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1 **[The R.M.C. 803 session was called to order at 0916,**  
2 **16 January 2024.]**

3 MJ [Lt Col BRAUN]: This commission is called to order.

4 Trial Counsel, please identify who is present on behalf of  
5 the United States. If any counsel is making his or her first  
6 appearance, please indicate such so that we can get their detailing  
7 information, qualifications, status as to oath, and whether they have  
8 acted in any disqualifying manner in this case on the record.

9 MDTC [Lt Col GOEWERT]: Good morning, Your Honor.

10 Representing the government today are Colonel George Kraehe,  
11 United States Army; Lieutenant Colonel Christopher Goewert, United  
12 States Air Force; Lieutenant Commander Jeffrey Larson, United States  
13 Navy.

14 All trial counsel present today have been detailed to this  
15 military commission by the chief prosecutor in accordance with Rule  
16 for Military Commission 503.

17 All members of the government are qualified under Rule for  
18 Military Commissions 502(d) and have been previously sworn in  
19 accordance with Rule for Military Commissions 807.

20 No member of the government has acted in any manner which  
21 might tend to disqualify us in this proceeding.

22 LDC [MR. BOUFFARD]: Pardon me, Your Honor. Brian Bouffard  
23 for Mr. bin Lep. We're getting no sound through the headphones.

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1 MJ [Lt Col BRAUN]: One moment, Trial Counsel.

2 We'll just take a moment here in place to troubleshoot that  
3 issue.

4 Thank you, Mr. Bouffard.

5 Okay. Counsel, it sounds like this is going to take a  
6 little bit of time, five minutes or so. So what I'm going to do is  
7 place the commission into recess, allow the COM, the tech folks, to  
8 do what they need to do pretty freely in the room. And then once  
9 we're ready to proceed, we'll just reconvene.

10 So with that, this commission is in recess.

11 **[The R.M.C. 803 session recessed at 0918, 16 January 2024.]**

12 **[The R.M.C. 803 session was called to order at 0933,**  
13 **16 January 2024.]**

14 MJ [Lt Col BRAUN]: This commission will again come to order.  
15 All parties that were present when the commission recessed are again  
16 present.

17 Before we move ahead, Mr. Bouffard, have we resolved the  
18 audio?

19 LDC [MR. BOUFFARD]: It appears so, sir.

20 MJ [Lt Col BRAUN]: Okay. Thank you.

21 Trial Counsel, can you please affirm these proceedings are  
22 being transmitted by closed-circuit television to the United States  
23 in compliance with commission's order in Appellate Exhibit 0007.006

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1 (TJ)?

2 MDTC [Lt Col GOEWERT]: Your Honor, yes. Do you want me to go  
3 back and reread the script from the beginning, given the translation  
4 issue?

5 MJ [Lt Col BRAUN]: Mr. Bouffard, your client, would you like  
6 the government to reannounce who's present for benefit of  
7 transcription?

8 LDC [MR. BOUFFARD]: That's not necessary, sir.

9 MJ [Lt Col BRAUN]: Okay. Thank you.

10 Then I don't think that's necessary. You may proceed.

11 MDTC [Lt Col GOEWERT]: Thank you, sir.

12 So due to snow conditions, we have -- these proceedings are  
13 being transmitted stateside via closed-circuit television  
14 transmission CCTV to remote site in Fort Meade; however, that site  
15 will not start operating until 10:00 a.m. this morning due to snow  
16 conditions. The Pentagon is closed today due to snow conditions; and  
17 that is, of course, pursuant to the commission's order  
18 that -- mentioned by the commission.

19 Furthermore, due to snow conditions, witnesses -- there will  
20 be no participating witnesses today, not that there were any on the  
21 schedule. However, the RHR room, which the commission anticipated  
22 using for counsel for other -- potentially for counsel's viewing of  
23 the commission's proceedings, which is located in Arlington,

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1 Virginia, is closed today.

2 MJ [Lt Col BRAUN]: Thank you, Trial Counsel.

3 We will cover the anticipated use of that RHR when we  
4 discuss detailing of defense counsel and presence of defense counsel.  
5 It seems appropriate at that time.

6 Okay. Ms. Funk, could you please indicate for the record  
7 who is present on behalf of Mr. bin Amin? Also, please indicate if  
8 any attorney is making their first appearance so we can get their  
9 detailing information, qualifications, status as to oath, and whether  
10 they have acted in any disqualifying manner on the record.

11 CDC [MS. FUNK]: Certainly, Your Honor.

12 Christine Funk -- thank you. Christine Funk, appearing on  
13 behalf of Mr. bin Amin.

14 Also on the record, Lieutenant Colonel Chantell Higgins of  
15 the United States Marine Corps and Lieutenant Commander Crystal  
16 Curtis of the United States Navy.

17 All detailed members of the defense have been detailed to  
18 this commission by the chief defense counsel. All detailed members  
19 of the defense are qualified and certified under Chapter 47A of Title  
20 10, United States Code.

21 No member of the defense has acted in any manner that might  
22 tend to disqualify us in this commission.

23 MJ [Lt Col BRAUN]: Thank you, Ms. Funk.

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1 CDC, [MS. FUNK]: Thank you.

2 MJ [Lt Col BRAUN]: Mr. Bouffard, I'm going to ask that you do  
3 the same for those present on behalf of Mr. bin Lep.

4 LDC [MR. BOUFFARD]: Yes, sir.

5 Good morning. I'm Brian Bouffard, on behalf of Mr. bin Lep.  
6 I am joined by Major Jason Cordova, United States Air Force;  
7 Lieutenant Jennifer Joseph, JAG Corps, United States Navy; Lieutenant  
8 Commander Matthew Anderson, JAG Corps, United States Navy; and  
9 Ms. Nessma Bashi, who has not yet been sworn.

10 MJ [Lt Col BRAUN]: Thank you, Mr. Bouffard.

11 Ms. Bashi, could you please rise, and if you would raise  
12 your right hand.

13 **[Counsel was sworn.]**

14 MJ [Lt Col BRAUN]: Thank you. You may be seated.

15 Mr. Bouffard, I believe it was one of your attorneys teams  
16 that was going to appear remotely via the RHR.

17 LDC [MR. BOUFFARD]: Yes, sir.

18 MJ [Lt Col BRAUN]: Can you place that on the record, please?

19 LDC [MR. BOUFFARD]: Yes, sir. Were it not for weather  
20 conditions, Mr. Aaron Shepard would also be appearing from the RHR;  
21 however, as Lieutenant Colonel Goewert noted, that's untenable today.  
22 So he is not present. Mr. bin Lep will waive his appearance.

23 MJ [Lt Col BRAUN]: Okay. Very well. Thank you.

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1           Mr. bin Lep, Mr. Bouffard, your attorney, just indicated  
2 that one of your detailed defense counsel, Mr. Aaron Shepard, is not  
3 present for this morning's proceeding. Have you had an opportunity  
4 to discuss his absence with your defense counsel?

5           ACC [MR. BIN LEP]: Yes.

6           MJ [Lt Col BRAUN]: Normally you have -- under the Rules for  
7 Military Commissions, you have the right to have all of your detailed  
8 military defense counsel present during all stages of the proceeding,  
9 and that would include this stage of the proceeding this morning. Do  
10 you understand that?

11          ACC [MR. BIN LEP]: **[Speaking in English]** Yeah.

12          MJ [Lt Col BRAUN]: However, you do have the ability to waive  
13 the presence of one of your detailed defense counsel if you desire to  
14 do so. Do you understand that?

15          ACC [MR. BIN LEP]: Yes, I understand.

16          MJ [Lt Col BRAUN]: Now, if you waive the presence of  
17 Mr. Shepard for today's proceeding, I will consider that a waiver  
18 only for today's proceeding, not for any future proceeding before  
19 this commission.

20           Do you desire to proceed with this proceeding this morning,  
21 understanding that Mr. Shepard is not present here today in this  
22 courtroom?

23          ACC [MR. BIN LEP]: Yes.

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1 MJ [Lt Col BRAUN]: And is that decision to waive the presence  
2 of Mr. Shepard your decision and your decision alone?

3 ACC [MR. BIN LEP]: Yes.

4 MJ [Lt Col BRAUN]: Has anybody made any threats or promises  
5 to get you to agree to waive the presence of Mr. Shepard this  
6 morning?

7 ACC [MR. BIN LEP]: No.

8 MJ [Lt Col BRAUN]: Very well.

9 I find that Mr. bin Lep has intelligently, knowingly, and  
10 voluntarily waived the presence of Mr. Aaron Shepard for the purposes  
11 of this proceeding this morning, and find that, as Mr. bin Lep is  
12 represented by detailed, certified, qualified counsel, this  
13 proceeding can proceed under the Rules for Military Commissions.

14 I also note that Mr. bin Amin and Mr. bin Lep are present  
15 here in the courtroom this morning.

16 Mr. bin Amin and Mr. bin Lep, I will now advise you of your  
17 right to be present and your right to waive said presence.

18 You each have the right to be present during all sessions of  
19 the commission. If you request to absent yourself from any session,  
20 such absence must be voluntary and of your own free will. Your  
21 voluntary absence from any session of the commission is an  
22 unequivocal right -- unequivocal waiver of the right to be present  
23 during that session.

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1           Your absence from any session may negatively affect  
2 presentation of the defense in your case. Your failure to meet and  
3 cooperate with your defense counsel may also negatively affect the  
4 presentation of your case. Your presence is required during certain  
5 portions of your case, to include entry of plea and the providence  
6 inquiry.

7           Under circumstances such as these, your attendance at a  
8 session can be compelled regardless of your personal desire not to be  
9 present.

10           Regardless of your voluntary waiver to attend a particular  
11 session of the commission, you have the right at any time to decide  
12 to attend any subsequent session. If you decide not to attend the  
13 morning session, but wish to attend the afternoon session, for  
14 example, you must notify the guard force of your desires. Assuming  
15 there is enough time to arrange transportation, you will then be  
16 allowed to attend the afternoon session.

17           You will be informed of the time and date of each commission  
18 session prior to that session to afford you the opportunity to decide  
19 whether you wish to attend that particular session.

20           Mr. bin Amin, do you understand what I have just explained  
21 to you?

22           ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

23           MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you ----



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1 ACC [MR. BIN AMIN]: Yes, I understand.

2 MJ [Lt Col BRAUN]: ---- understand -- excuse me.

3 And, Mr. bin Lep, do you understand what I have just  
4 explained?

5 ACC [MR. BIN LEP]: Yes, I understand.

6 MJ [Lt Col BRAUN]: Now, it's my understanding that two of the  
7 daily prayer times are scheduled during our normal court hours with  
8 one taking place at approximately 1210, and the other taking place at  
9 approximately 1520. It's also my understanding that the dining  
10 facility is open from 1100 to 1300 for lunch and from 1630 to 1830  
11 for the evening meal.

12 In order to accommodate those prayer times and meal time, I  
13 intend to take a lunch recess from 1130 to 1300, and an afternoon  
14 recess from 1500 to 1545. I may go a little later than that 1500  
15 mark, but just to try and help counsel anticipate.

16 I will intend to recess the court no later than 1730 each  
17 day. I assume that will work for all the parties based upon the  
18 prayer schedule and then the schedule of the various meal facility  
19 options here on station.

20 Is there any objection to my proposed schedule? Trial  
21 Counsel?

22 MDTC [Lt Col GOEWERT]: Not from us, sir.

23 MJ [Lt Col BRAUN]: The counsel for Mr. bin Amin?

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1 CDC [MS. FUNK]: No, Your Honor. Thank you.

2 MJ [Lt Col BRAUN]: Thank you.

3 Counsel for Mr. bin Lep?

4 LDC [MR. BOUFFARD]: No, Your Honor.

5 MJ [Lt Col BRAUN]: Outstanding.

6 Also, as this is an open session, I'm going to ask and  
7 remind all present in the courtroom to either take off or tuck away  
8 your badge while we're on the record. Your attention to that is  
9 appreciated.

10 Prior to coming on the record, I conducted three conferences  
11 pursuant to Rule for Military Commissions 802. Two of the three  
12 conferences were conducted via telephone with the parties and both  
13 accused absent.

14 The first occurred on 13 December 2023. At this conference  
15 we discussed the scheduling and logistics in relation to the upcoming  
16 three-week commission session. The government summarized the  
17 activities it was engaging in to ensure the anticipated schedule of  
18 the commission could be met.

19 The parties indicated that they were working together to  
20 streamline the anticipated pleas and the sentencing proceeding.

21 The parties also discussed their recommended sequencing of  
22 events as it relates to compliance with terms of the accused's  
23 pretrial agreement, the taking of pleas, and sentencing. The

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1 schedule was recommended to avoid delay in reaching sentencing in  
2 this commission.

3 Finally, the commission directed the parties to the previous  
4 commissions which involved guilty pleas to illustrate how the  
5 commission would likely proceed as it relates to determining  
6 providency of each accused's plea of guilty based upon the  
7 anticipated pleas submitted by counsel.

8 The second R.M.C. 802 session was held by telephone on 4  
9 January 2024. At this conference we discussed the following: The  
10 parties discussed the providence inquiry, and how to best approach it  
11 in a joint trial. The military judge indicated that he was inclined  
12 to conduct a joint providence inquiry, given the very similar charges  
13 of the accused.

14 The parties also discussed the anticipated litigation  
15 schedule for the sentencing proceeding to include anticipated  
16 witnesses and evidence.

17 The military judge indicated sentencing would tentatively  
18 start on 24 January 2024, based upon the initial input of the  
19 parties.

20 The military judge also indicated he was open to allowing  
21 the members to deliberate over the weekend, if they desired to do so,  
22 and neither party had an objection at that time to that approach, but  
23 the military commission indicated that any such objection may be made

1 on the record at the appropriate time.

2 The parties also directed the commission's attention to the  
3 Friday prayer schedule.

4 The parties further discussed the timing of anticipated  
5 depositions of the accused, how the parties desire to sequence those  
6 depositions with the greater proceeding. The parties informed the  
7 commission that the timing of the depositions could result in a  
8 motion to continue.

9 The defense notified the military judge that they  
10 anticipated needing to use the RHR for the proceedings, and would  
11 submit a formal request.

12 Finally, the parties confirmed that no Military Rule of  
13 Evidence 505 hearing would likely be needed for the sentencing  
14 proceeding. The parties also informed the military judge that they  
15 would be providing a signed PTA clarification document by 15  
16 January 2024.

17 A third R.M.C. 802 session was held here in the courtroom on  
18 yesterday, the 15th of January 2024. The parties were present. The  
19 accused were absent for this session as well.

20 At this session the commission discussed the anticipated  
21 evidence and witnesses each party anticipated; discussed general  
22 timing for this week's and next week's proceedings; discussed the  
23 sequencing of the various events, to include compliance with terms of

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1 the accused's pretrial agreements and how that sequencing might  
2 impact the overall process of today's -- or this week's and next  
3 week's proceedings.

4 The commission also alerted the parties to some language the  
5 commission noted in the anticipated pleas and forum, the proposed  
6 flyer submitted by the party, the joint flyer submitted by the  
7 party -- parties, and informed the parties that they should be ready  
8 to discuss those matters should the commission desire to inquire into  
9 them further on the record here today.

10 No evidence was received, argument entertained, or rulings  
11 provided at any of these R.M.C. 802 conferences. At the conclusion  
12 of the 13 December 2023 and 4 January 2024 conferences, the parties  
13 did provide the commission a proposed summary of the conferences  
14 themselves.

15 Does any party have any additions or corrections to the  
16 commission's summary of the R.M.C. 802 conferences or desire to  
17 include the written summaries provided to the commission as part of  
18 the record?

19 Trial Counsel?

20 MDTC [Lt Col GOEWERT]: We do not, Your Honor.

21 MJ [Lt Col BRAUN]: All right.

22 Team for Mr. bin Amin?

23 CDC [MS. FUNK]: No, Your Honor.

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1 MJ [Lt Col BRAUN]: Okay. And counsel for Mr. bin Lep?

2 LDC [MR. BOUFFARD]: No, Your Honor.

3 MJ [Lt Col BRAUN]: Ms. Funk, is Mr. bin Amin prepared to  
4 enter pleas?

5 CDC [MS. FUNK]: Yes, Your Honor.

6 MJ [Lt Col BRAUN]: Mr. Bouffard, is Mr. bin Lep prepared to  
7 enter pleas?

8 LDC [MR. BOUFFARD]: Through counsel, yes, Your Honor.

9 MJ [Lt Col BRAUN]: Yes. And I will allow both accused to  
10 enter plea through counsel, if so desired.

11 With that, Mr. bin Amin and Defense Counsel, please rise.

12 DC [LtCol HIGGINS]: Your Honor, we just have a quick  
13 question. There has been a dispute in terms of the common  
14 allegations and the question that the court asked yesterday in terms  
15 of the flyer, and we still believe that that issue has not been  
16 resolved. Unless the court has actually resolved it, we would like  
17 to know how.

18 MJ [Lt Col BRAUN]: So as the flyer is a reflection of the  
19 charges that would go before the sentencing authority, in this case a  
20 panel, understanding we're in a military commission, the flyer  
21 itself, the final form of the flyer cannot be determined until  
22 findings are -- pleas are entered, findings are made to determine  
23 what the ultimate -- what the ultimate charges and specifications and

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1 common allegations may be appropriately before the sentencing -- the  
2 sentencing authority.

3 So at this time, it's the commission's opinion that it would  
4 be premature to rule upon the language of the flyer until we've  
5 reached that point where we have findings, and then we will need to  
6 have that discussion of marking the flyer, taking up any objections  
7 the parties have to that flyer based upon the findings that were  
8 entered by the commission.

9 Does that answer the question?

10 DC [LtCol HIGGINS]: Yes, Your Honor, as long as we are  
11 allowed an opportunity to object.

12 MJ [Lt Col BRAUN]: Yes, yes. Yeah, the flyer absolutely has  
13 not been -- it's been provided to the commission via pretrial filing,  
14 but it has not been accepted by the commission, nor has permission  
15 been given to publish that to any entity outside of the commission at  
16 this time.

17 CDC [MS. FUNK]: Thank you, Your Honor.

18 Your Honor, I apologize. I was under the impression we  
19 would be having significantly more legal argument before getting to  
20 the pleas. If it's all right with the court, I would like to change  
21 our seating arrangement at this table so that I can be next to my  
22 client.

23 MJ [Lt Col BRAUN]: Yes. That's absolutely -- that's

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1 absolutely appropriate if you'd like to do that at this time.

2 DC [LCDR CURTIS]: Your Honor, Lieutenant Commander Curtis for  
3 Mr. bin Amin. May I approach the podium?

4 MJ [Lt Col BRAUN]: For what purpose?

5 DC [LCDR CURTIS]: Sir, do you intend to inquire about  
6 intended pleas for the day?

7 MJ [Lt Col BRAUN]: I'm going to call for -- I anticipate  
8 calling for pleas here shortly, yes. Would you like to be at the  
9 podium to -- are you entering pleas?

10 DC [LCDR CURTIS]: Yes, Your Honor.

11 MJ [Lt Col BRAUN]: Okay. Very well. You can enter pleas  
12 from where you are if -- unless it's easier for you to do it from the  
13 podium, then please feel free to move to the podium.

14 DC [LCDR CURTIS]: Thanks, Your Honor.

15 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin and his defense  
16 counsel, please rise.

17 Mr. Mohammed Farik bin Amin, at this time, how do you plead?  
18 I advise you that any motion addressed under Rule for Military  
19 Commissions 905(b) must be made prior to the entry of pleas. Your  
20 defense counsel will speak for you.

21 DC [LCDR CURTIS]: Your Honor, Mr. bin Amin pleads as follows:

22 To Charge I, Specification 1: Guilty;

23 To Charge I, Specification 2: Not guilty;



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1 To Charge I: Guilty;

2 To Charge II and its two specifications: Not guilty;

3 To Charge III, Specification 1: Guilty;

4 To Charge III, Specification 2: Not guilty;

5 To Charge III: Guilty;

6 To Charge IV and its two specifications: Not guilty;

7 To Charge V and its two specifications: Not guilty;

8 To Charge VI and its two specifications: Not guilty;

9 To Charge VII, Specification 1: Guilty;

10 To Charge VII, Specification 2: Not guilty;

11 To Charge VII: Guilty;

12 To Charge VIII and its sole specification: Guilty,

13 excepting the word and figure "August 2003," substituting, therefore,

14 the word and figure "December 2002;"

15 And to Charge IX and its sole specification: Guilty.

16 MJ [Lt Col BRAUN]: Mr. bin Amin and your counsel, you may be

17 seated.

18 Mr. bin Lep and his defense counsel, please rise.

19 Mr. Mohammed Nazir bin Lep, at this time how do you plead?

20 I advise you that any motion addressed under Rule for Military

21 Commissions 905(b) must be made prior to the entry of pleas. Your

22 defense counsel will speak for you.

23 LDC [MR. BOUFFARD]: Your Honor, we have no motions under

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1 905(b), and the accused, through counsel, pleads as follows:

2 To Specification 1 of Charge I: Guilty;

3 To Specification 2 of Charge I: Not guilty;

4 To Charge I: Guilty;

5 To Charge II and its two specifications: Not guilty;

6 To Specification 1 of Charge III: Guilty;

7 To Specification 2 of Charge III: Not guilty;

8 To Charge III: Guilty;

9 To Charge IV and the two specifications thereunder: Not  
10 guilty;

11 To Charge V and the two specifications thereunder: Not  
12 guilty;

13 To Charge VI and the two specifications thereunder: Not  
14 guilty;

15 To Specification 1 of Charge VII: Guilty;

16 To Specification 2 of Charge VII: Not guilty;

17 To Charge VII: Guilty;

18 To Charge VIII, and its sole specification: Guilty,

19 excepting the word and figure "August 2003," substituting, therefore,  
20 the word and figure "December 2002;"

21 To Charge IX, and the sole specification thereunder:  
22 Guilty.

23 MJ [Lt Col BRAUN]: Thank you, Mr. bin Lep and counsel. You

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1 may be seated.

2 Mr. bin Amin and bin Lep, your counsel has just entered a  
3 plea of guilty on your behalf to Charge I, Specification 1; Charge  
4 III, Specification 1; Charge VII, Specification 1; Charge VIII and  
5 its sole specification, excepting the word and figure "August 2003,"  
6 substituting, therefore, the word and figure "December 2002;" and to  
7 Charge IX and its specification.

8 Your plea of guilty will not be accepted unless you  
9 understand its meaning and effect. I'm going to discuss your plea of  
10 guilty with each of you. You may consult with your defense counsel  
11 prior to answering any of my questions. If you have any questions,  
12 please feel free to ask them.

13 Mr. bin Amin, do you understand what I've said so far?

14 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

15 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand what I have  
16 said so far?

17 ACC [MR. BIN LEP]: Yes, I understand.

18 MJ [Lt Col BRAUN]: Now, gentlemen, this morning we are going  
19 to be talking back and forth quite a bit. I'm going to ask that you  
20 simply remain in your seat, listen to the question I'm asking you,  
21 think about it, and then provide me an accurate answer.

22 If at any point I ask you something that is confusing,  
23 please let me know. Additionally, if you have a question of me, ask

1 it.

2 You are also free to consult with your counsel sitting next  
3 to you as often as you need to. If you need a moment, please let me  
4 know.

5 Finally, if for any reason you need a recess, please bring  
6 that to the attention of your counsel or to me so that I can attend  
7 to that request.

8 The important thing here is I want to ensure that you  
9 understand what I'm asking you, and you are providing me accurate  
10 responses.

11 Do you understand, Mr. bin Amin?

12 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

13 MJ [Lt Col BRAUN]: Do you understand, Mr. bin Lep?

14 ACC [MR. BIN LEP]: Yes, I understand.

15 MJ [Lt Col BRAUN]: Thank you.

16 A plea of guilty is equivalent to a conviction and is the  
17 strongest form of proof known to the law. On your plea alone, and  
18 without receiving any evidence, this commission can find you guilty  
19 of the offenses to which you have pled guilty.

20 Your plea will not be accepted unless you realize that by  
21 your plea you admit every act or omission and every element of the  
22 offenses to which you have pled guilty.

23 In addition, your plea will not be accepted unless I am

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1 convinced that you are pleading guilty because you are, in fact,  
2 guilty under United States law, or having viewed the evidence the  
3 government intends to introduce against you with your counsel, you  
4 are personally convinced that the prosecution could prove your guilt  
5 of the offenses to which you are pleading guilty beyond a reasonable  
6 doubt.

7 If you do not think you are guilty under United States law  
8 or you are not convinced the government could prove your guilt beyond  
9 a reasonable doubt, then you should not plead guilty.

10 Mr. bin Amin, do you understand what I've said so far?

11 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

12 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand what I have  
13 said so far?

14 ACC [MR. BIN LEP]: Yes, I understand.

15 MJ [Lt Col BRAUN]: In addition, I cannot and will not accept  
16 your plea unless, after making my inquiry, I am satisfied that there  
17 is a factual basis for the plea or that you voluntarily agree that,  
18 having viewed the evidence the government intends to introduce  
19 against you, you are personally convinced that the prosecution could  
20 prove your guilt of the offenses to which you are pleading guilty  
21 beyond a reasonable doubt.

22 Mr. bin Amin, do you understand this?

23 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

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1 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand this?

2 ACC [MR. BIN LEP]: Yes, I understand.

3 MJ [Lt Col BRAUN]: Again, if at any time during this inquiry  
4 process you are confused, you have questions, please stop me, and  
5 I'll give you a chance to talk things over with your attorneys.

6 Do you understand this, Mr. bin Amin?

7 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

8 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

9 ACC [MR. BIN LEP]: Yes, I understand.

10 MJ [Lt Col BRAUN]: I mentioned earlier that if at any point  
11 you require a recess, please let me know. I also want to advise you  
12 that we will be talking quite a bit this morning, but there is no  
13 time limit on how long we have for this process to take. I am  
14 prepared to take as much time as we need to ensure that I am  
15 satisfied that your pleas to the charges you have pled guilty are  
16 indeed provident.

17 Do you understand that, Mr. bin Amin?

18 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

19 MJ [Lt Col BRAUN]: Do you understand that, Mr. bin Lep?

20 ACC [MR. BIN LEP]: Yes, I understand.

21 MJ [Lt Col BRAUN]: Really, what is of utmost concern to me is  
22 that you can fully focus your attention on the questions I'm asking  
23 you and your answers to those questions.

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1           The importance of your understanding of your guilty plea,  
2 the pretrial agreement, and the stipulation of fact cannot be  
3 understated. Therefore, if at any point you have a hard time  
4 focusing on what is going on between my inquiry with you, I ask that  
5 you simply alert me or your attorney to that fact.

6           Again, Mr. bin Amin, do you understand this?

7           ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

8           MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

9           ACC [MR. BIN LEP]: Yes, I understand.

10          MJ [Lt Col BRAUN]: By your plea of guilty you waive or, in  
11 other words, you give up certain important rights. First, you give  
12 up the right against self-incrimination. That is the right to say  
13 nothing at all about the offenses you have pled guilty to.

14          Mr. bin Amin, do you understand that you have this right?

15          ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

16          MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand that you  
17 have this right?

18          ACC [MR. BIN LEP]: Yes, I understand.

19          MJ [Lt Col BRAUN]: Second, you give up the right to a trial  
20 of the facts by the military commission. That is your right to have  
21 the commission decide whether or not you are guilty based on evidence  
22 presented by the government and any evidence presented by the  
23 defense.

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1 Mr. bin Amin, do you understand that you have this right?

2 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

3 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand that you  
4 have this right?

5 ACC [MR. BIN LEP]: Yes, I understand.

6 MJ [Lt Col BRAUN]: Third, you give up the right to confront  
7 and cross-examine the witnesses called against you and to call  
8 witnesses on your own behalf in the findings portion of this trial.

9 Mr. bin Amin, do you understand that you have this right?

10 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

11 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand that you  
12 have this right?

13 ACC [MR. BIN LEP]: Yes, I understand.

14 MJ [Lt Col BRAUN]: If you plead guilty, there will be no  
15 trial of any kind as to the offenses to which you are pleading  
16 guilty. And by pleading guilty, you will give up these three rights  
17 that I just described with respect to those offenses to which you  
18 have plead guilty.

19 Mr. bin Amin, do you understand this?

20 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

21 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand this?

22 ACC [MR. BIN LEP]: Yes, I understand.

23 MJ [Lt Col BRAUN]: Even if you believe you are guilty, you



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1 still have the legal and moral right to enter a plea of not guilty,  
2 and to require the government to prove its case against you, if it  
3 can, by legal and competent evidence beyond a reasonable doubt.

4 If you were to plead not guilty, then you would be presumed  
5 under the law to be innocent. And only by introducing evidence and  
6 proving your guilt beyond a reasonable doubt could the government  
7 overcome this presumption of innocence.

8 Mr. bin Amin, do you understand this?

9 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

10 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand this?

11 ACC [MR. BIN LEP]: Yes, I understand.

12 MJ [Lt Col BRAUN]: Mr. bin Amin, have you discussed this with  
13 your defense counsel?

14 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, we did.

15 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you discussed this  
16 with your defense counsel?

17 ACC [MR. BIN LEP]: Yes.

18 MJ [Lt Col BRAUN]: Mr. bin Amin, do you agree to give up  
19 these rights with regard to the offenses to which you have pled  
20 guilty and to answer my questions concerning your plea?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

22 MJ [Lt Col BRAUN]: Mr. bin Lep, do you agree to waive these  
23 three rights with regard to the offenses to which you have pled

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1 guilty and to answer my questions concerning your plea?

2 ACC [MR. BIN LEP]: Yes, I agree.

3 MJ [Lt Col BRAUN]: If you continue with your guilty plea, you  
4 will be placed under oath, and I will question you to determine  
5 whether your plea is accurate. That is to say, there is either a  
6 factual basis for your plea or you voluntarily agree that, having  
7 viewed the evidence the government intends to introduce against you,  
8 you are personally convinced the government could prove you're guilty  
9 of the offenses to which you are pleading guilty beyond a reasonable  
10 doubt.

11 Mr. bin Amin, do you understand this?

12 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

13 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

14 ACC [MR. BIN LEP]: Yes, I understand.

15 MJ [Lt Col BRAUN]: You should also understand that if you  
16 tell me anything that is untrue, you may be charged with perjury or  
17 making false statements, and your statements may be used against you  
18 in any resulting prosecution.

19 Mr. bin Amin, do you understand this?

20 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

21 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

22 ACC [MR. BIN LEP]: Yes, I understand.

23 MJ [Lt Col BRAUN]: Trial Counsel, please place the accused

1 under oath.

2 MDTC [Lt Col GOEWERT]: Will you please stand and raise your  
3 right hand.

4 **ACCUSED, MOHAMMED FARIK BIN AMIN, was called as a witness for the**  
5 **prosecution, was sworn, and testified as follows:**

6 **ACCUSED MOHAMMED NAZIR BIN LEP, was called as a witness for the**  
7 **prosecution, was sworn, and testified as follows:**

8 MJ [Lt Col BRAUN]: Thank you. You may be seated.

9 Trial Counsel, I understand there is a stipulation of fact  
10 in the case of Mr. bin Amin. Could you please identify that  
11 stipulation of fact for the record?

12 MDTC [Lt Col GOEWERT]: Your Honor, the Stipulation of Fact is  
13 Prosecution Exhibit 1 in this case for Mr. bin Amin.

14 MJ [Lt Col BRAUN]: Is Prosecution Exhibit 1 for  
15 identification in its final form?

16 MDTC [Lt Col GOEWERT]: Yes, it is, Your Honor. It was  
17 actually submitted to the court and approved by the court already.

18 MJ [Lt Col BRAUN]: Ms. Funk, do you agree that Prosecution  
19 Exhibit 1 is in its final form?

20 CDC [MS. FUNK]: Yes, Your Honor. Thank you.

21 MJ [Lt Col BRAUN]: I also understand that a Malaysian  
22 translation of Prosecution Exhibit 1 for identification has also been  
23 accomplished.

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1 Trial Counsel, is that document in its final form? And, if  
2 so, how has it been marked for identification?

3 MDTC [Lt Col GOEWERT]: Your Honor, it is in its final form  
4 and it has been marked as PE 2.

5 MJ [Lt Col BRAUN]: I note its actual notation is Prosecution  
6 Exhibit 2 (TRANS), indicating the translation.

7 Ms. Funk, do you agree that Prosecution Exhibit 2 (TRANS)  
8 for identification provides an accurate translation of Prosecution  
9 Exhibit 1?

10 CDC [MS. FUNK]: Truthfully, Your Honor, I'm not qualified to  
11 represent that it's an accurate translation.

12 MJ [Lt Col BRAUN]: Does your team not have a means by which  
13 to validate the translation of that document?

14 CDC [MS. FUNK]: We received it about 8:00 last night, Your  
15 Honor.

16 MJ [Lt Col BRAUN]: Okay.

17 CDC [MS. FUNK]: I wasn't anticipating that question, so I  
18 apologize. If maybe we could just take a 10-minute break?

19 MJ [Lt Col BRAUN]: So -- and, Ms. Funk, I think this is an  
20 important question. So what we are going to do is I'm going to ask  
21 the defense the same questions to see if we maybe can economize that  
22 review if we have the same issue, and then I will take a recess to  
23 allow the parties to quickly review that document and ensure its

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1 accuracy. And then we can come back on the record and you can  
2 affirmatively, or not, answer that question for the commission.

3 CDC [MS. FUNK]: Thank you.

4 MJ [Lt Col BRAUN]: Okay. So I'm going to transition to the  
5 Stipulation of Fact for Mr. bin Lep.

6 Trial Counsel, there's a stipulation for Mr. bin Lep as  
7 well, correct?

8 LDC [MR. BOUFFARD]: I'm sorry, Your Honor. Could you please  
9 repeat the question?

10 MJ [Lt Col BRAUN]: It was actually to trial counsel,  
11 Mr. Bouffard.

12 Trial Counsel, there's also a stipulation for Mr. bin Lep;  
13 that's correct?

14 MDTC [Lt Col GOEWERT]: There is, sir.

15 MJ [Lt Col BRAUN]: Okay. Could you identify it for the  
16 record, please?

17 MDTC [Lt Col GOEWERT]: Your Honor, that stipulation is  
18 Prosecution Exhibit 3, and it has already been admitted by prior  
19 order of this court.

20 MJ [Lt Col BRAUN]: Well, Counsel, I don't believe it's been  
21 admitted. The admission of Prosecution Exhibits 1, 2 -- 1 and 3, the  
22 stipulations, as well as their translations, would be contingent upon  
23 the commission's acceptance of the accused's guilty plea.

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1 MDTC [Lt Col GOEWERT]: Yes, sir. And so, for the record, it  
2 is the same stipulation that was involved in the prosecution's  
3 submissions to this court, prior AE sequences.

4 MJ [Lt Col BRAUN]: Understood. And that is identified as  
5 Prosecution Exhibit 3 for identification, correct?

6 MDTC [Lt Col GOEWERT]: Yes, sir. And its translation is  
7 Prosecution Exhibit 4 (TRANS).

8 MJ [Lt Col BRAUN]: Thank you, Trial Counsel.

9 Mr. Bouffard, do you agree that Prosecution Exhibit 3 for  
10 identification is the Stipulation of Fact for Mr. bin Lep's case, and  
11 that it is in its final form?

12 LDC [MR. BOUFFARD]: We do agree, Your Honor.

13 MJ [Lt Col BRAUN]: Have you received the translation of  
14 Prosecution Exhibit 3, identified as Prosecution Exhibit 4 (TRANS)  
15 for identification? Have you received that document?

16 LDC [MR. BOUFFARD]: Yes, Your Honor.

17 MJ [Lt Col BRAUN]: Okay. Have you had an opportunity to  
18 determine whether Prosecution Exhibit 4 (TRANS) for identification  
19 provides an accurate translation of Prosecution Exhibit 3 for  
20 identification?

21 LDC [MR. BOUFFARD]: Yes, Your Honor.

22 MJ [Lt Col BRAUN]: Okay.

23 Okay. Given you have been able to do that, I'm going to

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1 continue with this portion for Mr. bin Lep before we recess just in  
2 an attempt to try and keep things together here.

3 LDC [MR. BOUFFARD]: You mean "Mr. bin Amin," Your Honor?

4 MJ [Lt Col BRAUN]: I'm sorry. Mr. -- well, I'm going to talk  
5 to Mr. bin Lep first.

6 So, Mr. bin Lep, I'd like you to look at the last page -- at  
7 the last page of Prosecution Exhibit 3 for identification. That is a  
8 stipulation of fact.

9 Did you sign this document?

10 ACC [MR. BIN LEP]: Yes.

11 MJ [Lt Col BRAUN]: Did you read this document or its  
12 Malaysian translation thoroughly before you signed it?

13 ACC [MR. BIN LEP]: Yes.

14 MJ [Lt Col BRAUN]: Does the government and counsel for  
15 Mr. bin Lep agree to the stipulation and that your signatures appear  
16 on this document?

17 Trial Counsel?

18 MDTC [Lt Col GOEWERT]: Yes. Our signatures are on that  
19 document, sir.

20 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

21 LDC [MR. BOUFFARD]: Yes, Your Honor.

22 MJ [Lt Col BRAUN]: Mr. bin Lep, prior to signing this  
23 stipulation, did you read it and discuss it with your attorneys?

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1 ACC [MR. BIN LEP]: Yes.

2 MJ [Lt Col BRAUN]: Do you understand everything contained  
3 within that Stipulation of Fact?

4 ACC [MR. BIN LEP]: Yes, I understand.

5 MJ [Lt Col BRAUN]: Very well.

6 So I'm inclined at this point to not get too far ahead of  
7 myself and take that recess to allow the team for Mr. bin Amin to  
8 review the translation marked as Prosecution Exhibit 2 for  
9 identification and ensure that it is an accurate translation of  
10 Prosecution Exhibit 1 for identification.

11 Ms. Funk, if you could assist me in understanding about how  
12 long you think that would take.

13 CDC [MS. FUNK]: Your Honor, again, I'm not proficient in  
14 Malay, but I am looking at the Stipulation of Fact, and I am looking  
15 at the translated document that I understand from my team to be the  
16 associated document. It appears to me -- oh, I apologize.

17 It looks like on top we have the pretrial agreement and then  
18 later on the Stipulation of Fact does appear to be here.

19 I think that 15 minutes would be sufficient, and I can be in  
20 communication with your court staff if we need either longer or  
21 shorter amount of time.

22 MJ [Lt Col BRAUN]: Okay.

23 CDC [MS. FUNK]: Thank you.



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1 MJ [Lt Col BRAUN]: Very well, then.

2 What we will do is we will take that 15-minute recess to  
3 allow the bin Amin team to make that confirmation. When we come back  
4 on the record, then I will affirm that on the record, and then we  
5 will proceed with the inquiry into the various stipulations of fact.

6 Is there anything else that this commission can take up at  
7 this time prior to my recessing the commission for 15 minutes?

8 Trial Counsel?

9 MDTC [Lt Col GOEWERT]: No. Thank you, sir.

10 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

11 LDC [MR. BOUFFARD]: No, Your Honor.

12 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

13 CDC [MS. FUNK]: No, Your Honor. Thank you.

14 MJ [Lt Col BRAUN]: Very well. This commission's in a  
15 15-minute recess.

16 **[The R.M.C. 803 session recessed at 1019, 16 January 2024.]**

17 **[The R.M.C. 803 session was called to order at 1041,**  
18 **16 January 2024.]**

19 MJ [Lt Col BRAUN]: This commission will come to order. All  
20 parties that were present when the commission recessed are again  
21 present.

22 Ms. Funk, have you had an adequate opportunity to review  
23 Prosecution Exhibit 2 Translation for identification?

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1 CDC [MS. FUNK]: Yes, I have.

2 MJ [Lt Col BRAUN]: Do you agree that Prosecution Exhibit 2  
3 Translation for identification provides an accurate translation of  
4 Prosecution Exhibit 1?

5 CDC [MS. FUNK]: A couple of things, Your Honor.

6 First, I'd like to correct the record. I indicated to the  
7 court that we received the Malay translation last night, which we  
8 did, but my team tells me we also received it previously in  
9 discovery. So I don't want to unfairly disparage the government.

10 Second, I want it to be clear on the record that while  
11 English is not my client's first language, he has during his time in  
12 United States custody developed substantial skill. I want it to be  
13 clear that the Stipulation of Fact, before it was signed, we spent  
14 weeks meeting with the client, communicating by mail with an  
15 interpreter present and available for any questions he may have.

16 So I am confident, despite not having reviewed the Malay  
17 version earlier, that he understands what he is doing.

18 I will note for the record there is one small  
19 mistranslation. It is on -- it's page 30 on the bottom right;  
20 page 16, if you look in the middle of the bottom of the page. It's  
21 number 90.

22 The last sentence says -- in English, says: The accused  
23 assisted Hambali in order to prevent Hambali's apprehension.

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1           In Malay it says: The accused assisted Hambali in order to  
2 prevent Hambali worrying.

3           I think "would be apprehensive." It's a small detail. I  
4 would not say it's particularly important, but because we have  
5 reviewed it for accuracy, I wanted to put that on the record.

6           MJ [Lt Col BRAUN]: Okay.

7           CDC [MS. FUNK]: Thank you.

8           MJ [Lt Col BRAUN]: And, Ms. Funk, have you informed your  
9 client of that small issue on the translation so if he's referring to  
10 the translated version, he's cognizant of that language difference?

11          CDC [MS. FUNK]: Yes. He actually told us what that word was.  
12 So, thank you.

13          MJ [Lt Col BRAUN]: Outstanding. Thank you.

14          So, Mr. bin Amin, I would like you to please look at page 17  
15 of Prosecution Exhibit 1 for identification. That is the stipulation  
16 of fact I've been talking with your counsel about.

17          Did you sign this stipulation?

18          CDC [MS. FUNK]: Your Honor, I apologize. I've been shifting  
19 documents, so I'll just need a minute to locate that page.

20          MJ [Lt Col BRAUN]: Quite all right. Take your time. Just  
21 please look up at me when you've found it.

22          **[Pause.]**

23          CDC [MS. FUNK]: I did sign it, Your Honor.

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1 MJ [Lt Col BRAUN]: Mr. bin Amin, did you sign that  
2 stipulation -- your counsel is showing you Prosecution Exhibit 1 for  
3 identification. Did you sign that stipulation of fact?

4 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I signed it.

5 MJ [Lt Col BRAUN]: Mr. bin Amin, did you read this document,  
6 or the Malay translation, thoroughly before you signed it?

7 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I read it with  
8 my lawyer.

9 MJ [Lt Col BRAUN]: Do counsel for both sides agree to the  
10 stipulation and that your signatures appear on the document?

11 Trial Counsel?

12 MDTC [Lt Col GOEWERT]: We do, sir.

13 MJ [Lt Col BRAUN]: Ms. Funk?

14 CDC [MS. FUNK]: Yes, Your Honor. Thank you.

15 MJ [Lt Col BRAUN]: Mr. bin Amin, prior to signing the  
16 stipulation, did you read it and discuss it with your attorneys?

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

18 MJ [Lt Col BRAUN]: Do you understand everything contained  
19 within this stipulation of fact?

20 ACC [MR. BIN AMIN]: **[Speaking in English]** Pardon, Your Honor?  
21 Pardon, can you repeat the question?

22 MJ [Lt Col BRAUN]: I sure can. Did you -- excuse me.

23 Do you understand everything contained within this

1 Stipulation of Fact?

2 ACC [MR. BIN AMIN]: **[Speaking in English]** With help, with my  
3 lawyer, I understand it.

4 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin and Mr. bin Lep, at  
5 this point we are going to discuss the Stipulation of Fact to ensure  
6 that you understand it and agree to its uses.

7 A stipulation of fact is an agreement between the trial  
8 counsel, the defense counsel, and you, that the contents of the  
9 stipulation are the uncontradicted facts in this case.

10 You have the right not to enter into this stipulation, and  
11 this stipulation will only be accepted with your consent.

12 You should enter into this stipulation only if you truly  
13 want to do so.

14 Mr. bin Amin, do you understand this?

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

16 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

17 ACC [MR. BIN LEP]: Yes, I understand.

18 MJ [Lt Col BRAUN]: Okay. At this time I'm going to address  
19 Mr. bin Amin and his Stipulation of Fact, which has been identified  
20 as Prosecution Exhibit 1 for identification and the translation at  
21 Prosecution Exhibit 2 (TRANS) for identification.

22 Mr. bin Amin, your stipulation contains an introductory  
23 paragraph and 90 numbered paragraphs in 17 pages. Have you

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1 thoroughly reviewed this stipulation in its entirety with your  
2 counsel?

3 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

4 MJ [Lt Col BRAUN]: Are you voluntarily entering into this  
5 stipulation?

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

7 MJ [Lt Col BRAUN]: Do you think it is in your best interest  
8 to enter into this stipulation?

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

10 MJ [Lt Col BRAUN]: Having reviewed this document, is there  
11 any part to which you do not wish to consent?

12 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

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

15 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

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

21 Do you understand this?

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

23 MJ [Lt Col BRAUN]: Do you agree to those uses?

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

2 MJ [Lt Col BRAUN]: Do counsel also agree to those uses?  
3 Trial Counsel?

4 MDTC [Lt Col GOEWERT]: We do, sir.

5 MJ [Lt Col BRAUN]: And, Ms. Funk?

6 CDC [MS. FUNK]: Yes, Your Honor.

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

11 Mr. bin Amin, do you understand this?

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

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

18 Do you understand that?

19 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, Your Honor.

20 MJ [Lt Col BRAUN]: Thank you, Mr. bin Amin.

21 Mr. bin Lep, I'm now going to ask you questions about your  
22 Stipulation of Fact, which has been identified as Prosecution  
23 Exhibit 3 for identification, as well as Prosecution Exhibit 4

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1 Translation for identification.

2 LDC [MR. BOUFFARD]: Your Honor, in an abundance of caution,  
3 we did note over the break that there is a typo in our stip that is  
4 of some minor significance, and that just is simply in  
5 paragraph 9 ----

6 MJ [Lt Col BRAUN]: One moment, Counsel.

7 LDC [MR. BOUFFARD]: Certainly.

8 MJ [Lt Col BRAUN]: Okay. Paragraph 9 of Prosecution  
9 Exhibit 3 for identification?

10 LDC [MR. BOUFFARD]: Yes, sir. The accused's birth date  
11 should be December 25 vice 26.

12 MJ [Lt Col BRAUN]: Okay. What I'm going to do, Counsel, is  
13 we're going to take a moment here in place. And I would like, as all  
14 the signatories to this Stipulation of Fact are present in this room,  
15 I would like for that change to be made via pen-and-ink correction to  
16 the Stipulation of Fact so that when this -- should this document be  
17 accepted -- or admitted upon acceptance of the accused's guilty plea,  
18 it is accurate, given that it would potentially be used for  
19 sentencing purposes.

20 So please take a moment. I'll allow the parties to  
21 crosstalk as we take a recess in place here to effect that correction  
22 and ensure that all relevant parties have initialed and dated the  
23 pen-and-ink correction.



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1 Do you understand?

2 LDC [MR. BOUFFARD]: Yes, sir. Thank you.

3 MJ [Lt Col BRAUN]: Okay. Very well. We're going to take a  
4 recess in place.

5 **[The R.M.C. 803 session recessed at 1052, 16 January 2024.]**

6 **[The R.M.C. 803 session was called to order at 1053,**  
7 **16 January 2024.]**

8 MJ [Lt Col BRAUN]: All parties are again present.

9 So during the recess in place, Trial Counsel, you had a  
10 request. Let's state that again, please.

11 MDTC [Lt Col GOEWERT]: Yes, Your Honor. Thank you. My  
12 apologies.

13 Request the ability to provide a substituted version of  
14 Prosecution Exhibit 4 (TRANS), based on that minor alteration to the  
15 stipulation so that a corrected version of the translation can be  
16 entered into the record.

17 LDC [MR. BOUFFARD]: No objection to that, sir.

18 MJ [Lt Col BRAUN]: Okay. Thank you, Counsel. I will permit  
19 you to provide a corrected translation to capture the change that is  
20 being made.

21 I would like to discuss that change on the record.

22 So the court reporter has handed me Prosecution Exhibit 3  
23 for identification. Commission notes that in paragraph 9, in the

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1 very first line of that paragraph, the figure "26" has been lined  
2 through, and the figure "25" has been written above it. To the left  
3 I see today's date, 16 January 2024, as well as three sets of  
4 initials.

5 Trial Counsel, I believe those are your initials on that  
6 document; is that correct?

7 MDTC [Lt Col GOEWERT]: That's correct. Yes, Your Honor.

8 MJ [Lt Col BRAUN]: Defense Counsel, it looks like I also see  
9 your initials on that document; is that correct?

10 LDC [MR. BOUFFARD]: Yes, sir.

11 MJ [Lt Col BRAUN]: Okay. So, Mr. bin Lep, counsel just made  
12 a change to Prosecution Exhibit 3 for identification, your  
13 Stipulation of Fact. That change is captured in paragraph 9 ----

14 LDC [MR. BOUFFARD]: Your Honor, I'm sorry. We're having  
15 headphone issues here as well. We're not getting an audio feed.

16 Now we are.

17 MJ [Lt Col BRAUN]: Okay. Very well.

18 Mr. bin Lep, the parties have provided to me a -- have  
19 provided to me Prosecution Exhibit 3 for identification. This is  
20 your Stipulation of Fact that we have been discussing.

21 In paragraph 9 of this document, there has been a change  
22 made. That change changes, in essence, your birthday, the day you  
23 were born on, from December 26, 1976, to December 25, 1976.

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1 Have you seen this change?

2 ACC [MR. BIN LEP]: Yes. Yes.

3 MJ [Lt Col BRAUN]: And do you agree to this change?

4 ACC [MR. BIN LEP]: Yes, I agree.

5 MJ [Lt Col BRAUN]: And are those your initials next to this  
6 change on Prosecution Exhibit 3 in the margin?

7 ACC [MR. BIN LEP]: Yes.

8 MJ [Lt Col BRAUN]: Okay. Very well.

9 I'm going to hand the original Prosecution Exhibit 3 for  
10 identification back to the court reporter.

11 So with that resolved, Mr. bin Lep, I want to discuss your  
12 stipulation specifically with you. So if you could please ensure you  
13 are looking at Prosecution Exhibit 3 for identification or  
14 Prosecution Exhibit 4 Translation for identification. I'd recommend  
15 you have both available to you.

16 Your stipulation contains an introductory paragraph and 106  
17 numbered paragraphs over 12 pages.

18 Have you thoroughly reviewed this stipulation with your  
19 counsel?

20 ACC [MR. BIN LEP]: Yes.

21 MJ [Lt Col BRAUN]: Are you voluntarily entering into this  
22 stipulation?

23 ACC [MR. BIN LEP]: Yes, I agree.

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1 MJ [Lt Col BRAUN]: Do you think it is in your best interest  
2 to enter into this stipulation?

3 ACC [MR. BIN LEP]: Yes.

4 MJ [Lt Col BRAUN]: Having reviewed this document, is there  
5 any part to which you do not wish to consent?

6 ACC [MR. BIN LEP]: No.

7 MJ [Lt Col BRAUN]: Has anyone forced or threatened you to  
8 enter into this stipulation?

9 ACC [MR. BIN LEP]: There's no one.

10 MJ [Lt Col BRAUN]: If I admit this stipulation into evidence,  
11 it will be used in two ways. First, I will use it to determine if  
12 you are guilty of the offenses to which you've pled guilty.

13 Second, the trial counsel may read it to the court members,  
14 and they will have it with them when they decide your sentence.

15 Mr. bin Lep, do you understand this?

16 ACC [MR. BIN LEP]: Yes, I understand.

17 MJ [Lt Col BRAUN]: Do you agree to those uses?

18 ACC [MR. BIN LEP]: Yes, I agree.

19 MJ [Lt Col BRAUN]: Do counsel also agree to those uses?

20 Trial Counsel.

21 MDTC [Lt Col GOEWERT]: We do, sir.

22 MJ [Lt Col BRAUN]: Mr. Bouffard?

23 LDC [MR. BOUFFARD]: Yes, Your Honor.

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1 MJ [Lt Col BRAUN]: Ordinarily, a stipulation of fact cannot  
2 be contradicted or questioned after it has been entered into  
3 evidence. That is, after it has been admitted into evidence, you  
4 cannot later argue that the information contained in the stipulation  
5 is false.

6 Mr. bin Lep, do you understand this?

7 ACC [MR. BIN LEP]: Yes, I understand.

8 MJ [Lt Col BRAUN]: If this stipulation should be questioned  
9 or contradicted after I have accepted your guilty plea, I will reopen  
10 the inquiry into your pleas. This means you need to let me know at  
11 this point if there is anything at all that you disagree with or  
12 anything that you feel is untrue in this stipulation.

13 Do you understand this?

14 ACC [MR. BIN LEP]: I understand.

15 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, I want you  
16 both to read your Stipulation of Fact silently to yourself as I read  
17 them to myself. When you are done reviewing your Stipulation of  
18 Fact, I ask that you look up at me so that I know you are done  
19 reading.

20 **[Pause.]**

21 MJ [Lt Col BRAUN]: Mr. bin Amin, have you finished reading  
22 your Stipulation of Fact?

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

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1 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you finished  
2 reading your Stipulation of Fact?

3 ACC [MR. BIN LEP]: Yes, I finished.

4 MJ [Lt Col BRAUN]: Okay. Very well, then.

5 At this time I'm going to be asking questions of both of  
6 you, and I'm going to need you both to respond. We're going to be  
7 doing that a little bit today.

8 How I'm going to handle that is I'm going to ask a question,  
9 and then I will just refer to, as I have been, each one of you so  
10 that you can provide me your answer at that time. I think that will  
11 make things a little clearer for the record and a little easier for  
12 you to understand when I'm directing my question to each one of you  
13 individually.

14 So, Mr. bin Amin, do you agree and admit that the  
15 information contained in the stipulation is true and correct to the  
16 best of your knowledge and belief?

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

18 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you agree and admit  
19 that the information contained in the stipulation is true and correct  
20 to the best of your knowledge and belief?

21 ACC [MR. BIN LEP]: Yes, I agree.

22 MJ [Lt Col BRAUN]: Is there anything in the stipulation that  
23 you do not wish to admit is true, Mr. bin Amin?

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1 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

2 MJ [Lt Col BRAUN]: And, Mr. bin Lep?

3 ACC [MR. BIN LEP]: No, nothing.

4 MJ [Lt Col BRAUN]: Ms. Funk, do you have any objection to  
5 Prosecution Exhibit 1 for identification?

6 CDC [MS. FUNK]: I do not, Your Honor.

7 MJ [Lt Col BRAUN]: Ms. Funk, do you have any objection to  
8 Prosecution Exhibit 2 Translation for identification?

9 CDC [MS. FUNK]: No, Your Honor.

10 MJ [Lt Col BRAUN]: Prosecution Exhibit 1 for identification,  
11 Mr. bin Amin's Stipulation of Fact, is admitted into evidence as  
12 Prosecution Exhibit 1, subject to my acceptance of the accused's  
13 guilty plea.

14 Prosecution Exhibit 2 Translation for identification,  
15 Mr. bin Amin's Stipulation of Fact, is admitted into evidence as  
16 Prosecution Exhibit 2 Translation, subject to acceptance of the  
17 accused's guilty plea.

18 Mr. Bouffard, do you have any objection to Prosecution  
19 Exhibit 3 for identification?

20 LDC [MR. BOUFFARD]: No, sir.

21 MJ [Lt Col BRAUN]: Mr. Bouffard, do you have any objection to  
22 Prosecution Exhibit 4 Translation for identification?

23 LDC [MR. BOUFFARD]: No, sir.

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1 MJ [Lt Col BRAUN]: Prosecution Exhibit 3 for identification,  
2 Mr. bin Lep's Stipulation of Fact, is admitted into evidence as  
3 Prosecution Exhibit 3, subject to my acceptance of the accused's  
4 guilty plea.

5 Prosecution Exhibit 4 Translation for identification,  
6 Mr. bin Lep's Stipulation of Fact, is admitted into evidence as  
7 Prosecution Exhibit 4 Translation, subject to my acceptance of the  
8 accused's guilty plea.

9 Trial Counsel, you had asked for permission to correct  
10 the -- or make a conforming change to that document based upon the  
11 pen-and-ink change agreed to by the parties in Prosecution Exhibit 3.  
12 I would like to see that change after the next recess -- or,  
13 actually, after the lunch recess to ensure that it has been indeed  
14 made.

15 And if you can ensure that that is coordinated with defense,  
16 and then I will ask defense, as well as Mr. bin Lep, the same -- that  
17 they've reviewed that change and concur with it.

18 MDTC [Lt Col GOEWERT]: Yes, Your Honor. Thank you.

19 MJ [Lt Col BRAUN]: Thank you.

20 Defense Counsel, do Mr. bin Amin and Mr. bin Lep have a copy  
21 of the charge sheets in front of them?

22 Ms. Funk?

23 CDC [MS. FUNK]: Mr. bin Amin does. Thank you.



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1 MJ [Lt Col BRAUN]: And, Mr. Bouffard?

2 LDC [MR. BOUFFARD]: We do, Your Honor.

3 MJ [Lt Col BRAUN]: Before we start discussing the charges and  
4 specifications themselves, I want to clarify the aliases listed in  
5 the charge sheets and the common allegations.

6 So, Mr. bin Amin, the charge sheet your counsel showed you  
7 identifies you as Mohammed Farik bin Amin, aka Zubair. Have you used  
8 Zubair as one of your aliases?

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

10 MJ [Lt Col BRAUN]: The charge sheet also references a list of  
11 aliases in Appendix A. I would like you to look -- find Appendix A  
12 and review it. When you are done reviewing Appendix A, I want you to  
13 look up at me.

14 **[Pause.]**

15 MJ [Lt Col BRAUN]: Are those also aliases you have used?

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

17 MJ [Lt Col BRAUN]: Mr. bin Lep, the charge sheet identifies  
18 you as Mohammed Nazir bin Lep, aka Lillie. Have you used Lillie as  
19 one of your aliases?

20 ACC [MR. BIN LEP]: My nickname is Ali and not Lillie.

21 MJ [Lt Col BRAUN]: Understanding that, have you ever used  
22 Lillie as an alias?

23 ACC [MR. BIN LEP]: I have never used Lillie.

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1 LDC [MR. BOUFFARD]: Your Honor, I can clear that up, if I  
2 may.

3 Essentially, early on in this he became known to Allied  
4 Coalition Forces as "Lillie" due to some unrelated evidence. He  
5 will -- he does believe and will admit that the references to  
6 "Lillie" on the charge sheet and in this case do indeed refer to him.

7 MJ [Lt Col BRAUN]: Thank you, Mr. Bouffard.

8 That would be my next question for you. You've had an  
9 opportunity to review the charge sheet in its entirety, correct?

10 ACC [MR. BIN LEP]: Correct.

11 MJ [Lt Col BRAUN]: We just concluded reviewing Prosecution  
12 Exhibit 3, the Stipulation of Fact; is that correct?

13 ACC [MR. BIN LEP]: Correct.

14 MJ [Lt Col BRAUN]: Based upon your review of those documents  
15 and your review of the other evidence in this case that you have  
16 reviewed with your counsel, are you satisfied that "Lillie" is an  
17 alias that is used to refer to you?

18 ACC [MR. BIN LEP]: I am satisfied.

19 MJ [Lt Col BRAUN]: Now I would like you to, in your charge  
20 sheet, turn to Appendix A, and that contains a list of aliases. I  
21 would like you to review those aliases, and look up at me when you  
22 are done.

23 **[Pause.]**

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1 MJ [Lt Col BRAUN]: Are those aliases listed in Appendix A  
2 also aliases that you have used or you have been referred to by?

3 ACC [MR. BIN LEP]: Yes.

4 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin and Mr. bin Lep, I  
5 want you to flip to the first page of that charge sheet. On there  
6 you will see your personal information on the top. Down the page,  
7 you're going to see a piece that says "Charge." And then the  
8 attaching pages -- the attached pages, you're going to see common  
9 allegations as well as the beginning of the charges.

10 I want to orient you to this document because I'm going to  
11 step you through the charges and specifications that you have pled  
12 guilty to in the order that they appear in this document. So we're  
13 going to move from the front of the document to the back of the  
14 document as much as I can. There will necessitate some moving around  
15 in between there.

16 Because we're going to be reviewing this document regularly,  
17 I would recommend that you keep the charge sheet, as well as your  
18 Stipulation of Fact, available to you so that you can refer to both  
19 of them throughout this inquiry.

20 Do you have any questions, Mr. bin Amin?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

22 MJ [Lt Col BRAUN]: Okay. Do you have any questions, Mr.  
23 bin Lep?

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1 ACC [MR. BIN LEP]: No.

2 MJ [Lt Col BRAUN]: Even though I will separate my questions  
3 for you into different sections, I would like to rely on your answers  
4 to all of my questions today in determining whether or not you are  
5 guilty of each offense regardless of when those questions are posed.

6 For instance, I might ask you questions while we are focused  
7 and discussing on Charge I that are also relevant in determining  
8 whether you are guilty of Charge VII.

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

12 Mr. bin Amin?

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

14 MJ [Lt Col BRAUN]: And, Mr. bin Lep?

15 ACC [MR. BIN LEP]: Yes.

16 MJ [Lt Col BRAUN]: Do counsel also agree to my use of the  
17 accused's responses in this fashion?

18 Trial Counsel?

19 MDTC [Lt Col GOEWERT]: Yes, Your Honor.

20 MJ [Lt Col BRAUN]: Ms. Funk?

21 CDC [MS. FUNK]: Yes, Your Honor.

22 MJ [Lt Col BRAUN]: Mr. Bouffard?

23 LDC [MR. BOUFFARD]: Yes, Your Honor.

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1 MJ [Lt Col BRAUN]: I'm going to explain the elements of the  
2 offenses to which you have pled guilty and when I use the term  
3 "elements," I mean those facts which the prosecution would have to  
4 prove beyond a reasonable doubt before you could be found guilty if  
5 you had pled not guilty.

6 When I state each element, I want you to ask yourself two  
7 things. First, is the element true? And second, do you wish to  
8 admit that it is true?

9 After I list the elements for you, we will have a discussion  
10 regarding the circumstances surrounding those offenses.

11 Do you have any questions about this process as I have  
12 described it, Mr. bin Amin?

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

14 MJ [Lt Col BRAUN]: Do you have any questions -- do you have  
15 any questions, Mr. bin Lep?

16 ACC [MR. BIN LEP]: No.

17 MJ [Lt Col BRAUN]: Before I move into the charges and  
18 specifications, we are at the point where I said we would break for  
19 lunch. So this seems like, before I dive into the beginning here of  
20 Charge I, that this might be an opportune time to take that recess.

21 As I had mentioned at the very beginning, my intent would be  
22 to recess the court until 1300, absent any contrary requests from the  
23 parties.

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1           Would a recess until 1300 be sufficient, understanding I  
2 asked you to accomplish some corrections?

3           Trial Counsel?

4           MDTC [Lt Col GOEWERT]: We can make that correction, sir.

5           MJ [Lt Col BRAUN]: Okay. Ms. Funk, if you could speak for  
6 your team, please?

7           CDC [MS. FUNK]: That would be sufficient. Thank you.

8           MJ [Lt Col BRAUN]: Okay. And Mr. Bouffard?

9           LDC [MR. BOUFFARD]: Sufficient, sir. Thank you.

10          MJ [Lt Col BRAUN]: Outstanding. And, Mr. Bouffard, if you  
11 could please make sure that you coordinate with the government on  
12 that additional change and your clients during the recess, that would  
13 be appreciated.

14          LDC [MR. BOUFFARD]: Yes, sir.

15          MJ [Lt Col BRAUN]: Very well, then. If there's nothing else  
16 this commission can take up, we are in recess until 1300.

17          **[The R.M.C. 803 session recessed at 1133, 16 January 2024.]**

18          **[The R.M.C. 803 session was called to order at 1306,**  
19 **16 January 2024.]**

20          MJ [Lt Col BRAUN]: This commission will come to order. All  
21 parties that were present when the commission recessed are again  
22 present.

23          Before we move ahead, Trial Counsel, were you able to

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1 address the change to Prosecution Exhibit 4 Translation?

2 MDTC [Lt Col GOEWERT]: We were, Your Honor. We made a  
3 pen-and-ink change to that with the signatures of all the original  
4 signatures to that document, the PTA itself, and have provided that  
5 back to the commission.

6 MJ [Lt Col BRAUN]: Okay. Mr. Bouffard, do you have a copy of  
7 Prosecution Exhibit 4 Translation with the change?

8 LDC [MR. BOUFFARD]: Sir, I don't. We didn't make another  
9 copy of it, but I have seen it and I do affirm that it's been done.

10 MJ [Lt Col BRAUN]: Okay. And those are your initials  
11 underneath the date 16 January 2024?

12 LDC [MR. BOUFFARD]: Yes, sir.

13 MJ [Lt Col BRAUN]: Okay. Very well.

14 Mr. bin Lep, I have in front of me Prosecution Exhibit 4  
15 Translation. This is the translation of the Stipulation of Fact you  
16 and I were talking about earlier or, more specifically, a translation  
17 of Prosecution Exhibit 3.

18 In this document, at paragraph 9, there is a pen-and-ink  
19 change, what appears to be December 26, 1976 was modified to read  
20 December 25th, 1976.

21 Did you see this change?

22 ACC [MR. BIN LEP]: Yes, I saw it.

23 MJ [Lt Col BRAUN]: And do you concur with this change? Do

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1 you agree with it?

2 ACC [MR. BIN LEP]: Yes, I agree.

3 MJ [Lt Col BRAUN]: And are those your initials next to this  
4 change on the side of the page?

5 ACC [MR. BIN LEP]: Yes. True.

6 MJ [Lt Col BRAUN]: Okay. Very well, then. I find that the  
7 changes are -- have been appropriately made and will accept  
8 Prosecution Exhibit 4 Translation for identification as Prosecution  
9 Exhibit 4, pending acceptance of the accused's guilty plea.

10 Okay. Mr. bin Lep and Mr. bin Amin, I want to pick up where  
11 we left off before the lunch recess. With that, I want to remind you  
12 that I advise you have a copy of the charge sheet as well as a copy  
13 of your Stipulation of Fact in front of you, as we will be  
14 referencing those two documents through this inquiry.

15 Do you indeed have those documents in front of you,  
16 Mr. bin Amin?

17 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I have it.

18 MJ [Lt Col BRAUN]: Thank you.

19 And, Mr. bin Lep?

20 ACC [MR. BIN LEP]: Yes, I have.

21 MJ [Lt Col BRAUN]: Thank you.

22 So before we get into the specific charges and  
23 specifications you have pled guilty to, I want to talk about a common



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

4 An alien is an individual who is not a citizen of the United  
5 States. An unprivileged enemy belligerent is an individual other  
6 than a privileged belligerent who, A, has engaged in hostilities  
7 against the United States or its coalition partners; B, has  
8 purposefully and materially supported hostilities against the United  
9 States or its coalition partners; or, C, was a part of al Qaeda at  
10 the time of the alleged offense under Chapter 47A of Title 10, United  
11 States Code.

12 Counsel, are there any objections to the definitions I have  
13 just provided?

14 Trial Counsel?

15 MDTC [Lt Col GOEWERT]: No, Your Honor.

16 MJ [Lt Col BRAUN]: Defense counsel for Mr. bin Amin?

17 CDC [MS. FUNK]: No, Your Honor.

18 MJ [Lt Col BRAUN]: And defense counsel for Mr. bin Lep?

19 LDC [MR. BOUFFARD]: No, Your Honor.

20 MJ [Lt Col BRAUN]: Mr. bin Amin, do you understand the  
21 definitions I have just provided?

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

23 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand those

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1 definitions?

2 ACC [MR. BIN LEP]: Yes, I understand.

3 MJ [Lt Col BRAUN]: Do you understand these elements and its  
4 terms are common to all the charges and specifications to which you  
5 have pled guilty, Mr. bin Amin?

6 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I understand.

7 MJ [Lt Col BRAUN]: And do you, Mr. bin Lep?

8 ACC [MR. BIN LEP]: Yes, I understand.

9 MJ [Lt Col BRAUN]: Do you admit and agree that within the  
10 context of this military commission, these terms and their  
11 definitions describe who you are?

12 Mr. bin Amin?

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

14 MJ [Lt Col BRAUN]: And Mr. bin Lep?

15 ACC [MR. BIN LEP]: Yes.

16 MJ [Lt Col BRAUN]: Okay. So I'd like to look at the  
17 provisions in the Stipulation of Fact which address this  
18 jurisdictional issue.

19 Mr. bin Amin and Mr. bin Lep, please look at paragraphs 1  
20 and 2 of your Stipulations of Fact.

21 This paragraph in those Stipulations of Fact describe and  
22 explain how you fit within the definition of an alien unprivileged  
23 enemy belligerent. Once again, that particular element, being an

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1 alien unprivileged enemy belligerent, is an offense of all of the  
2 offenses -- or I'm sorry -- is an element of all of the offenses. So  
3 we are only going to discuss this particular element one time,  
4 recognizing it applies to each offense to which you are pleading  
5 guilty.

6 Now, based on the agreement that the Stipulation of Fact is  
7 true and the explanations I have provided, do you admit that you meet  
8 the definition of an alien unprivileged enemy belligerent?

9 Mr. bin Amin?

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

11 MJ [Lt Col BRAUN]: And Mr. bin Lep?

12 ACC [MR. BIN LEP]: Yes.

13 MJ [Lt Col BRAUN]: Do you agree and admit that the military  
14 commission has jurisdiction both over you and all of the offenses to  
15 which you have entered a plea of guilty?

16 Mr. bin Amin?

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

18 MJ [Lt Col BRAUN]: And Mr. bin Lep?

19 ACC [MR. BIN LEP]: Yes.

20 MJ [Lt Col BRAUN]: Okay. Counsel, before I begin discussing  
21 and defining liability in general, is there any evidence that places  
22 Mr. bin Amin or Mr. bin Lep in a position of command? And if it is  
23 helpful, I will direct you particularly to Part 4 of the manual where

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1 it discusses principals, paragraph 2, subpart 3. Additionally,  
2 command, as it is used as a principal, counseling, commanding, or  
3 procuring.

4 MDTC [Lt Col GOEWERT]: No, Your Honor. We do not believe  
5 there is a command element to this.

6 MJ [Lt Col BRAUN]: Okay. Defense counsel for Mr. bin Lep, do  
7 you agree?

8 CDC [MS. FUNK]: I do agree. Oh, pardon me.

9 LDC [MR. BOUFFARD]: I do agree, Your Honor.

10 MJ [Lt Col BRAUN]: And counsel for Mr. bin Amin, do you also  
11 agree?

12 CDC [MS. FUNK]: Yes, Your Honor.

13 MJ [Lt Col BRAUN]: Thank you.

14 Okay. I also, based upon my review of the Stipulations of  
15 Fact, concur with that. So while I will provide that definition to  
16 the accused generally, when it comes to individual offenses, I will  
17 not be discussing that particular theory of liability.

18 Is there any objection to that approach?

19 Trial Counsel?

20 MDTC [Lt Col GOEWERT]: No, Your Honor.

21 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

22 CDC [MS. FUNK]: No, Your Honor.

23 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

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1 LDC [MR. BOUFFARD]: No, Your Honor.

2 MJ [Lt Col BRAUN]: Thank you.

3 Mr. bin Amin and Mr. bin Lep, in Charges I, III, VII, and  
4 their specifications that you have pled guilty to, you are charged  
5 with liability for substantive criminal acts committed by a person  
6 other than yourself.

7 Do you understand this, Mr. bin Amin?

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

9 MJ [Lt Col BRAUN]: And do you understand this, Mr. bin Lep?

10 ACC [MR. BIN LEP]: Yes, I understand.

11 MJ [Lt Col BRAUN]: Do you understand that you may be held  
12 criminally responsible for acts of others on a theory of vicarious  
13 liability?

14 Mr. bin Amin?

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

16 MJ [Lt Col BRAUN]: And Mr. bin Lep?

17 ACC [MR. BIN LEP]: Yes.

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

23 Under the theory of principal liability for the acts of

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1 another, you may be held criminally responsible if you:

2 One, commit, aid, abet, counsel, command, or procure the  
3 commission of an offense punishable under the Military Commissions  
4 Act;

5 Two, cause an act to be done which, if it were directly  
6 performed by you, would be punishable under the Military Commissions  
7 Act;

8 Or, three, are a superior commander who, with regard to acts  
9 punishable under the Military Commissions Act, knew, had reason to  
10 know, or should have known that a subordinate was about to commit  
11 such acts or had done so, and you failed to take the necessary and  
12 reasonable measures to prevent such acts or to punish the  
13 perpetrators thereof.

14 Do you understand this, Mr. bin Amin?

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

16 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

17 ACC [MR. BIN LEP]: I understand.

18 MJ [Lt Col BRAUN]: Have you discussed these legal concepts  
19 with your counsel, Mr. bin Amin?

20 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I -- we did.

21 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you discussed these  
22 concepts with your counsel?

23 ACC [MR. BIN LEP]: Yes.

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1 MJ [Lt Col BRAUN]: The first theory of principal liability  
2 involving vicarious liability applies to one who aids, abets,  
3 counsels, commands, or procures the commission of a substantive  
4 criminal act. I will discuss aiding and abetting at the start.

5 Any person who actually commits an offense is a principal.  
6 Anyone who knowingly and willfully aids or abets another in  
7 committing an offense is also a principal, and equally guilty of the  
8 offense.

9 An aider or abetter must knowingly and willfully participate  
10 in the commission of the crime as something he wishes to bring about,  
11 and must aid, encourage, or incite the person to commit the criminal  
12 act.

13 Presence at the scene of the crime is not enough, nor is  
14 failure to prevent the commission of an offense. There must be an  
15 intent to aid or encourage the person or persons who commit the  
16 crime. Also, if one witnesses the commission of the crime and had a  
17 duty to interfere, but did not because he wanted to protect or  
18 encourage the actual perpetrator, that person is a principal.

19 Although you must consciously share in the actual  
20 perpetrator's criminal intent to be an aider or abetter, there is no  
21 requirement that you agree with, or even have knowledge of, the means  
22 by which the perpetrator is to carry out that criminal intent.

23 Do you understand this, Mr. bin Amin?

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

2 MJ [Lt Col BRAUN]: Do you understand this, Mr. bin Lep?

3 ACC [MR. BIN LEP]: Yes, I understand.

4 MJ [Lt Col BRAUN]: If the finder of fact were satisfied  
5 beyond a reasonable doubt that you aided and abetted the commission  
6 of Specification 1 of Charge I, Specification 1 of Charge III, and  
7 Specification 1 of Charge VII, and that you specifically intended the  
8 commission of the underlying offenses in each instance, you could be  
9 found guilty of the underlying offense, even though you were not the  
10 person who actually committed the crimes.

11 Do you understand this, Mr. bin Amin?

12 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

13 MJ [Lt Col BRAUN]: And do you understand this, Mr. bin Lep?

14 ACC [MR. BIN LEP]: Yes, I understand.

15 MJ [Lt Col BRAUN]: I will next discuss principal liability  
16 with respect to one who counsels or procures another to commit an  
17 offense.

18 As I have explained, any person who commits an offense is a  
19 principal. Any person who knowingly and willfully counsels or  
20 procures another to commit an offense is also a principal and is just  
21 as guilty as the person who actually committed the offense. Again,  
22 presence at the scene of the crime is not required.

23 The term "counsel" means to advise, recommend, or encourage.



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1 The term "procure" means to bring about or cause. If the matter is  
2 committed -- I'm sorry. If the offense is committed, even if it is  
3 accomplished in a different manner from that counselled, procured,  
4 the person who counseled, commanded, or procured the commission of  
5 the offense is guilty of the offense.

6 Once the act counseled, commanded, or procured by a person  
7 is done, he is criminally responsible for all the likely results that  
8 may occur from the act.

9 Do you understand this, Mr. bin Amin?

10 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

11 MJ [Lt Col BRAUN]: And do you understand this, Mr. bin Lep?

12 ACC [MR. BIN LEP]: Yes, I understand.

13 MJ [Lt Col BRAUN]: The second theory of principal liability  
14 involves vicarious -- involving vicarious liability applies to one  
15 who causes an act to be done. As I have explained, any person who  
16 commits an offense is a principal. Anyone who willfully causes an  
17 act to be done, which, if actually performed by him would be a  
18 criminal offense, is a principal and is just as guilty of the offense  
19 as if he had done the act himself.

20 Once an act is done, a principal is criminally responsible  
21 for all of the likely results that may occur from the doing of that  
22 act.

23 Mr. bin Amin, do you understand this?

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

2 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

3 ACC [MR. BIN LEP]: I understand.

4 MJ [Lt Col BRAUN]: I have one additional explanation for you  
5 with regard to vicarious liability under principal liability.

6 When an offense charged requires proof of a specific intent  
7 or a particular state of mind, as in elements, the evidence must also  
8 prove that the accused had that intent or state of mind, whether an  
9 accused is charged as a perpetrator or an other party to the crime.

10 Mr. bin Amin, do you understand this?

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

12 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

13 ACC [MR. BIN LEP]: Yes, I understand.

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

17 Do you understand this and everything else I have described  
18 concerning principal liability, Mr. bin Amin?

19 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

20 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this  
21 and everything else I have described regarding principal liability?

22 ACC [MR. BIN LEP]: Yes, I understand.

23 MJ [Lt Col BRAUN]: Counsel, do you agree with the definitions

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1 and explanations of principal liability that I have provided?

2 Trial Counsel?

3 MDTC [Lt Col GOEWERT]: Yes, sir.

4 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

5 CDC [MS. FUNK]: We do, Your Honor.

6 MJ [Lt Col BRAUN]: And counsel for Mr. bin Lep?

7 LDC [MR. BOUFFARD]: We do, Your Honor.

8 MJ [Lt Col BRAUN]: I will now discuss conspiratorial  
9 liability with you. This is also referred to as the rule of  
10 co-conspirators.

11 You are also charged under a theory of conspiratorial  
12 liability in Specification 1 of Charge I, Specification 1 of Charge  
13 III, and Specification 1 of Charge VII.

14 The rule of co-conspirators allows conviction of an accused  
15 for a substantive offense upon a showing that he was a member of an  
16 unlawful conspiracy and that while he continued to be a member of  
17 that conspiracy, the offense charged was committed in furtherance of  
18 the conspiracy or was an object of the conspiracy. An unlawful  
19 conspiracy occurs when two or more individuals conspire to commit one  
20 or more substantive offenses triable by military commission.

21 A conspiracy may also be referred to as a common plan or  
22 agreement. While an accused need not be formally charged with  
23 conspiracy, the existence of the conspiracy must be shown before an

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1 accused may be convicted of a substantive offense under this theory.

2 Unlike the law of principals, a person need not play any  
3 role in the commission of the substantive offense, nor must he have  
4 any particular state of mind regarding the offense, nor must he be  
5 aware of the commission of the offense.

6 Although I will provide these explanations later when we  
7 discuss the specific crimes to which you have pled guilty, you are  
8 advised that the agreement in a conspiracy does not have to be in any  
9 particular form or expressed in formal words. It is sufficient if  
10 the minds of the parties reach a common understanding to accomplish  
11 the object of the conspiracy, and this may be proved by the conduct  
12 of the parties.

13 The agreement does not have to be expressed -- does not have  
14 to express the manner in which the conspiracy is to be carried out or  
15 which part each co-conspirator is to play.

16 Mr. bin Amin, do you understand this?

17 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

18 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

19 ACC [MR. BIN LEP]: Yes, I understand.

20 MJ [Lt Col BRAUN]: To be clear, then, a member of a  
21 conspiracy is criminally responsible under the law for any offense  
22 which was committed by any other member of the conspiracy in  
23 furtherance of the conspiracy or as an object of the conspiracy even

1 if he were neither a principal nor an aider and abetter in the  
2 offense.

3 Mr. bin Amin, do you understand this?

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

5 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand this?

6 ACC [MR. BIN LEP]: Yes, I understand.

7 MJ [Lt Col BRAUN]: Finally, before you could be found guilty  
8 of Specification 1 of Charge I, Specification 1 of Charge III, and  
9 Specification 1 of Charge VII, under the rule of co-conspirators, the  
10 finder of fact must also be satisfied beyond a reasonable doubt  
11 either, one, that the substantive offense was committed in  
12 furtherance of the conspiracy or, two, that the substantive offense  
13 was an object of the conspiracy.

14 If the finder of fact were satisfied beyond a reasonable  
15 doubt that at the time the substantive offense was committed you had  
16 entered into and continued to be a member of an unlawful conspiracy,  
17 as I have defined that term, and if the finder of fact determined  
18 beyond a reasonable doubt that the substantive offense was committed  
19 while the conspiracy continued to exist and in furtherance of that  
20 unlawful conspiracy, or was an object of that conspiracy, then the  
21 finder of fact would be able to find you guilty of this offense as a  
22 co-conspirator. This is true even though, under the circumstances,  
23 you were not the person who actually committed the criminal offense,

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1 that is a principal, and even though you were not an aider and  
2 abetter of the person who committed the substantive offense.

3           However, if the finder of fact were not satisfied beyond a  
4 reasonable doubt that you were -- you were a continuing member of an  
5 unlawful conspiracy or that the substantive offense was committed in  
6 furtherance of an unlawful conspiracy or was an object of that  
7 conspiracy, then the finder of fact would be required to find you not  
8 guilty under the rule of co-conspirators.

9           That said, the finder of fact could still find beyond a  
10 reasonable doubt that you were an aider and abetter or a principal as  
11 I have otherwise defined those terms and, therefore, still criminally  
12 responsible.

13           Mr. bin Amin, do you understand this?

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

15           MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand this?

16           ACC [MR. BIN LEP]: I understand.

17           MJ [Lt Col BRAUN]: Next I would like to explain to you the  
18 affirmative defense of withdrawal as it applies to conspiratorial  
19 liability.

20           As I have previously explained, each conspirator is liable  
21 for all offenses committed pursuant to or in furtherance of the  
22 conspiracy by any of the co-conspirators after such conspirator has  
23 joined the conspiracy and while the conspiracy continues and such

1 conspirator remains a party to it.

2           A party to the conspiracy who withdraws from or abandons the  
3 agreement before the commission of the underlying offense by any  
4 conspirator is not guilty under the rule of co-conspirators. An  
5 effective withdrawal or abandonment must consist of affirmative  
6 conduct that is wholly inconsistent with the adherence to the  
7 unlawful agreement or common criminal purpose and that shows the  
8 party has severed all -- excuse me -- and that shows that the party  
9 has severed all connection with the conspiracy.

10           A conspirator who effectively withdraws from or abandons the  
11 conspiracy after the performance of an overt act by one of the  
12 conspirators remains guilty of conspiracy and of any offenses  
13 committed pursuant to the conspiracy up to the time of the withdrawal  
14 or abandonment. The withdrawal of a conspirator from the conspiracy  
15 does not affect the status of the remaining members.

16           Last, the finder of fact could only find you guilty of an  
17 underlying offense through the rule of co-conspirators if it was  
18 proven beyond a reasonable doubt that you did not abandon or withdraw  
19 from the conspiracy before the commission of the underlying offense  
20 by any of your co-conspirators.

21           Do you understand these requirements for the affirmative  
22 defense of withdrawal as it applies to conspiratorial liability?

23           Mr. bin Amin?

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1 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

2 MJ [Lt Col BRAUN]: And, Mr. bin Lep?

3 ACC [MR. BIN LEP]: I understand.

4 MJ [Lt Col BRAUN]: Counsel, do you request further  
5 explanation of the concepts that I have addressed so far with the  
6 accused?

7 Trial Counsel.

8 MDTC [Lt Col GOEWERT]: We do not, sir.

9 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

10 CDC [MS. FUNK]: No, Your Honor. Thank you.

11 MJ [Lt Col BRAUN]: And counsel for Mr. bin Lep?

12 LDC [MR. BOUFFARD]: No, Your Honor.

13 MJ [Lt Col BRAUN]: Mr. bin Amin, do you have any questions  
14 concerning any of the legal concepts I have explained so far today?

15 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

16 MJ [Lt Col BRAUN]: Mr. bin Lep, do you have any questions  
17 concerning any of the legal concepts I have explained so far today?

18 ACC [MR. BIN LEP]: No, Your Honor.

19 MJ [Lt Col BRAUN]: Okay. Now, Mr. bin Amin and Mr. bin Lep,  
20 please turn to the section of your charge sheets titled Common  
21 Allegations. And it should be on page 3 of the respective charge  
22 sheets.

23 Let me ask you first, Mr. bin Amin, are you familiar with



1 this portion of your charge sheet?

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

3 MJ [Lt Col BRAUN]: And, Mr. bin Lep, are you familiar with  
4 this portion of your charge sheet?

5 ACC [MR. BIN LEP]: Yes, Your Honor.

6 MJ [Lt Col BRAUN]: Have you read this section of your charge  
7 sheet and discussed it thoroughly with your counsel, Mr. bin Amin?

8 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, we do.

9 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you read this  
10 portion thoroughly and discussed it with your counsel?

11 ACC [MR. BIN LEP]: Yes, Your Honor.

12 MJ [Lt Col BRAUN]: Do you agree with, or are you personally  
13 convinced, that the prosecution could prove beyond a reasonable doubt  
14 all of the statements made within this section of the charge sheet,  
15 including the introductory paragraph and the numbered paragraphs from  
16 1 through 60?

17 Mr. bin Amin?

18 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

19 MJ [Lt Col BRAUN]: To what extent do you -- and if this  
20 cannot be easily articulated by numbered paragraphs, I appreciate  
21 that. And, Counsel, if you want to assist, that is all right as  
22 well.

23 To what extent?

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1 CDC [MS. FUNK]: To the extent, Your Honor, that the common  
2 allegations match the Stipulation of Fact, we can agree to the facts  
3 that are in the stipulation.

4 MJ [Lt Col BRAUN]: Okay.

5 CDC [MS. FUNK]: Thank you.

6 MJ [Lt Col BRAUN]: Okay. Mr. bin Lep, I'm going to ask you  
7 the same question, and I will repeat the question so that it's front  
8 of mind.

9 Do you agree with, or are you personally convinced, that the  
10 prosecution could prove beyond a reasonable doubt all of the  
11 statements made within this section of the charge sheet, including  
12 the introductory paragraph and the numbered paragraphs from 1 through  
13 60?

14 ACC [MR. BIN LEP]: I agree.

15 MJ [Lt Col BRAUN]: Okay. So, Mr. bin Amin and Mr. bin Lep,  
16 I'd like to you flip ahead in that charge sheet to the point where  
17 you see at the near top of the page the words "Charge I, Violation of  
18 10 U.S.C. Section 950t(15)."

19 Underneath that initial bolded language, you will see the  
20 words "Specification 1." That is going to be the specification I'm  
21 going to discuss with you now.

22 Have you found where I'm referring to on the charge sheet,  
23 Mr. bin Amin?

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

2 MJ [Lt Col BRAUN]: Okay. And, Mr. bin Lep, have you found  
3 where I'm referring to on the charge sheet?

4 ACC [MR. BIN LEP]: Yes, I found it.

5 MJ [Lt Col BRAUN]: Okay. In Specification 1 of Charge I, you  
6 are both charged with the offense of murder in violation of the law  
7 of war in violation of 10 United States Code Section 950t(15). By  
8 pleading guilty to this offense under the theory of principal  
9 liability, you are admitting that the following elements are true and  
10 accurately describe how you committed, aided, abetted, counseled, or  
11 procured the events listed in the specification, or that you are  
12 personally convinced that the government could prove beyond a  
13 reasonable doubt:

14 One, that on or about 12 October 2002, at or near Bali,  
15 Indonesia, the actual perpetrators killed one or more persons as  
16 noted in Appendix C of the charge sheet;

17 Two, the killings were the result of the actual perpetrators  
18 intentionally detonating explosives in Paddy's Pub on Legian Street  
19 in front of the Sari Club on Legian Street located in or around Bali,  
20 Indonesia;

21 Three, the killings were unlawful;

22 Four, you intended to kill one or more persons, as listed in  
23 Appendix C of the charge sheet;

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1 Five, the killing was in violation of the law of war;

2 Six, that the act took place in the context of and was  
3 associated with hostilities;

4 And, seven, that you aided, abetted, counseled, procured, or  
5 caused the actual perpetrators to commit the offense of murder in  
6 violation of the law of war by the means described in  
7 Mr. bin Amin's -- excuse me -- by the means described in, for  
8 Mr. bin Amin, your Stipulation of Fact, paragraph 33, 35 through 43,  
9 and for Mr. bin Amin **[sic]**, in your Stipulation of Fact,  
10 paragraphs 39 and 42 through 52.

11 I'm going to give you a moment to refer to those paragraphs  
12 in your Stipulations of Fact. After you've done so and are ready to  
13 proceed, please look up at me.

14 LDC [MR. BOUFFARD]: Your Honor, did you say 39 and 42 through  
15 52?

16 MJ [Lt Col BRAUN]: For Mr. bin Lep, it will be paragraphs 39  
17 and 42 through 52.

18 LDC [MR. BOUFFARD]: Thank you, Judge.

19 **[Pause.]**

20 MJ [Lt Col BRAUN]: So Elements 1 through 6 that I just read  
21 for you describe the underlying offense and come from the Manual for  
22 Military Commissions. The final element, Element 7, addresses the  
23 types of vicarious liability applying to a principal within the facts

1 of this case.

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

5 Trial Counsel?

6 MDTC [Lt Col GOEWERT]: No, Your Honor.

7 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

8 CDC [MS. FUNK]: No, Your Honor.

9 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

10 LDC [MR. BOUFFARD]: No, Your Honor.

11 MJ [Lt Col BRAUN]: As I have previously explained, the  
12 government has also charged that you are separately liable for the  
13 underlying offense in Specification 1 of Charge I based on the role  
14 of co-conspirators.

15 By pleading guilty to this offense under the theory of  
16 co-conspiratorial liability, you are admitting again the first  
17 through sixth elements I provided a moment ago.

18 You are further admitting that the following elements are  
19 true and accurately describe what you did or that you are personally  
20 convinced that the government could prove beyond a reasonable doubt:  
21 One, that from on or about 1999 to on or about December 2002, you  
22 entered into an agreement with the individuals named in the  
23 Specification 1 of Charge I and the individuals listed in Appendix B

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1 of the charge sheet section of your charge sheets to commit the  
2 substantive offense triable by military commission named in  
3 Specification 1 of Charge I.

4 Two, that while the agreement continued to exist and while  
5 you remained a party to the agreement, you, or another individual  
6 named in Appendix B of the charge sheet, performed one or more overt  
7 acts as set out in Mr. bin Amin's Stipulation of Facts at  
8 paragraph 33, 35 through 43; and in Mr. bin Lep's Stipulation of  
9 Facts, paragraph 39 and 42 through 52 for the purposes of bringing  
10 about the object of the agreement.

11 Three, that the actual perpetrators of the murder in  
12 violation of the law of war were members of the conspiracy.

13 And, four, that the underlying offense was committed in  
14 furtherance of the conspiracy or that the underlying offense was an  
15 object of the conspiracy.

16 Counsel, any objection to the elements as I have defined  
17 them for the specification of charge -- for Specification 1 of Charge  
18 I under the theory of conspiratorial liability?

19 Trial Counsel?

20 MDTC [Lt Col GOEWERT]: No, Your Honor. Thank you.

21 MJ [Lt Col BRAUN]: Counsel for Mr. Bin Amin?

22 CDC [MS. FUNK]: Nothing, Your Honor. Thank you.

23 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

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1 LDC [MR. BOUFFARD]: No, Your Honor. Thank you.

2 MJ [Lt Col BRAUN]: In order to ensure you fully understand  
3 the elements, I will provide the following definitions. The killing  
4 of a human being is unlawful when done without legal justification or  
5 excuse. Hostilities means any conflict subject to the laws of war.

6 In the context of and associated with hostilities requires  
7 that there be a connection or nexus between hostilities and the  
8 conduct at issue. This connection or nexus may be determined in a  
9 number of ways and could involve, but is not limited to, time,  
10 location, or purpose of the conduct at issue in relation to  
11 hostilities.

12 Mere closeness of conduct in time or location to hostilities  
13 does not satisfy the necessary nexus. For example, murder committed  
14 between members of the same armed force for reasons of personal gain  
15 unrelated to hostilities, even if associated with hostilities in time  
16 and location, is not in the context of hostilities.

17 However, conduct that is undertaken or organized with  
18 knowledge or intent to contribute to hostilities, to include by  
19 advantaging or disadvantaging a party to hostilities with respect to  
20 that party's position in hostilities, would satisfy the nexus  
21 requirements.

22 Mr. bin Amin, do you understand all of the definitions that  
23 I have just read to you?

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

2 MJ [Lt Col BRAUN]: Mr. bin Amin, do you understand all of the  
3 elements that I have read to you?

4 ACC [MR. BIN AMIN]: Yes, Your Honor.

5 MJ [Lt Col BRAUN]: Mr. bin Lep, do you understand all of the  
6 definitions that I have just read to you?

7 ACC [MR. BIN LEP]: Yes, I understand.

8 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you understand all of  
9 the elements that I have read to you?

10 ACC [MR. BIN LEP]: Yes, I understand.

11 MJ [Lt Col BRAUN]: And do you both understand that these  
12 elements and definitions constitute the offense murder in violation  
13 of the law of war?

14 Mr. bin Amin?

15 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

16 MJ [Lt Col BRAUN]: And Mr. bin Lep?

17 ACC [MR. BIN LEP]: Yes.

18 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, at this time  
19 I want you to reread Specification 1 of Charge I. While you do that,  
20 I ask you to refer to the attachments I defined -- or I provided to  
21 you earlier as it relates to that charge and specification.

22 When you are done rereading it, please look up at me.

23 **[Pause.]**



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1 MJ [Lt Col BRAUN]: Mr. bin Amin, have you finished reviewing  
2 the Specification 1 of Charge I?

3 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

4 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you finished  
5 reviewing Specification 1 of Charge I?

6 ACC [MR. BIN LEP]: Yes, I finished.

7 MJ [Lt Col BRAUN]: After reviewing specification of Charge I  
8 again, do you still admit that the elements are true and accurately  
9 describe what you did, or that you are personally convinced that the  
10 government could prove your guilt beyond a reasonable doubt?

11 Mr. bin Amin?

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

13 MJ [Lt Col BRAUN]: And Mr. bin Lep?

14 ACC [MR. BIN LEP]: Yes.

15 MJ [Lt Col BRAUN]: Understanding that you have admitted every  
16 element we have discussed regarding this offense, I have some  
17 additional and specific questions for you.

18 Do you agree that you are criminally responsible for the  
19 intentional and unlawful killings alleged in Specification 1 of  
20 Charge I?

21 Mr. bin Amin?

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

23 MJ [Lt Col BRAUN]: And Mr. bin Lep?

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1 ACC [MR. BIN LEP]: Yes, I agree.

2 MJ [Lt Col BRAUN]: Okay. Let's look at some of the  
3 provisions in the Stipulation of Fact which address this offense.

4 Mr. bin Amin, I'm going to have you, in your Stipulation of  
5 Fact, turn to paragraphs 33 and then 35 through 43. These were the  
6 same paragraphs I had you look at earlier.

7 Earlier you had indicated that you agreed with each  
8 paragraph of the Stipulation of Fact, including paragraphs 33 and 35  
9 through 43. After reviewing those paragraphs again, do you still  
10 agree with each of those paragraphs of your Stipulations of Fact?

11 CDC [MS. FUNK]: A point of order, Your Honor.

12 Are you asking if these elements can be proven or if he  
13 agrees he's guilty of those beyond a -- there's some language that is  
14 sensitive.

15 MJ [Lt Col BRAUN]: Yes. So I'm asking whether, having  
16 reviewed the charges and specification, and the elements and  
17 necessary definitions, and now looking at the facts contained in  
18 those paragraphs, he still affirms that those facts in those  
19 paragraphs are true and correct as part of his Stipulation of Fact,  
20 either as something that he has personally done or something that he  
21 is satisfied the government can prove beyond a reasonable doubt.

22 I appreciate that in the Stipulation of Fact it does  
23 distinguish those portions. So, I'm cognizant of that.

1 Does that answer the question?

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

3 MJ [Lt Col BRAUN]: Do you agree that those statements in  
4 those specific paragraphs are true and correct to the best of your  
5 knowledge and belief?

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

7 MJ [Lt Col BRAUN]: Okay.

8 Mr. bin Lep, I'm going to have you look at paragraphs 39 and  
9 42 through 52 of your Stipulation of Fact. Again, these are the same  
10 paragraphs I directed you to earlier.

11 Earlier in this proceeding you indicated that you agreed  
12 with each paragraph of your Stipulation of Fact and, therefore, by  
13 necessity, paragraphs 39 and 42 through 52. Having now re-reviewed  
14 those paragraphs, is that still true? And are paragraphs 39 and 42  
15 through 52 true and correct to the best of your knowledge and belief?

16 ACC [MR. BIN LEP]: Yes, it's true.

17 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, we  
18 previously discussed the affirmative defense of withdrawal as it  
19 applies to conspiratorial liability and, in turn, how it connects to  
20 Specification 1 of Charge I, Specification 1 of Charge III, and  
21 Specification 1 of Charge VII.

22 Do you request that I provide you these definitions again,  
23 Mr. bin Amin?

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1 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

2 MJ [Lt Col BRAUN]: Mr. bin Lep, do you request that I provide  
3 you those definitions again?

4 ACC [MR. BIN LEP]: No.

5 MJ [Lt Col BRAUN]: Do you still understand that this  
6 affirmative defense -- do you still understand this affirmative  
7 defense as I previously explained it to you, Mr. bin Amin?

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

9 MJ [Lt Col BRAUN]: And Mr. bin Lep?

10 ACC [MR. BIN LEP]: Yes.

11 MJ [Lt Col BRAUN]: Do you agree and admit that you did not  
12 effectively withdrawal from the conspiracy before the offense  
13 described in Specification 1 of Charge I was committed?

14 Mr. bin Amin?

15 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes.

16 MJ [Lt Col BRAUN]: And Mr. bin Lep?

17 ACC [MR. BIN LEP]: Yes, I agree.

18 MJ [Lt Col BRAUN]: Do counsel for either side believe that  
19 any further inquiry is required with regard to Specification 1 of  
20 Charge I?

21 Trial Counsel?

22 MDTC [Lt Col GOEWERT]: No, Your Honor.

23 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

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1 CDC [MS. FUNK]: No, Your Honor. Thank you.

2 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

3 LDC [MR. BOUFFARD]: No, Your Honor. Thank you.

4 MJ [Lt Col BRAUN]: We have been on the record now for just  
5 about -- a little short of an hour, but before I move into  
6 Specification 1 of Charge III, this might be the best opportunity for  
7 us to take a comfort recess. I'm inclined to provide 10 minutes  
8 unless the parties feel more time is necessary.

9 Trial Counsel, is 10 minutes sufficient?

10 MDTC [Lt Col GOEWERT]: Your Honor, that would be fine.

11 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin?

12 CDC [MS. FUNK]: Yes. Thank you.

13 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Lep?

14 LDC [MR. BOUFFARD]: Yes, Your Honor.

15 MJ [Lt Col BRAUN]: Very well. Then this commission is in a  
16 10-minute recess.

17 **[The R.M.C. 803 session recessed at 1400, 16 January 2024.]**

18 **[The R.M.C. 803 session was called to order at 1413,**

19 **16 January 2024.]**

20 MJ [Lt Col BRAUN]: This commission will come to order. All  
21 parties that were present when the commission last recessed are again  
22 present.

23 Before we proceed with the providency, the bailiff informed

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1 me that the trial team had something to request of the commissions  
2 regarding after today's session.

3 TC [COL KRAEHE]: I'm not aware of anything, Your Honor.

4 MJ [Lt Col BRAUN]: Oh ----

5 TC [COL KRAEHE]: We did ask, Your Honor, that the accused be  
6 held over for an hour so that they can have a meeting.

7 MJ [Lt Col BRAUN]: Okay. Defense Counsel -- okay. No issue  
8 with that, I'm assuming?

9 CDC [MS. FUNK]: No issue with that. Thank you.

10 LDC [MR. BOUFFARD]: None here, and that does apply to Mr.  
11 bin Lep as well.

12 MJ [Lt Col BRAUN]: Okay. Very well, then. I think that's  
13 appropriate as far as you -- if my permission would be helpful, you  
14 have it.

15 TC [COL KRAEHE]: Yes, Your Honor. Thank you.

16 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin and Mr. bin Lep, I now  
17 would like to transition from Charge I to Charge II. So if you look  
18 at the next page of your -- I'm sorry -- Charge III. Excuse me.

19 So if you could identify Charge III, which starts off  
20 "Violation of 10 U.S.C. Section 950t(13)," and look up at me once you  
21 have found that.

22 **[Pause.]**

23 MJ [Lt Col BRAUN]: Very well.

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1           In Specification 1 of Charge III, you are charged with the  
2 offense of intentionally causing serious bodily injury in violation  
3 of 10 United States Code Section 950 subsection t, subsection (13).

4           By pleading guilty to this offense under the theory of  
5 principal liability, you are admitting that the following elements  
6 are true and accurately describe how you committed, aided, abetted,  
7 counseled, or procured the events listed in the specification, or  
8 that you are personally convinced that the government could prove  
9 beyond a reasonable doubt:

10           One, that on or about 12 October 2002, at or near Bali,  
11 Indonesia, the actual perpetrators intentionally and unlawfully  
12 caused and inflicted serious injury to the body of one or more  
13 person;

14           Two, you intended to cause the serious injury upon the  
15 person;

16           Three, the injury was done with unlawful force or violence;

17           Four, the serious bodily injury inflicted by the actual  
18 perpetrators was in violation of the law of war;

19           And five -- excuse me. Five, the conduct took place in the  
20 context of and was associated with hostilities;

21           And six, that you aided, abetted, counseled, procured, or  
22 caused the actual perpetrators to commit the offense of intentionally  
23 causing serious bodily harm by the means described in, for

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1 Mr. bin Amin, your Stipulation of Fact paragraphs 33, and 35 through  
2 43; and for Mr. bin Lep, in your Stipulation of Fact, paragraphs 39,  
3 and 42 through 52.

4 Elements 1 through 5 that I just described describe the  
5 underlying offense and come from the Manual for Military Commissions.  
6 Element 6 addressing the types of vicarious liability applying to a  
7 principal within the facts of this case.

8 Counsel, any objection to the elements as I have defined  
9 them for Specification 1 of Charge III under the theory of principal  
10 liability?

11 Trial Counsel?

12 MDTC [Lt Col GOEWERT]: No, Your Honor.

13 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

14 CDC [MS. FUNK]: No, Your Honor.

15 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

16 LDC [MR. BOUFFARD]: No, Your Honor.

17 MJ [Lt Col BRAUN]: As I previously explained, the government  
18 has also alleged that you are separately liable for the underlying  
19 offense in Specification 1 of Charge III based upon the rule of  
20 co-conspirators.

21 By pleading guilty to this offense, under the theory of  
22 conspiratorial liability, you are admitting again the first five  
23 elements I provided a moment ago. You are further admitting that the



1 following elements are true and accurately describe what you did, or  
2 that you are personally convinced that the government could prove  
3 beyond a reasonable doubt:

4           One, that from on or about 1999 to on or about  
5 December 2002, you entered into an agreement with the individuals  
6 named in the Specification 1 of Charge III, and the individuals  
7 listed in Appendix B of your charge sheets, to commit the substantive  
8 offenses triable by military commission named in Specification 1 of  
9 Charge III;

10           Two, that while the agreement continued to exist, and while  
11 you remained a party to the agreement, you performed one or more  
12 overt acts stated as set forth in Mr. bin Amin's Stipulation of  
13 Facts, paragraph 33, and 35 through 43, and in Mr. bin Lep's  
14 Stipulation of Facts, paragraph 39, and 42 through 52, for the  
15 purpose of bringing about the object of the agreement;

16           Three, that the actual perpetrators that intentionally  
17 caused the serious bodily injury were members of the conspiracy;

18           Four, that the underlying offense was committed in  
19 furtherance of the conspiracy or that the underlying offense was an  
20 object of the conspiracy.

21           Counsel, any objection to the elements as I have defined  
22 them for Specification 1 of Charge III under the theory of  
23 conspiratorial liability?

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1 Trial Counsel?

2 MDTC [Lt Col GOEWERT]: No, Your Honor.

3 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

4 CDC [MS. FUNK]: No, Your Honor.

5 MJ [Lt Col BRAUN]: And counsel for Mr. bin Lep.

6 LDC [MR. BOUFFARD]: No objection.

7 MJ [Lt Col BRAUN]: In order to ensure you fully understand  
8 the elements, I will provide the following definitions:

9 The term "hostilities" and the term "in the context of and  
10 associated with hostilities" have the same meaning as I have  
11 previously explained to you.

12 The term "serious bodily injury" means bodily injury which  
13 involves, one, a substantial risk of death; two, extreme physical  
14 pain; three, protracted and obvious disfigurements; or, four,  
15 protracted loss or impairment of a bodily member, organ, or mental  
16 faculty.

17 Do you understand all the definitions that I have just read  
18 to you?

19 Mr. bin Amin?

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

21 MJ [Lt Col BRAUN]: Mr. bin Lep?

22 ACC [MR. BIN LEP]: Yes, I understand.

23 MJ [Lt Col BRAUN]: And do you understand that these elements

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1 and definitions constitute the offense of intentionally causing  
2 serious bodily harm?

3 Mr. bin Amin?

4 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, I do.

5 MJ [Lt Col BRAUN]: And Mr. bin Lep?

6 ACC [MR. BIN LEP]: Yes, I understand.

7 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, I want you  
8 to reread Specification 1 of Charge III, and tell me when you are  
9 done rereading it. Basically look up at me when you are done.

10 **[Pause.]**

11 MJ [Lt Col BRAUN]: After reviewing Specification 1 of Charge  
12 III again, do you still admit that the elements are true and  
13 accurately describe what you did or that you are personally convinced  
14 that the government could prove your guilt beyond a reasonable doubt?

15 Mr. bin Amin?

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

17 MJ [Lt Col BRAUN]: And Mr. bin Lep?

18 ACC [MR. BIN LEP]: Yes.

19 MJ [Lt Col BRAUN]: Now I want to turn to your respective  
20 Stipulations of Fact. The same paragraphs in each of your  
21 stipulations that related to Specification 1 of Charge I, the last  
22 charge we just talked about, relate to this charge as well.

23 Mr. bin Amin, these are paragraphs 33 and 35 through 43 of

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1 your stipulation.

2 Mr. bin Lep, you will be looking at paragraphs 39 and 42  
3 through 52 of your stipulation.

4 Do either of you require time to review those paragraphs  
5 again?

6 Mr. bin Amin?

7 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

8 MJ [Lt Col BRAUN]: And Mr. bin Lep?

9 ACC [MR. BIN LEP]: No.

10 MJ [Lt Col BRAUN]: After considering those paragraphs from  
11 your Stipulations of Fact, do you both still admit that the elements  
12 are true and accurately describe what you did or that you are  
13 personally convinced that the government could prove your guilt  
14 beyond a reasonable doubt?

15 Mr. bin Amin?

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

17 MJ [Lt Col BRAUN]: And Mr. bin Lep?

18 ACC [MR. BIN LEP]: Yes.

19 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, we  
20 previously discussed the affirmative defense of withdrawal as it  
21 applies to conspiratorial liability and, in turn, how it connects to  
22 Charge I, Charge III, and Charge VII and each of the specifications  
23 to those charges to which you are pleading guilty.

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1 Do you request that I provide those definitions again?

2 Mr. bin Amin?

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

4 MJ [Lt Col BRAUN]: And Mr. bin Lep?

5 ACC [MR. BIN LEP]: No.

6 MJ [Lt Col BRAUN]: Do you still understand this affirmative  
7 defense as I've explained it to you previously?

8 Mr. bin Amin?

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

10 MJ [Lt Col BRAUN]: And Mr. bin Lep?

11 ACC [MR. BIN LEP]: Yes.

12 MJ [Lt Col BRAUN]: Do you agree and admit that you did not  
13 effectively withdraw from the conspiracy before the offense described  
14 in Specification 1 of Charge III was committed?

15 Mr. bin Amin?

16 ACC [MR. BIN AMIN]: **[Speaking in English]** Can you repeat  
17 that question?

18 MJ [Lt Col BRAUN]: I can.

19 Do you agree and admit that you did not effectively withdraw  
20 from the conspiracy before the offense described in Specification 1  
21 of Charge III was committed?

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

23 MJ [Lt Col BRAUN]: And, Mr. bin Lep, same question to you.

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1 ACC [MR. BIN LEP]: Yes.

2 MJ [Lt Col BRAUN]: Do counsel for either side believe that  
3 any further inquiry is required with regard to Specification 1 of  
4 Charge III?

5 Trial Counsel?

6 MDTC [Lt Col GOEWERT]: No, Your Honor.

7 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

8 CDC [MS. FUNK]: No, Your Honor.

9 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

10 LDC [MR. BOUFFARD]: No, Your Honor.

11 MJ [Lt Col BRAUN]: Okay. Now I would like to move on to  
12 Charge VII.

13 So, Mr. bin Amin and Mr. bin Lep, if you could please in  
14 your charge sheet move to Charge VII, which reads: Violation of  
15 10 U.S.C. Section 950t(16).

16 In Specification 1 of Charge VII, you are both charged with  
17 the offense of destruction of property in violation of the law of war  
18 in violation of 10 United States Code Section 950, subsection t,  
19 subsection 16.

20 By pleading guilty to this offense, under the theory of  
21 principal liability, you are admitting that the following elements  
22 are true and accurately describe how you committed, aided, abetted,  
23 counseled, or procured the events listed in the specification, or

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

3 One, that on or about 12 October 2002, at or near Bali,  
4 Indonesia, the actual perpetrators intentionally destroyed property;

5 Two, the property belonged to another person;

6 Three, the actual perpetrators destroyed the property  
7 without that person's consent;

8 Four, you intended to destroy such property;

9 Five, the destruction of the property was in violation of  
10 the law of war;

11 Six, the destruction took place in the context of and was  
12 associated with hostilities;

13 And, seven, that you aided, abetted, counseled, procured, or  
14 caused the actual perpetrators to commit the offense of intentional  
15 destruction of property in violation of the law of war by the means  
16 described in Mr. bin Amin's Stipulation of Facts, paragraphs 33 and  
17 35 through 43, and in Mr. bin Lep's Stipulation of Facts,  
18 paragraphs 39 and 42 through 52.

19 Elements 1 through 6 describe the underlying offense and  
20 come from the Manual for Military Commissions.

21 Element 7 addresses the type of vicarious liability applying  
22 to a principal within the facts of this case.

23 Counsel, any objection to the elements as I have defined

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1 them for Specification 1 of Charge VII under the theory of principal  
2 liability?

3 Trial Counsel?

4 MDTC [Lt Col GOEWERT]: No, Your Honor. Thank you.

5 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

6 CDC [MS. FUNK]: No, Your Honor. Thank you.

7 MJ [Lt Col BRAUN]: And counsel for Mr. bin Lep?

8 LDC [MR. BOUFFARD]: No objection.

9 MJ [Lt Col BRAUN]: As I have previously explained, the  
10 government has also alleged that you are separately liable for the  
11 underlying offense in Specification 1 of Charge VII based on the rule  
12 of co-conspirators. By pleading guilty to this offense, under the  
13 theory of conspiratorial liability, you are admitting again the first  
14 six elements I provided a moment ago.

15 You are further admitting that the following elements are  
16 true and accurately describe what you did or that you are personally  
17 convinced that the government could prove beyond a reasonable doubt:

18 One, that from on or about 1999 to on or about  
19 December 2002, you entered into an agreement with the individuals  
20 named in the Specification 1 of Charge VII, and the individuals  
21 listed in Appendix B of your charge sheets to commit the substantive  
22 offense triable by military commission named in Specification 1 of  
23 Charge VII;



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1           Two, that while the agreement continued to exist, and while  
2 you remained a party to the agreement, you or another individual  
3 named in Appendix B of your charge sheets performed one or more overt  
4 acts as described in Mr. bin Amin's  
5 Stipulation of Facts, paragraphs 33, and 35 through 43, and in  
6 Mr. bin Lep's Stipulation of Facts, paragraphs 39, and 42 through 52,  
7 for the purpose of bringing about the object of the agreement;

8           Three, that the actual perpetrators of the destruction of  
9 the property were members of the conspiracy;

10           And four, that the underlying offense was committed in  
11 furtherance of the conspiracy, or that the underlying offense was an  
12 object of the conspiracy.

13           Counsel, any objection to the elements as I have defined  
14 them for the specification of Charge VII under the theory of  
15 conspiratorial liability?

16           Trial Counsel?

17           MDTC [Lt Col GOEWERT]: No, Your Honor.

18           MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

19           CDC [MS. FUNK]: No, Your Honor.

20           MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

21           LDC [MR. BOUFFARD]: No objection.

22           MJ [Lt Col BRAUN]: I have previously advised you of the  
23 definition of the phrase "in the context of and associated with

1 hostilities."

2           Would you like me to provide that definition again,  
3 Mr. bin Amin?

4           ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

5           MJ [Lt Col BRAUN]: Mr. bin Lep, would you like me to provide  
6 that definition again?

7           ACC [MR. BIN LEP]: No.

8           MJ [Lt Col BRAUN]: And do you both understand that these  
9 elements and the definitions constitute the offense of destruction of  
10 property in violation of the law of war?

11           Mr. bin Amin?

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

13           MJ [Lt Col BRAUN]: And Mr. bin Lep?

14           ACC [MR. BIN LEP]: Agree.

15           MJ [Lt Col BRAUN]: Mr. bin Amin and bin Lep, I want you to  
16 reread Specification 1 of Charge VII, and look up at me when you have  
17 finished re-reading it.

18 **[Pause.]**

19           MJ [Lt Col BRAUN]: After reviewing Specification 1 of Charge  
20 VII again, do you still admit that the elements are true and  
21 accurately describe what you did, or that you are personally  
22 convinced that the government could prove your guilt beyond a  
23 reasonable doubt?

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1 Mr. bin Amin?

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

3 MJ [Lt Col BRAUN]: And Mr. bin Lep?

4 ACC [MR. BIN LEP]: I agree.

5 MJ [Lt Col BRAUN]: Understanding that you have admitted every  
6 element we have discussed regarding this offense, I have some  
7 additional and specific questions for you.

8 Do you agree that you are criminally responsible for the  
9 destruction of property as alleged in Specification 1 of Charge VII?

10 Mr. bin Amin?

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

12 MJ [Lt Col BRAUN]: And Mr. bin Lep?

13 ACC [MR. BIN LEP]: Yes, I agree.

14 MJ [Lt Col BRAUN]: Let's turn to your Stipulations of Fact.  
15 The same paragraphs in each of your Stipulation of Facts that related  
16 to Specification 1 of Charge I and Specification 1 of Charge III also  
17 relate to this charge.

18 Mr. bin Amin, these are paragraphs 33, and 35 through 43, of  
19 your stipulation.

20 Mr. bin Lep, it would be paragraphs 39, and 42 through 52,  
21 of your stipulation.

22 Do either of you need time to review those paragraphs again?

23 Mr. bin Amin?

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1 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

2 MJ [Lt Col BRAUN]: Mr. bin Lep?

3 ACC [MR. BIN LEP]: No.

4 MJ [Lt Col BRAUN]: After considering these paragraphs from  
5 your Stipulation of Fact, do you both still admit that the elements  
6 are true and accurately describe what you did, and that you are  
7 personally convinced that the government could prove your guilt  
8 beyond a reasonable doubt?

9 Mr. bin Amin?

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

11 MJ [Lt Col BRAUN]: And Mr. bin Lep?

12 ACC [MR. BIN LEP]: Yes.

13 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, we  
14 previously have discussed the affirmative defense of withdrawal as it  
15 applies to conspiratorial liability, and in turn, how it connects to  
16 Charge I, Charge III, and Charge VII, and the specifications to which  
17 you are pleading guilty.

18 Do you request that I provide you those definitions again as  
19 they apply to the affirmative defense of withdrawal?

20 Mr. bin Amin?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

22 MJ [Lt Col BRAUN]: And Mr. bin Lep?

23 ACC [MR. BIN LEP]: No need.

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1 MJ [Lt Col BRAUN]: Do you still understand this affirmative  
2 defense as I have explained it to you?

3 Mr. bin Amin?

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

5 MJ [Lt Col BRAUN]: And Mr. bin Lep?

6 ACC [MR. BIN LEP]: Yes, I understand.

7 MJ [Lt Col BRAUN]: Do you agree and admit that you did not  
8 effectively withdraw from the conspiracy before the offense described  
9 in Specification 1 of Charge VII was committed?

10 Mr. bin Amin?

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

12 MJ [Lt Col BRAUN]: And Mr. bin Lep?

13 ACC [MR. BIN LEP]: Yes.

14 MJ [Lt Col BRAUN]: Do counsel for either side believe that  
15 any further inquiry is required with regard to Specification 1 of  
16 Charge VII?

17 Trial Counsel?

18 MDTC [Lt Col GOEWERT]: No. Thank you, Your Honor.

19 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

20 CDC [MS. FUNK]: I do not, Your Honor. Thank you.

21 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

22 LDC [MR. BOUFFARD]: No, Your Honor.

23 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin and Mr. bin Lep, I'd

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1 like you to now advance in your charge sheet to Charge IX -- I'm  
2 sorry, Charge VIII. Excuse me.

3 This is the violation of 10 U.S.C. Section 950t(29)  
4 Conspiracy. Once you have found that charge in your charge sheet,  
5 please look up at me.

6 **[Pause.]**

7 MJ [Lt Col BRAUN]: In the specification of Charge IX -- I'm  
8 sorry. In the specification of Charge VIII, you are charged with the  
9 offense of conspiracy in violation of 10 United States Code  
10 Section 950, subsection t, subsection 29.

11 By pleading guilty to this offense, you are admitting that  
12 the following elements are true and accurately describe what you did,  
13 or that you are personally convinced that the government could prove  
14 beyond a reasonable doubt:

15 One, that from on or about 1999 to on or about  
16 December 2002, at multiple locations in and around Afghanistan,  
17 Southeast Asia, and elsewhere, in the context of and associated with  
18 hostilities, you entered into an agreement with Usama bin Laden,  
19 Khalid Shaikh Mohammad, Abu Bak'r Ba'aysir, Abdullah Sungkar, and  
20 other individuals known and unknown, to commit the following  
21 substantive offenses triable by military commission, to wit:

22 Murder in violation of law of war, attempted murder in  
23 violation of law of war, intentionally causing serious bodily injury,

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1 terrorism, attacking civilians, attacking civilian objects, and  
2 destruction of property in violation of law of war;

3 Two, that you knew the unlawful objectives and purposes of  
4 the agreement, or the common criminal purpose of the enterprise, and  
5 joined willfully; that is, with the intent to further the unlawful  
6 objectives and purposes;

7 And, three, that thereafter you knowingly committed one or  
8 more overt acts in order to accomplish some objective or purpose of  
9 the agreement.

10 Counsel, any objection to the elements as I have defined  
11 them for the specification of Charge VIII?

12 Trial Counsel?

13 MDTC [Lt Col GOEWERT]: No, Your Honor.

14 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

15 CDC [MS. FUNK]: No, Your Honor.

16 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

17 LDC [MR. BOUFFARD]: No objection.

18 MJ [Lt Col BRAUN]: The law requires me to define the elements  
19 of each offense which was the object of the conspiracy.

20 Regarding the offense of murder in violation of the law of  
21 war, in violation of 10 United States Code Section 950, subsection t,  
22 subsection 15, the elements of the offense are as follows:

23 One, one or more persons are dead;

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1 Two, the death of the persons resulted from the act or  
2 omission of the accused;

3 Three, the killing was unlawful;

4 Four, the accused intended to kill the person or persons;

5 Five, the killing was in violation of the law of war;

6 And, six, the killing took place in the context of and was  
7 associated with hostilities.

8 I previously provided you the definitions for unlawful,  
9 hostilities, and in the context of and associated with hostilities  
10 when we discussed Specification 1 of Charge I.

11 Do you need me to review those definitions for you again?

12 Mr. bin Amin?

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

14 MJ [Lt Col BRAUN]: And Mr. bin Lep?

15 ACC [MR. BIN LEP]: No need.

16 MJ [Lt Col BRAUN]: Regarding the offense of attempted murder  
17 in violation of the law of war, in violation of 10 United States Code  
18 Section 950, subsection t, subsection 28, the elements of the offense  
19 are as follows:

20 One, the accused did a certain overt act;

21 Two, the act was done with the specific intent to commit  
22 murder in violation of the law of war;

23 Three, the act amounted to more than mere preparations;



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1           And, four, the act apparently tended to effect the  
2 commission of the intended offense.

3           The following definitions are relevant to this offense:  
4 Preparation consists of devising or arranging the means or measures  
5 necessary for the commission of the attempted offense.

6           To be guilty of this offense, one must go beyond preparatory  
7 steps, and one's acts must amount to a substantial step and a direct  
8 movement toward the commission of the intended offense. A  
9 substantial step is one that is strongly corroborative of the  
10 accused's criminal intent and is indicative of the resolve to commit  
11 the offense.

12           Proof that the offense of murder in violation of the law of  
13 war actually occurred or was completed by the accused is not  
14 required. However, it must be proved beyond a reasonable doubt that  
15 at the time of the acts the accused intended every element of the  
16 murder in violation -- of murder in violation of the law of war.

17           I previously provided you the elements of the offense murder  
18 in violation of law of war. Would you like me to cover them again,  
19 Mr. bin Amin?

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

21           MJ [Lt Col BRAUN]: Mr. bin Lep?

22           ACC [MR. BIN LEP]: No need.

23           MJ [Lt Col BRAUN]: Regarding the offense of intentionally

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1 causing serious bodily harm in violation of 10 United States Code  
2 Section 950, subsection t, subsection 13, the elements of the offense  
3 are as follows:

4 One, the accused caused serious injury to the body or health  
5 of one or more persons;

6 Two, the accused intended to inflict such serious injury  
7 upon the person or persons;

8 Three, the injury was done with unlawful force or violence;

9 Four, the serious bodily injury inflicted by the accused was  
10 in violation of the law of war;

11 Five, the conduct took place in the context of and was  
12 associated with hostilities.

13 I have previously given you the definitions relevant to this  
14 offense. Do you need me to review them again?

15 Mr. bin Amin?

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

17 MJ [Lt Col BRAUN]: Mr. bin Lep?

18 ACC [MR. BIN LEP]: No need.

19 MJ [Lt Col BRAUN]: Regarding the offense of terrorism in  
20 violation of 10 United States Code Section 950, subsection t,  
21 subsection 24, the elements of the offense are as follows:

22 One, an accused intentionally killed or inflicted great  
23 bodily harm on one or more protected persons or engaged in an act

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1 that evinced a wanton disregard for human life;

2 Two, that the accused did so in a manner calculated to  
3 influence or affect the conduct of the government or civilian  
4 population by intimidation or coercion or to retaliate against  
5 government conduct;

6 And, three, the killing, harm, or wanton disregard for human  
7 life took place in the context of and was associated with  
8 hostilities.

9 This offense includes the concept of causing death or bodily  
10 harm, even if indirectly. The requirement that the conduct be  
11 wrongful for this crime necessitates that the conduct establishing  
12 this offense not constitute attacks against a lawful military  
13 objective undertaken by military forces of a state in the exercise of  
14 their official duties.

15 Regarding the offense of attacking civilians in violation of  
16 10 United States Code Section 950, subsection t, subsection 2, the  
17 elements of the offense are as follows:

18 One, an attack -- excuse me --

19 One, an attack -- an accused --

20 One, an accused engaged in an attack;

21 Two, the object of the attack was a civilian population as  
22 such or individual civilians not taking direct or active part in  
23 hostilities;

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1 Three, that the accused intended the civilian population as  
2 such or individual civilians not taking direct or active part in  
3 hostilities to be an object of the attack;

4 Four, that the accused knew or should have known of the  
5 factual circumstances that established the civilian status;

6 And, five, the attack took place in the context of and was  
7 associated with hostilities.

8 I have previously provided you the definition of "in the  
9 context of and was associated with hostilities." Do you need me to  
10 repeat that definition?

11 Mr. bin Amin?

12 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

13 MJ [Lt Col BRAUN]: Mr. bin Lep?

14 ACC [MR. BIN LEP]: No need.

15 MJ [Lt Col BRAUN]: Regarding the offense of attacking  
16 civilian objects in violation of 10 United States Code Section 950,  
17 subsection t, subsection 3, the elements of the offense are as  
18 follows:

19 One, an accused engaged in an attack;

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

22 Three, that the attack -- that the accused intended such  
23 civilian property to be an object of the attack;

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1 Four, that the accused knew or should have known that such  
2 property was not a military objective;

3 And, five, the attack took place in the context of and was  
4 associated with hostilities.

5 For purposes of this offense, the term "military objective"  
6 means, one, combatants; and, two, those objects during hostilities  
7 which by their nature, location, purpose, or use, effectively  
8 contribute to the opposing force's war fighting or war-sustaining  
9 capability, and the total or partial destruction, capture or  
10 neutralization of which would constitute a definite military  
11 advantage to the attacker under the circumstances at the time of the  
12 attack.

13 Regarding the offense of destruction of property in  
14 violation of the law of war, in violation of 10 United States Code  
15 Section 950, subsection t, subsection 16, the elements of the offense  
16 are as follows:

17 One, the accused destroyed property;

18 Two, the property belonged to another person;

19 Three, the accused destroyed the property without that  
20 person's consent;

21 Four, the accused intended to destroy such property;

22 Five, the destruction of the property was in violation of  
23 the law of war;

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1           Six, the destruction took place in the context of and was  
2 associated with hostilities.

3           I previously provided you the definition of "in the context  
4 of and was associated with hostilities."

5           Do you need me to repeat that definition?

6           Mr. bin Amin?

7           ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

8           MJ [Lt Col BRAUN]: Mr. bin Lep?

9           ACC [MR. BIN LEP]: No.

10          MJ [Lt Col BRAUN]: Counsel, any objection to the elements  
11 that I have defined or the definitions provided regarding the  
12 underlying offenses alleged in the specification of Charge VIII?

13          Trial Counsel?

14          MDTC [Lt Col GOEWERT]: No. Thank you, Your Honor.

15          MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

16          CDC [MS. FUNK]: No, thank you, Your Honor.

17          MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

18          LDC [MR. BOUFFARD]: No objection.

19          MJ [Lt Col BRAUN]: Mr. Bin Amin and Mr. bin Lep, do you  
20 understand all the elements and definitions that I have just read to  
21 you?

22          Mr. bin Amin?

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

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1 MJ [Lt Col BRAUN]: Mr. bin Lep?

2 ACC [MR. BIN LEP]: Yes, I understand.

3 MJ [Lt Col BRAUN]: Returning to the offense of conspiracy  
4 alleged in the specification of Charge VIII. In order to ensure you  
5 fully understand the elements, I will provide the following  
6 definitions:

7 Two or more persons are required in order to have a  
8 conspiracy. Knowledge of the identity of co-conspirators and their  
9 particular connection with the agreement need not be established. A  
10 person may be guilty of conspiracy although incapable of committing  
11 the intended offense.

12 The joining of another conspirator after the conspiracy has  
13 been established does not create a new conspiracy or affect the  
14 status of the other conspirators.

15 The agreement or common criminal purpose in a conspiracy  
16 need not be in any particular form or manifested in any formal words.  
17 The agreement must, at least in part, involve the commission of  
18 intended or intended commission of one or more substantive offenses  
19 triable by military commission.

20 A single conspiracy may embrace multiple criminal  
21 objectives. The agreement need not include knowledge that any  
22 relevant offense is, in fact, triable by military commission.  
23 Although the accused must be subject to the Military Commissions Act,

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1 other co-conspirators need not be.

2           The overt acts must be done by the accused and must be done  
3 to effectuate the object of the conspiracy or in furtherance of the  
4 common criminal purpose. Given the charging language in the  
5 specification of Charge VIII, the overt acts must have been done  
6 following the agreement.

7           The overt acts need not be in themselves criminal, but must  
8 advance the purpose of the conspiracy. Although committing the  
9 intended offense may constitute the overt act, it is not essential  
10 that the object offense be committed. It is not essential that any  
11 substantive offense, including the object offense, be committed.

12           Each conspirator is liable for all offenses committed  
13 pursuant to or in furtherance of the conspiracy by any of the  
14 co-conspirators after such conspirator has joined the conspiracy and  
15 while the conspiracy continues and such conspirator remains a party  
16 to it.

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

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

21           Mr. bin Amin?

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

23           MJ [Lt Col BRAUN]: And Mr. bin Lep?



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1 ACC [MR. BIN LEP]: Yes, I understand.

2 MJ [Lt Col BRAUN]: And do you understand that these elements  
3 and definitions constitute the offense of conspiracy?

4 Mr. bin Amin?

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

6 MJ [Lt Col BRAUN]: And Mr. bin Lep?

7 ACC [MR. BIN LEP]: Yes.

8 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, I want you  
9 to reread the specification of Charge VIII and the common  
10 allegations. When you are done reading them, please look up at me.

11 **[Pause.]**

12 LDC [MR. BOUFFARD]: Your Honor, to clarify, do you want them  
13 to read through the entirety of the common allegations again?

14 MJ [Lt Col BRAUN]: I do. And, Counsel, what I'm thinking,  
15 given the length of that, perhaps we could also take a break while  
16 they are reviewing those materials.

17 I appreciate the common allegations, I believe, are 60  
18 enumerated paragraphs, plus then the charge itself. So I'm amenable  
19 to a ten, if counsel think it would be more appropriate, a 15-minute  
20 break to allow them to read that.

21 Counsel for Mr. bin Amin, what would you prefer?

22 CDC [MS. FUNK]: I'd prefer 15 minutes, Your Honor, if that's  
23 possible.

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1 LDC [MR. BOUFFARD]: We have a prayer break in 20 minutes.

2 MJ [Lt Col BRAUN]: I'm going to give a 15-minute recess. I  
3 appreciate that we do have prayer break coming up, but we can come  
4 back on the record and we can continue on. I think there is a  
5 significant amount of time still that we can accomplish more work yet  
6 before that break.

7 So, Government, any objection to 15 minutes?

8 MDTC [Lt Col GOEWERT]: No, Your Honor. Thank you.

9 MJ [Lt Col BRAUN]: Okay. Very well, then.

10 It is 1456. So we will be in recess until 1510. This  
11 court's in recess.

12 **[The R.M.C. 803 session recessed at 1457, 16 January 2024.]**

13 **[The R.M.C. 803 session was called to order at 1549,**  
14 **16 January 2024.]**

15 MJ [Lt Col BRAUN]: This commission will come to order. All  
16 parties that were present when the commission recessed are again  
17 present.

18 During the recess, did the -- did Mr. bin Amin and  
19 Mr. bin Lep have an opportunity to review Charge VIII and its  
20 Specification along with the common allegations?

21 Ms. Funk?

22 CDC [MS. FUNK]: Yes, Your Honor.

23 MJ [Lt Col BRAUN]: Okay. Mr. Bouffard?

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

2 MJ [Lt Col BRAUN]: Awesome. Thank you.

3 Mr. bin Amin, having reviewed the Specification of Charge  
4 VIII to include the common allegations again, do you still admit that  
5 the elements of the offense are true and accurately describe what you  
6 did or that you are personally convinced that the government could  
7 prove your guilt beyond a reasonable doubt?

8 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

9 CDC [MS. FUNK]: To the extent that the facts in the common  
10 allegations are consistent with the Stipulation of Facts, to that  
11 extent Mr. bin Amin agrees that he's guilty of the crime of  
12 conspiracy based on that, those facts which are in both the common  
13 allegations and the Stipulation of Fact.

14 MJ [Lt Col BRAUN]: Okay. And we're going to discuss that a  
15 little bit further here shortly. So thank you for the  
16 classification, Counsel.

17 Mr. bin Lep, I'm going to ask you the same question. Having  
18 now re-reviewed the Specification of Charge VIII to include the  
19 common allegations, do you still admit that the elements are true and  
20 accurately describe what you did or that you are personally convinced  
21 that the government could prove your guilt beyond a reasonable doubt?

22 ACC [MR. BIN LEP]: Yes, that's correct.

23 MJ [Lt Col BRAUN]: So now understanding that you have

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1 admitted every element we have discussed regarding this offense, I  
2 have some additional and specific questions for you.

3 Do you agree that you entered into the conspiracy as  
4 alleged, Mr. bin Amin?

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

6 MJ [Lt Col BRAUN]: And, Mr. bin Lep, understanding that you  
7 admitted every element we've discussed regarding this -- excuse me.

8 Do you agree that you have entered into the conspiracy as  
9 alleged, Mr. bin Lep?

10 ACC [MR. BIN LEP]: Yes, I agree.

11 MJ [Lt Col BRAUN]: Do you agree that you knew the unlawful  
12 objectives and purposes of the conspiracy and joined willfully; that  
13 is, with the intent to pursue those unlawful objectives and purposes?

14 Mr. bin Amin?

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

16 MJ [Lt Col BRAUN]: Mr. bin Lep, same question to you.

17 ACC [MR. BIN LEP]: Same answer. Yes, I agree.

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

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

22 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you also agree that  
23 you knowingly committed one or more of the overt acts stated in the

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1 common allegations in order to accomplish some objective or purpose  
2 of the agreement?

3 ACC [MR. BIN LEP]: Yes, I agree.

4 MJ [Lt Col BRAUN]: Okay. So, Mr. bin Amin -- actually,  
5 before we move into this, Trial Counsel, I note that in the  
6 Specification of Charge VIII, we have a beginning date of  
7 August 1996. Based upon the Stipulations of Facts, the facts before  
8 this commission, it would appear that the start date would more  
9 appropriately be August of 1999.

10 Do you have a position on that, or can you point the  
11 commission to something to the contrary of that?

12 MDTC [Lt Col GOEWERT]: Yes, Your Honor. In AE 083.002, which  
13 is the -- which was the government's response to AE 083.001 (TJ), the  
14 order for supplemental pretrial agreement clarification regarding  
15 Mr. bin Amin and Mr. bin Lep, the parties took a position and cited  
16 case law -- sorry --

17 MJ [Lt Col BRAUN]: Please feel free to use the podium.

18 MDTC [Lt Col GOEWERT]: Thank you very much, Your Honor.

19 In the submission that I just mentioned, 83.002, we filed a  
20 number of instances of case law in which courts in various circuits  
21 have ruled that a person who joins a conspiracy is, in fact,  
22 responsible for events that have occurred prior to them or at least  
23 that they are -- and I'll quote some language in here, and this is

1 from the Eleventh Circuit, which states that: Courts consistently  
2 have stated that one who joins a conspiracy in progress with  
3 knowledge of the unlawful enterprise is responsible for  
4 co-conspirators' actions occurring -- excuse me, before his or her  
5 actions, and that's United States v Carrascal-Olivera 775 F.2d 1446.

6 And that court goes on to state: Therefore, a  
7 co-conspirator's acts done prior to the defendant's association may  
8 be considered in conspiracy prosecutions to establish the scope of  
9 the conspiracy, or establish venue for prosecution.

10 We cite another case, United States v Collins, 799 F.3d 54,  
11 which is a Sixth Circuit case 2015. And that Sixth Circuit  
12 recognized that it has long been established that a conspirator may  
13 join a conspiracy already in progress, and may be held responsible  
14 for actions done in furtherance of the conspiracy before he joined.

15 MJ [Lt Col BRAUN]: So, Counsel, I'm going to stop you there,  
16 then. Can you agree -- do you agree with the accused entering the  
17 conspiracy in 1999?

18 It appears your position is the conspiracy started in 1996,  
19 but is it a fair assessment based upon the facts as presented to this  
20 commission that the accused would have entered that conspiracy in  
21 1999?

22 MDTC [Lt Col GOEWERT]: Yes, sir. I mean, just from the facts  
23 as pled directly from -- sorry. I apologize. I'm getting green and

1 yellow, sir.

2           Based on the allegations that relate directly to they  
3 themselves, they entered in 1999, absolutely. So they entered an  
4 ongoing conspiracy, and the other overt acts begin to describe the  
5 nature of the conspiracy that they entered into.

6           MJ [Lt Col BRAUN]: Okay. As that relates to liability, is it  
7 the government's position that liability to the accused would reach  
8 backwards before the time that they entered the conspiracy?

9           MDTC [Lt Col GOEWERT]: We cited cases that stand for that  
10 proposition, and that could be a minority view, and this court may  
11 believe that it may not be the most reasonable view, but we certainly  
12 cited cases arguing in favor of that position. That they've joined  
13 an ongoing conspiracy, the conspiracy is underway, and they could  
14 easily be liable for any of the criminal activities that were ongoing  
15 at that time.

16           I'll note that most of the acts that we're talking about  
17 that occurred before they're joining that are discussed in those  
18 overt acts -- well, they're called overt acts, but they're discussed  
19 in the common allegations -- many of them aren't criminal, per se.  
20 Many of them are descriptive of the nature of the conspiracy.

21           So, UBL's fatwa, for example, is a great indicator of it.  
22 Hambali's trip to Afghanistan. These are things setting out the  
23 nature and scope of it, and they may not be criminal acts in and of

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1 themselves, right? So someone in a conspiracy can only be liable for  
2 crimes committed prior to their entry.

3 So to the degree that those are crimes, I think that that  
4 might inform the court's decision on this rather than just background  
5 as to the nature and scope of the conspiracy that they joined.

6 MJ [Lt Col BRAUN]: Fair.

7 Because there are two potential pieces of relevancy here,  
8 and the commission is trying to make sure it understands. One could  
9 be just knowledge of the conspiracy attributable to the accused that  
10 they could enter into a conspiracy or an understanding of the  
11 conspiracy versus the actual liability or criminal piece of it  
12 reaching backwards.

13 So the government's position would be that that would be  
14 useful for both; insomuch as there was previous criminal activity,  
15 the accused could be held criminally liable for that previous  
16 activity. Additionally, the government's position is that  
17 information that is not of a criminal nature would be useful for  
18 knowledge of the conspiracy itself?

19 MDTC [Lt Col GOEWERT]: Exactly, both, sir, especially as any  
20 criminal activity may have been ongoing when they joined versus  
21 completed criminal activity.

22 But yes. So those overt acts define and direct the scope  
23 and nature of that conspiracy in both breadth and time.



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1 MJ [Lt Col BRAUN]: Okay. Thank you, Trial Counsel.

2 MDTC [Lt Col GOEWERT]: Thank you, Your Honor.

3 MJ [Lt Col BRAUN]: Counsel for Mr. Amin, I would like to ask  
4 you the same question and your position on, first off, when Mr. Amin,  
5 based upon the evidence before this commission, entered the  
6 conspiracy, understanding we have this 1999 to 1996 piece. You heard  
7 the government's position on that.

8 What is your position?

9 Then I would like to know the second piece, which is: What  
10 relevance does any acts that may have occurred prior to Mr. Amin's  
11 entry into that commission, what relevance do those acts have,  
12 criminal or otherwise?

13 CDC [MS. FUNK]: So as a starting matter, I would submit that  
14 Mr. bin Amin's joining the conspiracy occurred at some point in 1999.  
15 There are two or three different stopping points where you could  
16 assess -- you know, it's always -- there are some times in a  
17 conspiracy where it's a close call, right? So is this the dreamer or  
18 is this the doer?

19 So it would depend on the court's perspective as to whether,  
20 for example, simply travelling to Afghanistan, is that an overt act  
21 or is that mere preparation, right?

22 There are some other acts that seem to go a bit further, and  
23 at some point it is clear that he is involved in a conspiracy.

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1           Whether or not he -- and I think that I would agree that  
2 certainly there are things that maybe were known to the public that  
3 could inform an individual that they were not joining a, you know,  
4 pure religious order or something, that they may have been aware that  
5 there was conduct or an attitude towards certain people or certain  
6 societies, and that -- prior conspiracy would inform that.

7           However, whether or not the individual joining the  
8 conspiracy would be guilty of crimes that occurred prior to their  
9 entry into the conspiracy, I would submit, is not relevant in this  
10 case because the -- if as a prosecutor you wanted to use the law in  
11 that way -- I haven't reviewed the case law recently. I know there  
12 are some jurisdictions that say you can be responsible for prior  
13 acts. But in this particular case, there are no criminal charges  
14 which anticipate charging for something that happened, say, in 1996.

15           So he's not being accused of, you know, issuing the fatwa,  
16 for example. If he was, we could certainly argue more about it, but  
17 I guess our position is that the Bali bombing happened in 2002. And  
18 there is plenty of evidence of conspiracy with our client's  
19 fingerprints on them, if you will, from 1999 to the spring or the  
20 summer of 2003.

21           So for those reasons, I don't think it's appropriate to  
22 even -- even consider it. Thank you.

23           MJ [Lt Col BRAUN]: Thank you.

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1 Counsel for Mr. bin Lep, same questions to you.

2 LDC [MR. BOUFFARD]: Yes, sir.

3 We, and Mr. bin Lep, have determined that it is in his best  
4 interest to adopt the government's view; however, I think many of Ms.  
5 Funk's points are quite well taken.

6 And as to your question regarding relevancy, we would think  
7 that anything prior to 1999 would be wholly irrelevant.

8 MJ [Lt Col BRAUN]: Thank you.

9 MDTC [Lt Col GOEWERT]: Your Honor, may we add a clarifying  
10 point?

11 MJ [Lt Col BRAUN]: You may.

12 MDTC [Lt Col GOEWERT]: Well, just to be clear, we view those  
13 initial items that we're discussing under conspiracy as related to  
14 establishing the ----

15 MJ [Lt Col BRAUN]: When you say initial...

16 MDTC [Lt Col GOEWERT]: At least those items predating 1999.

17 MJ [Lt Col BRAUN]: Okay.

18 MDTC [Lt Col GOEWERT]: So those overt acts, and I think that  
19 does go to what -- when we say overt act, I mean a common allegation  
20 is, in fact, a descriptor and an overt act in this case. It is a  
21 descriptor of the nature, the existence, the type, the form of  
22 conspiracy in which they entered into, right?

23 So we're talking about a description of the conspiracy that

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1 Mr. bin Amin and Mr. bin Lep entered into, and they take on relevance  
2 in that regard, not just as necessarily -- and many of them aren't  
3 offenses. Many of them are acts that show that other co-conspirators  
4 were acting in their own regard in furthering the conspiracy.

5 So we're talking about defining the nature and scope of the  
6 conspiracy in order to show what they joined.

7 MJ [Lt Col BRAUN]: What overt -- identify an overt act in one  
8 of the Stipulations of Fact that occurred prior to 1999. I'll let  
9 you choose from Prosecution Exhibit 3 or Prosecution Exhibit 1.

10 MDTC [Lt Col GOEWERT]: Yes, sir. So when we say overt act, I  
11 think that's ----

12 MJ [Lt Col BRAUN]: That's a term -- overt act is a term of  
13 art.

14 MDTC [Lt Col GOEWERT]: Yes, sir.

15 So the -- UBL's fatwa is an overt act that lays out the  
16 objectives of the conspiracy. Now, that's not an overt act of these  
17 accused, but it is of their co-conspirator.

18 So we cannot say that prior to '99 that there is an overt  
19 act. Sorry. We cannot say that prior to '99 that there's an overt  
20 act committed by either of these two individuals, only their  
21 co-conspirators.

22 MJ [Lt Col BRAUN]: Okay.

23 MDTC [Lt Col GOEWERT]: So to the degree that impacts this

1 court's analysis of that issue, we take a different tact.

2 MJ [Lt Col BRAUN]: Okay. I appreciate the clarification and  
3 the response to my question.

4 So, Mr. bin Amin, I defined earlier for you what an overt  
5 act is. I would now like to discuss with you some of those overt  
6 acts. And how I'm going to do that is I'm going to reference you  
7 first to the common allegations. I'm then going to reference you to  
8 what appears to be a corresponding statement in your Stipulation of  
9 Fact, and we're going to look at those two things together.

10 And then I'm going to ask you a question about each one of  
11 those common allegations and how it relates to an overt act that you  
12 may or may not -- are willing to admit that you committed as part of  
13 Charge VIII, the conspiracy.

14 So looking first at common allegation number 9, and that  
15 appears to correspond, when you look at your Stipulation of Facts,  
16 paragraphs 13, 14 ----

17 CDC [MS. FUNK]: Your Honor?

18 MJ [Lt Col BRAUN]: Yes.

19 CDC [MS. FUNK]: Mr. bin Amin is still reading the 99.

20 MJ [Lt Col BRAUN]: Okay. Read the common allegation. When  
21 you're done, please look up at me.

22 **[Pause.]**

23 MJ [Lt Col BRAUN]: Okay. Now I would like for you to look at

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1 your Stipulation of Fact, specifically paragraphs 13, 14, and 15.  
2 Read those over. And when you're done, look up at me.

3 **[Pause.]**

4 MJ [Lt Col BRAUN]: Based upon your review of those items,  
5 Mr. bin Amin, do you agree that the information contained within the  
6 Stipulation of Fact describes the common allegation that you  
7 reviewed?

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

9 MJ [Lt Col BRAUN]: Do you agree that the Stipulation of Fact  
10 accurately describes what you did or what the government could prove  
11 you did beyond a reasonable doubt?

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

13 MJ [Lt Col BRAUN]: Okay. And then I want to move on to  
14 common allegation number 10. Please review that. And after you've  
15 done so, please look up at me.

16 **[Pause.]**

17 MJ [Lt Col BRAUN]: And now I would like for you to review  
18 paragraph 16 in your Stipulation of Fact.

19 **[Pause.]**

20 MJ [Lt Col BRAUN]: Do you agree that the information  
21 contained within the Stipulation of Fact describes common allegation  
22 number 10 that you just reviewed, with one change to common  
23 allegation number 10? That change would be removing the language

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1 "Lillie adopted the name Bashir and."

2 **[Pause.]**

3 CDC [MS. FUNK]: Your Honor? In reviewing the common  
4 allegations, the name is Ahmed, A-H-M-E-D. And it adds a last name,  
5 al Filipini.

6 In number 16 of the Stipulation of Fact, the alias is simply  
7 referred to as Ahmad, A-H-M-A-D. My client tells me that this is a  
8 common thing that happens when interpreting Arabic, the spelling  
9 sometimes changes, sometimes with an E, sometimes with an A.

10 After having pointed out that discrepancy, he does agree  
11 that they are essentially the same.

12 MJ [Lt Col BRAUN]: Okay. So understanding that -- let me ask  
13 it this way: Looking at the Stipulation of Facts, specifically  
14 paragraph 16, is everything in paragraph 16 still correct?

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

16 MJ [Lt Col BRAUN]: Is there anything in paragraph 16 that you  
17 do not wish to admit is correct?

18 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

19 MJ [Lt Col BRAUN]: Is everything -- asked in a different way,  
20 is everything in paragraph number 16 true and correct to the best of  
21 your knowledge and belief?

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

23 MJ [Lt Col BRAUN]: Okay. So based on what -- those responses

1 and what your counsel's just told me, would it be more accurate if  
2 common allegation number 10 also accepted the words "Ahmed  
3 al Filipini" -- excuse me. I'm probably mispronouncing that, and I  
4 apologize -- but instead inserts or substitutes the word "Ahmad,"  
5 A-H-M-A-D, as contained in paragraph 16 of the Stipulation of Fact?

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

7 MJ [Lt Col BRAUN]: So that would -- that change would then  
8 make what is contained in common allegation 10 correct and concur  
9 with what is contained in paragraph 16 of your Stipulation of Fact;  
10 is that accurate?

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

12 MJ [Lt Col BRAUN]: Okay. With that change, do you agree that  
13 the Stipulation of Fact accurately describes what you did or what the  
14 government could prove you did beyond a reasonable doubt?

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

16 MJ [Lt Col BRAUN]: Then I want to move on to common  
17 allegation 13.

18 **[Pause.]**

19 MJ [Lt Col BRAUN]: Is there a provision in your Stipulation  
20 of Fact, Prosecution Exhibit 1, that contains that same information?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** No, Your Honor.

22 MJ [Lt Col BRAUN]: Okay. Understanding that, common  
23 allegation 13 contains information that purports you have done



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1 something, an overt act -- and that's what we're talking about right  
2 now as it relates to conspiracy -- do you agree that common  
3 allegation number 13 is either, one, something that you have done or,  
4 two, something that the government could prove you have done beyond a  
5 reasonable doubt?

6 CDC [MS. FUNK]: Respectfully, Your Honor, the issue is with  
7 the word "fighters." I can elaborate if you would ----

8 MJ [Lt Col BRAUN]: Please.

9 CDC [MS. FUNK]: ---- like that.

10 My client is reading the word "fighters" as people who were,  
11 like, on the front lines fighting in the -- and certainly, he did  
12 work in a hospital, and certainly, there were people who were at the  
13 training camp who became injured during their training. And because  
14 he was working at the hospital, he would have had some contact with  
15 many of those people, but not fighters in the, you know, Jihad sense.

16 MJ [Lt Col BRAUN]: What word would better fit?

17 CDC [MS. FUNK]: Do you want to say --

18 **[Pause.]**

19 CDC [MS. FUNK]: We're proposing "wounded trainees," Your  
20 Honor.

21 MJ [Lt Col BRAUN]: Okay. So if the word "fighters" were  
22 excepted, but the word "trainees" was substituted therein, that would  
23 then make common allegation 13 something that you would admit that

1 you have done or that the government could prove you had done beyond  
2 a reasonable doubt, Mr. bin Amin?

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

4 MJ [Lt Col BRAUN]: Okay. I want to transition now to common  
5 allegation number 15.

6 Please review that common allegation.

7 **[Pause.]**

8 MJ [Lt Col BRAUN]: Now I want you to look at paragraph 17 in  
9 your Stipulation of Fact.

10 **[Pause.]**

11 CDC [MS. FUNK]: One of the difficulties we're having here,  
12 Your Honor, is the common allegations are in -- there are a number of  
13 inconsistencies and things that are just plain incorrect.

14 We spent weeks working both with the government and with our  
15 client to come up with a Stipulation of Fact that was consistent with  
16 both what evidence the government had and also what our client knew  
17 personally.

18 So it makes my client uncomfortable to not cooperate with  
19 the court, but at the end of the day the truth of the matter is that  
20 there are things in 15 that are not in 17, and they're inconsistent  
21 and suggestive of, in some cases, more than what he actually did and  
22 in some cases different than what he actually did.

23 I'll leave it at that for now.

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1 MJ [Lt Col BRAUN]: And just for the record, I'm not asking  
2 for your client to agree or disagree, or answer in any particular  
3 fashion, just to answer my questions honestly.

4 As the court tries to reconcile the common allegations with  
5 the evidence in Stipulation of Fact admitted as being true by  
6 Mr. bin Amin, and then using that to determine whether the accused  
7 is -- Mr. bin Amin is provident of the plea to guilty to Charge VIII  
8 and its Specification, the court has to determine what overt acts  
9 your client is willing to acknowledge he either personally knows he  
10 committed or that he is satisfied the government can prove beyond a  
11 reasonable doubt.

12 So I do appreciate the challenge this raises, but  
13 that's -- in the end, that's really what the court is trying to  
14 ascertain here, is what is the basis of the overt acts that would be  
15 necessary for a finding of providency as to the plea entered.

16 CDC [MS. FUNK]: I have a proposal.

17 MJ [Lt Col BRAUN]: Okay.

18 CDC [MS. FUNK]: My client will agree to everything that's in  
19 the Stipulation of Fact. And I think that you've already identified  
20 a number of things that perhaps stand alone or perhaps, you know,  
21 taken as a whole, indicate overt acts.

22 I can point out some others to the court, although I'm  
23 100 percent confident that this court has already identified a series

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1 of other overt acts in the Stipulation of Facts, and I can assure  
2 this court that Mr. bin Amin was very careful and very precise in  
3 reviewing each and every word of this Stipulation of Facts.

4 Thank you.

5 MJ [Lt Col BRAUN]: While I appreciate that, the challenge is  
6 the common allegations were pled into specification -- the  
7 Specification of Charge VIII, right?

8 As you look at language on the charge sheet, at the very  
9 bottom of the Specification of Charge VIII, the paragraphs numbered 1  
10 through 60 listed in the section entitled "Common Allegations" are  
11 hereby realleged and incorporated by reference as overt acts as if  
12 set forth fully here.

13 And that is -- that is the challenge that the commission has  
14 to wrestle with, because they've been incorporated into the charge.  
15 And, unfortunately, the commission does not have the ability to know  
16 what the -- what the accused personally knows or does not know.

17 I have a charge sheet with common allegations. I have a  
18 Stip of Fact. I can attempt to -- and the commission can attempt to  
19 try and resolve the two. But without asking the questions, it  
20 becomes impossible because the commission would be inserting its  
21 judgment for Mr. bin Amin, which would be inappropriate.

22 DC [LtCol HIGGINS]: Judge, if I may? I'm having some  
23 concerns with the common allegations in general, because there's no

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1 basis in military justice or even federal law for a prosecutor to  
2 just include a diatribe of conduct in a charge sheet. Why not list  
3 the exact overt acts that Mr. bin Amin is responsible for? There's  
4 been no Article 32. There's been no grand jury.

5 So, you know, the additional, I believe -- what? -- nine  
6 pages of overt acts, I'm not sure why we even need that. Don't we  
7 just need to find that there were some overt acts? Or are we just  
8 trying to say that the charge sheet is not actually alleging what we  
9 need to allege?

10 MJ [Lt Col BRAUN]: I think the charge sheet alleges what it  
11 alleges, Counsel. I think the challenge here is that in determining  
12 whether the plea entered is provident, the commission has a  
13 responsibility under law to ensure that the accused understands what  
14 has been alleged and that the commission understands that those acts  
15 which are contained in the common allegations, which in the  
16 commission's determination constitute overt acts, are actually overt  
17 acts that the accused has committed, either because he has personal  
18 knowledge of it or he believes that the government can prove it  
19 beyond a reasonable doubt.

20 DC [LtCol HIGGINS]: Understood, Your Honor. But 1996, for  
21 example, common allegation number 2, KSM, a senior leader of the  
22 international terrorist organization al Qaeda, I mean, that in and of  
23 itself is not an overt act that Mr. bin Amin could have been

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1 responsible for.

2 MJ [Lt Col BRAUN]: I understand your perspective. I  
3 understand your argument. I also -- the commission also did not ask  
4 Mr. bin Amin specifically about that specific common allegation  
5 because the commission can see that Mr. bin Amin's name is not in  
6 that common allegation.

7 What the commission is trying to do is to ascertain those  
8 common allegations which involve Mr. bin Amin are indeed common  
9 allegations that Mr. bin Amin can acknowledge either, again, he  
10 personally knows are true or believes, based upon his review of the  
11 evidence, the government could prove beyond a reasonable doubt for  
12 purposes of providency.

13 DC [LtCol HIGGINS]: So we're trying to find a common  
14 allegation that actually does match with the Stipulation of Fact?

15 MJ [Lt Col BRAUN]: We are trying to reconcile the two.

16 DC [LtCol HIGGINS]: Okay.

17 MJ [Lt Col BRAUN]: Because equally problematic would be a  
18 statement which contradicts the Stipulation of Fact, correct?

19 CDC [MS. FUNK]: Your Honor ----

20 MJ [Lt Col BRAUN]: And the commission does appreciate that  
21 the charge sheet is not evidence. It's a charge sheet, right?

22 The Stip of Fact is, when received, based upon acceptance of  
23 the accused's guilty plea should we get there, would become evidence

1 at that time. However, the accused and the parties have agreed that  
2 the court can rely upon the Stipulation of Fact in determining  
3 whether the accused is provident.

4 CDC [MS. FUNK]: So in pursuit of that, Your Honor, what I can  
5 say is that number 15 in the common allegations is inaccurate as to  
6 the February 2001 date. However, it is true that our client was at  
7 Al Farouq training camp in Afghanistan, as referenced in 17 of the  
8 stipulation.

9 Further, if you look down to 21, it establishes that our  
10 client took advanced explosive classes. So I don't know that -- not  
11 having been in the military, I don't know if explosive classes would  
12 cover tactical movements, ambushes, land navigation, and guerilla  
13 warfare, but he certainly did take advanced training.

14 My client tells me he did not help erect any buildings at  
15 any other camp. There were some rudimentary structures, tents and  
16 things of that nature, that were put up and taken down. But to  
17 assert that buildings were erected is just false.

18 MJ [Lt Col BRAUN]: Okay. And so that's part of what the  
19 commission's trying to understand through this inquiry.

20 The questions I anticipate I would ask, as we proceed  
21 through this, will be similar to the ones I've already asked: You  
22 know, review the common allegation, review the stip, what appears to  
23 be, at least from the commission's read, corollary statements -- but,

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1 again, the commission needs the accused to either affirm or deny  
2 that -- and then asking whether the statement within the Stipulation  
3 of Fact describes the common allegation, and then whether  
4 Mr. bin Amin agrees that the Stipulation of Fact accurately describes  
5 what was -- what the accused did or what the government could prove  
6 the accused did beyond a reasonable doubt, understanding the issue  
7 earlier that you'd raised, that the accused admits those things that  
8 are consistent with the Stipulation of Fact.

9 CDC [MS. FUNK]: So just for clarification, then, for me, do  
10 you want me to provide details like, yeah, he didn't erect any  
11 buildings, but he'll agree with the rest of it? Or do you want  
12 me -- you do? Okay.

13 MJ [Lt Col BRAUN]: Yeah. If there are statements that are  
14 just categorically false, not supported by the Stipulation of Fact,  
15 if you would highlight those ----

16 CDC [MS. FUNK]: Certainly.

17 MJ [Lt Col BRAUN]: ---- that would be helpful.

18 CDC [MS. FUNK]: Okay. Thank you.

19 MJ [Lt Col BRAUN]: So I believe we were on common  
20 allegation 15.

21 CDC [MS. FUNK]: The advanced training is referenced in  
22 number 21 of the Stipulation of Fact. So it certainly is in there  
23 that he took advanced training. It's just in a



1 different -- different paragraph towards the end. It's actually the  
2 very last sentence fragment in 21 on page 5.

3 MJ [Lt Col BRAUN]: Okay. Does paragraph 17 and then that  
4 portion of paragraph 21 accurately describe what is contained in  
5 common allegation 15?

6 CDC [MS. FUNK]: So as to 17, Your Honor, it does have some  
7 common language with 15 regarding training that was not advanced, but  
8 was basic training about military tactics, topography, and firearms.  
9 And then it identified some specific firearms in it. It is true that  
10 some of that language also appears in 15.

11 And, again, the advanced training appears in 21 of the  
12 Stipulation of Fact. The land navigation and guerilla warfare I  
13 don't believe appear anywhere. And the erection of buildings at a  
14 camp is just false.

15 MJ [Lt Col BRAUN]: Okay. So if the commission were to accept  
16 that last sentence that you've indicated is just unsupported by  
17 anything in the Stipulation of Fact -- and I believe you said land  
18 navigation and guerilla warfare?

19 CDC [MS. FUNK]: Yes.

20 MJ [Lt Col BRAUN]: Okay. Then common allegation 15  
21 accurately describes what Mr. bin Amin agrees he did or what the  
22 government can prove he did beyond a reasonable doubt?

23 **[Pause.]**

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1 CDC [MS. FUNK]: Again, Your Honor, there's the problem of the  
2 date. But otherwise, I believe, yes, with those additions, it is  
3 accurate.

4 MJ [Lt Col BRAUN]: Okay. So those refer to each other.

5 And by date, February 2021 **[sic]** is inaccurate, but between  
6 July 2000 and through the fall of 2000 would be accurate? Am I  
7 understanding that correctly?

8 CDC [MS. FUNK]: Yes.

9 MJ [Lt Col BRAUN]: Okay.

10 Okay, Counsel. I have a recommended way ahead here.  
11 Because I think trying to trudge through this common allegation by  
12 common allegation, step by step, is going to take a very long time,  
13 and I don't think necessarily would be beneficial to the parties. So  
14 we can continue to do this on the record and just work through each  
15 one.

16 The other option is the commission could identify for the  
17 respective parties, for Mr. bin Amin and for Mr. bin Lep, those  
18 common allegations the commission was going to inquire about and the  
19 corollary paragraphs from the Stipulation of Fact.

20 The commission could then break for the evening. The  
21 parties could take that information and determine if any  
22 substitutions or exceptions to those common allegations would be  
23 necessary to make them accurate. Similar to what we're doing right

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1 now, but that would give you an ability to sit down and just have the  
2 conversation, potentially talk to the opposing counsel, to the  
3 government, if you would like to do so before we come on the record,  
4 so at least everybody is somewhat on the same page.

5           And then the commission could step through those perhaps a  
6 little more easily, and would be inclined to then request from each  
7 accused whether they've reviewed the information, whether it is  
8 indeed accurate, and be able to check that information for any  
9 inconsistencies with the Stipulations of Fact, which would also be of  
10 concern to the commission.

11           Does that way ahead seem to be slightly more helpful to the  
12 parties in trying to move through what the commission's trying to do  
13 right now in determining what common allegations would constitute  
14 overt acts as it pertains to the Specification of Charge VIII?

15           Ms. Funk.

16           CDC [MS. FUNK]: This is something we'll need to do in  
17 conjunction with speaking with our client, so we're going to need our  
18 client held here for a bit.

19           I -- can you give me an estimate as to how many other  
20 comparisons the court has?

21           MJ [Lt Col BRAUN]: It is 17 allegations for bin Amin. It is  
22 15 for Mr. bin Lep.

23           CDC [MS. FUNK]: I think we can do that in an hour. We'll do

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1 our best.

2 MJ [Lt Col BRAUN]: Okay.

3 LDC [MR. BOUFFARD]: Your Honor, if I may, just to clarify?

4 MJ [Lt Col BRAUN]: Please.

5 LDC [MR. BOUFFARD]: Because I'm trying to think through how  
6 this inquiry is going to be different between the two accused based  
7 on their posture.

8 So my question is: Even though, for example, in our case I  
9 think you said 15 -- even though 15 overt acts in the common  
10 allegations might be identifiable or viable, is it the court's  
11 position that we need more than a single overt act?

12 MJ [Lt Col BRAUN]: The commission feels it is appropriate for  
13 the commission to identify those overt acts which are contained  
14 within the common allegation as they relate to the specification of  
15 the charge, yes.

16 LDC [MR. BOUFFARD]: Okay. So there is no -- once an overt  
17 act has been identified solidly, the inquiry must continue from  
18 there?

19 MJ [Lt Col BRAUN]: Correct. Because all of those overt acts  
20 have been re-alleged in the specification, the commission does feel  
21 it appropriate to ascertain each overt act, each potential overt act.

22 LDC [MR. BOUFFARD]: Understood, sir.

23 And then I wasn't clear about team bin Amin's preference

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1 about whether to continue now or to break for the evening.

2 MJ [Lt Col BRAUN]: I believe team bin Amin -- and correct me  
3 if I'm wrong, but I believe team bin Amin's request was to allow the  
4 commission to identify those common allegations and corollary  
5 paragraphs from the statement -- the Stipulation of Fact, and then  
6 allow the team to work with their client through those common  
7 allegations to determine what substitutions, exceptions, may be  
8 necessary. Some may be fine as they are. Some may require  
9 significant changing. Some may not apply.

10 But to work through that piece and then come back in the  
11 morning so that we can step through those common allegations the  
12 commission has identified, as well as any others that the parties may  
13 identify that they feel are appropriate to discuss.

14 Is that an accurate assessment?

15 CDC [MS. FUNK]: Yes, Your Honor. Thank you.

16 LDC [MR. BOUFFARD]: Understood, sir.

17 MJ [Lt Col BRAUN]: Does that work for the team for  
18 Mr. bin Amin -- or bin Lep?

19 LDC [MR. BOUFFARD]: Certainly.

20 MJ [Lt Col BRAUN]: Very well, then. I'm going to identify  
21 those common allegations starting with Mr. bin Amin's case.

22 So we already talked about it, common allegation 9, and then  
23 the stipulation paragraphs 13, 14, and 15.

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1           Then common allegation number 10, stipulation paragraph 16.

2           We already talked about common allegation 13.

3           Common allegation 15, stipulation paragraph 17, and you had  
4 identified 21 as well.

5           Common allegation number 16, stipulation paragraphs 18 and  
6 19.

7           Common allegation number 30, stipulation paragraph  
8 number 21.

9           Common allegation number 31, stipulation paragraphs 22 and  
10 23.

11          Common allegation number 32, stipulation paragraph 25 and  
12 26.

13          Common allegation number 34, stipulation paragraph 30, 31,  
14 and 32.

15          Common allegation 35, stipulation paragraph 32, 33, and 34.

16          Common allegation number 36, stipulation paragraph 42.

17          Common allegation number 37, stipulation paragraphs 40 and  
18 46.

19          Common allegation number 38.

20          Common allegation number 39, stipulation paragraph 34.

21          Common allegation 47, stipulation paragraph 49.

22          Common allegation number 48, stipulation paragraphs 47, 48,  
23 49.

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1 Common allegation number 50, stipulation paragraph 51.

2 And, finally, common allegation number 51, stipulation  
3 paragraph 53.

4 Excuse me. I made a mistake. Retract common allegation  
5 number 38. That was my mistake.

6 For Mr. bin Lep, common allegation number 8, stipulation  
7 paragraph 11 and 12.

8 Common allegation number 9, stipulation paragraphs 13, 14,  
9 15.

10 Common allegation number 10, stipulation paragraph 15.

11 Common allegation number 12, stipulation paragraph 21.

12 Common allegation number 14, stipulation paragraphs 22, 23,  
13 24, 25.

14 Common allegation 16, stipulation paragraph 18 and 19.

15 Common allegation number 30, stipulation paragraph 28.

16 Common allegation number 31, stipulation paragraph 29, 30.

17 Common allegation number 32, stipulation paragraphs 31, 32,  
18 and 33.

19 Common allegation number 34, stipulation paragraphs 36, 37.

20 Common allegation 35, stipulation paragraphs 38, 39, and 40.

21 Common allegation number 36, stipulation paragraph  
22 number 51.

23 Common allegation 37, stipulation paragraphs 48 and 49.

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1 Common allegation number 39, stipulation paragraphs 40 and  
2 41.

3 Common allegation number 43, stipulation paragraph  
4 number 45.

5 LDC [MR. BOUFFARD]: Your Honor, may we briefly confer with  
6 the government?

7 MJ [Lt Col BRAUN]: You may.

8 **[Counsel conferred.]**

9 LDC [MR. BOUFFARD]: Thank you, Your Honor.

10 MJ [Lt Col BRAUN]: Very well. Based on where we are at in  
11 the proceeding, it is my intent to recess the commission until 0800  
12 tomorrow morning.

13 Are there any other matters that we can take up at this time  
14 before I recess the commission?

15 Trial Counsel?

16 MDTC [Lt Col GOEWERT]: No, Your Honor. Thank you.

17 MJ [Lt Col BRAUN]: Counsel for Mr. bin Amin?

18 CDC [MS. FUNK]: No, thank you.

19 MJ [Lt Col BRAUN]: Counsel for Mr. bin Lep?

20 LDC [MR. BOUFFARD]: No, sir.

21 MJ [Lt Col BRAUN]: Okay. Very well. This commission is in  
22 recess until 0800 tomorrow morning.

23 **[The R.M.C. 803 session recessed at 1654, 16 January 2024.]**