the agreement continued to exist and
15 while you remained a party to the agreement, you and another
16 individual named in Charge V and its specification performed
17 one or more overt acts stated in the common allegations for
18 the purpose of bringing about the object of the agreement;

19 Three, that the actual perpetrators of the attempted
20 use of treachery or perfidy were members of the conspiracy,
21 and;

22 Four, that the underlying offense was committed in
23 furtherance of the conspiracy or that the underlying offense

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1 was an object of the conspiracy.

2 Trial Counsel, any objection to the elements as I have
3 defined them for the specification of Charge IV under the
4 theory of conspiratorial liability?

5 TC [MR. SHORT]: No objection, Your Honor.

6 LDC [MS. HENSLER]: No objection, Your Honor.

7 MJ [Lt Col ROSENOW]: Thank you.

8 All relevant definitions involving the specification
9 of Charge IV have been provided above or were covered with my
10 discussion of Specification 1 of Charge III.

11 Mr. Hadi, would you like me to provide any definitions
12 again?

13 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

14 MJ [Lt Col ROSENOW]: Do you still understand all of the
15 definitions relevant to this offense?

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: And do you understand that these
18 elements and definitions constitute the offense of attempted
19 use of treachery or perfidy?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Please take a moment and reread the
22 specification of Charge IV, and when you're done reviewing,
23 either let me know or your counsel can let me know.

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1 [Did as directed.]

2 ACC [MR. HADI]: I read it, Your Honor.

3 MJ [Lt Col ROSENOW]: Thank you.

4 After reviewing specification of Charge IV again, do
5 you still admit that the elements are true and accurately
6 describe what you did and that you are personally convinced
7 that the government could prove your guilt beyond a reasonable
8 doubt?

9 ACC [MR. HADI]: [Speaking in English] Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: I'd ask you to look now at
11 paragraphs 108 and 123 of the stipulation of fact. You had
12 earlier indicated that you agreed with each paragraph of the
13 stipulation of fact. After reviewing paragraphs 108 and 123,
14 let me know if that is still true.

15 ACC [MR. HADI]: I have read it, Your Honor.

16 MJ [Lt Col ROSENOW]: Would you agree that those
17 paragraphs are true?

18 ACC [MR. HADI]: [Speaking in English] Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: We previously discussed the
20 affirmative defense of withdrawal as it applies to
21 conspiratorial liability and, in turn, how it connects to
22 Charge II, Charge III, Charge IV, and all of their
23 specifications.

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1 Do you request that I provide these definitions again?

2 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

3 Thank you.

4 MJ [Lt Col ROSENOW]: Mr. Hadi, do you understand this
5 affirmative defense as I have explained it to you?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: Do you agree and admit that you did
8 not effectively withdraw from the conspiracy before the
9 offense described in Charge IV and its specification was
10 committed?

11 **[Accused conferred with counsel.]**

12 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

13 MJ [Lt Col ROSENOW]: Do counsel for either side believe
14 that any further inquiry is required with regard to Charge IV
15 and its specification?

16 TC [MR. SHORT]: Nothing further from the government, Your
17 Honor.

18 LDC [MS. HENSLER]: No, Your Honor.

19 MJ [Lt Col ROSENOW]: In the specification of Charge V,
20 you are charged with the offense of conspiracy in violation of
21 10 United States Code, Section 950t(29).

22 By pleading guilty to this offense, you are admitting
23 that the following elements are true and accurately describe

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1 what you did and that you are personally convinced that the
2 government could prove beyond a reasonable doubt:

3 One, that from in or about 1996 to on or about
4 1 November 2006 at multiple locations in and around
5 Afghanistan, Pakistan, Iraq, Turkey, and elsewhere in the
6 context of and associated with hostilities you entered into an
7 agreement with Usama bin Laden, Ayman al Zawahiri, Mohammed
8 Atef, Khalid Sheikh Mohammed, and other individuals, known and
9 unknown, to commit the following substantive offenses triable
10 by military commission; to wit, using treachery or perfidy,
11 attacking protected property, and attacking civilian objects;

12 Two, that this was done with the purpose of forcing
13 the United States and its allies out of Afghanistan and Iraq;

14 Three, that you knew the unlawful objectives and
15 purposes of the agreement and joined willfully; that is, with
16 the intent to further the unlawful objectives and purposes,
17 and;

18 Four, that thereafter you knowingly committed an overt
19 act in order to accomplish some objective or purpose of the
20 agreement.

21 Counsel, given the accused's pleas, any objection to
22 the elements as I have defined them for the specification of
23 Charge V?

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1 TC [MR. SHORT]: No, Your Honor.

2 MJ [Lt Col ROSENOW]: Defense Counsel?

3 LDC [MS. HENSLER]: No, Your Honor.

4 MJ [Lt Col ROSENOW]: The law requires me to define the
5 elements of each offense which you are charged with conspiracy
6 to commit as well. Because these underlying offenses are
7 discussed within the common allegations, I will provide only
8 the general elements of each offense and related definitions.
9 First, though, I have a few questions about the common
10 allegations.

11 Mr. Hadi, are you familiar with the section of the
12 charge sheet titled Common Allegations?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

14 MJ [Lt Col ROSENOW]: Have you read it and discussed it
15 with your attorneys?

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Thank you.

18 I will now return to explaining the elements of each
19 offense which you are charged with conspiracy to commit and
20 that you have entered a plea of guilty concerning.

21 Regarding the offense of using treachery or perfidy in
22 violation of 10 United States Code Section, 950t(17), the
23 elements and related definitions of the offense follow those I

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1 have previously described in discussing the specifications of
2 Charge III and the specification of Charge IV.

3 Regarding the offense of attacking protected property,
4 in violation of 10 United States Code, Section 950t(4), the
5 elements and related definitions of the offense follow those I
6 have previously described in discussing the specification of
7 Charge II.

8 Regarding the offense of attacking civilian objects,
9 in violation of 10 United States Code, Section 950t(3), the
10 elements of the offense are as follows:

11 One, an accused engaged in an attack;

12 Two, the object of the attack was civilian property;
13 that is, property that was not a military objective;

14 Three, that accused intended such civilian property to
15 be an object of the attack;

16 Four, that accused knew or should have known that such
17 property was not a military objective, and;

18 Five, the attack took place in the context of and was
19 associated with hostilities.

20 Trial Counsel, any objection to the elements that I
21 have defined or the definitions provided regarding the
22 underlying offenses alleged in the specification of Charge V
23 and that the accused has entered a guilty plea concerning?

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1 TC [MR. SHORT]: No, Your Honor.

2 MJ [Lt Col ROSENOW]: Defense Counsel?

3 LDC [MS. HENSLER]: No, Your Honor.

4 MJ [Lt Col ROSENOW]: Mr. Hadi, do you understand all of
5 the elements and definitions that I have provided to you or
6 referenced?

7 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: I'm returning now to the offense of
9 conspiracy as alleged in the specification of Charge V, and in
10 order to ensure that you fully understand these elements, I
11 will provide the following definitions:

12 Two or more persons are required in order to have a
13 conspiracy. Knowledge of the identity of coconspirators and
14 their particular connection with the agreement need not be
15 established. A person may be guilty of conspiracy although
16 incapable of committing the intended offense.

17 The joining of another conspirator after the
18 conspiracy has been established does not create a new
19 conspiracy or affect the status of the other conspirators.

20 The agreement or common criminal purpose in a
21 conspiracy need not be in any particular form or manifested in
22 any formal words. The agreement must, at least in part,
23 involve the commission or intended commission of one or more

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1 substantive offenses triable by military commission.

2 A single conspiracy may embrace multiple criminal
3 objectives.

4 The agreement need not include knowledge that any
5 relevant offense is, in fact, triable by military commission.

6 Although the accused must be subject to the Military
7 Commissions Act, other coconspirators need not be.

8 The overt act must be done by the accused, and it must
9 be done to effectuate the object of the conspiracy or in
10 furtherance of the common criminal purpose.

11 Given the charging language in the specification of
12 Charge V, the overt act must have been done following the
13 agreement.

14 The overt act need not be in itself criminal, but it
15 must advance the purpose of the conspiracy. Although
16 committing the intended offense may constitute the overt act,
17 it is not essential that the object offense be committed. It
18 is not essential that any substantive offense, including the
19 object offense, be committed.

20 Each conspirator is liable for all offenses committed
21 pursuant to or in furtherance of the conspiracy by any of the
22 coconspirators after such conspirator has joined the
23 conspiracy and while the conspiracy continues and such

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1 conspirator remains a party to it.

2 That the object of the conspiracy was impossible to
3 effect is not a defense to this offense.

4 Mr. Hadi, do you understand all of the definitions
5 that I have just read to you?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: And do you understand that these
8 elements and definitions constitute the offense of conspiracy?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: Mr. Hadi, I'd like you to reread the
11 specification of Charge V as well as, if you have it next to
12 you, any of those exhibits I just referenced, Appellate
13 Exhibit 217G, 217H, or 217I.

14 And when you've had the opportunity to review both the
15 specification of Charge V and those exhibits which record the
16 plea that was entered, please let me know or your counsel can
17 let me know.

18 **[Accused conferred with counsel.]**

19 ACC [MR. HADI]: I read it, Your Honor.

20 MJ [Lt Col ROSENOW]: Having reviewed those materials
21 again, do you still admit that the elements are true and
22 accurately describe what you did and that you are personally
23 convinced that the government could prove your guilt beyond a

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1 reasonable doubt with the exceptions and substitutions you
2 have made in your guilty plea?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Understanding that you have admitted
5 the elements as I defined them, I have some additional and
6 specific questions for you:

7 First, do you agree that you entered into the
8 agreement as alleged?

9 **[Accused conferred with counsel.]**

10 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Do you admit that you knew the
12 unlawful objectives and purposes of the agreement and joined
13 willfully; that is, with the intent to further those unlawful
14 objectives and purposes?

15 **[Accused conferred with counsel.]**

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Thank you.

18 Do you agree that you knowingly committed one or more
19 of the overt acts stated in the common allegations in order to
20 accomplish some objective or purpose of the agreement?

21 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: I would like to cover three in
23 particular. As an example, paragraph 9 of the common

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1 allegations states, quote, beginning in or about 1999 you
2 served as an al-Qaeda liaison to the Taliban, end quote.

3 Do you agree that this accurately reflects an overt
4 act that you committed after joining the conspiracy?

5 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

6 MJ [Lt Col ROSENOW]: As another example, paragraph 35 of
7 the common allegations states, quote, in or about
8 September 2003 you organized and planned an attack on U.S.
9 forces located at or near a U.S. military installation at or
10 near Shkin, Afghanistan.

11 Do you agree that this accurately reflects an overt
12 act that you committed after joining the conspiracy?

13 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

14 MJ [Lt Col ROSENOW]: As a final example, paragraph 61 of
15 the common allegation states, quote, on or about 27
16 October 2006 in an effort to continue to travel undetected to
17 Iraq to advise and assist al-Qaeda in Iraq with its
18 insurgency, you filed a letter of objection to the denial of
19 your fraudulent request for asylum in which you continued to
20 use the false name Abdulrahman Yar Mohammed and made false
21 statements.

22 Do you agree that this accurately reflects an overt
23 act that you committed after joining the conspiracy?

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1 LDC [MS. HENSLER]: Your Honor, I need to interject with
2 respect to this common allegation.

3 MJ [Lt Col ROSENOW]: Go ahead.

4 LDC [MS. HENSLER]: The stipulation of fact does address
5 that allegation; however, Mr. Al-Tamir does not agree that the
6 request for asylum was fraudulent, and he does not agree that
7 the name used was false. Other than that, that common
8 allegation is reflected in the stipulation of fact.

9 MJ [Lt Col ROSENOW]: As reflected in paragraph 117 of
10 Prosecution Exhibit 39, on or about 27 October 2006, in an
11 effort to continue to travel undetected to Iraq to advise and
12 assist al-Qaeda in Iraq with its insurgency, the accused filed
13 a letter of objection to the denial of his request for asylum
14 in which he continued to use the name that we've mentioned and
15 made a -- false statements.

16 So the clarification that you're providing me is that
17 it was not a fraudulent request for asylum. There was false
18 information inside what you would characterize as a legitimate
19 request for asylum?

20 LDC [MS. HENSLER]: It was a legitimate request for
21 asylum, and the name used was not false. It's the name --
22 it's Mr. Al-Tamir's Afghan name. He is an Iraqi citizen and
23 also an Afghan citizen, and his Afghan citizenship is under

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1 the name listed in that paragraph.

2 MJ [Lt Col ROSENOW]: Defense Counsel, would you concede
3 that with those clarifications, paragraph 61 of the common
4 allegations still constitutes an overt act within the meaning
5 of the definitions I have provided as they relate to Charge V
6 and its specification?

7 LDC [MS. HENSLER]: Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: Trial Counsel, do you agree with
9 that as well?

10 TC [MR. SHORT]: Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: Thank you.

12 As the parties are aware, the allegation is one or
13 more, so we've covered a few here.

14 I'd like to move along to some of the provisions that
15 are contained in the stipulation of fact which addressed this
16 offense.

17 Mr. Hadi, if you could turn your attention to
18 paragraphs 118 and 124 of the stipulation of fact. You had
19 earlier indicated that you agreed with each paragraph of the
20 stipulation of fact. Once you review paragraphs 118 and 124,
21 please let me know or your counsel can let me know.

22 ACC [MR. HADI]: I've read it, Your Honor.

23 MJ [Lt Col ROSENOW]: Do you agree that those paragraphs

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1 are true?

2 ACC [MR. HADI]: [Speaking in English] Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Mr. Hadi, we had previously
4 discussed the affirmative defense of withdrawal as it applies
5 to conspiratorial liability and, in turn, how it connects to
6 Charge II, Charge III, Charge IV, and all of their
7 specifications. We will now discuss how this affirmative
8 defense applies to Charge V and its specification.

9 A party to a conspiracy who withdraws from or abandons
10 the agreement or enterprise before the commission of an overt
11 act by any conspirator is not guilty of conspiracy. An
12 effective withdrawal or abandonment must consist of
13 affirmative conduct that is wholly inconsistent with adherence
14 to the unlawful agreement or common criminal purpose and it
15 shows that the party has severed all connection with the
16 conspiracy.

17 A conspirator who effectively withdraws from or
18 abandons the conspiracy after the performance of an overt act
19 by one of the conspirators remains guilty of conspiracy and of
20 any offenses committed pursuant to the conspiracy up to the
21 time of the withdrawal or abandonment. The withdrawal of a
22 conspirator from the conspiracy does not affect the status of
23 the remaining members.

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1 Do you understand this affirmative defense as I have
2 explained it to you?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Do you agree and admit that you did
5 not effectively withdraw from the conspiracy described in
6 Charge V and its specification?

7 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: Do counsel for either side believe
9 that any further inquiry is required with regard to Charge V
10 and its specification?

11 TC [MR. SHORT]: No, Your Honor.

12 LDC [MS. HENSLER]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: I will now address the maximum
14 punishment. Mr. Hadi, do you understand that under the Manual
15 for Military Commissions, setting aside any limitations from
16 Appendix A of your pretrial agreement, the maximum punishment
17 for the offenses to which you have entered a plea of guilty is
18 confinement for life and a fine?

19 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

20 MJ [Lt Col ROSENOW]: Trial Counsel, setting aside the
21 separate conversation about whether or not if the accused were
22 found guilty a fine might be appropriate, do you agree in the
23 commission's statement of the maximum punishment for the

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1 offenses to which the accused has entered a plea of guilty?

2 TC [MR. SHORT]: Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Defense Counsel?

4 LDC [MS. HENSLER]: Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: As discussed last Friday and earlier
6 today, I understand there is a pretrial agreement in this
7 case. The pretrial agreement, or PTA, is marked as Appellate
8 Exhibit 217 and Appendix A as Appellate Exhibit 217A. The
9 Arabic translation of the PTA is marked as Appellate
10 Exhibit 217B and the Arabic translation of Appendix A as
11 Appellate Exhibit 217C. There is also an addendum to the
12 pretrial agreement which has been marked as Appellate
13 Exhibit 217E with the Arabic translation marked as Appellate
14 Exhibit 217F.

15 Defense Counsel, do you have a copy of the PTA,
16 appendix, and addendum with you?

17 LDC [MS. HENSLER]: Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Defense Counsel, do you agree that
19 Appellate Exhibits 217B, 217C, and 217F are accurate
20 translations of the PTA and associated documents?

21 LDC [MS. HENSLER]: Yes, Your Honor.

22 MJ [Lt Col ROSENOW]: Mr. Hadi, would you please look at
23 page 7 of the pretrial agreement, page 1 of Appendix A, and

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1 page 4 of the addendum. I am orienting you to what purports
2 to be your signature.

3 And my question is: Are these your signatures on
4 these pages?

5 **[Accused conferred with counsel.]**

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor,
7 I'm looking on these pages.

8 MJ [Lt Col ROSENOW]: Did your counsel thoroughly explain
9 all of these documents to you before you signed them, and do
10 you understand the contents of your pretrial agreement?

11 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

12 MJ [Lt Col ROSENOW]: Did your counsel thoroughly explain
13 the addendum to the pretrial agreement before you signed it,
14 and do you understand its impact on the contents of your
15 pretrial agreement?

16 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Did anyone threaten or force you in
18 any way to enter into this agreement?

19 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

20 MJ [Lt Col ROSENOW]: Does this agreement with its
21 addendum contain all the understandings and agreements that
22 you have made with the convening authority in this case?

23 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: Has anyone made any promises to you
2 that are not written into this agreement in an attempt to get
3 you to plead guilty?

4 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

5 MJ [Lt Col ROSENOW]: Trial Counsel, are these three
6 appellate exhibits, Appellate Exhibits 217, 217A, and 217E,
7 the full and complete agreements in this case, and are you
8 satisfied that there are no other agreements?

9 TC [MR. SHORT]: Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: Defense Counsel?

11 LDC [MS. HENSLER]: Yes, Your Honor.

12 MJ [Lt Col ROSENOW]: Mr. Hadi, as a general rule, in a
13 pretrial agreement, you agree to enter pleas of guilty and in
14 return the convening authority agrees to take some favorable
15 action in your case, usually in the form of limiting the
16 sentence that will be approved. Do you understand this?

17 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: The law requires that I discuss the
19 conditions of your pretrial agreement with you. Take a look
20 at the very first paragraph on page 1 of your pretrial
21 agreement. In relevant part, it states the following:

22 That you are the accused under military commission
23 charges dated 3 February 2014;

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1 That you have read the charges against you;
2 That your counsel have explained them to you, and;
3 That you understand the charges and that you are aware
4 you have a legal right to plead not guilty and to require the
5 government to prove your guilt beyond a reasonable doubt by
6 admissible and competent evidence.

7 Do you understand and agree that all of these things
8 are true?

9 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

10 MJ [Lt Col ROSENOW]: In the following paragraph the
11 pretrial agreement states that in consideration of the
12 agreement by the convening authority to approve a sentence in
13 accord with the limitations set forth in Appendix A, as well
14 as other conditions within the agreement, you offer to plead
15 guilty to Charge II, Charge III, Charge IV, and Charge V and
16 all of their specifications. This was not the plea that was
17 entered for you earlier today by your defense counsel.

18 However, since then, we have been provided, and it's
19 been referenced on the record previously, Appellate
20 Exhibits 217H and 217I, which confirm under the convening
21 authority's hand in writing that the pleas that were entered
22 by you through your counsel meet this requirement and all
23 requirements relating to pleas of the pretrial agreement as

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1 amended.

2 Do you understand that?

3 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

4 MJ [Lt Col ROSENOW]: Trial Counsel, do you believe that
5 is an accurate statement of the convening authority in his
6 view?

7 TC [MR. SHORT]: Yes, Your Honor.

8 MJ [Lt Col ROSENOW]: Defense Counsel, can you confirm
9 that that is an accurate understanding of the accused?

10 LDC [MS. HENSLER]: Yes, Your Honor.

11 MJ [Lt Col ROSENOW]: In the third paragraph, in relevant
12 part, the pretrial agreement states that acceptance by the
13 convening authority constitutes a binding agreement. It also
14 includes the assertion by you that you are, in fact, guilty of
15 the offenses to which you have offered to plead guilty and in
16 the manner that you have offered to plead guilty.

17 Do you understand these provisions?

18 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Mr. Hadi, is it true that you are,
20 in fact, guilty of Charge II, Charge III, Charge IV, Charge V,
21 and all of their specifications with the exceptions to
22 Charge II and the exceptions and substitutions to Charge V
23 that we have already discussed?

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1 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

2 MJ [Lt Col ROSENOW]: I do not intend to cover each
3 remaining paragraph of the pretrial agreement in total because
4 you have already had the time and opportunity to discuss these
5 matters in detail with your counsel; however, if after the
6 additional questions I have you would like to discuss any
7 other portion of your pretrial agreement, we will do so. You
8 can let me know, either directly or through counsel, if that
9 is your wish.

10 Do you understand our way ahead?

11 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

12 MJ [Lt Col ROSENOW]: One more point and as a reminder:
13 When I poll the government for its position regarding
14 interpretation of any term, trial counsel is speaking on
15 behalf of the convening authority. Defense counsel, of
16 course, speaks on behalf of the accused.

17 As we had discussed when we took up the stipulation of
18 fact earlier today, there were remarks offered to the
19 parties in Appellate Exhibit 217D from the court provided over
20 the weekend. The response that has been returned in the form
21 of the addendum to the pretrial agreement clarifies many of
22 these matters, but I do have a few follow-up questions that I
23 would pose to the counsel at this time.

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1 Trial Counsel, with respect to the timing until any
2 sentencing proceedings in this case, it appears that that
3 ambiguity, such that it existed before, has been resolved.
4 Could you succinctly state what you understand the effect of
5 this agreement is if the military judge agrees what is the
6 inbound request?

7 TC [MR. SHORT]: Your Honor, you're referring to the
8 sentencing in two years ----

9 MJ [Lt Col ROSENOW]: Delay, yes.

10 TC [MR. SHORT]: ---- the two-year delay?

11 Your Honor, yes, that's for the parties to conduct
12 some business and ensure that the effect of the agreement is
13 taking place, Your Honor, and that we would request that it be
14 delayed for two years.

15 MJ [Lt Col ROSENOW]: So the presentencing proceedings
16 will be delayed until that time, if granted by a military
17 judge, me being the military judge at this time.

18 TC [MR. SHORT]: Yes.

19 MJ [Lt Col ROSENOW]: What counts, for the purposes of two
20 years from today, as presentencing? Is it members? Is it
21 something else?

22 TC [MR. SHORT]: That would be the members, Your Honor.

23 MJ [Lt Col ROSENOW]: So is it the process of member

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1 selection -- essentially, we would have members sitting in the
2 room who would be navigating voir dire? That would constitute
3 the event that is going to take place on the timeline that's
4 been negotiated under the terms of the amended pretrial
5 agreement?

6 TC [MR. SHORT]: I think that's the event that would take
7 place, given that -- you know, at times members take a couple
8 days, I mean, but we're talking about two years. But that was
9 the intent, Your Honor, absolutely.

10 MJ [Lt Col ROSENOW]: So, Defense Counsel, if on the
11 timeline that's been negotiated at the time that you expect,
12 the event that is experienced is members walking into this
13 courtroom or a different one to navigate member selection,
14 does that meet the terms?

15 LDC [MS. HENSLER]: Yes, Your Honor.

16 MJ [Lt Col ROSENOW]: Understood. And it appears that
17 there is a meeting of the minds on that point.

18 Next. Trial Counsel, by what time, if any, is the
19 convening authority required to make the recommendations that
20 have been promised within paragraphs 19 and 27?

21 TC [MR. SHORT]: Your Honor, both of those are as soon as
22 practicable and reasonable, Your Honor. So it would be very
23 soon.

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1 MJ [Lt Col ROSENOW]: Defense Counsel, does that suffice?

2 LDC [MS. HENSLER]: Yes, Your Honor.

3 MJ [Lt Col ROSENOW]: Thank you.

4 Moving on to page 3 of Appellate Exhibit 217D and
5 looking at the portion involving the stipulation of fact,
6 almost all of my questions have been answered, and the one
7 remaining has been by implication answered, but I want to make
8 it explicit.

9 Does this pretrial agreement permit the parties to
10 later modify or supplement the stipulation of fact, which was
11 accepted as Prosecution Exhibits 39 and 40 today, if they so
12 choose?

13 TC [MR. SHORT]: And, Your Honor, just to be clear, do you
14 mean unilaterally or by agreement?

15 MJ [Lt Col ROSENOW]: By agreement.

16 TC [MR. SHORT]: I think by agreement we can do that,
17 absolutely.

18 MJ [Lt Col ROSENOW]: Defense Counsel, do you agree?

19 LDC [MS. HENSLER]: Yes, Your Honor, as long as it's in
20 writing and signed by both parties.

21 MJ [Lt Col ROSENOW]: Thank you.

22 Following up now on the issue of sentencing evidence,
23 I will ask the direct question: Is the Accused, Trial

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1 Counsel, permitted to testify during the presentencing
2 hearing?

3 TC [MR. SHORT]: Your Honor, per the rules, the accused
4 can provide a sworn or unsworn statement. If he provides a
5 sworn statement, he would be subjected to cross-examination,
6 which I believe has the same effect as testify. But per the
7 rule, I think the terminology is sworn or unsworn statement.
8 And that's why it was used in that context, Your Honor.

9 MJ [Lt Col ROSENOW]: I'm not sure I read 1001 the same
10 way, but what I'm hearing from you is, to the extent
11 paragraph 22 and other related paragraphs would, perhaps,
12 suggest that the accused could not testify in his own defense
13 during sentencing, that is not the intent; he could provide an
14 unsworn statement or he could testify under oath subject to
15 cross-examination. And if we call that testimony, it is not
16 precluded by this pretrial agreement.

17 Is that correct, Trial Counsel?

18 TC [MR. SHORT]: That would be correct, Your Honor.

19 MJ [Lt Col ROSENOW]: Defense Counsel, do you agree?

20 LDC [MS. HENSLER]: Yes, that's right, Your Honor.

21 MJ [Lt Col ROSENOW]: Trial Counsel, what is the immediate
22 effect of the pretrial agreement, if any, on currently pending
23 litigation before the commission?

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1 TC [MR. SHORT]: Your Honor, most, if not all, are mooted.
2 I believe defense counsel will be withdrawing certain pending
3 litigation currently, but it is the effect that certain
4 administrative type of things that will be the province of
5 this commission should be able to go forward, including the
6 health of the accused and counsel issues, Your Honor.

7 MJ [Lt Col ROSENOW]: When you say mooted, I don't hear
8 waived or withdrawn necessarily. I also don't see inside the
9 pretrial agreement or its supplement any requirement for
10 waiver.

11 Am I right to understand that reply back that, in
12 practice, we expect many of these things that were of interest
13 to be no longer of interest, but there is no requirement for
14 the defense counsel to make that decision?

15 TC [MR. SHORT]: That is correct, Your Honor.

16 MJ [Lt Col ROSENOW]: Defense Counsel, could you provide,
17 please, some additional clarity on the record at this point as
18 to how you interpret this term; but then also, in direct
19 response to my question, what's the immediate effect on
20 pending litigation?

21 LDC [MS. HENSLER]: So, Your Honor, with respect to your
22 second question, the defense gave notice in AE 215M that we
23 will -- if the plea is accepted, we will move to withdraw

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1 AE 207 and AE 208 immediately.

2 With the guilty plea, if it's accepted, we will waive
3 all motions related to guilt. We'll also waive motions
4 related to a number of the other substantive areas which are
5 explicitly identified in paragraph 11 of the agreement.

6 We -- we do not waive litigation relating to
7 sentencing mitigation and foundational issues like fairness
8 and impartiality of the commission.

9 MJ [Lt Col ROSENOW]: Thank you. And to make sure that
10 everyone is in alignment here, I take those proposed or
11 intended waivers as not generosity, but also not the opposite,
12 not a requirement. So these still remain at the defense's
13 option to litigate against whatever other professional
14 responsibilities you have to not pursue frivolous litigation
15 when things are no longer properly before a commission.

16 Am I right in understanding all of that?

17 LDC [MS. HENSLER]: Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Additionally, would you agree with
19 me that this is not a condition of the pretrial agreement that
20 is not included in the appellate exhibits that I've already
21 mentioned; this is a different thing?

22 LDC [MS. HENSLER]: Yes, this is not a condition of the
23 pretrial agreement, although the waiver provision does address

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1 some of it. This is a different thing.

2 MJ [Lt Col ROSENOW]: Are you referring to the waiver
3 regarding discovery or a different waiver inside of the
4 pretrial agreement?

5 LDC [MS. HENSLER]: In paragraph 11?

6 MJ [Lt Col ROSENOW]: Yes.

7 LDC [MS. HENSLER]: In the middle of the paragraph?

8 MJ [Lt Col ROSENOW]: Yep.

9 LDC [MS. HENSLER]: It says, "I further agree to withdraw
10 or dismiss, without prejudice, any pending litigation
11 regarding my capture, detention, confinement conditions,
12 structure, jurisdiction, or lawfulness of the military
13 commission, or alien unlawful enemy combatant or alien
14 unlawful enemy belligerent status."

15 MJ [Lt Col ROSENOW]: And then we have -- past that, you
16 gave me examples of -- and a ready one would be 207.

17 Is 207 in that series that I'm missing? Would you say
18 any of these terms reach Appellate Exhibit 207 ----

19 LDC [MS. HENSLER]: No ----

20 MJ [Lt Col ROSENOW]: ---- or is that outside of it?

21 LDC [MS. HENSLER]: No, Your Honor, I think that falls
22 outside of the bounds of the waiver. It's more of a
23 practical -- a practical response to the fact that the defense

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1 will no longer be seeking dismissal on that basis, given that
2 we've reached a pretrial agreement.

3 MJ [Lt Col ROSENOW]: I believe I understand the defense's
4 position as stated.

5 Government, speaking on behalf of the convening
6 authority, is there any other clarity on this point of the
7 immediate effect of the pretrial agreement on currently
8 pending litigation before the commission that you'd like to
9 record for the record today?

10 TC [MR. SHORT]: No, Your Honor.

11 MJ [Lt Col ROSENOW]: Following up, is the accused's
12 guilty plea a conditional plea within the meaning of
13 R.M.C. 910(a)(2), yes or no, Government?

14 TC [MR. SHORT]: No, Your Honor.

15 MJ [Lt Col ROSENOW]: Defense Counsel?

16 LDC [MS. HENSLER]: No, Your Honor.

17 MJ [Lt Col ROSENOW]: I will ask the, perhaps, obvious
18 follow-up: Is this then an unconditional plea outside of any
19 limits that have been placed within the pretrial agreement?

20 TC [MR. SHORT]: Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Defense Counsel?

22 LDC [MS. HENSLER]: Yes, Your Honor.

23 MJ [Lt Col ROSENOW]: And then returning to the last

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1 subparagraph on page 4 of Appellate Exhibit 217D addressing
2 the pretrial agreement, the first question has been clarified
3 in my mind per the language that was provided in the
4 supplement -- excuse me, addendum available at Appellate
5 Exhibit 217E. But, Government, what of the next questions?

6 Is the relief that was provided by the D.C. Circuit
7 waived as a part of this pretrial agreement or obviated and
8 set aside in a way because of the practical reality of moving
9 toward a sentencing proceeding rather than dismissal or
10 something else?

11 TC [MR. SHORT]: Your Honor, I think it's -- it's kind of
12 a smash of all those, right? And so I think defense counsel
13 put it on the record earlier regarding the position of the
14 parties in the addendum which accurately reflects that. I do
15 think it's mostly obviated, but I believe some things are
16 waived, Your Honor, if you want to even look at it that way.
17 I think the -- you know, it's more obviated than anything
18 else, Your Honor.

19 MJ [Lt Col ROSENOW]: And I want to follow up on that,
20 because page 2 of Appellate Exhibit 217E includes the
21 following -- and you all know it well, you drafted it, but to
22 make sure some of the members of the public who are following
23 along understand, too, it adds the following language:

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1 I acknowledge that the ruling by the United States
2 Court of Appeals for the District of Columbia in this case
3 bars neither my entry into this pretrial agreement nor the
4 military judge's acceptance of my plea and entry of findings.

5 I see that as a slightly different thing than the
6 relief that was promised by government counsel in that
7 appellate setting during the oral argument and that was
8 directed by the D.C. Circuit as being waived or obviated.
9 Those are different things, certainly.

10 Let me go to the defense, then, and see if they have a
11 clarification available for both myself and the trial counsel.

12 LDC [MS. HENSLER]: So, Your Honor, with respect to the
13 specific question that's put forth in 217D, the parties agree
14 that the D.C. Circuit opinion does not bar entry of the
15 agreement and Your Honor's acceptance of the agreement, and
16 that has been adduced [sic] to writing in the addendum to the
17 agreement, as Your Honor pointed out.

18 But with respect to the second and third questions on
19 page 4 of Your Honor's notice, one is the relief -- is that
20 relief waived as part of this pretrial agreement, that relief
21 being the offer of de novo reconsideration made by the
22 government? No. That has not been waived as part of this
23 agreement, though as Mr. Short said, the practical

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1 implications of the plea will -- we will cover some of the
2 same territory. So that may be the effect, but that's not the
3 waiver.

4 The next question is: If so, does that waiver serve
5 as a substitute for de novo reconsideration and thereby itself
6 scrub the case of judicial bias to provide the accused an
7 apparently fair proceeding? No is the answer to that
8 question.

9 MJ [Lt Col ROSENOW]: Understanding that many, maybe most,
10 items that were in the queue for de novo reconsideration are,
11 perhaps, going to move out of that category, what of, as an
12 example, de novo reconsideration within the 505 process, is
13 that something that the defense would expect will continue
14 unimpacted by the acceptance of the accused's guilty plea and
15 this pretrial agreement?

16 LDC [MS. HENSLER]: Yes, Your Honor, that's a good
17 example. 505 litigation -- relitigation -- excuse me, de novo
18 reconsideration of the protective orders. There's a witness
19 order in the AE 030 series. Those sorts of things are not
20 waived as part of the pretrial agreement and, therefore, are
21 subject to de novo reconsideration, notwithstanding this plea
22 agreement.

23 MJ [Lt Col ROSENOW]: Trial Counsel, is this all sounding

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1 like you expected and do you believe, speaking on behalf of
2 the convening authority, that this was the intent of the
3 parties in managing this pretrial negotiation?

4 TC [MR. SHORT]: Your Honor, with regard to 505,
5 particularly 505(f), I think in discovery, you know, it's
6 949p-4, I think some of those things will be waived by the
7 nature of the agreement explicitly in the agreement.

8 I think that the -- you know, I think somebody put it
9 best that, you know, it obviates the things that it obviates,
10 and some of the things it's not going to obviate. It's -- as
11 simple and naive as that may seem, there's obviously some
12 litigation to go down the road. There will be some things
13 that the defense has to continue to litigate. I think -- I
14 think it is exactly what I expected, Your Honor, from the
15 convening authority's perspective, yeah.

16 MJ [Lt Col ROSENOW]: And, Trial Counsel, of course and
17 always, until a case is no longer being tried, there is
18 litigation. What I'm doing my level best and what I believe
19 the rules require me to do is avoid litigation over whether or
20 not that litigation is permitted in the wake of the pretrial
21 agreement. So that's why we're having this conversation now.

22 Is there any other item that you would like me to
23 surface in a conversation with the defense counsel so as to

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1 make it clear what they believe is the type of ongoing
2 litigation that will continue to go on, or are you satisfied
3 that they've clarified the point sufficiently for the
4 convening authority?

5 And I will tell you before you answer, my inclination
6 and, I think, the requirement will be to resolve any ambiguity
7 in favor of the accused. So to the extent something is not
8 explicitly waived inside of this agreement, the interpretation
9 of this commission will be in the favor of ensuring litigation
10 occurs. It doesn't mean relief is provided, but it means they
11 get to have their hearing and they get to litigate the matter.

12 With that in mind, over to you, Trial Counsel, if
13 there is anything else that you'd ask me to surface.

14 TC [MR. SHORT]: Yes, Your Honor. I think that is our
15 belief as well, that -- that would be the nature of an
16 agreement of this magnitude and nature.

17 However, the 505(f) litigation, I think -- I'm not
18 sure if the defense was, you know, stating that the protective
19 orders or that -- what 505 -- there's a lot of litigation
20 about 505, not necessarily the particulars of what's inside
21 505. So maybe we just need to clarify that just fairly
22 quickly.

23 LDC [MS. HENSLER]: Your Honor, what I meant was the

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1 process, the procedures, rather than the individual 505 notice
2 sort of related litigation. Obviously, a lot of that will
3 become -- is OBE at this point.

4 TC [MR. SHORT]: That satisfies the government, Your
5 Honor.

6 MJ [Lt Col ROSENOW]: I'd like to move everyone's
7 attention to Appendix A available at Appellate Exhibit 217A, a
8 very straightforward question, but one I'd like to confirm on
9 the record.

10 May the convening authority grant the accused greater
11 relief from any adjudged sentence beyond the relief required
12 by the pretrial agreement?

13 TC [MR. SHORT]: That is in within -- I'm sorry, Your
14 Honor. That's within the discretion of the convening
15 authority, absolutely.

16 MJ [Lt Col ROSENOW]: Defense Counsel, you agree?

17 LDC [MS. HENSLER]: Yes, Your Honor.

18 MJ [Lt Col ROSENOW]: Thank you for that. And we are very
19 close to a comfort break, everyone, if that's what you're
20 thinking. I have a couple more things, though, I did want to
21 cover in this block.

22 If the parties look at page 3 of Appellate
23 Exhibit 217E, there's a paragraph 9. Paragraph 9 refers back

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1 to Appellate Exhibit 217, the pretrial agreement, at
2 paragraph 22. The convention in the addendum is that the
3 changes are in bold, and what's not in bold is extant before.

4 I would note that a portion of the language that is
5 not in bold in the addendum does not appear within
6 paragraph 22. There's been a change from the notion of not
7 objecting to the military judge relaxing the rules for the
8 government's case in rebuttal in Appellate Exhibit 217 to not
9 objecting to the government relaxing the rules in their case
10 in rebuttal.

11 The effect is understood. There don't appear to be
12 any ambiguities to resolve. But to the extent that this is
13 not a direct transfer over and it's not in bold, I want to
14 confirm with you, Government, it's still, on behalf of the
15 convening authority, your intent to include paragraph 9 of
16 Appellate Exhibit 217E as an amendment to paragraph 22 of
17 Appellate Exhibit 217, the pretrial agreement?

18 TC [MR. SHORT]: Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Defense Counsel, is that the
20 accused's intent as well?

21 LDC [MS. HENSLER]: Yes, Your Honor. The part of the
22 sentence which is not bolded -- this is sort of a track
23 changes issue -- was in the original provision, and so,

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1 therefore, we did not bold it.

2 MJ [Lt Col ROSENOW]: Understood. And thank you for that
3 clarification.

4 That is the only remaining clarification that I had
5 involving the pretrial agreement, its appendix, and the
6 addendum.

7 With those clarifications in place, I want to turn to
8 you, Mr. Hadi, for a few questions involving Appendix A. This
9 is contained in Appellate Exhibit 217A.

10 As part of your offer, there is an appendix which sets
11 out additional requirements and limitations for both you and
12 the convening authority. Do you have a copy of that document
13 with you, Mr. Hadi?

14 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

15 MJ [Lt Col ROSENOW]: Do you have any questions at all as
16 to the terms that Appendix A contains?

17 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

18 MJ [Lt Col ROSENOW]: Do you understand and agree to this
19 provision of your pretrial agreement?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Defense Counsel, have you fully
22 explained the terms of Appendix A to Mr. Hadi and are you
23 satisfied that he fully understands the terms of that

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1 document?

2 LDC [MS. HENSLER]: Yes, he understands.

3 MJ [Lt Col ROSENOW]: Do you also believe the terms
4 contained in Appendix A are in your client's best interest?

5 LDC [MS. HENSLER]: Yes, they are in his best interest.

6 MJ [Lt Col ROSENOW]: Trial Counsel, do you agree the
7 addendum has had no impact on the terms contained in
8 Appendix A?

9 TC [MR. SHORT]: I agree, Your Honor.

10 MJ [Lt Col ROSENOW]: Defense Counsel?

11 LDC [MS. HENSLER]: I agree.

12 MJ [Lt Col ROSENOW]: Mr. Hadi, are you satisfied with the
13 advice provided by your defense counsel concerning this
14 pretrial agreement?

15 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

16 MJ [Lt Col ROSENOW]: Did you enter this agreement of your
17 own free will?

18 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Has anyone threatened or otherwise
20 tried to force you to enter into this agreement?

21 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

22 MJ [Lt Col ROSENOW]: Do you have any questions about your
23 pretrial agreement?

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1 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

2 MJ [Lt Col ROSENOW]: Do you fully understand all the
3 terms of your pretrial agreement, all the terms of Appendix A,
4 all the terms of the addendum, and all of the clarifications
5 that have been given and how those things affect your case?

6 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: Mr. Hadi, I ask you, are you
8 pleading guilty not just because you hope to receive a lighter
9 sentence, but because you are convinced that you are, in fact,
10 guilty under United States law of the offenses to which you
11 have pled guilty?

12 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

13 MJ [Lt Col ROSENOW]: Separate from that acknowledgment
14 and having reviewed the evidence in this case, are you
15 personally convinced that the government could prove, beyond a
16 reasonable doubt, your guilt of the offenses to which you have
17 pled guilty?

18 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Do counsel for both sides agree with
20 the commission's interpretation of the pretrial agreement?

21 TC [MR. SHORT]: Yes, Your Honor.

22 LDC [MS. HENSLER]: Yes, Your Honor.

23 MJ [Lt Col ROSENOW]: And last, do counsel for both sides

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1 believe that all substantial terms in the pretrial agreement
2 have been properly clarified, to the extent clarification is
3 required, and that there has been a meeting of the minds
4 between the accused and the convening authority?

5 TC [MR. SHORT]: Yes, Your Honor.

6 LDC [MS. HENSLER]: Yes, Your Honor.

7 MJ [Lt Col ROSENOW]: Thank you.

8 What I have remaining, Counsel, is a closing inquiry
9 with the accused prior to potentially accepting his pleas. Is
10 15 minutes sufficient for the defense, understanding that I
11 will next turn my attention to those series of questions -- or
12 that series of questions?

13 LDC [MS. HENSLER]: Yes, it is. Thank you, Your Honor.

14 MJ [Lt Col ROSENOW]: Does that work for the government as
15 well?

16 TC [MR. SHORT]: Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: The commission will be in recess for
18 15 minutes.

19 [The R.M.C. 803 session recessed at 1700, 13 June 2022.]

20 [The R.M.C. 803 session was called to order at 1720,
21 13 June 2022.]

22 MJ [Lt Col ROSENOW]: The commission is called to order.

23 The same parties are present as were present before, including

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1 the accused.

2 Defense Counsel, have you had enough time and
3 opportunity to discuss this entire case with the accused?

4 LDC [MS. HENSLER]: Yes, Your Honor.

5 MJ [Lt Col ROSENOW]: Mr. Hadi, have you had enough time
6 and opportunity to discuss not just the pretrial agreement,
7 but your entire case with your defense counsel?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Have you, in fact, consulted fully
10 with your defense counsel and received the full benefit of
11 their advice?

12 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

13 MJ [Lt Col ROSENOW]: Are you satisfied that your defense
14 counsel's advice has been in your best interest?

15 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

16 MJ [Lt Col ROSENOW]: Are you satisfied with your defense
17 counsel?

18 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: Are you pleading guilty voluntarily?

20 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

21 MJ [Lt Col ROSENOW]: Mr. Hadi, are you pleading guilty of
22 your own free will?

23 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

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1 MJ [Lt Col ROSENOW]: Has anyone made any threat or tried
2 to force you in any way to plead guilty?

3 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

4 MJ [Lt Col ROSENOW]: Do you have any questions at all as
5 to the meaning and effect of your pleas of guilty?

6 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

7 MJ [Lt Col ROSENOW]: Do you still wish to plead guilty?

8 ACC [MR. HADI]: **[Speaking in English]** Yes, Your Honor.

9 MJ [Lt Col ROSENOW]: Defense Counsel, do you have need of
10 any more time to consult with your client?

11 LDC [MS. HENSLER]: No, Your Honor.

12 MJ [Lt Col ROSENOW]: And, Mr. Hadi, do you have any more
13 questions for your defense counsel or for the commission?

14 ACC [MR. HADI]: **[Speaking in English]** No, Your Honor.

15 MJ [Lt Col ROSENOW]: I find that your pleas of guilty
16 have been made voluntarily with full knowledge of their
17 meaning and effect. I further find that you have knowingly,
18 intelligently, and consciously waived your rights against
19 self-incrimination, that you've waived your rights to a trial
20 of the facts by a military commission, and you've waived your
21 rights to be confronted by the witnesses called against you in
22 the findings portion of your commission. Accordingly, your
23 pleas of guilty are provident and I accept them.

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1 You may request to withdraw from your guilty plea at
2 any time before sentence is announced; and if you have a good
3 reason for your request, I will grant it.

4 Mr. Hadi, this is a time that I'm going to require you
5 to stand. If the defense counsel would rise as well.

6 Mr. Hadi, in accordance with your pleas of guilty,
7 this commission finds you:

8 Of the specification of Charge II guilty except the
9 words "knew and," of the excepted words not guilty;

10 Of Charge II, guilty;

11 Of Specification 1 of Charge III, guilty;

12 Of Specification 2 of Charge III, guilty;

13 Of Specification 3 of Charge III, guilty;

14 Of Charge III, guilty;

15 Of the specification of Charge IV, guilty;

16 Of Charge IV, guilty;

17 Of the specification of Charge V, guilty except the
18 words "to commit the following substantive offenses triable by
19 military commission: Terrorism, denying quarter, using
20 treachery or perfidy, murder of protected persons, attacking
21 protected property, attacking civilians, attacking civilian
22 objects, and employing poison or similar weapons in order to
23 force the United States, its allies, and non-Muslims out of

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1 the Arabian Peninsula, Afghanistan, and Iraq"; substituting,
2 therefore, the words "to commit the following substantive
3 offenses triable by military commission using treachery or
4 perfidy, attacking protected property, and attacking civilian
5 objects, in order to force the United States and its allies
6 out of Afghanistan and Iraq," of the excepted words, not
7 guilty;

8 Of the substituted words, guilty;

9 Of Charge V, guilty.

10 You can be seated, please.

11 Defense counsel as well.

12 Trial Counsel, do you agree that was a proper
13 announcement of the findings with respect ----

14 TC [MR. SHORT]: Yes.

15 MJ [Lt Col ROSENOW]: ---- to the pleas entered?

16 TC [MR. SHORT]: Yes, Your Honor.

17 MJ [Lt Col ROSENOW]: Defense Counsel?

18 LDC [MS. HENSLER]: Yes, Your Honor.

19 MJ [Lt Col ROSENOW]: I do intend to reserve what I
20 believe is Appellate Exhibit 217J, which should be next in
21 line. I will write out precisely what the findings of the
22 commission were as within the portions that were accepted and
23 substituted. There's a fair bit of punctuation, and to the

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1 extent that the parties might be looking into the future,
2 things like fliers that would be presented to members, I want
3 to make sure that you have precisely what I found here today
4 reflected in writing.

5 Any objection to that way ahead, Trial Counsel?

6 TC [MR. SHORT]: No, Your Honor.

7 MJ [Lt Col ROSENOW]: Defense Counsel?

8 LDC [MS. HENSLER]: No objection.

9 MJ [Lt Col ROSENOW]: Trial Counsel, do you have a motion
10 to raise with respect to Charge I and its specification at
11 this time?

12 TC [MR. SHORT]: Your Honor, at this time the
13 government ----

14 MJ [Lt Col ROSENOW]: We don't have audio, Mr. Short.

15 TC [MR. SHORT]: At this time the government moves to
16 dismiss Charge I without prejudice to ripen into prejudice
17 upon timely and appropriate filing of the military
18 commission Form 2330, Your Honor.

19 MJ [Lt Col ROSENOW]: Defense Counsel, any objection?

20 LDC [MS. HENSLER]: No objection, Your Honor.

21 MJ [Lt Col ROSENOW]: Thank you.

22 The government motion to withdraw and dismiss Charge I
23 and its specification without prejudice but to ripen into

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1 prejudice upon the timely and appropriate filing of the
2 military commission Form 2330 is granted.

3 Defense Counsel, at this time are you prepared to
4 state any motions that you are withdrawing, or is that
5 something that could be put forward in a written filing with
6 the commission?

7 LDC [MS. HENSLER]: Your Honor, at this time we will be
8 withdrawing AE 207 and AE 208.

9 MJ [Lt Col ROSENOW]: Thank you.

10 Trial Counsel, were you expecting anything else at
11 this point?

12 TC [MR. SHORT]: No, Your Honor.

13 MJ [Lt Col ROSENOW]: Closing up here, given the
14 agreed-upon delay of up to two years in the presentencing
15 hearing in this case, I am not going to set a litigation
16 schedule for that event at this point. The parties are free
17 to individually or jointly submit a request for a litigation
18 schedule in the future.

19 I would like to confirm that we will hold our
20 August 2022 setting to handle matters that will be identified
21 by the commission and at the invitation to you all by you all
22 as well in response to the commission.

23 I would like to also, besides confirming that we

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1 should plan on being together in August 2022, signal to you
2 that the settings that were put forward in Appellate
3 Exhibit 197, I believe, have a couple more meetings here at
4 Guantanamo.

5 And one of the questions that I will have for the
6 parties leading into the August 2022 setting is: Are all of
7 those still required in the view of the parties based on what
8 the litigation schedule will look like going forward?

9 Certainly, hold on to those dates as we have so far,
10 but that's something that you might want to start thinking
11 about as you respond back to the commission with what could be
12 taken up in August or the next time after.

13 Any questions about that way ahead, Trial Counsel?

14 TC [MR. SHORT]: No, Your Honor.

15 MJ [Lt Col ROSENOW]: Anything from the defense?

16 LDC [MS. HENSLER]: No, Your Honor.

17 MJ [Lt Col ROSENOW]: Trial Counsel, do you have anything
18 else to take up before this commission goes into recess?

19 TC [MR. SHORT]: No, Your Honor.

20 MJ [Lt Col ROSENOW]: Defense Counsel?

21 LDC [MS. HENSLER]: No, Your Honor, thank you.

22 MJ [Lt Col ROSENOW]: Thank you. I'd be remiss not to
23 note that I appreciate the parties' flexibility in scheduling

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1 this hearing today, and I hope the personal matters involving
2 defense counsel that supported moving these inquiries forward
3 are quickly and safely resolved.

4 Unless modified by an order prior to that session, the
5 commission is in recess until 0830 on 15 August 2022.

6 [The R.M.C. 803 session recessed at 1730, 13 June 2022.]

7 [END OF PAGE]

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