

1 **[The R.M.C. 803 session was called to order at 0918,**
2 **17 January 2024.]**

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

4 Trial Counsel, are all government counsel who were present
5 at the close of the previous session again present?

6 MDTC [Lt Col GOEWERT]: We are, Your Honor.

7 MJ [Lt Col BRAUN]: And, Trial Counsel, please confirm that
8 these proceedings are being transmitted via closed-circuit television
9 to the United States in compliance with commission's order in
10 Appellate Exhibit 0007.006 Trial Judiciary.

11 MDTC [Lt Col GOEWERT]: Your Honor, these proceedings are
12 being transmitted stateside via closed-circuit television
13 transmission to remote viewing sites in Fort Meade, Maryland, and the
14 Pentagon.

15 The RHR is currently open and visible to us.

16 MJ [Lt Col BRAUN]: And, Trial Counsel, it's my understanding
17 that -- well, Trial Counsel, are there any counsel appearing remotely
18 from the Remote Hearing Room, to your knowledge?

19 MDTC [Lt Col GOEWERT]: We were told that in prior filings
20 that the defense wanted someone there, but we don't see anyone on
21 screen at this point.

22 MJ [Lt Col BRAUN]: Okay. Anybody -- how about this: Anybody
23 from the government present in the RHR?

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1 MDTC [Lt Col GOEWERT]: Not from our side, Your Honor.

2 MJ [Lt Col BRAUN]: Okay.

3 Ms. Funk, anybody from -- any attorney or personnel from
4 Mr. bin Amin's team present in the RHR for today's proceeding?

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

6 MJ [Lt Col BRAUN]: Okay.

7 And, Mr. Bouffard, if you could answer the same question
8 from your team.

9 LDC [MR. BOUFFARD]: Good morning, Judge.

10 We had anticipated Mr. Shepard being present. He is not
11 present. He may arrive. At this point Mr. bin Lep will waive his
12 presence.

13 My suggestion would be if we see him arrive, maybe call a
14 halt and get him on the record.

15 MJ [Lt Col BRAUN]: Okay. Yeah, I think that's appropriate as
16 he is not here, and the waiver of defense counsel that we
17 accomplished yesterday was specific -- my language was specific to
18 yesterday's session.

19 I would like to cover that again with you, Mr. bin Lep. So,
20 Mr. bin Lep, yesterday we discussed you waiving the presence of
21 Mr. Shepard, one of your detailed military counsel's presence, for
22 that proceeding. I note that he is also not present here again today
23 but remains detailed as a member of your defense team.

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1 Is Mr. Shepard a member of your defense team -- still a
2 member of your defense team?

3 ACC [MR. BIN LEP]: Yes.

4 MJ [Lt Col BRAUN]: Normally under the rules, you have the
5 right to have the presence of all of your detailed military defense
6 counsel at all sessions of a military commission. Do you understand
7 this right?

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

9 MJ [Lt Col BRAUN]: Now, of course, with Mr. Shepard not being
10 present, you do have the ability to request that the commission
11 continue today's session until such time as all of your detailed
12 military defense counsel could be present.

13 Do you understand that?

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

15 MJ [Lt Col BRAUN]: Have you discussed this right with your
16 military defense counsel? I'm sorry. With your defense counsel?

17 ACC [MR. BIN LEP]: Yes, I already spoken with them.

18 MJ [Lt Col BRAUN]: Okay. And do you agree to waive the
19 presence of Mr. Shepard for today's proceeding?

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

21 MJ [Lt Col BRAUN]: Did anybody make any promises or threats
22 in any way to get you to agree to waive Mr. Shepard's presence for
23 today's proceeding?

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1 ACC [MR. BIN LEP]: There was none.

2 MJ [Lt Col BRAUN]: Very well.

3 I find Mr. bin Lep has knowingly, intelligently, and
4 voluntarily waived the right to have Mr. Shepard present for today's
5 proceeding. I also note that he is represented physically here in
6 the courtroom by detailed defense counsel. So under the Rules for
7 Military Commissions, this proceeding can continue with that waiver.

8 Should Mr. Shepard show up later on, I would just ask if
9 counsel -- if the commission does not immediately notice that on the
10 RHR feed, if counsel could promptly notify the commission so that we
11 could take a recess.

12 I will remind counsel, as we are broadcasting to the Remote
13 Hearing Room, that consistent with a previous order of the
14 commission, any party -- the commission -- excuse me.

15 Consistent with previous order of the commission, the RHR is
16 an extension of the well of this courtroom; therefore, any party that
17 would depart or enter the well will need to announce that fact prior
18 to departing or upon return to ensure that we have a complete record
19 of the proceeding.

20 Mr. Bouffard, if you can ensure that that is communicated to
21 Mr. Shepard on behalf of the commission, should he decide to join us
22 at a later point, that would be appreciated.

23 LDC [MR. BOUFFARD]: Sir, at the first break we will do that.

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1 MJ [Lt Col BRAUN]: Thank you.

2 With that resolved, Ms. Funk, are all defense counsel who
3 were present at the close of the previous session for Mr. bin Amin
4 present here today?

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

6 Whoops. I apologize. Yes. All of the attorneys on the
7 record are present today.

8 MJ [Lt Col BRAUN]: Thank you.

9 And, Mr. Bouffard, same question for you for Mr. bin Lep's
10 team.

11 LDC [MR. BOUFFARD]: Affirmative, sir.

12 MJ [Lt Col BRAUN]: Thank you.

13 I do note that both accused are present in the courtroom
14 this morning.

15 When we recessed last, I discussed with the parties the
16 request that they examine the common allegations over the overnight
17 recess with their clients and determine, based upon the Stipulation
18 of Fact, which portions of the common allegations would constitute
19 overt acts which their clients could -- which the accused could adopt
20 as part of the providency process as it relates to Charge VIII and
21 its Specification.

22 First off, have the defense teams had an opportunity to
23 consult with their clients to effect that end state?

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1 And we'll start with you, defense team for Mr. bin Amin.

2 CDC [MS. FUNK]: We have, Your Honor.

3 MJ [Lt Col BRAUN]: Okay.

4 Have you been able to have that same discussion with your
5 client, Mr. bin Lep?

6 LDC [MR. BOUFFARD]: We have, sir.

7 MJ [Lt Col BRAUN]: It's my understanding, Ms. Funk, that
8 you've also reduced that to a written document in a line-in/line-out
9 format; is that accurate?

10 CDC [MS. FUNK]: That is correct.

11 MJ [Lt Col BRAUN]: Okay. Could we have that identified as an
12 appellate exhibit, please?

13 Let me ask it this way: Has that been marked as Appellate
14 Exhibit 0091.001 (AMI)?

15 CDC [MS. FUNK]: I apologize, Your Honor. I didn't appreciate
16 that question was for me. I am being told that, yes, in fact that
17 was ----

18 MJ [Lt Col BRAUN]: Okay.

19 CDC [MS. FUNK]: ---- designated that number.

20 MJ [Lt Col BRAUN]: I note the court reporter handed me a copy
21 of that appellate exhibit. It is a 31-page document. Top of it
22 states MC Form 458 JAN 2007, continuing to common allegations.

23 I do note that all of the common allegations are in here;

1 however, only some have line-in/line-out.

2 Ms. Funk, the commission yesterday identified specific
3 allegations for you to discuss -- or request you discuss those
4 specific allegations with your client. Of course, you're free to
5 discuss any additional allegations that you feel may constitute an
6 overt act.

7 Understanding that, the commission was specifically looking
8 at, for your client, common allegations 9, 10, 13, 15, 16, 30, 31,
9 32, 34, 35, 36, 37, 39, 47, 48, 50, and 51.

10 Are those also the allegations that, after discussions with
11 your client, your client agrees constitute overt acts for purposes of
12 the Specification of Charge VIII?

13 CDC [MS. FUNK]: With our assignment, Your Honor, we went
14 through those numbers that you just put onto the record, and we
15 reviewed that with our client. And with the amendments that are
16 provided in AE 0091, our client does agree that those are overt acts.

17 MJ [Lt Col BRAUN]: Okay.

18 CDC [MS. FUNK]: I do have another housekeeping matter, just
19 briefly.

20 When we had spoken yesterday about when our client entered
21 into the conspiracy, I believe I referenced 1999. Now, in my memory,
22 the court has not made a decision yet as to when our client entered
23 the conspiracy; but having had an opportunity to flyspeck the overt

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1 acts, I believe 2000 would be a more accurate date. So I just wanted
2 to correct that misstatement from yesterday.

3 MJ [Lt Col BRAUN]: Thank you for that correction.

4 CDC [MS. FUNK]: If I may, Your Honor?

5 There was some -- my teammates and I wrote down different
6 things for what the assignment was. So what the court has before it
7 right now is specifically the numbers that you requested.

8 Our team has also gone through and crossed out other things
9 in the common allegations that we do not believe are overt acts.
10 Just for your reference, we have that available if the court is
11 interested.

12 MJ [Lt Col BRAUN]: Of all 60 common allegations?

13 CDC [MS. FUNK]: Line-in/line-out of all 60 allegations,
14 correct.

15 MJ [Lt Col BRAUN]: Understood. And I appreciate some of,
16 like, common allegation -- we'll just take number 2, for example,
17 does not contain necessarily your client engaging in any activity.
18 The government yesterday agreed that definition of "overt act"
19 includes activities engaged by an individual, as was instructed by
20 the commission.

21 So I don't think -- I don't require those for purposes of
22 this inquiry, but I do appreciate you bringing that to my attention.
23 Should they be helpful in a future portion of this proceeding, I

1 absolutely will ask for those at that time.

2 CDC [MS. FUNK]: Thank you.

3 MJ [Lt Col BRAUN]: Okay. What I'd like to do, then, is
4 examine those common allegations as articulated in Appellate Exhibit
5 0091.001 (AMI) with Mr. bin Amin to ensure that he does indeed agree
6 with the information contained in that common allegation based upon
7 the information contained in his Stipulation of Fact, as well as his
8 personal knowledge and his understanding of what the -- or what
9 his -- what he feels the government could prove beyond a reasonable
10 doubt to determine providency purposes as it relates to the
11 Specification of Charge VIII.

12 To that end, could you please ensure that Mr. bin Amin has a
13 copy of the charge sheet, the Stipulation of Fact, and this appellate
14 exhibit in front of him, please?

15 CDC [MS. FUNK]: He does, Your Honor.

16 MJ [Lt Col BRAUN]: Thank you.

17 Okay. Mr. bin Amin, I would like to direct your attention
18 first to the charge sheet, specifically Charge VIII and its
19 Specification.

20 As we discussed yesterday, Charge VIII and its Specification
21 allege the offense of conspiracy in violation of 10 United States
22 Code Section 950, subsection t, subsection 29. I provided you
23 yesterday the elements and the relevant definitions that apply to

1 that Charge and its Specification.

2 Would you like for me to repeat any of those elements or
3 their definitions for you here this morning?

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

5 MJ [Lt Col BRAUN]: Based upon our conversation yesterday, do
6 you have any questions about those elements or their definitions?

7 ACC [MR. BIN AMIN]: **[Speaking in English]** Not for right now.

8 MJ [Lt Col BRAUN]: Based upon your conversations you had with
9 your counsel overnight, do you still admit that those elements and
10 their definitions are true and accurately describe what you did, or
11 that you are personally convinced that the government could prove
12 your guilt beyond a reasonable doubt?

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

14 MJ [Lt Col BRAUN]: Okay. Now I would like to discuss with
15 you these common allegations that we were discussing yesterday. And
16 how I'm going to do that is I'm going to step through the common
17 allegations you covered with your defense counsel and I will be
18 referencing the changes or the line-in/line-out that your counsel
19 provided in Appellate Exhibit 0091.001 (AMI).

20 So first looking at common element number 9, I note that
21 that common element is generally unchanged with the exception of
22 excepting the words "approximately early July."

23 Excepting those words, "in approximately early July," with

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1 that change, do you agree that that common element accurately
2 describes what you did or what the government can prove beyond a
3 reasonable doubt as it relates to an overt act incorporated into the
4 Specification of Charge VIII?

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

6 MJ [Lt Col BRAUN]: And do you agree that the information
7 contained within your Stipulation of Fact describes that common
8 allegation as modified?

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

10 MJ [Lt Col BRAUN]: Okay. Then I want to move on to common
11 allegation number 10.

12 I note in that common allegation you are excepting the
13 language "Lillie adopted the name Bashir and."

14 You are changing the spelling of Ahmed to A-H-M-A-D,
15 excepting out the letter E, adding the letter A, and excepting the
16 words "al Filipini."

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

18 MJ [Lt Col BRAUN]: Based upon those changes, do you agree
19 that the information contained -- with those changes, do you agree
20 that the information contained in common allegation number 10
21 accurately describe what you did or what you believe the government
22 can prove beyond a reasonable doubt as an overt act as it relates to
23 the Specification of Charge VIII?

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

2 MJ [Lt Col BRAUN]: Do you agree that the common allegation
3 10, as modified, accurately agrees with the information contained
4 within your Stipulation of Fact?

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

6 MJ [Lt Col BRAUN]: Okay. Then we're going to move on to
7 common allegation 13.

8 In common allegation number 13, you are excepting the word
9 "fighters" and substituting therein the word "trainees."

10 Do you agree that with that change, common allegation
11 number 13 accurately describes what you know personally or what
12 the -- do you believe the government reasonably can prove as an overt
13 act related to the Specification of Charge VIII?

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

15 MJ [Lt Col BRAUN]: And do you agree that with that change,
16 common allegation 13 accurately is captured within your Stipulation
17 of Fact?

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

19 MJ [Lt Col BRAUN]: Okay. Then I want to move on to common
20 allegation number 16.

21 CDC [MS. FUNK]: Respectfully, Your Honor --

22 MJ [Lt Col BRAUN]: Excuse me. Common allegation 15. I
23 apologize, Mr. Amin.

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1 With common allegation number 15, you are excepting the
2 words -- word and figure "February 2001," substituting therein the
3 word and figures "July 2000" and the "fall of 2000."

4 You're further excepting the word "advanced." You are
5 substituting the word "and." And then you're excepting the words
6 "land navigation, and guerilla warfare. He also trained and helped
7 erect buildings at another camp located in -- located about a
8 45-minute walk away from Al-Farouq."

9 Do you agree, with those modifications to common element 15,
10 that common element 15 now captures what you personally believe or
11 what you believe the government can prove beyond a reasonable doubt
12 as an overt act related to the Specification of Charge VIII?

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

14 MJ [Lt Col BRAUN]: Is that information accurately reflected
15 within your Stipulation? Is that common element -- I'm sorry.

16 Is that common allegation accurately reflected within your
17 Stipulation of Fact as modified?

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

19 MJ [Lt Col BRAUN]: Okay. Now I would like to move on to
20 common allegation 16.

21 It appears you are making no change to common allegation
22 number 16. So do you agree that the information contained in common
23 allegation number 16 is something you personally know or believe that

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1 the government can prove beyond a reasonable doubt as an overt act
2 related to the Specification of Charge VIII?

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

4 MJ [Lt Col BRAUN]: And is common allegation number 16
5 accurately reflected in your Stipulation of Fact?

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

7 MJ [Lt Col BRAUN]: We're going to move on to common
8 allegation 30.

9 For common allegation number 30, you are inserting the
10 language "and," you're excepting the language, "and fellow Southeast
11 Asian JI associate Yazid Sufaat and Abu Rahim, a/k/a Abu Harris," and
12 making no additional changes to common allegation number 30.

13 Do you agree that common allegation number 30, as amended,
14 accurately reflects an overt act related to the Specification of
15 Charge VIII as something that you personally know or believe that the
16 government can prove beyond a reasonable doubt?

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

18 MJ [Lt Col BRAUN]: And is common allegation number 30, as
19 modified, accurately reflected in your Stipulation of Fact?

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

21 MJ [Lt Col BRAUN]: Okay. I'd like to move on to common
22 allegation number 31.

23 In common allegation 31, you are excepting the language "Nik

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1 Amran bin Mustafa," and the letters "a/k/a." You are making no other
2 change to common allegation number 31.

3 As modified, does common allegation number 31 describe an
4 overt act you engaged in, based upon personal knowledge or what you
5 believe the government can prove beyond a reasonable doubt as related
6 to the Specification of Charge VIII?

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

8 MJ [Lt Col BRAUN]: And as modified, is common allegation
9 number 31 reflected in your Stipulation of Fact?

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

11 MJ [Lt Col BRAUN]: Okay. Then I want to turn to common
12 allegation number 32. It appears there is no change to common
13 allegation number 32.

14 Do you agree that common allegation number 32 is an overt
15 act you engaged in with relation to the Specification of Charge VIII
16 as something that you personally know or something that you believe
17 the government can prove beyond a reasonable doubt as charged?

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

19 MJ [Lt Col BRAUN]: And is common allegation number 34
20 accurately reflected in your Stipulation of Fact? Excuse me. I
21 believe we're on common allegation 32.

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

23 MJ [Lt Col BRAUN]: Now I'd like to look at common allegation

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1 number 34. It appears there is no change to common allegation
2 number 34, so I'll ask: Do you agree that common allegation 34 is an
3 overt act in relation to the Specification of Charge VIII that you
4 engaged in, either through your personal knowledge or something that
5 the government can prove beyond a reasonable doubt?

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

7 MJ [Lt Col BRAUN]: And is common allegation number 34
8 reflected in your Stipulation of Fact?

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

10 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin, I want to now discuss
11 common allegation number 35. Common allegation number 35, you have
12 excepted the language "they also traveled to Cambodia for operational
13 purposes."

14 Do you agree that, as modified, common allegation 35 is an
15 overt act you engaged in in relation to the Specification of Charge
16 VIII through either your personal knowledge or is something that the
17 government can prove beyond a reasonable doubt?

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

19 MJ [Lt Col BRAUN]: And is common allegation number 35
20 reflected in your Stipulation of Fact?

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

22 MJ [Lt Col BRAUN]: Okay. Let's move ahead to common
23 allegation 36.

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1 Okay. I see there is no change to -- recommended to common
2 allegation number 36. So do you agree that common allegation
3 number 36 is an overt act you engaged in in relation to the
4 Specification of Charge VIII through either your personal knowledge
5 or as something the government can prove beyond a reasonable doubt?

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

7 MJ [Lt Col BRAUN]: And is common allegation number 36
8 accurately reflected in your Stipulation of Fact?

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

10 CDC [MS. FUNK]: Your Honor, could we have a moment?

11 MJ [Lt Col BRAUN]: You may.

12 CDC [MS. FUNK]: There seems to be a paperwork issue. Just a
13 few minutes.

14 **[Pause.]**

15 CDC [MS. FUNK]: Thank you, Your Honor. We're ready to
16 proceed.

17 MJ [Lt Col BRAUN]: Okay. I believe -- I'm not sure I asked
18 you. I'll ask again. Is common allegation number 36 accurately
19 reflected in your Stipulation of Fact?

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

21 MJ [Lt Col BRAUN]: Okay. Then we're going to move on to
22 common allegation number 37. I see there's no recommended change to
23 common allegation number 37. So let me ask: Do you agree that

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1 common allegation number 37 is an overt act in relation to the
2 Specification in Charge VIII that you engaged in through your
3 personal knowledge or is something that you are convinced the
4 government can prove beyond a reasonable doubt?

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

6 MJ [Lt Col BRAUN]: And is that common allegation accurately
7 reflected in your Stipulation of Fact?

8 CDC [MS. FUNK]: If I may, Your Honor? My client -- my client
9 agrees with the first part, which talks about his involvement. My
10 client does not have any knowledge, nor is it in the Stipulation of
11 Fact, anything that happened between Mr. bin Lep and other parties.

12 So that second sentence, while present, is not something
13 that he has personal knowledge of. I don't know that that
14 necessarily means that it needs to be stricken, but I just wanted to
15 call that to your attention, that there's really two separate parts
16 to that paragraph.

17 MJ [Lt Col BRAUN]: Okay. If I were to except that second
18 sentence beginning with "on multiple occasions," ending with "for
19 Hambali," and modify the common allegation number 37 in that way,
20 does that common allegation, as modified, constitute an overt act,
21 Mr. bin Amin, that you created -- you engaged in in relation to the
22 Specification of Charge VIII through either your personal knowledge
23 or something that you are convinced the government can prove beyond a

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1 reasonable doubt?

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

3 MJ [Lt Col BRAUN]: And, as modified, would then that common
4 allegation be accurately reflected in your Stipulation of Fact?

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

6 CDC [MS. FUNK]: Similarly, Your Honor -- I apologize -- as to
7 36, the second sentence regarding Mr. bin Lep's conduct and whether
8 or not he received CD-ROMs is not something that is either in my
9 client's Stipulation of Facts or within his realm of knowledge.

10 MJ [Lt Col BRAUN]: Okay. Then I'm going to recover that
11 common allegation just so that the record is clear. What is
12 important to me, Mr. bin Amin, is that I understand what either you
13 personally know or you believe the government -- you are convinced
14 the government can prove beyond a reasonable doubt as it relates to
15 the common allegations as an overt act, right? And we're talking
16 about the Specification of Charge VIII.

17 So that's -- if there is something in there that you do not
18 have personal knowledge of or you are not convinced that the
19 government can prove beyond a reasonable doubt, then I need to know
20 about those particular matters.

21 Does that make sense?

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

23 MJ [Lt Col BRAUN]: Okay. So, then, I'm going to readdress

1 common allegation 38 based upon your counsel's statements. And to do
2 so, I'm going to except -- I'm sorry. Common allegation 36. And I'm
3 going to except the last sentence, beginning with "Lillie also
4 received CD-ROMs" and ending in "apartment in Bangkok."

5 Now, does common allegation 36, as modified, constitute an
6 overt act you committed in relation to Specification of Charge VIII
7 that either -- that you engaged in through -- that you know either
8 through your personal knowledge or that you are convinced the
9 government can prove beyond a reasonable doubt?

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

11 MJ [Lt Col BRAUN]: And with that modification, is common
12 allegation 36 accurately reflected in your Stipulation of Fact? I
13 would direct you to paragraph 42 of your Stipulation of Fact, if that
14 is helpful.

15 CDC [MS. FUNK]: That's exactly what we're looking at, Your
16 Honor. And the language in the Stipulation of Fact specifically
17 references "learning how to construct electrical circuits," rather
18 than using the more inflammatory words that are found in the common
19 allegations.

20 And I apologize. I thought we were careful yesterday when
21 we reviewed this, but it's been brought to my attention now.

22 MJ [Lt Col BRAUN]: And I appreciate there could be
23 differences, right? I don't think that that in and of itself is

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1 necessarily fatal, assuming that one can read the statements in
2 common allegation number 36 in concert with paragraph 42 of the
3 Stipulation of Fact. Of course, significant differences would be a
4 problem as stipulation of facts cannot be contradicted.

5 And you understand that, Mr. bin Amin, correct? Your
6 Stipulation of Fact ordinarily -- it cannot be contradicted?

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

8 MJ [Lt Col BRAUN]: Okay. So I can appreciate that there may
9 be some variance, and I think that that in and of itself is not
10 necessarily going to be fatal.

11 What I'm trying to determine is whether the factual basis
12 for that common allegation is borrowed from the Stipulation of Fact
13 as well as what, Mr. bin Amin, you are telling me here today based
14 upon your personal knowledge and what you believe the government can
15 prove beyond a reasonable doubt.

16 Does that make sense?

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

18 MJ [Lt Col BRAUN]: Okay. Does that address somewhat your
19 concern, Defense Counsel, as well?

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

21 MJ [Lt Col BRAUN]: Okay. I'd like to turn to common
22 allegation 39.

23 On common allegation number 39, you are excepting the last

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1 para -- the last sentence, excuse me, that begins with "on multiple
2 occasions" and ends on "his own initiative."

3 As modified -- do you agree that, as modified, common
4 allegation 39 is an overt act in relation to the Specification of
5 Charge VIII that you engaged in through either -- that you know
6 either through personal knowledge or as something the
7 government -- you are convinced the government can prove beyond a
8 reasonable doubt?

9 CDC [MS. FUNK]: Apologies, Your Honor.

10 The first sentence of 39 does not directly relate to my
11 client, and he has no knowledge of that. Thank you.

12 MJ [Lt Col BRAUN]: So if common allegation 39 were modified
13 to except the first sentence beginning with "on two separate
14 occasions" and ending with "Israeli airline customers," then further
15 excepting the language -- the last sentence starting with "on
16 multiple occasions," ending with "his own initiative."

17 So excepting those two sentences, the very first and the
18 very last sentence of common allegation 39, do you agree, as
19 modified, Mr. bin Amin, that common allegation 39 is an overt act in
20 relation to the Specification of Charge VIII that you engaged in
21 through either your personal knowledge or as something you are
22 convinced the government can prove beyond a reasonable doubt?

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

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1 MJ [Lt Col BRAUN]: And is common allegation number 39
2 incorporated within your Stipulation of Fact?

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

4 MJ [Lt Col BRAUN]: Then let's move on to common
5 allegation 47.

6 In common allegation number 47, you are excepting the
7 words -- the word "an," modifying the word "operation" to become
8 "operations." So substituting or adding an S at the end of it, and
9 then excepting the words "in which people would be killed."

10 Mr. bin Amin, do you agree that, as modified, common
11 allegation number 47 is an overt act in relation to the Specification
12 of Charge VIII that you engaged in through either your personal
13 knowledge or as something that you are convinced the government can
14 prove beyond a reasonable doubt?

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

16 MJ [Lt Col BRAUN]: Okay. And is common allegation number 47,
17 as modified, accurately reflected in your Stipulation of Fact -- or
18 is it reflected in your Stipulation of Fact?

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

20 MJ [Lt Col BRAUN]: Okay. Let's move on to common allegation
21 48.

22 Common allegation 48, you are excepting the language "and
23 Ali Abdul Aziz Ali a/k/a Ammar al Baluchi Ali." And then you are

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1 excepting the language remaining in common allegation 48, starting
2 with "KSM directed Khan to retrieve," and all that follows.

3 CDC [MS. FUNK]: Apologies, Your Honor. As to the first
4 sentence, the exception should be for the first sentence entirely.
5 Based on my client's knowledge, that's not a conversation he was
6 privy to.

7 Oh, I apologize.

8 MJ [Lt Col BRAUN]: I direct you to Stipulation of Fact 47,
9 48. You may want to examine those, Counsel, with your client.

10 CDC [MS. FUNK]: My team has already informed me of that,
11 thank you. But I would also note that that language covers conduct
12 that does not implicate my client into an overt act. I'm just
13 offering that for the court. If the court wishes to leave it for
14 context, I have no objection.

15 MJ [Lt Col BRAUN]: Okay. What I'd like to do is,
16 Mr. bin Amin, please look at your Stipulation of Fact. I'd like you
17 to review paragraphs 47, 48, and 49. Please look up at me when you
18 are done.

19 **[Pause.]**

20 MJ [Lt Col BRAUN]: Have you finished reviewing those
21 paragraphs of your Stipulation of Fact?

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

23 MJ [Lt Col BRAUN]: Is everything in paragraphs 47, 48, and 49

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1 true?

2 ACC [MR. BIN AMIN]: **[Speaking in English]** I understand it is
3 true, but I don't have any personal knowledge about it.

4 MJ [Lt Col BRAUN]: I'm sorry?

5 ACC [MR. BIN AMIN]: **[Speaking in English]** The statement is
6 true, but I don't have any personal knowledge about it.

7 CDC [MS. FUNK]: Your Honor, one of the parts of the
8 Stipulation of Fact wherein my client is agreeing that the
9 prosecution could prove those elements, but he doesn't have personal
10 knowledge.

11 MJ [Lt Col BRAUN]: And understood. The standard for
12 providency, right, is something that you, Mr. bin Amin, either
13 acknowledge that you personally know or something that you are
14 convinced that the government could prove beyond a reasonable doubt.

15 For the Stipulation of Fact, though, the question I'm asking
16 is very specific: Is the information that you just reviewed in the
17 Stipulation of Fact, is all of that information true?

18 ACC [MR. BIN AMIN]: **[Speaking in English]** I believe it true,
19 yeah.

20 MJ [Lt Col BRAUN]: Okay. And do you wish to admit it is
21 true?

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

23 MJ [Lt Col BRAUN]: Okay. And I know we covered those

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1 questions yesterday. I'm just coming back to them, based upon this
2 conversation, to ensure that there is nothing in those paragraphs
3 that you do not wish to admit is true.

4 So let me ask you that question. Is there anything in those
5 paragraphs you do not wish to admit is true? In those paragraphs of
6 your Stipulation of Fact, just so I'm clear.

7 CDC [MS. FUNK]: Would you repeat the question, Your Honor?

8 MJ [Lt Col BRAUN]: I can. Is there anything in those
9 paragraphs, specifically paragraphs 47, 48, or 49, of your
10 Stipulation of Fact that you do not wish to admit is true?

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

12 MJ [Lt Col BRAUN]: So do you agree, under oath, that the
13 matters contained in paragraphs 47, 48, and 49 of your Stipulation of
14 Fact are true and correct to the best of your knowledge and belief?

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

16 MJ [Lt Col BRAUN]: Okay. I'd like to move on to common
17 allegation number 50. I note there is no proposed change to common
18 allegation number 50, so let me ask you, Mr. bin Amin: Do you agree
19 that common allegation number 50 is an overt act in relation to the
20 Specification of Charge VIII that you engaged in through either your
21 personal knowledge or as something you are convinced the government
22 can prove beyond a reasonable doubt?

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

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1 MJ [Lt Col BRAUN]: And is common allegation number 50
2 reflected in your Stipulation of Fact?

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

4 MJ [Lt Col BRAUN]: And, finally, I'd like to talk about
5 common allegation number 51. Again, I see no proposed change to
6 that. Is common allegation number 51 an overt act in relation to the
7 Specification of Charge VIII that you engaged in that you are aware
8 of either through your personal knowledge or as something that you
9 are convinced the government could prove beyond a reasonable doubt?

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

11 MJ [Lt Col BRAUN]: And is common allegation number 51
12 reflected in your Stipulation of Fact?

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

14 MJ [Lt Col BRAUN]: Mr. bin Amin, do you agree that those
15 common allegations that we just discussed, as modified, accurately
16 reflect the overt acts that you committed after joining the
17 conspiracy? And if you need me to recapture those common
18 allegations, I can do so.

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

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

21 Counsel for Mr. bin Lep.

22 LDC [MR. BOUFFARD]: Your Honor, before we begin, we have new
23 information on the whereabouts of Mr. Shepard.

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1 MJ [Lt Col BRAUN]: Okay.

2 LDC [MR. BOUFFARD]: He showed up promptly in the RHR -- at
3 the RHR and was unable to establish contact with anyone inside. So
4 he was never allowed to enter the room.

5 Having sort of, you know, realized there might be, you know,
6 issues that might come up with the weather or whatever else, I
7 authorized him, you know, if you run into any problems, just stay
8 home. So he will not be appearing in the RHR.

9 Mr. bin Lep will continue to waive his presence for the
10 remainder of this session.

11 MJ [Lt Col BRAUN]: Okay. And we've already received that
12 waiver on the record, so I don't feel the need to readdress it.

13 Mr. bin Lep, you've been hearing what your counsel has
14 advised the commission. I believe he probably discussed that with
15 you while I was having that discussion with Mr. bin Amin.

16 Any objection to what your counsel has proffered to the
17 commission?

18 ACC [MR. BIN LEP]: I have none.

19 MJ [Lt Col BRAUN]: Okay. And you're comfortable proceeding,
20 understanding you had previously waived the presence of Mr. Shepard?

21 ACC [MR. BIN LEP]: Yes, I am fine with that.

22 MJ [Lt Col BRAUN]: Thank you.

23 And, actually, we've been on the record now for about an

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1 hour. So before we move into the -- a similar inquiry with
2 Mr. bin Lep, what we'll do is we'll take a 10-minute recess for
3 comfort purposes and then convene promptly at 1021.

4 This commission's in recess.

5 **[The R.M.C. 803 session recessed at 1012, 17 January 2024.]**

6 **[The R.M.C. 803 session was called to order at 1032,**
7 **17 January 2024.]**

8 MJ [Lt Col BRAUN]: This military commission will come to
9 order. All parties that were present when the commission recessed
10 are again present.

11 Mr. bin Lep, I would like to discuss with you the overt acts
12 you committed that are listed in the common allegations. So to do
13 that, I'm going to ask that you have a copy of the charge sheet open
14 to those common allegations, as well as a copy of your Stipulation of
15 Fact available to you.

16 LDC [MR. BOUFFARD]: And, Your Honor, if I may, I certainly
17 don't want to step on the commission's toes, but I believe I might be
18 able to help us streamline this portion of the inquiry. If you'd
19 like me to do that, I stand ready to do so.

20 MJ [Lt Col BRAUN]: Please proceed.

21 LDC [MR. BOUFFARD]: So yesterday we were given, by the court,
22 citations to 15 common allegations and associated paragraphs in the
23 Stipulation. We went over those with our client, just as we did

1 before we signed the pretrial agreement in this case.

2 We believe, and he will admit, that as to each of the 15
3 common allegations identified by the court, to the extent that they
4 purport to show an overt act, he agrees that that was an overt act in
5 accordance with the rest of this inquiry.

6 MJ [Lt Col BRAUN]: Okay.

7 LDC [MR. BOUFFARD]: I will say, if I may, that there
8 are -- to the extent that there are variances or discrepancies
9 between the common allegations and the Stip of Fact, we believe those
10 to be insignificant and immaterial. We did not identify any
11 contradictions between the common allegations and the Stip of Fact.

12 And, if the court would permit, I have just a little bit of
13 commentary to illustrate that.

14 MJ [Lt Col BRAUN]: Please.

15 LDC [MR. BOUFFARD]: And, actually, first of all, as to common
16 allegation 12, Your Honor, you identified corresponding stipulation
17 paragraph 21. We would also invite the court to look at 24, which we
18 believe also bolsters that allegation.

19 As to 36, this is an example of what we believe to be a
20 non-material variance. And that is the distinction between the word
21 "bombs," as it appears in the common allegation, and the term
22 "circuits for explosive devices," as appears in the Stipulation of
23 Fact.

1 Now, both we and the government agree to the maybe more
2 specific term that appears in the Stipulation of Fact; however, we
3 believe that that is subsumed fairly in the word "bombs."

4 Similarly, in common allegation 43, we might be able to
5 nitpick about the difference between "at a building" and "near a
6 building," but, again, we are in agreement with the government in the
7 Stipulation of Fact.

8 And it is not significant or material enough, in our view,
9 to pen change the common allegation. So we are not asking the court
10 for any modifications to any of the common allegations.

11 MJ [Lt Col BRAUN]: Okay.

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

13 MJ [Lt Col BRAUN]: Thank you. That is helpful context.

14 Then what the commission is inclined to do is to just walk
15 through those 15 allegations, ask your client -- ask Mr. bin Lep if
16 he does agree that those 15 allegations constitute an overt act he
17 committed and whether that is reflected in his Stipulation of Fact.

18 And assuming that the -- that Mr. bin Lep agrees with those,
19 we will proceed on. I think that would satisfy the providency
20 inquiry that the commission would be required to conduct.

21 So with that, Counsel, does Mr. bin Lep have a copy of the
22 charge sheet, as well as his Stipulation of Fact, available to him?

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

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1 MJ [Lt Col BRAUN]: So, Mr. bin Lep, I'm going to talk with
2 you this morning about Charge VIII and its sole Specification.
3 Charge VIII, as we previously discussed, refers to the offense of
4 conspiracy.

5 Yesterday, I defined for -- I provided you the elements of
6 that offense as well as definitions relevant to that defense. Do you
7 wish me to repeat any of those elements or definitions this morning?

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

9 MJ [Lt Col BRAUN]: Understanding those elements and
10 definitions and the Specification of Charge VIII and the common
11 allegations, do you still admit that the elements are true and
12 accurately describe what you did or that you are personally convinced
13 that the government could prove your guilt beyond a reasonable doubt?

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

15 MJ [Lt Col BRAUN]: Okay. Now I'm going to cover with you
16 specific common allegations. And how I'm going to do that is I'm
17 going to identify the common allegation, and then I'm going to ask
18 you some questions about that common allegation.

19 If at any point you need me to pause so that you can review
20 the common allegation or any other materials available to you, please
21 let me know and we'll take that moment.

22 Do you understand?

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

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1 MJ [Lt Col BRAUN]: Okay. I want to start with common
2 allegation number 8.

3 Do you agree that common allegation number 8 is an overt act
4 you engaged in that you are aware of either through your personal
5 knowledge or as something you are convinced the government can prove
6 beyond a reasonable doubt?

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

8 MJ [Lt Col BRAUN]: Okay. And is common allegation number 8
9 reflected in your Stipulation of Fact?

10 ACC [MR. BIN LEP]: Yes, there is.

11 MJ [Lt Col BRAUN]: Okay. Then we're going to move ahead to
12 common allegation number 9.

13 Do you agree that common allegation number 9 is an overt act
14 that you committed through either your personal knowledge or as
15 something that you are convinced the government can prove beyond a
16 reasonable doubt?

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

18 MJ [Lt Col BRAUN]: And is common allegation number 9
19 reflected in your Stipulation of Fact?

20 ACC [MR. BIN LEP]: Yes.

21 MJ [Lt Col BRAUN]: I'd like to move to common allegation
22 number 10.

23 Do you agree that common allegation number 10 is an overt

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1 act that you committed that you're aware of either through your
2 personal knowledge or as something that the government can prove
3 beyond a reasonable doubt?

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

5 MJ [Lt Col BRAUN]: And is common allegation number 10
6 reflected in your Stipulation of Fact?

7 ACC [MR. BIN LEP]: Yes.

8 MJ [Lt Col BRAUN]: I now want to move to common allegation
9 number 12.

10 Do you agree that common allegation number 12 is an overt
11 act that you committed through which you have personal knowledge or
12 as something that you are convinced that the government can prove
13 beyond a reasonable doubt?

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

15 MJ [Lt Col BRAUN]: And is common allegation number 12
16 reflected in your Stipulation of Fact?

17 ACC [MR. BIN LEP]: Yes, there is.

18 MJ [Lt Col BRAUN]: Then let's move ahead to common allegation
19 number 14.

20 Do you agree that common allegation number 14 is an overt
21 act that you committed through which you are aware via personal
22 knowledge or as something that you are convinced the government can
23 prove beyond a reasonable doubt?

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

2 MJ [Lt Col BRAUN]: And is common allegation 14 reflected in
3 your Stipulation of Fact?

4 ACC [MR. BIN LEP]: Yes, there is.

5 MJ [Lt Col BRAUN]: Then let's move ahead to common allegation
6 number 16.

7 Do you agree that common allegation number 16 is an overt
8 act that you committed through which you are aware of via personal
9 knowledge or as something that you are convinced the government can
10 prove beyond a reasonable doubt?

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

12 MJ [Lt Col BRAUN]: Okay. Let's move on to common allegation
13 number 30.

14 LDC [MR. BOUFFARD]: Your Honor, do you want to inquire if 16
15 is represented in the Stip of Fact?

16 MJ [Lt Col BRAUN]: I do. Thank you.

17 Is common allegation number 16 captured in your Stipulation
18 of Fact?

19 ACC [MR. BIN LEP]: Yes, there is.

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

21 Let's move on, then, to common allegation 30. Do you agree
22 that common allegation number 30 is an overt act that you committed
23 through either your personal knowledge or as something that you are

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1 convinced the government can prove beyond a reasonable doubt?

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

3 MJ [Lt Col BRAUN]: Okay. And is common allegation number 30
4 reflected in your Stipulation of Fact?

5 ACC [MR. BIN LEP]: Yes, there is.

6 MJ [Lt Col BRAUN]: I'd like to move on to common allegation
7 31.

8 Do you agree that common allegation number 31 is an overt
9 act you engaged in through either your personal knowledge or as
10 something that you are convinced the government can prove beyond a
11 reasonable doubt?

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

13 MJ [Lt Col BRAUN]: And is common allegation 31 reflected in
14 your Stipulation of Fact?

15 ACC [MR. BIN LEP]: Yes, there is.

16 MJ [Lt Col BRAUN]: Then let's move on to common allegation
17 number 32.

18 Do you agree that common allegation number 32 is an overt
19 act that you committed through which you are aware via personal
20 knowledge or as something that you are convinced the government can
21 prove beyond a reasonable doubt?

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

23 MJ [Lt Col BRAUN]: Then let's move on to common

1 allegation -- I'm sorry.

2 Is common allegation number 32 also reflected in your Stip
3 of Fact?

4 ACC [MR. BIN LEP]: There is.

5 MJ [Lt Col BRAUN]: Now let's move on to common allegation 34.

6 Do you agree that common allegation 34 is an overt act that
7 you committed through which you are aware via personal knowledge or
8 as something you are convinced the government can prove beyond a
9 reasonable doubt?

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

11 MJ [Lt Col BRAUN]: I note that in common allegation
12 number 34, before I ask the next question, there is a fairly
13 significant departure between the Stipulation of Fact in paragraph 36
14 and the common allegation number 34.

15 Specifically, the Stipulation at paragraph number 36 states
16 that the parties traveled separately. In common allegation
17 number 34, there is an indication that the parties traveled together.
18 Based upon the context, it is possible that those are two different
19 trips. It is unclear, though.

20 So before I ask the next question, I would like you to
21 review that information, and look up at me when, Mr. bin Lep, you've
22 had enough time to consider those two pieces of information, and
23 consult with your counsel about any questions you may have.

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1 LDC [MR. BOUFFARD]: If I may, Your Honor, that is one of the
2 items that we identified as a discrepancy, but not one that we
3 believe under the circumstances was significant or material. Again,
4 you know, we can imagine a fact scenario where that might be, but our
5 position is that this is not that fact scenario.

6 MJ [Lt Col BRAUN]: Okay.

7 **[Pause.]**

8 LDC [MR. BOUFFARD]: Also, if I may, sir, Masran appears in
9 the Stipulation of Fact as a traveler. Unless I'm mistaken, he does
10 not appear -- or he does not appear as a traveler in common
11 allegation 34, which would imply separate travel.

12 MJ [Lt Col BRAUN]: Okay.

13 LDC [MR. BOUFFARD]: And finally, we affirm that the
14 Stipulation of Fact is correct as we and the government have agreed.

15 MJ [Lt Col BRAUN]: And once, Mr. bin Lep, you've finished
16 reviewing those two pieces of information, I'm going to ask you
17 questions about that very matter.

18 Okay. So have you reviewed common allegation 34 and
19 paragraph 36 of your Stipulation of Fact, Mr. bin Lep?

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

21 MJ [Lt Col BRAUN]: Okay. First off, does your Stipulation of
22 Fact at paragraph 36 and 37 generally describe -- generally describe
23 common allegation 34?

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1 ACC [MR. BIN LEP]: Yes.

2 MJ [Lt Col BRAUN]: Now, as it relates to your Stipulation of
3 Fact, specifically those paragraphs 36 and 37, I had previously
4 advised you that a stipulation of fact ordinarily cannot be
5 contradicted. So I want to ask you, because there is an
6 inconsistency here, is the information contained in paragraphs 36 and
7 37 of your Stipulation of Fact true?

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

9 MJ [Lt Col BRAUN]: Okay. And you wish to admit that that
10 information is true?

11 ACC [MR. BIN LEP]: Yes, I admit it's true.

12 MJ [Lt Col BRAUN]: Is there anything in those two paragraphs
13 that you do not wish to admit is true?

14 ACC [MR. BIN LEP]: No, there isn't anything.

15 MJ [Lt Col BRAUN]: Very well. Then I'd like to move on to
16 common allegation number 35.

17 Do you agree that common allegation number 35 is an overt
18 act you committed that you are aware of through either personal
19 knowledge or as a matter the government can prove -- or is something
20 that you are convinced the government can prove beyond a reasonable
21 doubt?

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

23 MJ [Lt Col BRAUN]: Okay. And is paragraph number 35 -- I'm

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1 sorry. Is common allegation number 35 reflected in your Stipulation
2 of Fact?

3 ACC [MR. BIN LEP]: Yes, it is.

4 MJ [Lt Col BRAUN]: Then let's move on, Mr. bin Lep, to common
5 allegation 36.

6 Do you agree that common allegation 36 is an overt act that
7 you committed that you're aware of either through your personal
8 knowledge or as something that you are convinced the government can
9 prove beyond a reasonable doubt?

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

11 MJ [Lt Col BRAUN]: And is common allegation number 36
12 captured within your Stipulation of Fact?

13 ACC [MR. BIN LEP]: Yes, it is.

14 MJ [Lt Col BRAUN]: Then let's move on to common allegation
15 number 37.

16 Do you agree that common allegation number 37 is an overt
17 act you committed that you're aware of either through your personal
18 knowledge or as something you are convinced the government can prove
19 beyond a reasonable doubt?

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

21 MJ [Lt Col BRAUN]: And is common allegation number 37
22 captured within your Stipulation of Fact?

23 ACC [MR. BIN LEP]: Yes, it is.

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1 MJ [Lt Col BRAUN]: Okay. Then let's move on to common
2 allegation number 39.

3 Is common allegation -- do you agree that common allegation
4 39 is an overt act you committed through either your personal
5 knowledge or as something you are convinced the government can prove
6 beyond a reasonable doubt?

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

8 MJ [Lt Col BRAUN]: And is common allegation number 39
9 captured within your Stipulation of Fact?

10 ACC [MR. BIN LEP]: Yes, it is.

11 MJ [Lt Col BRAUN]: Then let's move to common allegation
12 number 43, please.

13 Do you agree that common allegation number 43 is an overt
14 act you committed which you are aware of either through your personal
15 knowledge or as something that you are convinced the government can
16 prove beyond a reasonable doubt?

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

18 MJ [Lt Col BRAUN]: And is common allegation number 43
19 captured in your Stipulation of Fact?

20 ACC [MR. BIN LEP]: It is, yes.

21 MJ [Lt Col BRAUN]: Mr. bin Lep, do you agree that the common
22 allegations we just discussed accurately reflect the overt acts that
23 you committed after joining the conspiracy described in the

1 Specification of Charge VIII?

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

3 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, do you agree
4 that you are responsible for the overt acts we just discussed?

5 Mr. bin Amin?

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

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

8 ACC [MR. BIN LEP]: Yes.

9 MJ [Lt Col BRAUN]: Now, Mr. bin Amin and Mr. bin Lep, we
10 previously have discussed the affirmative defense of withdrawal as it
11 applies to conspiratorial liability and, in turn, how it connects to
12 Charge I, Charge III, Charge VII, and the specifications of those
13 charges for which you have entered a plea of guilty.

14 We will now discuss how this affirmative defense applies to
15 Charge VIII and its Specification. A party to the conspiracy who
16 withdraws from or abandons the agreement or enterprise before the
17 commission of an overt act by any conspirator is not guilty of
18 conspiracy.

19 An effective withdrawal or abandonment must consist of
20 affirmative conduct that is wholly inconsistent with adherence to the
21 unlawful agreement or common criminal purpose and that shows that the
22 party has severed all connection with the conspiracy.

23 A conspirator who effectively withdraws from or abandons the

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

6 Do you understand the affirmative defense as I have
7 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, I understand.

11 MJ [Lt Col BRAUN]: Do you agree and admit that between on or
12 about 1999 and December 2002, you did not effectively withdraw from
13 the conspiracy described in Charge VIII and its Specification?

14 Mr. bin Amin?

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

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 Charge VIII and its
20 Specification?

21 Trial Counsel?

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

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, sir. Thank you.

4 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, in the
5 Specification of Charge IX, you are both charged with the offense of
6 accessory after the fact in violation of 10 United States Code
7 Section 950, subsection r.

8 By pleading guilty to this offense, you are admitting that
9 the following elements are true and accurately describe what you did
10 or that you are personally convinced that the government could prove
11 beyond a reasonable doubt that on or about October 12th, 2002, on the
12 island of Bali, Indonesia, Encep Nurjaman committed one or more
13 offense punishable by Chapter 47A of Title 10 United States Code, to
14 wit:

15 Murder in violation of law of war, attempted murder in
16 violation of law of war, intentionally causing serious bodily injury,
17 terrorism, attacking civilians, attacking civilian objects, and
18 destruction of property in violation of law of war;

19 Two, that you knew that Mr. Nurjaman had committed one or
20 more of these offenses;

21 Three, that, thereafter between on or about October 12,
22 2002, and on or about June 30, 2003, you received, comforted, or
23 assisted Mr. Nurjaman in Thailand, Cambodia, and elsewhere;

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1 And, four, that you did so for the purpose of hindering or
2 preventing the apprehension, trial, or punishment of Mr. Nurjaman.

3 I have previously provided you the elements and definitions
4 of the offenses described in the first element.

5 Do you want me to provide them to you again, Mr. bin Amin?

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

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

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

9 MJ [Lt Col BRAUN]: Counsel, any objections to the elements as
10 I have defined them for the Specification of Charge IX?

11 Trial Counsel?

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

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

14 CDC [MS. FUNK]: I apologize, Your Honor. Could you repeat
15 that?

16 MJ [Lt Col BRAUN]: Do you have any objection to the elements
17 as I have defined them for the Specification of Charge IX?

18 CDC [MS. FUNK]: I believe they are the elements, Your Honor.
19 Thank you.

20 MJ [Lt Col BRAUN]: Thank you.

21 And counsel for Mr. bin Lep?

22 LDC [MR. BOUFFARD]: No objection.

23 MJ [Lt Col BRAUN]: Thank you.

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1 Mr. bin Amin and Mr. bin Lep, do you both understand that
2 these elements constitute the offense of accessory after the fact?

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.

7 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, at this time
8 I want you to reread the Specification of Charge IX. Please look up
9 at me when you are done rereading it.

10 **[Pause.]**

11 MJ [Lt Col BRAUN]: After reviewing the Specification of
12 Charge IX 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 CDC [MS. FUNK]: Respectfully, Your Honor, I apologize. I
16 don't mean to appear difficult.

17 Mr. bin Amin, as stated yesterday, relies on the facts
18 listed in his Stipulation of Fact. Mr. bin Amin is prepared to plead
19 guilty to this charge.

20 Whether or not the court finds providency is beyond
21 Mr. bin Amin's control, and so he will be entering a plea of guilty
22 with the understanding that he's relying on the Stipulation of Facts
23 and the facts that are contained therein.

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1 Thank you.

2 MJ [Lt Col BRAUN]: Understood, Counsel.

3 And the Stipulation of Fact has been agreed to by the
4 parties as the factual -- part of the factual basis from which the
5 commission may determine whether or not the plea of either accused is
6 provident for purposes of entry of findings. So I do appreciate
7 that.

8 However, I do think the question is still a valid question,
9 and I'm going to ask that your client answer it as an affirmation
10 that the elements as provided by the commission are true and
11 accurately describe what the accused did would be a very necessary
12 portion of finding providency to a plea of guilty.

13 You may.

14 **[Pause.]**

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

16 MJ [Lt Col BRAUN]: And before -- since you had the benefit of
17 discussing with your counsel, what I'm going to do is repeat the
18 question, and then ask that you answer the question. Okay,
19 Mr. bin Amin?

20 After reviewing the Specification of Charge IX again, do you
21 still admit that the elements are true and accurately describe what
22 you did, or that you are personally convinced that the government
23 could prove your guilt beyond a reasonable doubt?

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

2 MJ [Lt Col BRAUN]: Is that a no? Okay.

3 **[Counsel conferred.]**

4 LDC [MR. BOUFFARD]: Your Honor, may I -- I'm sorry.

5 MJ [Lt Col BRAUN]: You may.

6 LDC [MR. BOUFFARD]: I was going to ask if I may confer with
7 the government briefly, but I can certainly wait.

8 MJ [Lt Col BRAUN]: How about this? What we will do is we
9 will take a brief recess. We've been -- I said we would break at, I
10 believe, 1130 for lunch. It's a little after 1107. How long do you
11 need to confer with the government, do you anticipate?

12 LDC [MR. BOUFFARD]: Thirty seconds.

13 MJ [Lt Col BRAUN]: Okay. We'll take a recess in place to
14 allow the parties to do that.

15 **[The R.M.C. 803 session recessed at 1108, 17 January 2024.]**

16 **[The R.M.C. 803 session was called to order at 1109,
17 17 January 2024.]**

18 MJ [Lt Col BRAUN]: This commission will again come to
19 order. The parties that were present when the commission took its
20 recess in place are still present.

21 What I'm going to do is transition to -- Mr. Bouffard, was
22 that sufficient?

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

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1 MJ [Lt Col BRAUN]: Okay.

2 CDC [MS. FUNK]: If I may, Your Honor? I apologize. I wasn't
3 quite done when Mr. Bouffard requested to address the court.

4 I want to be really clear. My client is pleading guilty to
5 this charge. That is his intention. He is mindful of the fact that
6 he is under oath, and he is respectful of this court. There is an
7 issue as to element 2 of the offense, whether the accused knew that
8 somebody else had committed a crime.

9 We've been having conversations about this with the
10 government for at least eight months. I can provide you with numbers
11 in the stipulation that discuss Mr. bin Amin's lack of actual
12 knowledge of whether or not the offense was committed by Mr. Hambali.
13 But his acknowledgment that he was aware that Mr. Hambali was alleged
14 to have committed these offenses and he was aware that Mr. Hambali
15 was seeking shelter. And he will acknowledge that he provided
16 comfort, and the other language in the statute, as far as hiding
17 Mr. Hambali.

18 We will leave it to the court to do the court's analysis
19 when it is appropriate. But for purposes of today's hearing, we are
20 pleading guilty, and we will rely on our Stipulation of Fact at 38,
21 40, 44, 45, 46, and 90.

22 MJ [Lt Col BRAUN]: I want to read those paragraphs back to
23 you: 38, 40, 44, 45, 46 -- and I believe you said 90?

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1 CDC [MS. FUNK]: 90 is the last one, Your Honor. Thank you.

2 MJ [Lt Col BRAUN]: Thank you.

3 So, Mr. bin Amin, I would like to talk with you about the
4 elements of this offense so that I can ensure that, as the
5 commission, I understand where the disconnect is right now. And
6 "disconnect" is probably not the best word, but where there's
7 a -- where you are not able to state that you are convinced either
8 through your personal knowledge or are satisfied that the government
9 can prove beyond a reasonable doubt a particular element.

10 Your counsel's indicated that the element that is causing a
11 difficulty is element number 2, as I described them to you; is that
12 correct?

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

14 MJ [Lt Col BRAUN]: Okay. As a starting point, are you
15 convinced -- are you personally -- do you admit that elements 1, 3,
16 and 4 are true and accurately describe what you did or that you are
17 personally convinced that the government could prove your guilt
18 beyond a reasonable doubt as to those other elements?

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

20 MJ [Lt Col BRAUN]: Okay. What I would like to do, given the
21 hour, is I would like to transition to Mr. bin Lep, ask him the
22 questions that I have. That will give the commission an opportunity
23 over the lengthy lunch recess to examine the paragraphs of the

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1 stipulation articulated by Mr. bin Amin's counsel in relation
2 specifically to the -- to element number 2, now that the commission's
3 attention has been drawn to that particular matter, so that the
4 commission can formulate the questions it will want to ask
5 Mr. bin Amin.

6 CDC [MS. FUNK]: And just as a housekeeping matter -- I
7 apologize, Your Honor -- the first element of the statute, that the
8 offense was committed by a certain person, in this case,
9 Mr. Nurjaman, that that element sort of ties in with element 2 as far
10 as, again, personal knowledge of whether or not Mr. Nurjaman
11 committed these offenses.

12 MJ [Lt Col BRAUN]: Okay. I understand what you are saying.

13 MDTC [Lt Col GOEWERT]: Your Honor ----

14 MJ [Lt Col BRAUN]: Yes.

15 MDTC [Lt Col GOEWERT]: ---- we'd also ask the court to look
16 at paragraph 44 as well in the Stipulation when reviewing whether or
17 not there's sufficient evidence of knowledge ----

18 MJ [Lt Col BRAUN]: And I believe defense counsel articulated
19 paragraph 44. Thank you, Trial Counsel.

20 I would anticipate that, Trial Counsel, you should be
21 prepared to articulate a position regarding those elements and the
22 knowledge necessary under the law based upon the government's
23 position following the lunch recess.

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1 I expect I will ask those questions of both counsel, so
2 please be prepared to provide that information once the commission
3 has the benefit of reviewing this specifically to the elements that
4 have just been articulated by defense counsel and Mr. bin Amin.

5 Okay. So, Mr. bin Lep, let me ask you: After reviewing the
6 Specification of Charge IX again, do you still admit that the
7 elements are true and accurately describe what you did or that you
8 are personally convinced that the government could prove your guilt
9 beyond a reasonable doubt?

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

11 MJ [Lt Col BRAUN]: Okay. Understanding that you've admitted
12 every element we have discussed regarding this offense, I have some
13 additional and specific questions for you.

14 Mr. bin Lep, I'd like to direct your attention to
15 paragraphs 52 through 55 of your Stipulation.

16 **[Pause.]**

17 MJ [Lt Col BRAUN]: I'd also like you to consider paragraph
18 56.

19 **[Pause.]**

20 MJ [Lt Col BRAUN]: After reviewing those paragraphs, is
21 everything contained in those paragraphs still true?

22 ACC [MR. BIN LEP]: It's true.

23 MJ [Lt Col BRAUN]: Mr. bin Amin, during the relevant -- I

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1 note that in your Stipulation ----

2 LDC [MR. BOUFFARD]: Sir, "Mr. bin Lep."

3 MJ [Lt Col BRAUN]: I'm sorry. Excuse me. Mr. bin Lep.

4 In your Stipulation of Fact -- and I'm just going to pick
5 out paragraph 54 as an example -- it uses the name "Hambali." Is
6 "Hambali" an alias that refers to Mr. Encep Nurjaman, the individual
7 identified in the Specification of Charge IX?

8 ACC [MR. BIN LEP]: Yes.

9 MJ [Lt Col BRAUN]: So, Mr. bin Amin, during the relevant time
10 period of this charge ----

11 LDC [MR. BOUFFARD]: "Mr. bin Lep," sir.

12 MJ [Lt Col BRAUN]: I'm sorry, excuse me. Mr. bin Lep.

13 During the relevant time period of this charge, did you know
14 Mr. Nurjaman committed one or more of the offenses listed in element
15 2?

16 ACC [MR. BIN LEP]: Yes.

17 MJ [Lt Col BRAUN]: How did you come to know this?

18 LDC [MR. BOUFFARD]: Your Honor, may I make a request ----

19 MJ [Lt Col BRAUN]: You may.

20 LDC [MR. BOUFFARD]: ---- per the inquiry? Could you ask that
21 question -- could you bifurcate that question, please, between
22 paragraphs 52 and 55, on one hand, and paragraph 56 on the other? Do
23 you see what I'm getting at?

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1 MJ [Lt Col BRAUN]: One moment.

2 **[Pause.]**

3 MJ [Lt Col BRAUN]: What I can do, Counsel, is I can ask the
4 individual paragraphs, how your -- how Mr. bin Lep became aware of
5 the information based upon the paragraphs, how they're broken out in
6 the paragraphs. Would that aid in this process?

7 LDC [MR. BOUFFARD]: Very much. Yes, sir.

8 MJ [Lt Col BRAUN]: Okay. So you said 52, 55, 56, correct?

9 LDC [MR. BOUFFARD]: Yes, sir. And are you tracking the
10 paragraph headers in the Stipulation of Fact on the ----

11 MJ [Lt Col BRAUN]: I am.

12 LDC [MR. BOUFFARD]: Okay.

13 MJ [Lt Col BRAUN]: So, Mr. bin Lep, then, I'm going to ask
14 you ----

15 LDC [MR. BOUFFARD]: Can we have just one moment, sir?

16 MJ [Lt Col BRAUN]: You may.

17 **[Pause.]**

18 LDC [MR. BOUFFARD]: We're ready, sir.

19 MJ [Lt Col BRAUN]: Okay.

20 So, Mr. bin Lep, what I'm going to do, based upon the
21 request of your counsel, is I'm just going to direct you to specific
22 paragraphs in the Stipulation of Fact, and then I'm going to ask you
23 how you became aware of the information contained within that

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1 Stipulation of Fact.

2 What I'm specifically trying to determine is how you
3 became -- how you became knowledgeable of the fact that Mr. Nurjaman
4 committed one or more of the offenses listed in element 2.

5 Do you understand what I'm asking?

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

7 MJ [Lt Col BRAUN]: Okay. So let's start with paragraph
8 number 52 from your Stipulation of Fact, which has been marked as
9 Prosecution Exhibit 3. I want you to look at the paragraph and then
10 describe for me how you became aware of that information.

11 ACC [MR. BIN LEP]: Based on the information that was given by
12 my counsel.

13 MJ [Lt Col BRAUN]: So was that knowledge you received based
14 upon review of evidence in this case?

15 ACC [MR. BIN LEP]: Yes.

16 MJ [Lt Col BRAUN]: Okay. I'd like to move to paragraph
17 number 55.

18 I would like to ask you how you became aware of that
19 information, and it appears to some extent news sources. But explain
20 to me how you became aware of the information contained in
21 paragraph 55.

22 ACC [MR. BIN LEP]: The information that was given to me was
23 informed to me.

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1 MJ [Lt Col BRAUN]: It appears that that information came from
2 a news article at the time, is that a correct understanding?

3 ACC [MR. BIN LEP]: Yes.

4 MJ [Lt Col BRAUN]: And based upon that news article, you knew
5 that Mr. Nurjaman had committed one or more of the offenses listed in
6 element 2 of this Specification?

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

8 MJ [Lt Col BRAUN]: And then paragraph number 66, how did you
9 arrive ---

10 LDC [MR. BOUFFARD]: Is that 56, sir?

11 MJ [Lt Col BRAUN]: I'm sorry, 56. Excuse me.

12 How did you arrive at the conclusion that Hambali or Mr.
13 Nurjaman was a wanted man?

14 ACC [MR. BIN LEP]: From the media.

15 MJ [Lt Col BRAUN]: Would that have been the same article that
16 we just talked about that was the source of the knowledge in
17 paragraph 55 as well as other news sources?

18 ACC [MR. BIN LEP]: More or less.

19 LDC [MR. BOUFFARD]: Your Honor, if I may?

20 MJ [Lt Col BRAUN]: You may.

21 LDC [MR. BOUFFARD]: I think that's best interpreted as both
22 that and other things.

23 MJ [Lt Col BRAUN]: Okay.

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1 Is that accurate, Mr. bin Lep?

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

3 MJ [Lt Col BRAUN]: As it relates to Mr. bin Lep's responses
4 and the commission's inquiry, does the government feel additional
5 inquiry is necessary as it relates to the Specification of Charge IX?

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

7 MJ [Lt Col BRAUN]: Defense counsel?

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

9 MJ [Lt Col BRAUN]: Okay. It is 1125. I'm inclined to break
10 at this point for the lunch recess. As I previously stated, we will
11 reconvene at 1300, absent any objection from the parties.

12 Trial Counsel?

13 MDTC [Lt Col GOEWERT]: No objection, sir.

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

15 CDC [MS. FUNK]: No objection.

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

17 LDC [MR. BOUFFARD]: No objection.

18 MJ [Lt Col BRAUN]: Very well, then. This court is in recess.

19 **[The R.M.C. 803 session recessed at 1127, 17 January 2024.]**

20 **[The R.M.C. 803 session was called to order at 1351,**
21 **17 January 2024.]**

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

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1 again present.

2 Just as a reminder, if I could have everyone in the
3 courtroom remove or otherwise tuck your badges away while we're in
4 open session, that would be appreciated.

5 During the lunch recess the commission directed the parties'
6 attention to the case of United States v. Foushee, which can be found
7 at 13 M.J. 833. That's an Army Court of Military Review case from
8 1982.

9 Of note in that case at page 835, the opinion states: A
10 person may not be found guilty of that offense if he was the
11 perpetrator of the substantive offense, either as the principal actor
12 or as an aider and abetter, because he cannot be an accessory after
13 the fact to his own offense.

14 Insomuch -- the court then cites United States v. McCrea,
15 50 C.M.R. 194. It's an Air Force Court of Military Review case. It
16 appears 1975.

17 Understanding the facts as they have come out through the
18 providency to include the facts and the various Stipulation of Fact
19 that are before the commission and the charges involved of which the
20 accused have entered a plea of guilty to.

21 Trial Counsel, do you have a position as to how this case
22 impacts Charge IX and its Specification?

23 MDTC [Lt Col GOEWERT]: Your Honor, prior to getting into U.S.

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1 v. Foushee, I understand that we've spoken to the defense and they
2 may be able to re-open the providence inquiry with the commission
3 with a different view as to how they might answer their questions. I
4 don't know if you'd like to take that up prior to talking about
5 Foushee or not.

6 MJ [Lt Col BRAUN]: I actually prefer to talk about Foushee,
7 because I believe that issue has to be resolved first.

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

9 So it has an impact, but ----

10 MJ [Lt Col BRAUN]: Please. Yes, please do.

11 MDTC [Lt Col GOEWERT]: Your Honor, thank you. And I do
12 apologize in advance to the interpreters and anyone else listening to
13 me. I will try to go slowly.

14 So, Your Honor, thank you for sending us the case. We
15 looked at Foushee, and it does have a degree of applicability, but
16 its applicability doesn't entirely remove the charge. When directly
17 applied, it removes the murder in violation of the law of war. So
18 that would be stricken because that was what the accused was found
19 guilty of.

20 However ----

21 MJ [Lt Col BRAUN]: Well, that's -- and I appreciate -- that's
22 assuming the pleas, as entered, are provident. So we will just make
23 that assumption at this time for purposes of analysis.

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1 MDTC [Lt Col GOEWERT]: Yes, sir. So I assume that the pleas,
2 everything else that they've entered are, in fact, provident. So at
3 this very moment, what we have, assuming they're provident, is that
4 the aspects of accessory after the fact could not be found. This
5 commission would not find those based on Foushee if this court adopts
6 the rule as cited in Foushee as binding upon this commission or
7 persuasive, and I see good reason for it to do so.

8 Murder in violation of the law of war would be stricken;
9 however -- as I think would other parts of this. However, things
10 like terrorism, attacking civilians, attacking civilian objects, and
11 destruction of property in violation of the law of war would still be
12 component pieces of this Specification that would remain after the
13 application of Foushee.

14 So there's still matters before the commission that would
15 have to be dealt with in some way, shape, or form. So it doesn't
16 entirely solve -- resolve the issue, but it does impact that
17 specification.

18 MJ [Lt Col BRAUN]: How does the government's charging of
19 Charge IX and its Specification specifically charging in the
20 disjunctive with regard to those offenses impact that analysis?

21 MDTC [Lt Col GOEWERT]: Your Honor, it's -- well -- because
22 it's in the disjunctive, this court is not bound -- they don't have
23 to -- they can exist side by side. They can exist apart from one

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1 another, because they are -- he was found guilty of certain -- I
2 mean, what we're talking about -- we are not talking about a set of
3 factual -- a set of facts, right?

4 This isn't a multiplicity or a multiplication of charges
5 issue at this point. This is a very specific inquiry as to -- an
6 offense-specific inquiry, not an event-specific inquiry.

7 So this court could go through here and line out murder in
8 violation of the law of war and then leave the remainder as separate
9 aspects of the specification. So the disjunctive is, in fact, what
10 saves it. They are not required to be read together or not at all.

11 MJ [Lt Col BRAUN]: So it's the government's position that the
12 commission, while the accused has been -- while the various accused
13 have been charged with, I believe, all of these offenses listed
14 within Charge IX -- pretty close to all, if not all -- because the
15 accused has only pled -- entered pleas of guilty to some of the
16 charges but not all of the charges, those charges that remain, should
17 the court accept those pleas of guilty, would still be -- would still
18 be available for an underlying offense -- not underlying offense, but
19 a ----

20 MDTC [Lt Col GOEWERT]: Yes, Your Honor. They still exist.

21 MJ [Lt Col BRAUN]: For purposes of accessory after the fact.

22 MDTC [Lt Col GOEWERT]: Yes, sir. And so a case in point
23 would be terrorism, right? We see an act which has a very different

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1 set of legal circumstances and legal elements than murder, so the
2 terrorism would exist here.

3 I mean, it was a -- terrorism has a requirement
4 that -- elements that require very different rationales than murder,
5 which is the mere act of killing someone, but terrorism requires far
6 more than murder. So that still exists and still must be dealt with
7 by this commission in one way, shape, or form.

8 MJ [Lt Col BRAUN]: Okay. Anything further, Trial Counsel?

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

10 MJ [Lt Col BRAUN]: Okay.

11 Counsel for Mr. Amin -- bin Amin? Excuse me.

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

13 On behalf of Mr. bin Amin, we defer to the government.

14 Thank you.

15 MJ [Lt Col BRAUN]: Counsel, understanding that you defer to
16 the government, the commission is still interested in your position
17 regarding the application of that rule of law to this commission.

18 CDC [MS. FUNK]: Fair point, Your Honor.

19 I think it's an interesting legal issue, but I do think the
20 government is correct that particularly the crime of terrorism is
21 sufficiently distinct from anything associated directly to the
22 murder, injury, and damage to property crimes.

23 I think that the -- it is arguable that causing serious

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1 bodily injury may be subsumed by, for example, the first charge, the
2 murder charge. But I think that terrorism is just -- is a distinct
3 and separate act which stands on its own, and it is my belief that
4 they are correct as to that count.

5 We are prepared to enter a plea of guilty at this time.

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

7 LDC [MR. BOUFFARD]: Sir, I believe we are persuaded by the
8 analysis of both the government and team bin Amin on this issue.

9 MJ [Lt Col BRAUN]: Which offenses do you think are in place,
10 should -- and this is making the assumption that the court were to
11 find the pleas, as entered, provident, just for purposes of argument.

12 LDC [MR. BOUFFARD]: Right. I agree that terrorism is the one
13 that can be distinct enough from the other charges, that it can
14 remain. Right, his not guilty plea to terrorism allows that to take
15 place.

16 MJ [Lt Col BRAUN]: Okay. Government Counsel, a couple
17 follow-on questions.

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

19 MJ [Lt Col BRAUN]: The first defense counsel for Mr. bin Amin
20 raises an interesting issue. How do lesser included offenses play
21 into this, potential lesser included offenses? And by that, what I
22 mean is an offense that is -- potentially lesser included offense of
23 one of the charged offenses to which the accused has pled guilty.

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1 MDTC [Lt Col GOEWERT]: Well, sir, if it was a lesser included
2 offense, then that would also be subsumed by the greater offense.
3 But we don't think -- because terrorism has a different mens rea, a
4 different purpose. I'm sorry.

5 MJ [Lt Col BRAUN]: And discount terrorism right now. I'm
6 just asking the question.

7 MDTC [Lt Col GOEWERT]: No, sir. So I think the commission
8 has hit on it spot on that if this court identifies something as
9 lesser included offense, it is subsumed under the greater offense.

10 MJ [Lt Col BRAUN]: Okay.

11 MDTC [Lt Col GOEWERT]: Anything that this commission finds to
12 be lesser included offense must also be excised from this list of
13 possible -- list of offenses.

14 MJ [Lt Col BRAUN]: Okay. Then the second question I had
15 pertains to Charge VIII and its Specification, specifically the
16 charge that alleges conspiracy.

17 Defense counsel have taken the position that terrorism
18 is -- terrorism, excuse me, is a distinct and separate offense from
19 those other offenses to which the accused has pled guilty; however,
20 that offense is included in the conspiracy charge.

21 MDTC [Lt Col GOEWERT]: Yes, sir. I appreciate that.

22 I think this is conspiracy law 101 in which someone can be
23 convicted of conspiracy and the underlying -- and the offense itself

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1 in separate fashion, because conspiracy is punishing the act of
2 conspiring versus the underlying offense itself. So we have a
3 different means of reaching the terrorism offense, namely the
4 accessory after the fact.

5 So conspiracy punishes the act of conspiring with one overt
6 act as proof of the -- that it is more than tough words or more than
7 merely an agreement and makes it very real; however, we could
8 separately convict someone of conspiring to commit terrorism and
9 terrorism. There is no overlap because they are both just separate
10 offenses.

11 So having terrorism as part of a conspiracy doesn't preclude
12 convicting someone of terrorism.

13 MJ [Lt Col BRAUN]: Okay. Thank you, Counsel.

14 Counsel for Mr. bin Amin, just on that last question
15 regarding the conspiracy charge, which incorporates terrorism into
16 it. Do you think that -- what is your position regarding how that
17 may or may not impact a charge for accessory after the fact?

18 CDC [MS. FUNK]: I got lost at the very last minute. I
19 was -- I thought we were talking about the fact that terrorism in the
20 conspiracy charge -----

21 MJ [Lt Col BRAUN]: Correct. So ----

22 CDC [MS. FUNK]: ---- is that the question?

23 MJ [Lt Col BRAUN]: Yes.

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1 So you had stated earlier that terrorism is a separate and
2 distinct charge from those charges which the accused has entered a
3 plea of guilty. However, terrorism is one of the offenses which is
4 mentioned in the conspiracy charge, in Charge VIII and its
5 Specification.

6 How does that impact Charge IX, accessory after the fact?

7 CDC [MS. FUNK]: So I taught criminal law for 12 years, and I
8 would be remiss if I didn't repeat the refrain that I taught my
9 students for those 12 years, which is that conspiracy is a talking
10 crime. The public policy behind punishing someone for conspiring
11 with another person to engage in conduct that constitutes a crime is
12 that we want to keep the public safe. And if there is a talking
13 crime that occurs and an agreement is developed, and the two or more
14 people engage in conduct that is beyond dreaming about it and more
15 close to doing it, that's punishable because we want to keep our
16 citizens safe.

17 So I frequently use the analogy of someone says let's rob
18 the liquor store, and someone says, yeah, let's. And they hop in the
19 car and they drive into the parking lot. You know, as soon as
20 they're done talking, they've developed this agreement. And as soon
21 as they do the overt act of driving to the liquor store, they are
22 guilty of the conspiracy, and can be charged with that separate and
23 apart from whether or not they then get out of the car, go into the

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1 store, say, with weapons, and rob the liquor store.

2 So I believe that the conspiracy to commit a terroristic act
3 is a separate and distinct crime from actually engaging in terrorism.

4 MJ [Lt Col BRAUN]: Okay. So your position would be because
5 it is a separate and distinct crime -- and I think we all agree on
6 that, that conspiracy is, in the Manual for Military Commissions, a
7 separate and distinct crime in and of itself. I mean, it's been
8 charged as such and pleas have been entered as such in this
9 commission, that because of that it would have no bearing -- the fact
10 that terrorism was an object of the conspiracy in that charged
11 offense would have no bearing, in the defense's opinion, based upon
12 that charge also then being used for accessory after the fact?

13 CDC [MS. FUNK]: Correct. No bearing at all.

14 MJ [Lt Col BRAUN]: Okay.

15 CDC [MS. FUNK]: Thank you.

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

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

18 And I think, you know, an example of what would make this
19 into a problem would be if in Charge IX he were charged with being
20 accessory after the fact to conspiracy to commit terrorism, which is
21 not the case.

22 So to answer the court's narrow question, I don't think this
23 has any effect on Charge IX.

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1 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin, you
2 stated that you are prepared to discuss providency, kind of where we
3 left off on Charge IX and its Specification; is that correct?

4 CDC [MS. FUNK]: I did state that, Your Honor.

5 I would ask for two minutes to confer with my client based
6 on our most recent conversation.

7 MJ [Lt Col BRAUN]: Okay.

8 CDC [MS. FUNK]: Okay.

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

10 CDC [MS. FUNK]: We're prepared to proceed, Your Honor.

11 MJ [Lt Col BRAUN]: Thank you.

12 Mr. bin Amin, prior to the lunch recess of the commission, I
13 advised you of the elements of the crime accessory after the fact,
14 which you see in the Specification of Charge IX on your charge sheet.

15 Would you like me to repeat those elements for you?

16 ACC [MR. BIN AMIN]: **[Speaking in English]** I believe I want,
17 yes.

18 MJ [Lt Col BRAUN]: Okay. So, Mr. bin Amin, in the
19 Specification of Charge IX, you are charged with the offense of
20 accessory after the fact in violation of 10 United States Code
21 Section 950, subsection r.

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

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

3 One, that on or about October 12, 2002, on the island of
4 Bali, Indonesia, Encep Nurjaman committed one or more offenses
5 punishable of Chapter 47A of Title 10 United States Code, to wit:
6 Murder in violation of law of war, attempted murder in violation of
7 law of war, intentionally causing serious bodily injury, terrorism,
8 attacking civilians, attacking civilian objects, and destruction of
9 property in violation of law of war;

10 Two, that you knew that Mr. Nurjaman had committed one or
11 more of these offenses;

12 Three, that thereafter, between on or about October 12,
13 2002, and on or about June 30, 2003, you received, comforted, or
14 assisted Mr. Nurjaman in Thailand, Cambodia, and elsewhere;

15 And, four, that you did so for the purpose of hindering or
16 preventing the apprehension, trial, or punishment of Mr. Nurjaman.

17 Now, I had previously provided you the elements and the
18 definitions of the offenses that I listed in that first element.

19 Do you want me to provide you any of the elements or
20 definitions of those offenses again?

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

23 MJ [Lt Col BRAUN]: Okay. Counsel, before we proceed, any

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1 objection to the elements as I have defined them just now for

2 Mr. bin Amin?

3 Trial Counsel?

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

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

6 CDC [MS. FUNK]: No. Thank you.

7 MJ [Lt Col BRAUN]: Mr. bin Amin, do you understand that these

8 elements constitute the offense of accessory after the fact?

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

10 MJ [Lt Col BRAUN]: And, Mr. bin Amin, what I want you to do

11 at this time is I'd like you to reread the Specification of

12 Charge IX. Please look up at me when you've finished doing so.

13 **[Pause.]**

14 MJ [Lt Col BRAUN]: After having reviewed the Specification of

15 Charge IX again, do you still admit that the elements are true and

16 accurately describe what you did or that you are personally convinced

17 that the government could prove your guilt beyond a reasonable doubt?

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

19 MJ [Lt Col BRAUN]: Understanding that you've just admitted

20 every element we have discussed regarding this offense, I'm going to

21 have some additional questions for you.

22 First, I would like you to look at your Stipulation of Fact,

23 specifically paragraphs 43, 44, 45, and 46.

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1 **[Pause.]**

2 MJ [Lt Col BRAUN]: Earlier you had indicated that you agreed
3 with each paragraph of your Stipulation of Fact to include those
4 paragraphs you just reviewed.

5 After reviewing paragraphs 43, 44, 45, and 46, is that still
6 true?

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

8 MJ [Lt Col BRAUN]: Mr. bin Amin, during the relevant time
9 period of this charge, did you know that Mr. Nurjaman committed one
10 or more of the offenses listed in element 2?

11 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes. And I believe
12 the government can prove that -- can prove that fact.

13 MJ [Lt Col BRAUN]: And understanding that the
14 government -- you believe that the -- you are convinced that the
15 government can prove that fact beyond a reasonable doubt, and is that
16 what -- part of what you're saying?

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

18 MJ [Lt Col BRAUN]: Okay. But at the relevant time of the
19 charge itself, did you know that Mr. Nurjaman had committed one or
20 more of those offenses listed in element 2?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** I believe the
22 government can prove that fact, sir.

23 MJ [Lt Col BRAUN]: Understanding that now -- and, Counsel, I

1 believe one of the -- one of the elements that must be shown -- and I
2 can direct the parties to United States v. Graves. It's a Ninth
3 Circuit case, 143 F.3d 1185 -- one of the necessary elements here is
4 that the -- at the time, the accused had knowledge that, in this
5 case, Mr. Nurjaman had committed an offense. And that goes to the
6 gravamen of offense, that the assistance or aid articulated in the
7 Specification was provided to hinder or prevent the apprehension,
8 trial, or punishment of the individual.

9 So while I do appreciate, Mr. Nurjaman **[sic]**, that you
10 believe the government can prove that fact beyond a reasonable doubt,
11 I do need to know whether you knew at the time charged in the
12 Specification that Mr. Nurjaman had engaged in one or more of those
13 offenses listed in element 2.

14 CDC [MS. FUNK]: Your Honor, I apologize. I don't understand
15 why this element is any different than any other element of any other
16 offense that we've pled guilty to.

17 We have had extensive conversations with the government.
18 The government assures us that they believe that they can prove by
19 circumstantial evidence that the defendant, Mr. bin Amin, knew.

20 MJ [Lt Col BRAUN]: Because at the time of the offense, the
21 accused has to have personal knowledge. That is a -- that is a
22 requirement of the element of the offense. The fact that the
23 government can prove that -- and I appreciate that, generally

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1 speaking, an accused's plea can be provident if the accused is
2 convinced beyond -- that the government can prove an essential
3 element beyond a reasonable doubt.

4 Here, however, for accessory after the fact -- for accessory
5 after the fact, for the accused to be convicted, according to case
6 law, the accused must have knowledge at the time the assistance, if
7 you will, was rendered, that the person that he or she was assisting
8 had committed a crime. That is element 2, and that is where the
9 knowledge question that I'm asking your client is coming directly
10 from.

11 MDTC [Lt Col GOEWERT]: Your Honor, may we be heard on this
12 issue? Would that be acceptable to the commission?

13 MJ [Lt Col BRAUN]: You may.

14 MDTC [Lt Col GOEWERT]: Sorry. Your Honor, I know we've had a
15 long day here discussing lots of very interesting legal issues, and I
16 thank the commission and everyone else here for their patience.

17 I would greatly request that the commission return to
18 reviewing Rule 910(e), which requires determining the accuracy of the
19 plea. It gives the military judge two options when accepting a plea.
20 It says the military judge -- I'm sorry. I'm going yellow again.

21 The accused shall satisfy the military judge that
22 either -- because it gives us two choices -- either there is a
23 factual basis for the plea or the accused voluntarily agrees that,

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1 having viewed the evidence the government intends to introduce
2 against him, he is personally convinced that the government could
3 prove the accused guilty of the offenses to which he is pleading
4 guilty.

5 The defense's position was well taken in this regard. They
6 don't have to admit to you, sir, personal knowledge at the time.
7 They merely have to admit to you that the government could prove such
8 an event, or such a fact, per the -- per 910.

9 So we would request the commission to ask questions along
10 that vein, because that would be perfectly acceptable under the
11 rules, if this commission is so willing.

12 MJ [Lt Col BRAUN]: Okay. Anything further, Counsel?

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

14 I think that we do have a Military Justice case -- I mean,
15 there aren't a lot discussing this, but one discussing the standard
16 of knowledge in circumstances like this being one of reasonable
17 certainty rather than absolute or perfect certainty that an offense
18 has been committed.

19 MJ [Lt Col BRAUN]: Okay. I would appreciate the citation to
20 that legal authority.

21 MDTC [Lt Col GOEWERT]: Yes, sir. I will grab that right now,
22 sir.

23 Your Honor, there's a case, it's a Navy Marine Corps case

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1 called United States v. Nystrom, N-Y-S-T-R-O-M. It is a 1993 case.
2 The citation is 39 M.J. 698, and the page number on that is either 17
3 or 704.

4 The quote is that: The appellant must have known -- in
5 quotations -- with reasonable certainty that it had been committed.
6 So we would argue that it's not absolute certainty, it's not perfect
7 certainty, but it's common, a common person sort of understanding
8 that an offense has occurred.

9 But, again, we would encourage and recommend the commission
10 view the relevant requirement for accepting pleas as: Can the
11 government prove its case, and are you sure of that? And if so, you
12 have met the standard for providency.

13 MJ [Lt Col BRAUN]: Okay. Thank you, Counsel.

14 So I'm going to take a very brief recess to review that
15 case. The commission appreciates the parties providing additional
16 legal support for their position. I will anticipate no more than 10
17 minutes to review the portion of that case, determine what
18 applicability that may or may not have on this proceeding. I think
19 that's necessary before we continue.

20 So with that, this commission's in recess.

21 **[The R.M.C. 803 session recessed at 1425, 17 January 2024.]**

22 **[END OF PAGE]**

23

1 [The R.M.C. 803 session was called to order at 1440,
2 17 January 2024.]

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

6 The commission did have an opportunity to read that
7 additional legal authority. And, again, thanks to the parties for
8 bringing that to the commission's attention.

9 Based upon that authority, the commission is going to ask
10 some specific questions to you, Mr. bin Amin. And in doing that, I
11 want to direct your attention to your Stipulation of Fact at
12 paragraph 45.

13 I believe this was one of the three -- or one of the
14 paragraphs I had you reference earlier; is that correct?

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

16 MJ [Lt Col BRAUN]: Okay. So I appreciate your statement that
17 the -- you are convinced -- you are personally convinced that the
18 government could prove beyond a reasonable doubt that Mr. Nurjaman
19 committed -- that you knew Mr. Nurjaman committed one or more of the
20 offenses listed in element 2.

21 As I look at paragraph 45 of your Stipulation of Fact, does
22 that also relate to how -- the basis of the statement that you are
23 convinced that it can be proved that you knew Mr. Nurjaman had

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1 committed one or more offenses listed in element 2?

2 And if you need me to repeat that question, I can. That was
3 not the most artful.

4 ACC [MR. BIN AMIN]: **[Speaking in English]** Can you repeat this
5 question?

6 MJ [Lt Col BRAUN]: I can.

7 So you had stated that you are convinced that the
8 evidence -- that the government -- you are personally convinced that
9 the government can prove beyond a reasonable doubt that you knew
10 Mr. Nurjaman committed one or more of the offenses listed in element
11 2.

12 I also see the information contained in paragraph 45 of your
13 Stipulation of Fact. Is paragraph 45 the basis of your statement?
14 I'm trying to link the two together to make sure that I'm
15 understanding that information.

16 ACC [MR. BIN AMIN]: **[Speaking in English]** I think it's part
17 of it.

18 MJ [Lt Col BRAUN]: It is part of it?

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

20 MJ [Lt Col BRAUN]: Okay. What is another part of it?

21 ACC [MR. BIN AMIN]: **[Speaking in English]** 44, sir.

22 MJ [Lt Col BRAUN]: Okay. Also the information in 44?

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

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1 MJ [Lt Col BRAUN]: Okay. So based upon your reading -- as
2 articulated in 45, based upon your reading about the Bali bombings on
3 the Internet, and seeing Hambali's picture on the cover of *Time*
4 *Magazine*, and then reading the associated article that appears, you
5 became aware, according to your Stipulation of Fact, that he had
6 engaged in one or more of the offenses I described in element 2 on
7 October 12th, 2002; is that correct?

8 ACC [MR. BIN AMIN]: **[Speaking in English]** Based on the fact
9 from 44, 45, and 46, I believe the government can prove that fact.

10 MJ [Lt Col BRAUN]: Okay. That you read about the bombings on
11 the Internet and saw his picture on the cover of *Time Magazine* and
12 read an associated article?

13 CDC [MS. FUNK]: We're dealing with both English as a second
14 language and complex legal issues. I'm wondering if you could break
15 down your questions a little bit, and incorporate words like
16 "circumstantial evidence" into the questioning.

17 MJ [Lt Col BRAUN]: I'm not confident I can incorporate
18 "circumstantial evidence" as much as -- let me try approaching this a
19 little differently, Counsel.

20 So, Mr. bin Amin, is the information contained in
21 paragraphs 44 and 45 of your Stipulation of Fact true?

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

23 MJ [Lt Col BRAUN]: Okay. So, then, based upon personal

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1 knowledge or evidence, you acknowledge that the prosecution -- you
2 are convinced, personally convinced that the prosecution can prove
3 beyond a reasonable doubt that you had read about the Bali bombings
4 on the Internet and saw Hambali's picture on the cover of *Time*
5 *Magazine* and read the article?

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

7 MJ [Lt Col BRAUN]: Okay. You also learned that Hambali was
8 wanted?

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

10 MJ [Lt Col BRAUN]: And you are further convinced, based on
11 personal knowledge or evidence, that the prosecution can prove beyond
12 a reasonable doubt that Hambali was the operational leader of Jemaah
13 Islamiyah, who was wanted for his involvement in the completed Bali
14 bombings on October 12th, 2002, which killed 202 people, including
15 seven Americans? And that's from paragraph 44.

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

17 MJ [Lt Col BRAUN]: Okay. And you are personally convinced
18 that the government can prove beyond a reasonable doubt that you were
19 aware of that between on or about October 12th, 2002, and on or about
20 June 30th, 2003?

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

22 MJ [Lt Col BRAUN]: Okay. And I ask that because in element 3
23 we talk about the assistance you provided between on or about

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1 October 12th, 2002, and on or about June 30th, 2003. And what I'm
2 trying to get at is that you are personally convinced that the
3 government can prove beyond a reasonable doubt or you have personal
4 knowledge that you provided that assistance at the time that you knew
5 Hambali had committed one or more of the offenses stated in element
6 1?

7 CDC [MS. FUNK]: Would you repeat the question, Your Honor?

8 MJ [Lt Col BRAUN]: I can, yeah.

9 I'm asking the time frames that I'm asking just to
10 ascertain -- and now I'm confirming -- that you, Mr. bin Amin, were
11 aware at the time you provided the assistance to Mr. Nurjaman that he
12 had committed a violation of Chapter 47, Title 10, the
13 offenses list -- that I provided you in element 1.

14 In essence, at the time you provided the assistance, you
15 were aware that he had violated the law as described. And that's
16 either through personal knowledge or you are personally convinced
17 that the government can prove that fact beyond a reasonable doubt.

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

19 MJ [Lt Col BRAUN]: I have one more question. I gave you a
20 lot of offenses in element 1. I need to ask: Specifically at the
21 time you provided that assistance, are you aware of personally or
22 personally convinced that the government can prove beyond a
23 reasonable doubt that you knew that Mr. Nurjaman had committed the

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1 act of terrorism in violation of Chapter 47A of Title 10 United
2 States Code?

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

4 MJ [Lt Col BRAUN]: Okay. And I can repeat the elements for
5 terrorism for you if you want me to. Do you need me to do that?

6 ACC [MR. BIN AMIN]: **[Speaking in English]** No. Thank you.

7 MJ [Lt Col BRAUN]: Okay. There is -- and I apologize, one
8 last question I do have to ask you.

9 So in your Stipulation of Fact, it routinely refers to
10 "Hambali." Is "Hambali" an alias for Encep Nurjaman, the individual
11 identified in element 1 of this -- element 1, as I described it to
12 you, for this offense?

13 ACC [MR. BIN AMIN]: **[Speaking in English]** Can you repeat the
14 question?

15 MJ [Lt Col BRAUN]: I can. In your Stipulation of Fact, it
16 talks about "Hambali." Is "Hambali" an alias for Mr. Encep Nurjaman,
17 the individual who's mentioned in this Specification?

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

19 MJ [Lt Col BRAUN]: Do counsel for either side believe that
20 further inquiry is required with regard to the Specification of
21 Charge IX as it relates to Mr. bin Amin?

22 Trial Counsel?

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

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1 MJ [Lt Col BRAUN]: Okay. Mr. bin Amin's defense counsel?

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

3 MJ [Lt Col BRAUN]: Thank you.

4 Mr. bin Lep, I know we had talked about the Specification of
5 Charge IX earlier; however, I do have an additional question based
6 upon the conversation we had at the beginning of this session.

7 Earlier you had stated to me that you were personally aware
8 or were convinced the government could prove beyond a reasonable
9 doubt that Mr. Nurjaman had committed one or more of the offenses I
10 provided you in the elements -- element 1 of accessory after the
11 fact.

12 Specifically, I would like to know, was one of the offenses
13 that you were personally aware of or are convinced the government can
14 prove beyond a reasonable doubt that Mr. Nurjaman committed -- let me
15 strike that and ask this in a very different way.

16 Of the offenses that Mr. Nurjaman -- that you became aware
17 of or are personally convinced that the government could prove beyond
18 a reasonable doubt, of the offenses that Mr. Nurjaman committed, was
19 one of them terrorism specifically?

20 ACC [MR. BIN LEP]: Yes. I'm sure.

21 MJ [Lt Col BRAUN]: Okay. Thank you, Mr. bin Lep.

22 Does either side feel additional inquiry is necessary as to
23 this charge for Mr. bin Lep?

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1 Trial Counsel?

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

3 MJ [Lt Col BRAUN]: Okay. Defense counsel for Mr. bin Lep?

4 LDC [MR. BOUFFARD]: No, sir. Thank you.

5 MJ [Lt Col BRAUN]: Thank you.

6 I will now address the maximum punishment.

7 Mr. bin Amin and Mr. bin Lep, do you understand that under
8 the Manual for Military Commissions, setting aside any limitations
9 from the pretrial agreements and Appendix A of your pretrial
10 agreements, the maximum punishment for the offenses to which you have
11 entered a plea of guilty is confinement for life and a fine?

12 Mr. bin Amin?

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

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

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

16 MJ [Lt Col BRAUN]: And, Counsel, do you agree?

17 Trial Counsel?

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

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

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

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

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

23 MJ [Lt Col BRAUN]: I understand there's a pretrial agreement

1 for each accused in this case. I believe the pretrial agreement, or
2 PTA, for Mr. bin Amin is marked as Appellate Exhibit 0089.001. And
3 Appendix A for Mr. bin Amin's pretrial agreement is marked as
4 Appellate Exhibit 0089.003.

5 The translation of the pretrial agreement is marked as
6 Appellate Exhibit 0089.002 (Trans), and the translation of Appendix A
7 as Appellate Exhibit 0089.004 (Trans).

8 There was also a clarification to Mr. bin Amin's pretrial
9 agreement, which has been marked as Appellate Exhibit 0089.005, with
10 the Malaysian translation marked as Appellate Exhibit 0089.006
11 (Trans).

12 The pretrial agreement, or PTA, for Mr. bin Lep is marked as
13 Appellate Exhibit 0090.001. And Appendix A of Mr. bin Lep's pretrial
14 agreement is marked as Appellate Exhibit 0090.003.

15 The Malaysian translation of the pretrial agreement is
16 marked as Appellate Exhibit 0090.002 (Trans). And the Malaysian
17 translation of Appendix A of the Appellate Exhibit is 0090.004
18 (Trans).

19 There was also a clarification to Mr. bin Lep's pretrial
20 agreement, which has been marked as Appellate Exhibit 0090.005, with
21 the Malaysian translation marked as Appellate Exhibit 0090.006
22 (Trans).

23 Counsel for Mr. bin Amin and counsel for Mr. bin Lep, do

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1 each of you have a copy of the pretrial agreement with you?

2 CDC [MS. FUNK]: I do, Your Honor.

3 LDC [MR. BOUFFARD]: Your Honor, we are handling that at the
4 moment. We do not have it at the moment. Working on it.

5 MJ [Lt Col BRAUN]: Okay. We're going to require those to
6 move forward, as I'm going to have discussions with your client about
7 them.

8 We are also at 1455, so we're just about at the time for the
9 afternoon break anyway. So we will just recess at this time until
10 1545 to accommodate that afternoon break.

11 I am going to ask that the courtroom be cleared while the
12 accused engage in prayer, just -- the courtroom and the gallery be
13 cleared during that time. I just think that that is appropriate. If
14 there needs to be an exception to that, please inform me. Of course,
15 the guard force will attend to things as they normally do. But I do
16 make that request of all present.

17 Is there anything else we can take up before I recess at
18 this point?

19 Trial Counsel?

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

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

22 CDC [MS. FUNK]: No, thank you.

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

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1 LDC [MR. BOUFFARD]: No, thank you, sir. We'll be ready to
2 go.

3 MJ [Lt Col BRAUN]: Very well, then. This commission is in
4 recess until 1545.

5 **[The R.M.C. 803 session recessed at 1458, 17 January 2024.]**

6 **[The R.M.C. 803 session was called to order at 1553,**
7 **17 January 2024.]**

8 MJ [Lt Col BRAUN]: Military commission will come to order.
9 All parties that were present when the commission last recessed are
10 again present.

11 Counsel for Mr. bin Lep, do you have a copy of the pretrial
12 agreement with you?

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

14 MJ [Lt Col BRAUN]: Okay. Before we get into that, counsel
15 for Mr. bin Amin, do you agree that Appellate Exhibits 0089.002
16 (Trans), and Appellate Exhibit 0089.004 (Trans), and Appellate
17 Exhibit 0089.006 (Trans) are accurate translations of Mr. bin Amin's
18 pretrial agreement and the associated documents?

19 CDC [MS. FUNK]: Yes, Your Honor. They were reviewed
20 yesterday. Thank you.

21 MJ [Lt Col BRAUN]: Thank you.

22 And, Mr. Bouffard, do you agree that Appellate Exhibits
23 0090.002 (Trans), Appellate Exhibit 0090.004 (Trans), and Appellate

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1 Exhibit 0090.006 (Trans) are accurate translations of Mr. bin Lep's
2 pretrial agreement and associated documents?

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

4 MJ [Lt Col BRAUN]: Thank you.

5 Mr. bin Amin, please take a look at page 11 of your pretrial
6 agreement as well as page 1 of Appendix A to your pretrial agreement.

7 Is that your signature on these pages?

8 ACC [MR. BIN AMIN]: **[Speaking in English]** Both are mine,
9 yeah.

10 MJ [Lt Col BRAUN]: And, Mr. bin Amin, now I want you to take
11 a look at page 2 of the PTA clarification.

12 Is that your signature on that document?

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

14 MJ [Lt Col BRAUN]: Mr. bin Lep, I'm going to have you take a
15 look at page 11 of your pretrial agreement as well as page 1 of
16 Appendix A to your pretrial agreement.

17 I'm going to ask the same question: Is that your signature
18 on those pages?

19 ACC [MR. BIN LEP]: Yes. It's true.

20 MJ [Lt Col BRAUN]: Now, Mr. bin Lep, please take a look at
21 page 2 of the pretrial agreement clarification. Is that your
22 signature on that page?

23 ACC [MR. BIN LEP]: Yes. It's true.

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1 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, did your
2 counsel thoroughly explain all these documents to you before you
3 signed them? And do you understand the contents of your pretrial
4 agreement?

5 Mr. bin Amin?

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

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

8 ACC [MR. BIN LEP]: Yes. I agree.

9 MJ [Lt Col BRAUN]: Did your counsel thoroughly explain the
10 clarification to the pretrial agreement before you signed it, and do
11 you understand its impact on the contents of your pretrial agreement?

12 Mr. bin Lep?

13 LDC [MR. BOUFFARD]: Do you mean Mr. bin Amin, sir?

14 MJ [Lt Col BRAUN]: Or, Mr. bin Amin, we can start with you.
15 Yes. I've been doing that all day.

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]: Did anyone threaten or force you in any
20 way that enter into this agreement?

21 Excuse me. Did anyone threaten or force you in any way to
22 enter into this agreement?

23 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]: There's none.

4 MJ [Lt Col BRAUN]: Does this agreement with the addendum
5 contain all the understandings or the agreements that you have made
6 with the convening authority in your case?

7 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]: Has anyone made any promises to you that
12 are not written into this agreement in an attempt to get you to plead
13 guilty?

14 Mr. bin Amin?

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

16 No, Your Honor.

17 MJ [Lt Col BRAUN]: Okay. Mr. bin Lep?

18 ACC [MR. BIN LEP]: There's none.

19 MJ [Lt Col BRAUN]: Trial Counsel and Ms. Funk, are these
20 three Appellate Exhibits, AE 0089.001, AE 0089.003, and AE 0089.005,
21 the full and complete agreement in the case of Mr. bin Amin, and are
22 you satisfied that there are no other agreements?

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

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

2 MJ [Lt Col BRAUN]: Trial Counsel and Mr. Bouffard, are these
3 three Appellate Exhibits, AE 0090.001, AE 0090.003, and AE 0090.005,
4 the full and complete agreement in the case of Mr. bin Lep, and are
5 you satisfied that there are no other agreements?

6 Trial Counsel?

7 MDTC [Lt Col GOEWERT]: We are, sir.

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

9 LDC [MR. BOUFFARD]: Yes as to both, sir.

10 MJ [Lt Col BRAUN]: Thank you.

11 Mr. bin Amin and Mr. bin Lep, as a general rule, in a
12 pretrial agreement you agree to enter pleas of guilty and, in return,
13 the convening authority agrees to take some favorable action in your
14 case, usually in the form of limiting the sentence that will be
15 approved.

16 Do you understand this, Mr. bin Amin?

17 ACC [MR. BIN AMIN]: **[Speaking in English]** Can you repeat the
18 question?

19 MJ [Lt Col BRAUN]: I can.

20 As a general rule, in a pretrial agreement you agree to
21 enter pleas of guilty and, in return, the convening authority agrees
22 to take some favorable action in your case, usually in the form of
23 limiting the sentence that will be approved.

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1 Do you understand this?

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

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

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

6 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, the law
7 requires that I discuss the conditions of your pretrial agreement
8 with you. I note that the provisions of each of your pretrial
9 agreements are identical; so, therefore, I'm going to go over the
10 terms of your agreements at the same time. And what we will do is
11 we're just going to step through those agreements in chronological
12 order, and I will identify the paragraphs I'm referencing as I
13 reference them for you.

14 So please take a look at the very first paragraph on page 1
15 of your pretrial agreement. In relevant part, it states the
16 following:

17 One, that you are the accused under military commission
18 charges dated 5 April 2019;

19 Two, that you've read the charges against you;

20 Three, that your counsel have explained them to you;

21 And, four, that you understand the charges and that you are
22 aware you have a legal right to plead not guilty and to require the
23 government to prove your guilt beyond a reasonable doubt by

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1 admissible and competent evidence.

2 Do you understand and agree that all of these things are
3 true?

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, I understand.

8 MJ [Lt Col BRAUN]: In the second paragraph of your pretrial
9 agreement, it discusses your rights to counsel.

10 Mr. bin Amin, your agreement states that you are represented
11 by Ms. Funk, Lieutenant Colonel Higgins, and Lieutenant
12 Colonel -- Lieutenant Commander Curtis, excuse me, and that you have
13 reviewed all aspects of your case with your attorneys and are
14 satisfied with your attorneys' legal representation.

15 Do you understand and agree with this paragraph?

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

17 MJ [Lt Col BRAUN]: Now, I also understand that Mr. Denbeaux
18 was part of your defense team -- remains part of your defense team
19 and note that he is not mentioned in this paragraph. Notwithstanding
20 Mr. Denbeaux's absence in this paragraph, have you had sufficient
21 time to discuss all aspects of your case with your attorneys, and are
22 you satisfied with your attorneys' legal representation?

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

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1 MJ [Lt Col BRAUN]: Mr. bin Lep, your agreement states that
2 you are represented by Mr. Bouffard, Mr. Shepard, Major Cordova, and
3 Lieutenant Joseph, and that you have reviewed all aspects of your
4 case with your attorneys and are satisfied with your attorneys' legal
5 representation.

6 Do you understand and agree with this paragraph?

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

8 MJ [Lt Col BRAUN]: Your agreement next states that you offer
9 to enter into this agreement and your plea of guilty here today
10 are -- excuse me.

11 Your agreement next states that your offer to enter into
12 this agreement and your plea of guilty here today are voluntary, that
13 nobody has made any threats, used force, or promised anything to you
14 outside of what is contained in this document here.

15 Is that correct, 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, correct.

19 MJ [Lt Col BRAUN]: Your agreement further states that you
20 understand that you have the right to the presumption of innocence,
21 to require the prosecution to prove your guilt beyond a reasonable
22 doubt, to confront and cross-examine prosecution witnesses, to be
23 protected from self-incrimination, to obtain witnesses and other

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1 evidence for your defense, and to representation of counsel or to
2 represent yourself.

3 You also have the right to remain silent. That is the right
4 to say nothing at all.

5 Do you understand this, Mr. bin Amin?

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

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

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

9 MJ [Lt Col BRAUN]: Mr. bin Amin, the pretrial agreement
10 states that, in consideration of the agreement by the convening
11 authority to approve a sentence in accordance with the limitations
12 set forth in Appendix A, as well as other conditions within the
13 agreement, you offer to plead as follows:

14 To Specification 1 of Charge I: Guilty;

15 To -- excuse me. You agree to -- you offer to plead guilty
16 to Specification 1 of Charge I;

17 Specification 1 of Charge III;

18 Specification 1 of Charge VII;

19 Charge VIII and its Specification, excepting the words and
20 figure "August 2003," substituting therefore the word and figure
21 "December 2002";

22 And Charge IX and its Specification.

23 This was the plea that was entered for you earlier yesterday

1 by your defense counsel.

2 Do you understand and agree to these provisions?

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

4 MJ [Lt Col BRAUN]: And, Trial Counsel, do you agree that the
5 plea entered by counsel for Mr. bin Amin comport with this provision
6 of his agreement?

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

8 MJ [Lt Col BRAUN]: Mr. bin Lep, the pretrial agreement you
9 have states that, in consideration of the agreement by the convening
10 authority to approve a sentence in accordance with the limitations
11 set forth in Appendix A, as well as other conditions within the
12 agreement, you offer to plead guilty to:

13 Specification 1 of Charge I;

14 Specification 1 of Charge III;

15 Specification 1 of Charge VII;

16 Charge VIII and its Specification, excepting the words and
17 figure "August 2003," substituting therefore the word and figure
18 "December 2002";

19 And Charge IX and its Specification.

20 Do you understand and agree with these provisions?

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

22 MJ [Lt Col BRAUN]: And I believe that was also the plea that
23 your counsel entered on your behalf yesterday.

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1 Is that also your understanding?

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

3 MJ [Lt Col BRAUN]: And, Trial Counsel, do you concur that the
4 plea entered by Mr. bin Lep comports with this provision of his
5 agreement?

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

7 MJ [Lt Col BRAUN]: In paragraph 7, the agreement states that
8 you agree that you and the government will jointly request that I
9 instruct the members, prior to deliberation, that the sentence to
10 confinement must be at least 20 years, and may not exceed 25 years.

11 Do you understand this provision, Mr. bin Amin?

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

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

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

16 MJ [Lt Col BRAUN]: Did you discuss this provision with your
17 defense counsel, Mr. bin Amin?

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

19 MJ [Lt Col BRAUN]: And did you discuss this provision with
20 your defense counsel, Mr. bin Lep?

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

22 MJ [Lt Col BRAUN]: Paragraph 8 states that any sentence to
23 confinement shall run from the date you enter a plea of guilty under

1 this agreement.

2 Do you understand this provision, Mr. bin Amin?

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

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

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

7 MJ [Lt Col BRAUN]: Paragraph 9 states that you will join the
8 government in requesting that the commission schedule the sentence
9 proceeding in your case for January 2024. I believe your counsel
10 already accomplished this request for you.

11 Is that also your understanding, Mr. bin Amin?

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

13 MJ [Lt Col BRAUN]: And is that also your understanding,
14 Mr. bin Lep?

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

16 MJ [Lt Col BRAUN]: Is that also your understanding, Trial
17 Counsel?

18 MDTC [Lt Col GOEWERT]: Yes, it is, sir.

19 MJ [Lt Col BRAUN]: And you did indeed join in that request;
20 is that correct, Trial Counsel?

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

22 MJ [Lt Col BRAUN]: Paragraph 10 states, in part, that while
23 you may present evidence in sentencing consistent with the Rules for

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1 Military Commissions, you agree to not object to the government's
2 entry of your Stipulation of Fact into evidence along with any live
3 testimony or written statements from victims and their families.

4 Do you understand that the Rules for Military Commissions
5 and the Rules of Evidence would normally apply to any evidence
6 presented at sentencing in this commission, Mr. bin Amin?

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

8 MJ [Lt Col BRAUN]: And do you understand that as well,
9 Mr. bin Lep?

10 ACC [MR. BIN LEP]: I understand as well.

11 MJ [Lt Col BRAUN]: Do you further understand that if you
12 objected to evidence offered by the government in sentencing, and if
13 I sustain that objection, one possible remedy would be that the
14 evidence offered by the government would not be accepted into
15 evidence?

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]: I understand.

20 MJ [Lt Col BRAUN]: This provision of your agreement waives
21 your right to object to the government offering certain pieces of
22 evidence as described in the agreement.

23 Do you understand that, Mr. bin Amin?

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

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

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

5 MJ [Lt Col BRAUN]: Did you discuss this provision with your
6 defense counsel, Mr. bin Amin?

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

8 MJ [Lt Col BRAUN]: Did you discuss this provision with your
9 defense counsel, Mr. bin Lep?

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

11 MJ [Lt Col BRAUN]: Mr. bin Amin, did you voluntarily agree to
12 this provision?

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

14 MJ [Lt Col BRAUN]: And, Mr. bin Lep, did you voluntarily
15 agree to this provision of your agreement?

16 ACC [MR. BIN LEP]: Yes, willingly.

17 MJ [Lt Col BRAUN]: Paragraph 10 continues to state that you
18 agree to limit the evidence you present in your sentencing case to
19 three live witnesses, including one expert consultant, one family
20 member, and one lay witness.

21 Do you understand that you are entitled to the production of
22 witnesses that are necessary for consideration of a matter of
23 substantial significance to a determination of an appropriate

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1 sentence, Mr. bin Amin?

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

3 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you also understand
4 that?

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

6 MJ [Lt Col BRAUN]: And do you understand that while you are
7 required to make such a showing, if you did, then the government
8 would have had to arrange travel for such a witness if this waiver
9 did not exist?

10 Mr. bin Amin? I'm sorry.

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

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

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

14 MJ [Lt Col BRAUN]: Mr. bin Amin, did you fully discuss this
15 term of your agreement with your counsel?

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

17 MJ [Lt Col BRAUN]: And, Mr. bin Lep, did you fully discuss
18 this term of your agreement with your counsel?

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

20 MJ [Lt Col BRAUN]: Was this waiver a free and voluntary act
21 on your part, Mr. bin Amin?

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

23 MJ [Lt Col BRAUN]: And, Mr. bin Lep, was this waiver a free

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1 and voluntary act on your part?

2 ACC [MR. BIN LEP]: Yes, sir, voluntarily.

3 CDC [MS. FUNK]: Your Honor?

4 MJ [Lt Col BRAUN]: Yes, ma'am.

5 CDC [MS. FUNK]: Before we move to the next part of the
6 pretrial agreement, I have a point of clarification.

7 It is my understanding that you asked our client if we
8 agreed not to object to testimony provided by witnesses. I don't
9 think that's actually what the pretrial agreement says.

10 And just for context, and I just want to call your attention
11 back to what we talked about, which is that the government's current
12 plan is for -- is to allow people other than the author of the letter
13 to read it into the record under oath.

14 We are not -- I can see from our agreement -- and I want to
15 be clear we're not suggesting that they shouldn't be submitted in
16 writing, but we will be, and I believe this is consistent with the
17 pretrial agreement, objecting to someone who is not -- who does not
18 have firsthand knowledge testifying under oath to the truth of the
19 written statement of another individual.

20 MJ [Lt Col BRAUN]: Okay.

21 So, Counsel, it is your position that paragraph -- and I'm
22 looking at paragraph 10 of both agreements. That provision there
23 that you agree to allow the government to offer a signed Stipulation

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1 of Fact and live testimony or written statements from victims and
2 their families does not include a provision to waive any objection to
3 that evidence.

4 Am I understanding that correctly?

5 CDC [MS. FUNK]: I wouldn't go so far as to waive any
6 objection. I mean, certainly, if the government wanted to submit in
7 writing a letter from a victim who's been identified as actually
8 being a victim or a victim family member, I don't think I could
9 object to that.

10 If a witness shows up, a victim shows up live, and wishes to
11 testify under oath about their feelings about what happened and the
12 loss of their family member, I don't think I can object to that
13 either.

14 I think those things are agreed to in the pretrial
15 agreement, and we stand by that agreement.

16 MJ [Lt Col BRAUN]: Then let me ask the question, I guess, in
17 the inverse. What can you object to?

18 CDC [MS. FUNK]: People who don't have personal knowledge
19 testifying under oath as to somebody else's personal knowledge.

20 MJ [Lt Col BRAUN]: And what I'm trying to understand is
21 what's the scope? What is the left and right to what you can or
22 cannot object to based upon your understanding of this provision?

23 CDC [MS. FUNK]: Well, based upon my understanding of the

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1 provision, and also the context in which I understand currently the
2 victim statements -- the government's plan for the victim statements,
3 and we had much discussion over the last several months about whether
4 the witnesses would be sworn, whether they would be unsworn. We both
5 did research, found the Rule of Military Commissions is different
6 than it is for regular courts-martial. We agreed on that.

7 Our only objection is a representation that they are
8 speaking truthfully about something that they don't have any personal
9 knowledge of.

10 MJ [Lt Col BRAUN]: Okay. And the term that specifically I'm
11 trying to make sure that we all understand, both counsel and your
12 client, is the term "agree to allow." It's a very non-legal term,
13 which one could read to mean you will not object to. It seems you're
14 short -- your understanding is short of not object to, but otherwise
15 will permit under certain circumstances. I'm just trying to figure
16 out what the scope of that is.

17 CDC [MS. FUNK]: That is my understanding. I'm certainly
18 happy to take 30 seconds to consult with the government about what
19 their understanding of this language is.

20 MJ [Lt Col BRAUN]: I'm actually going to ask them next.

21 CDC [MS. FUNK]: Oh, perfect.

22 MJ [Lt Col BRAUN]: Yeah.

23 Trial Counsel, I'm going to ask the same question to you.

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1 That language "agree to allow," as used in the fourth line
2 of paragraph 10 of the pretrial agreement -- specifically the
3 pretrial agreement marked AE 0089.001 is the one that I'm looking at
4 right this moment. How do you interpret that term?

5 MDTC [Lt Col GOEWERT]: Your Honor, we agree with the
6 defense's interpretation.

7 MJ [Lt Col BRAUN]: Okay. For the court's understanding, what
8 is -- what does "agree to allow" mean?

9 MDTC [Lt Col GOEWERT]: Your Honor, I think this "agree to
10 allow" is in reference to the fact that the government wasn't allowed
11 to call live witnesses in relation to matters in aggravation.

12 It's distinguishing victims and victim family members from
13 other live witnesses. It's creating two classes and categories, and
14 one we cannot call live witnesses and the other we can.

15 MJ [Lt Col BRAUN]: Okay. But that term does not, in and of
16 itself, deny the defense the ability to object to that evidence?

17 MDTC [Lt Col GOEWERT]: It does not, sir.

18 MJ [Lt Col BRAUN]: Okay.

19 So, Ms. Funk, as I'm understanding the position of the
20 government -- and I believe, as you explained it to me, this seems to
21 be consistent with your position, the term "agree to allow" really
22 relates to the nature of the testimony or the evidence being
23 presented as part of sentencing, specifically testimony or evidence

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1 related to victims and their families and not testimony or evidence
2 regarding specific matters of aggravation outside of those provided
3 by victims and their families.

4 Is that an accurate understanding?

5 CDC [MS. FUNK]: I believe it is, Your Honor.

6 MJ [Lt Col BRAUN]: Okay.

7 Counsel for Mr. bin Lep, is that also your understanding of
8 how that term operates?

9 LDC [MR. BOUFFARD]: As of now, yes. We adopt both the
10 government and team bin Amin's explanation of that.

11 MJ [Lt Col BRAUN]: Okay. Was that the understanding of the
12 parties at the time the agreement was entered into?

13 LDC [MR. BOUFFARD]: Yes. I personally had viewed it more
14 limiting than that and was not intending to object based on it. The
15 fact that that seems to be relaxed a little bit is now something I
16 will keep in mind.

17 MJ [Lt Col BRAUN]: Okay.

18 Mr. bin Amin, I've had a discussion here with your counsel,
19 as well as the counsel -- the trial counsel for the government. They
20 have explained or provided additional clarity to the term in
21 paragraph 10 that I discussed with you a moment ago regarding the
22 government's ability to present evidence in the sentencing
23 proceeding, specifically their ability to present evidence of live

1 testimony or written statements from victims and their families.

2 You heard the -- your counsel's position as well as the
3 government's position. Is your understanding the same as the
4 understanding of your counsel and the government as to the operation
5 of this provision?

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

7 MJ [Lt Col BRAUN]: Okay. Mr. bin Lep, I'm going to ask you
8 the same question. You've been present for the conversation I've had
9 with the counsel and their understanding of how that language in
10 paragraph 10 operates regarding the government's ability to admit
11 certain evidence from victims and their families during the
12 sentencing proceeding.

13 Does your understanding of that provision align with that of
14 your counsel that has been discussed here now?

15 ACC [MR. BIN LEP]: Yes, it is the same.

16 MJ [Lt Col BRAUN]: Okay. Then I would like to move on to
17 paragraph 14.

18 Paragraph 14 states that you agree to cooperate fully and
19 truthfully with the government. This may include acts such as
20 cooperating fully in the investigation of others, submitting to
21 interviews, depositions and testimony, and participating in various
22 proceedings or hearings.

23 You agree to provide completely truthful, complete, and

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1 accurate information as set forth in the Stipulation of Fact. Should
2 you fail to comply with this provision, the convening authority could
3 withdraw from this agreement. This cooperation will continue up to
4 30 days after you are sentenced unless otherwise agreed to by you,
5 your counsel, and the convening authority.

6 Do you understand this provision, Mr. bin Amin?

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

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

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

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

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

14 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you been able to
15 discuss this provision fully with your defense counsel?

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

17 MJ [Lt Col BRAUN]: And do you agree to -- do you voluntarily
18 agree to this provision in your pretrial agreement, Mr. bin Amin?

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

20 MJ [Lt Col BRAUN]: And, Mr. bin Lep, do you voluntarily agree
21 to this provision in your pretrial agreement?

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

23 MJ [Lt Col BRAUN]: Paragraph 15 states that you agree to

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1 waive all motions under Rule for Military Commissions 905 and 910,
2 905(b) and 910(j) specifically, and agree to make no additional
3 motions in this case except ones related to procedural or scheduling
4 matters.

5 You also agree to withdraw from all pending motions, with
6 the exception of a motion filed regarding a request for sentencing
7 credit prior to the signing of this agreement.

8 I advise you that certain motions are waived or given up if
9 your defense counsel does not make the motion prior to entering your
10 plea. Some motions, however, such as motions to dismiss for lack of
11 jurisdiction, can never be given up.

12 Do you understand that this term of your pretrial agreement
13 means that you give up the right to make any motion which, by law, is
14 given up when you plead guilty?

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, I agree.

19 MJ [Lt Col BRAUN]: In particular, do you understand that this
20 term of your agreement may preclude this court or any appellate court
21 from having the opportunity to determine if you are entitled to any
22 relief based upon such motion if your counsel had filed it?

23 Mr. bin Amin?

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

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

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

4 MJ [Lt Col BRAUN]: When you elected to give up the right to
5 litigate these motions, did your defense counsel explain this term of
6 your agreement and its consequences to you, Mr. bin Amin?

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

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

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

10 MJ [Lt Col BRAUN]: Did anyone force you to enter into this
11 term of your agreement, Mr. bin Lep -- I'm sorry -- Mr. bin Amin?

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

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

14 ACC [MR. BIN LEP]: Nobody.

15 MJ [Lt Col BRAUN]: Defense Counsel, which side originated the
16 waiver of motions provision, Ms. Funk? Which side originated the
17 waiver of motions provision?

18 CDC [MS. FUNK]: I wasn't keeping track at the time, Your
19 Honor, but it's my understanding that the government proposed this
20 provision.

21 MJ [Lt Col BRAUN]: Okay. Mr. Bouffard, is that also your
22 recollection?

23 LDC [MR. BOUFFARD]: It is, Your Honor.

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1 MJ [Lt Col BRAUN]: Okay. Although the government originated
2 this term of your pretrial agreement, did you freely and voluntarily
3 agree to this term of your agreement in order to receive what you
4 believe to be a beneficial agreement, 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, I agree.

8 MJ [Lt Col BRAUN]: Defense Counsel, I'm going to give you an
9 opportunity to place any factual basis of any motions covered by this
10 term of the pretrial agreement if you'd like to do so.

11 I'll start with you, Ms. Funk.

12 CDC [MS. FUNK]: I don't really have anything other than to
13 observe that the pending motions referenced at the end of the last
14 paragraph of number 15 have been -- those decisions have been issued
15 at this time.

16 MJ [Lt Col BRAUN]: Okay. And thank you. Thank you,
17 Ms. Funk.

18 Mr. Bouffard?

19 LDC [MR. BOUFFARD]: May we have a moment, Your Honor?

20 MJ [Lt Col BRAUN]: You may.

21 **[Counsel conferred.]**

22 LDC [MR. BOUFFARD]: Sir, nothing to put on the record
23 regarding motions here in the commissions. We do have an active writ

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1 that is currently being continued pending the resolution of the case
2 here in the commission.

3 MJ [Lt Col BRAUN]: Okay. And it's your understanding that
4 that writ falls outside of this provision of your pretrial agreement;
5 is that correct?

6 LDC [MR. BOUFFARD]: Probably this provision specifically, but
7 we're certainly willing to put on the record that we do intend to
8 withdraw that at the appropriate time.

9 MJ [Lt Col BRAUN]: Okay.

10 And, Trial Counsel, is that also your understanding?

11 MDTC [Lt Col GOEWERT]: Yes, it is, Your Honor.

12 MJ [Lt Col BRAUN]: Okay. Knowing what your defense counsel
13 and I have told you, do you want to give up the right to make any
14 motions, any additional motions, in order to get the benefit of your
15 pretrial agreement?

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]: Do you have any questions about this
21 provision of your pretrial agreement, Mr. bin Amin?

22 ACC [MR. BIN AMIN]: **[Speaking in English]** No, I don't have
23 any.

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1 MJ [Lt Col BRAUN]: I'm sorry?

2 ACC [MR. BIN AMIN]: **[Speaking in English]** No, I don't have
3 any.

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

5 ACC [MR. BIN LEP]: Nothing.

6 MJ [Lt Col BRAUN]: In paragraph 18, you agree to request no
7 more than two expert consultants for sentencing purposes at the
8 government's expense.

9 Do you understand that you are entitled to expert assistance
10 when necessary for an adequate defense?

11 Mr. bin Amin?

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

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

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

16 MJ [Lt Col BRAUN]: Do you understand that you are required to
17 make -- do you understand that you are required to make such a
18 showing, and if you did, then the government would have to provide
19 such expert assistance?

20 Mr. bin Amin?

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

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

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

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1 MJ [Lt Col BRAUN]: Do you understand that once appointed, if
2 under the terms of such an appointment, the government may have to
3 travel such expert assistance for the defense benefit at trial?

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, I understand.

8 MJ [Lt Col BRAUN]: Did you fully discuss this term with your
9 agreement -- this term of your agreement with your counsel,
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 have.

14 MJ [Lt Col BRAUN]: Was your waiver of expert assistance at
15 trial a free and voluntary act on your part?

16 Mr. bin Amin?

17 ACC [MR. BIN AMIN]: **[Speaking in English]** Can you repeat the
18 question?

19 MJ [Lt Col BRAUN]: I sure can.

20 Was this waiver of expert assistance outside of requesting
21 no more than two expert consultants at trial a free and voluntary act
22 on your part?

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

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1 MJ [Lt Col BRAUN]: And for you, Mr. bin Lep?

2 ACC [MR. BIN LEP]: Yes, it is voluntary.

3 MJ [Lt Col BRAUN]: Paragraph number 23 states that the
4 convening authority has directed the trial counsel to move to dismiss
5 those charges and specifications which you have entered a plea of not
6 guilty to after announcement of sentence.

7 Further, prejudice will attach to that dismissal after
8 completion of appellate review, should the findings and sentence be
9 upheld. In other words, if I accept your plea of guilty, the
10 government will not prosecute the remaining charges, provided your
11 plea of guilty remains in effect until the announcement of sentence,
12 at which time I would grant the motion.

13 Do you understand this?

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

15 MJ [Lt Col BRAUN]: However, if for some reason your plea of
16 guilty at any time becomes un -- I'm sorry.

17 Mr. bin Lep, do you also understand that? And I can repeat
18 it if you need me to.

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

20 MJ [Lt Col BRAUN]: Thank you.

21 However, if for some reason your plea of guilty at any time
22 becomes unacceptable, the trial counsel would be free to proceed on
23 all the charges and their specifications.

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1 Do you understand this -- do you understand that,

2 Mr. bin Amin?

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

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

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

6 MJ [Lt Col BRAUN]: This paragraph also states that the
7 government agrees not to pursue further criminal charges against you
8 pursuant to the Military Commissions Act of 2009 for your role in the
9 offenses described in the Stipulation of Fact, which you entered into
10 with the government.

11 Is that also your understanding, 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]: I understand.

15 MJ [Lt Col BRAUN]: And Trial Counsel?

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

17 MJ [Lt Col BRAUN]: Paragraphs 24 and 25 state that the
18 convening authority will recommend repatriation or transfer of you to
19 a third-party sovereign state after your guilty plea is entered under
20 this agreement. Under such transfer, you will cooperate with any
21 such nation's conditions and procedures.

22 Should you fail to submit your waiver of appellate review
23 within 10 days of notice of the action in this commission, the

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1 convening authority may withdraw the recommendation we just
2 discussed.

3 Do you understand this provision, Mr. bin Amin?

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

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

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

8 MJ [Lt Col BRAUN]: Further, you understand -- do you
9 understand that the convening authority's recommendation is just
10 that, a recommendation? And do you understand that the convening
11 authority has no power to control the location or conditions of your
12 detention or confinement, or otherwise release you from military or
13 civilian detention after taking action in this commission?

14 Do you understand that, Mr. bin Amin?

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

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

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

18 MJ [Lt Col BRAUN]: This provision continues to state that the
19 convening authority has no power to affect your status as an alien
20 unprivileged enemy belligerent or as a detainee subject to the
21 authorization of use of military force of 2001 or the law of war.

22 Do you fully understand this provision of your agreement?

23 Mr. bin Amin?

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

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

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

4 MJ [Lt Col BRAUN]: Did you discuss this provision in your
5 agreement with your defense counsel fully, Mr. bin Amin?

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

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

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

9 MJ [Lt Col BRAUN]: Do you voluntarily enter into this
10 agreement knowing the limitations contained in this provision,
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, voluntarily.

15 MJ [Lt Col BRAUN]: Paragraphs 26 through 29 state that you
16 have been fully advised of your post-trial and appellate rights in
17 this commission, and fully understand those rights.

18 Is that statement correct, Mr. bin Amin?

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

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

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

22 MJ [Lt Col BRAUN]: Have you indeed been fully advised of your
23 post-trial and appellate rights by your counsel, Mr. bin Amin?

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

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

3 ACC [MR. BIN LEP]: Yes. It's true.

4 MJ [Lt Col BRAUN]: Do you have any questions about your
5 post-trial or appellate rights?

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]: I don't have any.

10 MJ [Lt Col BRAUN]: Understanding your rights, your agreement
11 states that you agree to expressly waive all rights to appeal or
12 collaterally attack any conviction, sentence, or other matter related
13 to your prosecution in this commission with three noted exceptions:

14 One, where the sentence imposed for any count of conviction
15 exceeds the statutory maximum for that count;

16 Two, where the sentence imposed exceeds the terms of
17 Attachment A of your pretrial agreement;

18 And, three, where your detention continues after the
19 completion of any unsuspended portion of your sentence, as described
20 in paragraph 16 of your pretrial agreement, which states that you
21 retain the right to seek relief should you serve 180 days of an
22 approved sentence to confinement, and remain detained by the United
23 States pursuant to the authorization for use of military force of

1 2001 or the law of war.

2 Is that also your understanding, Mr. bin Amin?

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

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

5 ACC [MR. BIN LEP]: Yes. It's true.

6 MJ [Lt Col BRAUN]: So, in essence, you are agreeing to waive
7 most review by another court of this proceeding, knowing that you
8 could receive relief from such a review; is that correct,
9 Mr. bin Amin?

10 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, it's correct.

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

12 ACC [MR. BIN LEP]: Yes. It's true.

13 MJ [Lt Col BRAUN]: Now, Counsel and Trial Counsel, I'll
14 ask -- I'll direct this to you first. How will the dismissal without
15 prejudice of the charges and specifications to which the accused have
16 pled not guilty ripen into prejudice if there's a waiver of appellate
17 review, so, in essence, no appellate review, given the previous term
18 I discussed with the accused? What is the trigger?

19 **[Counsel conferred.]**

20 MJ [Lt Col BRAUN]: Counsel ----

21 MDTC [Lt Col GOEWERT]: Your Honor, I guess I have a partial
22 answer. And the reason I hesitate to complete this answer is because
23 I think we've had experiences in the past where we've had waivers and

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1 appellate courts have still taken up issues despite waiver, but I
2 don't think that's going to be the case here.

3 So I imagine that we may not have an actual -- we have
4 within the language the requirement that the accused waive appeals by
5 signing a form, a particularized form waiver of appeal, so that is
6 one moment when I think we can agree that it's likely that it will
7 ripen at that point. But it will certainly ripen after the signing
8 of that document and no additional appeal is filed or taken up by an
9 appellate court.

10 So I don't think I can commit to saying we'll know that will
11 happen at the very signature of that without seeing what the
12 appellate landscape turns out to be afterwards. So assuming that
13 after an elapsed period of time no appellate court -- no appeal is
14 actually filed and there's no appellate review, then that would
15 certainly -- we would know that with certainty.

16 MJ [Lt Col BRAUN]: Okay. So what I'd like to do, Trial
17 Counsel, I'm going to -- we're going to end up taking another break
18 here. I'm going to give you an opportunity to consult with the
19 convening authority, as well as opposing counsel, as necessary, to
20 make sure that there indeed is a meeting of the minds among the
21 signatories of this agreement.

22 And then you can provide that or, if there is not, the fact
23 that there is not to the commission after the break. And that might

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1 be the best way to approach, because I think it's important to
2 understand where that prejudice attaches. For me to be able to
3 advise the accused of when that prejudice attaches is a significant
4 term of the agreement.

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

6 MJ [Lt Col BRAUN]: So -- and I apologize. I'm going to press
7 on. I'm not going to take the break quite now, but there will be a
8 break forthcoming, because I think there's a couple more terms we can
9 still cover here.

10 I do not intend to cover the remaining paragraphs of this
11 portion of your pretrial agreement with you, Mr. bin Amin and
12 Mr. bin Lep, as you've already had a time and opportunity to discuss
13 these matters in detail with your counsel. However, if you'd like to
14 discuss any other portion of your pretrial agreement at this time, we
15 can do so.

16 Do you want to discuss any additional terms of your pretrial
17 agreement?

18 Mr. bin Amin?

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

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

21 ACC [MR. BIN LEP]: There isn't anything.

22 MJ [Lt Col BRAUN]: I'm sorry?

23 ACC [MR. BIN LEP]: There's nothing.

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1 MJ [Lt Col BRAUN]: Okay. Then I'd like to discuss with you
2 now Appendix A to your pretrial agreements. If you could please take
3 a look at that document.

4 As part of your offer, Appendix A sets out additional
5 requirements and limitations for both you and the convening
6 authority. Appendix A consists of two pages. Please take a look at
7 page 1 and confirm that that is your signature.

8 Mr. bin Amin?

9 ACC [MR. BIN AMIN]: **[Speaking in English]** Yes, that's mine.

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

11 ACC [MR. BIN LEP]: Yes, that's my signature.

12 MJ [Lt Col BRAUN]: I want you to read the terms of Appendix A
13 to yourself, as I read them to myself. And please look up at me when
14 you have completed doing so.

15 **[Pause.]**

16 MJ [Lt Col BRAUN]: Have you finished reading the terms
17 contained within Appendix A of your pretrial agreement, Mr. bin Amin?

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

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

20 ACC [MR. BIN LEP]: Yes, I've read it.

21 MJ [Lt Col BRAUN]: Do you understand and agree to this
22 provision of your pretrial agreement, Mr. bin Amin?

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

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

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

3 MJ [Lt Col BRAUN]: Defense Counsel, have you fully explained
4 the terms of Appendix A to your respective clients, and are you
5 satisfied that they fully understand the terms of that document?

6 Ms. Funk?

7 CDC [MS. FUNK]: Yes, Your Honor. I have fully explained the
8 contents of Appendix A, and I believe my client does completely
9 understand them.

10 MJ [Lt Col BRAUN]: Thank you.

11 Mr. Bouffard?

12 LDC [MR. BOUFFARD]: Yes as to both questions, Your Honor.

13 MJ [Lt Col BRAUN]: Thank you.

14 Do you also believe that the terms contained in Appendix A
15 are in your client's best interests?

16 Ms. Funk?

17 CDC [MS. FUNK]: I do, Your Honor.

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

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

20 MJ [Lt Col BRAUN]: Okay. I believe that is as far as I can
21 move without the clarification of the additional term of the pretrial
22 agreement from the government and then input from the parties and
23 counsel.

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1 Okay. Counsel, at this point I'm inclined to take a
2 15-minute recess until just 1702, it would be. Will that be
3 sufficient time for the parties?

4 Trial Counsel?

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

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

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

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

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

10 MJ [Lt Col BRAUN]: Very well, then. This commission is in
11 recess.

12 **[The R.M.C. 803 session recessed at 1648, 17 January 2024.]**

13 **[The R.M.C. 803 session was called to order at 1711,**
14 **17 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 Trial Counsel, can we discuss the waiver and prejudice issue
19 we were discussing prior to the recess?

20 MDTC [Lt Col GOEWERT]: Certainly, Your Honor. I just want to
21 thank the commission for their indulgence and the opportunity to do a
22 little review and consultation.

23 May I answer the commission's question now?

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1 MJ [Lt Col BRAUN]: Please.

2 MDTC [Lt Col GOEWERT]: Your Honor, we -- the waiver -- I'm
3 sorry.

4 The prejudice will ripen and take effect after the waiver
5 is -- of appellate rights and of appeals is accomplished by the
6 accused and provided to the CA, and then accepted by the CA, and this
7 would be -- and action occurs.

8 There are a couple conditions: One, that they provide
9 a -- the waiver of appeals, that that form is correctly filled out.

10 MJ [Lt Col BRAUN]: And I believe that form is referenced in
11 here; is that correct?

12 MDTC [Lt Col GOEWERT]: Yes, it is. I believe it's the 2030,
13 sir -- or 2330, excuse me. So the form is referenced in there, and
14 it's a standard commissions form.

15 MJ [Lt Col BRAUN]: Okay.

16 MDTC [Lt Col GOEWERT]: And defense counsel understand which
17 form it is.

18 MJ [Lt Col BRAUN]: It's the submission of the commission's
19 Form 2330 by the accused is condition 1.

20 MDTC [Lt Col GOEWERT]: Yes. And that that form be properly
21 filled out and signed and, therefore, accepted by the convening
22 authority, and then action occur.

23 And they have, per the terms of the pretrial agreement, 10

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1 days to do so after action, but it's possible, per the rule, that
2 they can provide it before action.

3 MJ [Lt Col BRAUN]: Okay.

4 MDTC [Lt Col GOEWERT]: But I would envision them providing
5 that after action.

6 MJ [Lt Col BRAUN]: Okay. So just to ensure that I am
7 understanding: For prejudice to attach, the accused must submit the
8 commission Form 2330, and that form must be accepted, and then action
9 must also have occurred.

10 Once both of those things have happened, the form has been
11 submitted and accepted, and action has occurred, whichever sequence
12 they happen in, then prejudice will attach to those charges; is that
13 correct?

14 MDTC [Lt Col GOEWERT]: Yes. That is correct, Your Honor.

15 MJ [Lt Col BRAUN]: Okay. Counsel for Mr. bin Amin ----

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

17 MJ [Lt Col BRAUN]: ---- do you concur with the statement of
18 the government as to the triggers that will -- and triggers is my
19 word -- the two conditions that would be required to be met for
20 prejudice to attach to those charges which are being withdrawn by the
21 trial counsel on behalf of the convening authority?

22 CDC [MS. FUNK]: We do.

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

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1 Counsel for Mr. bin Lep, do you also concur?

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

3 It's our reading of Form 2330 that CA's action must occur
4 first because 2330 says: I have read the action.

5 So our understanding is CA's action takes place. We fill
6 out and properly submit the 2330. No -- well, by 10 days after CA's
7 action, and that that's correctly the date.

8 MJ [Lt Col BRAUN]: Okay. As I read paragraph 28 of the
9 pretrial agreement, that does make -- it does comport with that
10 language saying that that form would be filed within 10 days after
11 notice of action.

12 So you would envision that it would be action and then the
13 form based upon the language of the form itself; is that correct?

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

15 MJ [Lt Col BRAUN]: Okay. But as a fundamental principle,
16 once that form has been submitted and accepted, and action has
17 occurred, regardless of the order of the action, and the submission
18 and acceptance of the form, that that -- once those two conditions
19 are met, that prejudice would attach?

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

21 MJ [Lt Col BRAUN]: Okay.

22 Mr. bin Amin, I have just been discussing with your counsel,
23 as well as trial counsel, the understanding between your counsel and

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1 the government, the convening authority, with regards to when
2 prejudice would attach to those charges which the government will
3 withdraw as part of your plea agreement.

4 The government and your counsel have agreed that for
5 prejudice to attach, you will be required to submit a commission's
6 Form 2330. That form will have to be accepted, and action will have
7 had to have occurred in your case.

8 Have you had an opportunity to discuss these conditions with
9 your defense counsel?

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

11 MJ [Lt Col BRAUN]: And do you understand your defense
12 counsel's advice?

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

14 MJ [Lt Col BRAUN]: Do you have any questions about this
15 provision of your pretrial agreement?

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

17 MJ [Lt Col BRAUN]: And are you agreeing to these terms -- to
18 this term of your pretrial agreement voluntarily and knowingly?

19 ACC [MR. BIN AMIN]: **[Speaking in English]** I agree.

20 MJ [Lt Col BRAUN]: Mr. bin Lep, I'm going to ask you, in
21 essence, the same questions.

22 The government and your counsel have agreed that once a
23 commission's Form 2330 is submitted and accepted, and additionally,

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1 action occurs in your case, at that point prejudice will attach to
2 those charges, which the government has dismissed with -- which the
3 government will dismiss as part of your pretrial agreement.

4 Do you understand that?

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

6 MJ [Lt Col BRAUN]: Have you had an opportunity to fully
7 discuss this with your defense counsel?

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

9 MJ [Lt Col BRAUN]: Okay. Are you satisfied with your defense
10 counsel's advice as to this provision?

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

12 MJ [Lt Col BRAUN]: Do you have any questions about the
13 operation of this provision in your pretrial agreement?

14 ACC [MR. BIN LEP]: No, no question.

15 MJ [Lt Col BRAUN]: And do you agree to this term voluntarily
16 and knowingly in your pretrial agreement?

17 ACC [MR. BIN LEP]: Yes. I agree everything's voluntarily.

18 MJ [Lt Col BRAUN]: Thank you, Mr. bin Lep.

19 Mr. bin Amin and Mr. bin Lep, are you satisfied with the
20 advice provided by your counsel concerning this pretrial agreement?

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.

2 MJ [Lt Col BRAUN]: Did you enter into this agreement of your
3 own free will, 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.

7 MJ [Lt Col BRAUN]: Has anyone threatened or otherwise tried
8 to force you to enter into this agreement, Mr. bin Amin?

9 ACC [MR. BIN AMIN]: **[Speaking in English]** None, Your Honor.

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

11 ACC [MR. BIN LEP]: No.

12 MJ [Lt Col BRAUN]: Do you have any questions about your
13 pretrial agreement, Mr. bin Amin?

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

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

16 ACC [MR. BIN LEP]: No.

17 MJ [Lt Col BRAUN]: Do you fully understand all the terms of
18 your pretrial agreement and how they affect your case?

19 Mr. bin Amin?

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

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

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

23 MJ [Lt Col BRAUN]: Are you pleading guilty, not just because

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1 you hope to receive a lighter sentence, but because you are convinced
2 that you are, in fact, guilty under the United States law of the
3 offenses to which you have pled guilty?

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, I agree.

8 MJ [Lt Col BRAUN]: Separate from that acknowledgment and
9 having reviewed the evidence in this case, are you personally
10 convinced that the government could prove beyond a reasonable doubt
11 your guilt of the offenses to which you have pled 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 for both sides agree with the
17 commission's interpretation of the pretrial agreement?

18 Trial Counsel?

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

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

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

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

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

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1 MJ [Lt Col BRAUN]: Do counsel for both sides believe that all
2 substantial terms in the pretrial agreement have been properly
3 clarified to the extent clarification is required and that there has
4 been a meeting of the minds between the accused and the convening
5 authority?

6 Trial Counsel?

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

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

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

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

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

12 MJ [Lt Col BRAUN]: Defense Counsel, have you had enough time
13 and opportunity to discuss this entire case with the accused?

14 Counsel for Mr. bin Amin?

15 CDC [MS. FUNK]: Yes, I have, Your Honor.

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

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

18 MJ [Lt Col BRAUN]: Mr. bin Amin, have you had enough time and
19 opportunity to discuss not just the pretrial agreement, but your
20 entire case with your defense counsel?

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

22 MJ [Lt Col BRAUN]: And, Mr. bin Lep, have you had enough time
23 and opportunity to discuss not just the pretrial agreement, but your

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1 entire case with your defense counsel?

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

3 MJ [Lt Col BRAUN]: Have you, in fact, consulted fully with
4 your defense counsel and received the full benefit of their advice?

5 Mr. bin Amin?

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

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

8 ACC [MR. BIN LEP]: Yes.

9 MJ [Lt Col BRAUN]: Are you satisfied that your defense
10 counsel's advice has been in your best interest?

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, I'm satisfied.

15 MJ [Lt Col BRAUN]: Are you satisfied with your defense
16 counsel, Mr. bin Amin?

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

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

19 ACC [MR. BIN LEP]: Yes, I'm satisfied.

20 MJ [Lt Col BRAUN]: Are you pleading guilty voluntarily,
21 Mr. bin Amin?

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

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

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1 ACC [MR. BIN LEP]: Yes, voluntarily.

2 MJ [Lt Col BRAUN]: Are you pleading guilty of your own free
3 will, Mr. bin Amin?

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

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

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

7 MJ [Lt Col BRAUN]: Has anyone made any threat or tried to
8 force you in any way to plead guilty, Mr. bin Amin?

9 ACC [MR. BIN AMIN]: **[Speaking in English]** None, Your Honor.

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

11 ACC [MR. BIN LEP]: No, there isn't.

12 MJ [Lt Col BRAUN]: Do you have any questions as to the
13 meaning and effect of your pleas of guilty?

14 Mr. bin Amin?

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

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

17 ACC [MR. BIN LEP]: No, there is none.

18 MJ [Lt Col BRAUN]: I want you to take a moment now and
19 consult with your defense counsel about whether you wish to desire to
20 plead guilty. If -- after you've finished doing so, please look up
21 back -- please look up at me.

22 **[Pause.]**

23 MJ [Lt Col BRAUN]: Mr. bin Amin, do you still wish to plead

1 guilty?

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

3 MJ [Lt Col BRAUN]: Mr. bin Lep, do you still wish to plead
4 guilty?

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

6 MJ [Lt Col BRAUN]: Mr. bin Amin and Mr. bin Lep, I find that
7 your pleas of guilty have been made voluntarily, with full knowledge
8 of their meaning and effect.

9 I further find that you have knowingly, intelligently, and
10 consciously waived your rights against self-incrimination; that
11 you've waived your rights to a trial of the facts by military
12 commission; and that you've waived your rights to be confronted by
13 the witness called against you in the findings portion of your
14 commission.

15 Accordingly, I am going to find some of your pleas of guilty
16 provident. And how I'm going to do that is I'm going to announce
17 findings; and those findings which I announce as guilty, those pleas
18 I have found provident and accepted.

19 For those that I do not announce a finding for guilty of, I
20 have not found provident.

21 Do counsel understand what the commission plans to do here?

22 Counsel for Mr. bin Amin?

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

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

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

3 MJ [Lt Col BRAUN]: Very well.

4 Before I do that, I want to notify Mr. bin Amin and
5 Mr. bin Lep, you may request to withdraw from your guilty plea at any
6 time before sentence is announced; and if you have a good reason for
7 your request, I will grant it.

8 Mr. bin Amin and Defense Counsel, please rise.

9 Mr. bin Amin, in accordance with your pleas of guilty, this
10 commission finds you:

11 Of Specification 1 of Charge I: Guilty;

12 Of Charge I: Guilty;

13 Of Specification 1 of Charge III: Guilty;

14 Of Charge III: Guilty;

15 Of Specification 1 of Charge VII: Guilty;

16 Of Charge VII: Guilty;

17 Of the Specification of Charge VIII: Guilty, except the
18 word and figure "August 1996," substituting therefore the words and

19 figure "the summer of 2000," except the word and figure

20 "August 2003," substituting therefore the word and figure

21 "December 2002," except the words and figures contained in common

22 allegations 1 through 8, 11 through 12, 14, 17 through 29, 33, 38, 40
23 through 46, 48, 49, 52 through 60;

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1 In common allegation 9, except the words "beginning in
2 approximately early July";

3 In common allegation 10, except the words "Lillie adopted
4 the name Bashir and," and except the words "Ahmed al Filipini,"
5 substituting therefore the word "Ahmad";

6 In common allegation 13, except the word "fighters" and
7 substituting therefore the word "trainees";

8 In common allegation 15, except the word and figure
9 "February 2001," substituting therefore the words and figure
10 "July 2000 and the fall of 2000," except the word "advanced," except
11 the words "and ambushes, land navigation, and guerilla warfare. He
12 also trained and helped erect buildings at another camp located about
13 45 minutes' walk away from Al-Farouq," substituting therefore "and
14 ambushes";

15 In common allegation 30, except the words and symbols "and
16 Masran and fellow Southeast Asian JI associates Yazid Sufaat and Abu
17 Rahim, a/k/a Abu Harris, (Abu Harris), substituting therefore the
18 words "and Masran";

19 In common allegation 31, except the words and symbols "Nik
20 Amran bin Mustafa, a/k/a";

21 In common allegation 35, except the words "they also
22 traveled to Cambodia for operational purposes";

23 In common allegation 36, except the words "Lillie also

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1 received CD-ROMs containing bomb-making instructions from Hambali
2 and, on Hambali's orders, stored these CD-ROMs in an apartment in
3 Bangkok";

4 In common allegation 37, except the word and figure
5 "August 2003," substituting therefore the word and figure
6 "December 2002," except the words "on multiple occasions, Lillie
7 helped obtain fraudulent identification documents for Hambali";

8 In common allegation 39, except the words and figure, "on
9 two separate occasions in early 2002, Hambali ordered Lillie to
10 surveil an Israeli airline counter at an airport in Bangkok,
11 Thailand, as part of a plan to conduct an attack targeting airline
12 customers," and excepting the word and figure "on multiple occasions
13 in 2002 and 2003, Zubair also surveilled the Israeli embassy in
14 Bangkok on his own initiative";

15 In common allegation 47, except the words "an operation in
16 which people would be killed," substituting therefore the word and
17 symbols "operations";

18 Of the substituted words and figures: Guilty;

19 Of Charge VIII: Guilty;

20 Of the Specification of Charge IX: Guilty, except the words
21 and figures, "murder in violation of the law of war," 10 U.S.C.
22 Section 950t, subsection 15; "attempted murder in violation of the
23 law of war," 10 U.S.C. Section 950t, subsection 28; "intentionally

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1 causing serious bodily injury" and except the words and figures "and
2 destruction of property in violation of the law of war," 10 U.S.C.
3 Section 950t (16);

4 Of the charge of Charge IX: Guilty.

5 You may be seated.

6 Mr. bin Amin, it appears I missed a line as it pertains to
7 the exception in common allegation 39. I'm going to reannounce that
8 specific common allegation.

9 In common allegation 39, except the words and figures "on
10 two separate occasions in early 2002, Hambali ordered Lillie to
11 surveil an Israeli airline counter at an airport in Bangkok,
12 Thailand, as part of a plan to conduct an attack targeting Israeli
13 airline customers," and excepting the word and figures "on multiple
14 occasions in 2002 and 2003, Zubair also surveilled the Israeli
15 embassy in Bangkok on his own initiative."

16 As it pertains to Charge IX, I'm going to reread my finding
17 for Charge IX in its entirety. I missed over a citation.

18 Of the Specification of Charge IX: Guilty, except the words
19 and figures, "murder in violation of the law of war," 10 U.S.C.
20 Section 950t, subsection 15; "attempted murder in violation of the
21 law of war," 10 U.S.C. Section 950t, subsection 28; "intentionally
22 causing serious bodily injury," 10 U.S.C. Section 950t, subsection
23 13; and except the words and figures "and destruction of property in

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1 violation of the law of war," 10 U.S.C. Section 950t, subsection 16;

2 Of Charge IX: Guilty.

3 Mr. bin Lep and defense counsel, please rise.

4 Mr. bin Lep, in accordance with your pleas of guilty, this
5 commission finds you:

6 Of Specification 1 of Charge I: Guilty;

7 Of Charge I: Guilty;

8 Of Specification 1 of Charge III: Guilty;

9 Of Charge III: Guilty;

10 Of Specification 1 of Charge VII: Guilty;

11 Of Charge VII: Guilty;

12 Of the Specification of Charge VIII: Guilty, except the
13 word and figure "August 1996," substituting therefore the words and
14 figure "the summer of 2000"; except the word and figure
15 "August 2003," substituting therefore the word and figure
16 "December 2002"; except the words and figures contained in common
17 allegations 1 through 7, 11, 13, 15, 17 through 29, 33, 38, 40
18 through 42, 44 through 60;

19 In common allegation 10, except the words "and Zubair
20 adopted the name Ahmed al Filipini";

21 In common allegation 34, except the word "together,"
22 substituting therefore the word "separately";

23 In common allegation 36, except the words "Lillie also

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1 received CD-ROMs containing bomb-making instructions from Hambali,
2 and on Hambali's orders stored these CD-ROMs in an apartment in
3 Bangkok";

4 In common allegation 37, except the words "from the end of
5 2001 until on or about August 2003," substituting therefore the word
6 and figure "sometime between January 2002 and December 2002";

7 In common allegation 39, except the word and figure "on
8 multiple occasions in 2002 and 2003, Zubair also surveilled the
9 Israeli embassy in Bangkok on his own initiative."

10 Of the substituted words and figures: Guilty;

11 Of the charge: Guilty;

12 Of the Specification of Charge IX: Guilty, except the words
13 and figures "murder in violation of the law of war," 10 U.S.C.
14 Section 950t, subsection 15; "attempted murder in violation of the
15 law of war," 10 U.S.C. Section 950t, subsection 28; "intentionally
16 causing serious bodily injury," 10 U.S.C. Section 950t (13); and
17 except the words and figures "and destruction of property in
18 violation of the law of war," 10 U.S.C. Section 950t, subsection 16;

19 Of Charge IX: Guilty.

20 Please be seated.

21 To the extent that the court has entered a finding of
22 guilty, the court has found that the accused's plea guilty to that
23 offense is provident.

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1 Counsel, I've just enter a guilty plea inconsistent with the
2 plea of the accused.

3 I'm going to place this commission in a recess so that the
4 parties can discuss their way ahead, and trial counsel can consult
5 with the convening authority as it relates to the plea agreement.

6 Trial Counsel, I will require the convening authority
7 memorialize any position taken in writing so that it can be placed in
8 the record as an appellate exhibit.

9 Is there anything else we can take up at this time prior to
10 my recessing this commission?

11 Trial Counsel?

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

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

14 CDC [MS. FUNK]: Your Honor, I was scribbling as fast as I
15 can, but I didn't hear you excepting anything from number 48.

16 MJ [Lt Col BRAUN]: That is correct. 48 has been accepted.

17 CDC [MS. FUNK]: Thank you. That answers my question.

18 MJ [Lt Col BRAUN]: Anything further? I'm sorry, Ms. Funk?

19 CDC [MS. FUNK]: Nothing further.

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

21 LDC [MR. BOUFFARD]: Nothing further, sir.

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

23 **[Counsel conferred with courtroom personnel.]**

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1 MJ [Lt Col BRAUN]: Does a 9:00 start time work for the
2 parties?

3 Trial Counsel?

4 TC [COL KRAEHE]: Your Honor, it might be a little too early.
5 We need some time to get the CA's signature.

6 MJ [Lt Col BRAUN]: Okay. What time would the government
7 propose? And I appreciate if we need to move things, we can do so.

8 TC [COL KRAEHE]: I think 10:00 a.m., we should be fine, Your
9 Honor.

10 MJ [Lt Col BRAUN]: Okay. Does a 10:00 a.m. start time work
11 for team bin Amin?

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

13 MJ [Lt Col BRAUN]: And for team bin Lep?

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

15 MJ [Lt Col BRAUN]: Very well, then. This commission stands
16 in recess until 10:00 tomorrow morning.

17 **[The R.M.C. 803 session recessed at 1740, 17 January 2024.]**

18 **[END OF PAGE]**