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1 [The R.M.C. 803 session was called to order at 1406,
2 29 January 2019.]

3 MJ [Col PARRELLA]: The commission is called to order.
4 I'll note for the record that it doesn't appear any of the
5 accused are here. So all parties that were here at the
6 previous session of the commission are here with the exception
7 of the accused.

8 Trial Counsel, do you have a witness that's here to
9 account for their absence?

10 CP [BG MARTINS]: We do, Your Honor. Captain, could you
11 please move to the witness box. Remain standing, raise your
12 right hand for the oath.

13 CAPTAIN, U.S. NAVY, was called as a witness for the
14 prosecution, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

16 **Questions by the Chief Prosecutor [BG MARTINS]:**

17 Q. You are a United States Navy captain; is that
18 correct?

19 A. Correct, sir.

20 Q. You are an assistant staff judge advocate assigned to
21 the Joint Task Force Guantanamo?

22 A. Yes, sir.

23 **[END OF PAGE]**

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1 Questions by the Trial Counsel [MR. SWANN]:

2 Q. Captain, did you have occasion to advise each of the
3 accused in this case of their right to attend today's
4 proceedings?

5 A. I did.

6 Q. And did you do that between, what, 8:00 and 11:00
7 today?

8 A. Roughly so, yes, sir.

9 Q. All right. Let's take what's been marked as
10 Appellate Exhibit 618. It's a waiver signed by Khalid Shaikh
11 Mohammad consisting of three pages. Do you have that document
12 in front of you?

13 A. I do.

14 Q. Did you read this document to Mr. Mohammad?

15 A. I did.

16 Q. Is that his signature that appears on the second page
17 of this document?

18 A. It is, sir.

19 Q. Do you have any question whether he understood his
20 right to attend today's proceeding?

21 A. I have no question, sir. He understood.

22 Q. Walid Mohammad Salih Mubarak Bin'Attash, a three-page
23 document, Appellate Exhibit 618A. Is that his signature on

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1 the third page of this document?

2 A. It is.

3 Q. That's the Arabic version. Did you read him both the
4 English and Arabic version?

5 A. I read him the English version. There was a linguist
6 present. He did not require the translation by the linguist.

7 Q. Is that his signature that appears on that page?

8 A. It is.

9 Q. Do you have any misgivings about his understanding of
10 his right to attend?

11 A. I have no misgivings.

12 Q. Ramzi Binalshibh, Appellate Exhibit 618B, consisting
13 of three pages. Do you have that document in front of you?

14 A. Yes, sir.

15 Q. Is that Mr. Binalshibh's signature on the second page
16 of this document?

17 A. It is.

18 Q. And did you read his rights to him in English or
19 Arabic?

20 A. I read it in English, sir.

21 Q. Did he understand -- did he say that he understood he
22 had a right to attend?

23 A. Yes, sir, he understood.

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1 Q. Ali Abdul Aziz Ali, Appellate Exhibit 618C. Again, a
2 three-page document. Is that Mr. Ali's signature on the
3 second page?

4 A. It is.

5 Q. Do you believe he understood his right to attend
6 today's proceedings?

7 A. I believe he did, yes, sir.

8 Q. And did he waive that right?

9 A. Yes, he did.

10 Q. And finally, Mustafa Ahmed Adam al Hawsawi. Again, a
11 three-page document, Appellate Exhibit 618D. Do you have that
12 in front of you?

13 A. Yes, sir.

14 Q. Is that Mr. Hawsawi's signature on the second page of
15 this document?

16 A. It is.

17 Q. Did you read these rights to him in English or in
18 Arabic?

19 A. I read them in English.

20 Q. And did he waive his right to attend today's
21 proceeding?

22 A. Yes, sir, he did.

23 TC [MR. SWANN]: No further questions, Your Honor.

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1 MJ [Col PARRELLA]: Any defense counsel have a question
2 for this witness? Mr. Nevin?

3 LDC [MR. NEVIN]: Well, I don't have a question for the
4 witness, Your Honor.

5 And I perhaps should have said this before, but I
6 renew the objection that I raised with you yesterday regarding
7 our inability to resolve our conflict and so we won't be -- as
8 we said this morning in the closed sessions, we will not be
9 participating in these proceedings pending resolution of those
10 issues.

11 I should also have said perhaps before the captain
12 testified that Ms. Radostitz, who was here earlier in the day,
13 is absent. Let me just take the occasion to say that she's
14 studying the availability of appellate or extraordinary
15 remedies about this situation, and I felt that I should renew
16 the request we made previously that the proceedings be
17 recessed pending resolution of those proceedings.

18 So I renew that -- I give you that information and I
19 renew the request.

20 MJ [Col PARRELLA]: I understand, Mr. Nevin. The
21 commission obviously stands by its earlier ruling from
22 yesterday, but I will consider that your objection or your
23 request is ongoing, at least from the commission's

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1 perspective.

2 LDC [MR. NEVIN]: Thank you, Your Honor.

3 MJ [Col PARRELLA]: You're welcome. Any other defense
4 counsel have a question for this witness?

5 LDC [MR. CONNELL]: Military commission will please note
6 my objection to anonymous testimony.

7 MJ [Col PARRELLA]: I will.

8 LDC [MR. CONNELL]: And second, we did this in the closed
9 session, but I want to renew my objection to proceeding under
10 Rule 805 while Captain Andreu is not present, being sick in
11 quarters.

12 MJ [Col PARRELLA]: Thank you, Mr. Connell. Your
13 objection with respect to anonymous testimony is overruled.

14 With respect to Captain Andreu, the commission stands
15 by its earlier ruling that it made in the closed session with
16 respect to my finding that, under the circumstances, a
17 continuance is not warranted. I would ask you to continue to
18 keep the commission apprised of Captain Andreu's status.

19 Okay. I have no questions for this witness.

20 Captain, you may step down.

21 [The witness was excused.]

22 MJ [Col PARRELLA]: The commission finds that
23 Mr. Mohammad, Mr. Bin'Attash, Mr. Binalshibh, Mr. Ali, and

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1 Mr. Hawsawi have knowingly and voluntarily waived their right
2 to be present at today's session.

3 We will now turn to AE 616. We'll start by --
4 Mr. Connell, I believe that your team was the proponent
5 initially of the issue in this one, so I'll afford you the
6 first opportunity to be heard, should you choose to.

7 ADC [MS. PRADHAN]: Good afternoon, Your Honor.

8 MJ [Col PARRELLA]: Good afternoon.

9 ADC [MS. PRADHAN]: Your Honor, just to set the stage, we
10 are here on AE 616, which is -- which was -- follows the order
11 in AE 350RRR from the military commission ordering the
12 testimony of a former interpreter for Mr. Binalshibh's team to
13 testify tomorrow by secure video conference by closed -- in a
14 closed session.

15 Pursuant -- following AE 350RRR, Mr. al Baluchi put
16 on record his objection to unclassified testimony being taken
17 in a classified session, and the military commission then
18 ruled -- asked the parties to brief their positions on this.
19 So it is our position that, actually because the government is
20 moving to close the session, the government bears the burden
21 of proof here, which I'll talk about in a minute.

22 As I mentioned, the interpreter is due to testify
23 tomorrow. And under AE 350RRR, there are two areas of inquiry

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1 for the testimony of this interpreter. The first is how he
2 sought employment with the Military Commissions Defense
3 Organization, and the second is whether anything or anyone
4 prevented him from disclosing to MCD0 his previous employment
5 with the CIA.

6 Now, the bar to close a hearing is very, very high
7 under both the First and the Sixth Amendments, and under the
8 Regulation for Trial by Military Commission Section 19-1, and
9 by Military Commission Rule 806(a) that says military
10 commissions shall be publicly held. The language of the case
11 law bears this out. As we discuss in our brief, the cases
12 talk about closing hearings sparingly, with an emphasis always
13 on holding a public trial. And any party seeking to close the
14 hearing -- the government in this case -- bears that burden.

15 If we look at the Press Enterprise criteria regarding
16 the right of public access, none of those criteria here, we
17 believe, have been fulfilled. We take them in turn. The
18 first is an overriding interest that is likely to be
19 prejudiced. Now, protecting classified information is the
20 interest that has been, of course, advanced by the government
21 and agreed by us. We do have an obligation, an interest in
22 protecting classified information. And we have already taken
23 significant steps to protect that information through the use

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1 of pseudonyms and other limitations on the questions that can
2 be asked of this interpreter and the subject matter that we
3 can cover in -- in a potential open session.

4 We have taken the position to the military commission
5 that we would support further restrictions on broadcasting the
6 interpreter's likeness to the court, and any other
7 restrictions on voice or images that would be necessary to
8 protect this individual's identity. In other words, the
9 prejudice has been mitigated, or can be mitigated, and I would
10 posit, eliminated to the extent possible by our adherence to
11 the guidance given to us by the government regarding this
12 classified information.

13 In a case like this, it is always going to be a
14 question of how do we balance the rights of the defendants and
15 the public to the default of a public trial with the
16 protection of national security? And this is why we make
17 every effort to bifurcate proceedings when we can, so that the
18 likelihood of that prejudice, that damage, is minimized.

19 But in considering this issue, we equally can't
20 minimize or prejudice the importance of a public trial here,
21 where there is a real question existing in the underlying
22 facts of whether the interpreter's presence on a defense team
23 constitutes an illegal government intrusion into a capital

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1 defense case.

2 The second criteria -- criterion under
3 Press Enterprise is that the closure must be no broader than
4 necessary to protect the interest. The employment of the
5 interpreter with the Military Commissions Defense Organization
6 is not classified. The former employment of the interpreter
7 with the CIA is not classified. The fact that the interpreter
8 had a nondisclosure agreement with the CIA is not classified.
9 And, in fact, we discussed the details of the interpreter's
10 history with the MCDO and his false statements to defense
11 personnel in open session in November where we were arguing to
12 call him for testimony. We did so without endangering
13 classified information, as is apparent from the public
14 transcript that's available on mc.mil. So the mere presence
15 of classified information around an issue cannot in itself --
16 thank you -- justify closure; otherwise, this entire
17 proceeding would be closed.

18 The -- it is the burden of the government to prove
19 that on this issue, as opposed to the many other issues
20 involving torture and the CIA that we have -- on which we've
21 had open hearings, that this issue merits entirely closed
22 testimony, and they can't fulfill this burden. Again, the
23 personally identifying information of the interpreter and the

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1 details of his activities or experiences during his employment
2 while with the CIA are classified. And we've dealt with both.

3 We currently have a pseudonym that we've used
4 successfully in open court regarding the interpreter for
5 several years now. We're rounding on four years now since the
6 initial incident in February of 2015. So it's up to the
7 government to let us know if they would like to modify that
8 pseudonym, and we will comply with any modifications that need
9 to happen.

10 The military commission has also ruled, of course,
11 that we will not be discussing the details of the previous
12 employment with the CIA. So most if not all of the testimony
13 is going to be on unclassified matters as per 350RRR. We will
14 be discussing whether anything or anyone prevented him from
15 disclosing his CIA employment to the defense.

16 Our inquiry into his limitations on that disclosure
17 have to do whether -- with whether anyone from his old
18 employment spoke to him ahead of time; whether anyone from
19 government agencies exerted pressure on him; whether he acted
20 sua sponte in withholding this very important information; and
21 if so, why did he choose to pursue that route?

22 MJ [Col PARRELLA]: Ms. Pradhan, when you argued back in
23 November, I believe in response to the commission's question,

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1 you indicated that the relief sought was either a deposition
2 or testimony.

3 ADC [MS. PRADHAN]: Yes, sir.

4 MJ [Co] PARRELLA]: And I understand your argument about
5 the balance. But say I had granted the other remedy, a
6 deposition. How would it have factored into that balance and
7 how would the public have had potential access to that?

8 ADC [MS. PRADHAN]: Well, the facts surrounding that, it
9 would obviously be a different physical setup and we would be
10 conducting that -- we would be conducting -- we would have
11 argued that the -- that the deposition, even though it would
12 be necessarily not conducted in front of the public, that
13 parts of that deposition be made public after the fact, either
14 through a declaration or through evidence submitted to the
15 military commission publicly in a filing.

16 So we would not have taken the position that the
17 contents of that deposition be classified or be -- or be kept
18 classified. We would have fought to make the parts of -- at
19 least parts of those deposition -- of that deposition public.

20 MJ [Co] PARRELLA]: Can't I simply order -- if we were to
21 do this in a closed session, order that a redacted transcript
22 of the proceeding be made available to the public?

23 ADC [MS. PRADHAN]: Yes, Your Honor, but that -- a

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1 redacted transcript after the fact does not allow the public
2 to access in real time. And this is -- there is discussion of
3 this in the case law about the ability of the public to
4 access ----

5 MJ [Col PARRELLA]: But neither would have a deposition
6 been accessed in real time.

7 ADC [MS. PRADHAN]: No, Your Honor. But given that we do
8 have the potential of live testimony is -- live testimony in a
9 public setting has qualities that a deposition conducted in a
10 closed forum does not have.

11 MJ [Col PARRELLA]: But that wasn't really the nature of
12 the motion that got us here in the first place. I mean, the
13 nature of the motion was essentially discovery, which is a
14 request for the -- hence the request for a deposition to get
15 information. So presumably, depending on what comes of this
16 testimony, the defense could make an appropriate motion, if
17 they choose or find it necessary. So it seems somewhat
18 disingenuous to now change that to where we need this
19 instantaneous access made available to the public.

20 ADC [MS. PRADHAN]: No, Your Honor, and that's for two
21 reasons. The first is that when we initially asked for a
22 deposition or for testimony, we did that with the
23 understanding -- or with at least the request to the

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1 commission that that testimony also cover the details of the
2 interpreter's previous employment with the CIA, which we
3 understood -- and we understood those details to be
4 classified. And that was the reason that there was discussion
5 of whether we should have a deposition or whether we should
6 have testimony. And the purpose, or potential purpose of
7 holding, you know, either one of those in a classified --
8 holding testimony in a classified setting or having a
9 deposition that would have classified parts to it.

10 The default, however, of public testimony and the
11 default of the right to a public trial is a public trial. The
12 default is never closure of proceedings and then releasing
13 information to the public after the fact. The default on the
14 Sixth Amendment and the First Amendment right to a public
15 trial is always to keep the proceedings open and to very, very
16 narrowly tailor the closure of proceedings.

17 And that's what we're asking the military commission
18 to do here, that the closure of the proceedings -- and we
19 recognize that there may be information that we ask -- or
20 questions that we ask the interpreter that may come up against
21 classified information or that the interpreter may feel
22 involves classified information, and we have expressed to the
23 military commission our agreement that, of course, there

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1 should be bifurcated proceedings. But the idea that the
2 entirety of the proceedings should be closed solely because
3 there is -- there are -- there's -- there are lines of
4 questioning that in -- in and of themselves are unclassified
5 but that may, you know, second or third degree out implicate
6 classified information is not sufficient to justify closure
7 under the Press Enterprise standard.

8 So again, you know, we've done these kinds of
9 questionings before where we know that there is a strict line
10 of classification. And the government has given us that
11 guidance and we appreciate that in this case. But we know
12 what is -- what is classified and unclassified about the
13 interpreter's employment. We have those boundaries, and we
14 protect that line, and we save its crossing for closed
15 session.

16 But the line of questioning that I've just outlined
17 to you strikes at the heart of what the public has a clear
18 interest in knowing, which is whether their government is at
19 all involved in actively undermining the capital defense in a
20 9/11 trial.

21 The third criteria under Press Enterprise is that the
22 trial court has to consider reasonable alternatives. Now,
23 there are several. We can hold open testimony with the

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1 interpreter's appearance obscured, either partially or
2 completely, and we know that the government is able to provide
3 disguises, if necessary. The military commission can
4 certainly decide that certain questions should be limited to
5 closed session, and that would satisfy, I think, the very
6 narrow bit of classification that pertains to the areas of
7 questioning that have been allowed by the military commission
8 in 35ORRR.

9 And I said this in closed session and I will submit
10 to you now that we have offered to submit at least our
11 questions on behalf of Mr. al Baluchi ex parte to -- to Your
12 Honor, to the military commission, so that you can make that
13 assessment. The topic of alternatives, though, brings me to
14 the confrontation clause discussion. And it is our position
15 that, if the military commission chooses to entirely close the
16 testimony of the interpreter, the defendants would have the
17 right to attend that closed session.

18 In AE 136E, Judge Pohl ruled in his findings, Section
19 b., that the accused do not enjoy a right to be present at
20 closed pretrial hearings during which classified material will
21 be discussed for which the accused is not the source of the
22 classified information. Now, in many ways, this is exactly
23 that scenario. But for the defendants, we would not have the

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1 information we have today regarding the interpreter.

2 Now, the case law supports the proposition that the
3 defendants must be allowed to attend the interpreter's
4 testimony. The Second Circuit has stated that the presence of
5 the defendant is a condition of due process to the extent that
6 a fair and just hearing would be thwarted by his absence. And
7 we know the defendants have a right to be present at any
8 critical stage of the proceedings. Now, it's a highly
9 fact-specific inquiry. The -- but it turns on the ability of
10 the defendant to contribute to the conduct of the proceeding.

11 The military commission would need factual
12 development of these issues every time the government seeks to
13 exclude the defendants from a session, and certainly in this
14 particular instance where we have the relatively rare at this
15 point instance of -- incidence of live testimony from a former
16 member of a defense team. And here, the interpreter, again,
17 is being called to discuss how he ended up in a situation that
18 severely compromised and violated the defendant's privilege,
19 at a minimum, and may have constituted government intrusion
20 into their capital defense.

21 One of the cases under -- one of the cases that deals
22 with the exclusion of the defendants is
23 United States v. Clark. In United States v. Clark, the

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1 citation is 475 F.2d 240, it's the Second Circuit, 1973, at
2 page 244. And in that case, they state: It is readily
3 apparent and not surprising that the suppression hearing in
4 that case covered a wide range of testimony. What was
5 surprising and wholly improper was the exclusion of the
6 appellant and the public from the course of an entire pretrial
7 proceeding designed to determine from evidence of events in
8 which the defendant, the appellant, participated, whether his
9 constitutional right to be free from an unreasonable search
10 and seizure was violated.

11 What would be surprising and wholly improper here is
12 the total exclusion of the defendants from witness testimony
13 designed to determine whether their Sixth Amendment rights to
14 effective assistance of counsel, to include the sanctity of
15 the attorney-client privilege, has been violated.

16 Subject to your questions, Your Honor.

17 MJ [Col PARRELLA]: I have no additional questions. Thank
18 you, Ms. Pradhan.

19 LDC [MR. CONNELL]: May I ----

20 MJ [Col PARRELLA]: You may.

21 [Pause.]

22 ADC [MS. PRADHAN]: Your Honor, I have one final point, if
23 the military commission would indulge.

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1 MJ [Col PARRELLA]: Sure.

2 ADC [MS. PRADHAN]: And that is just with regards to your
3 question regarding depositions versus testimony. The one
4 previous deposition that we have had here at the military
5 commission, even though it was closed to the public, was open
6 to the defendants. And so we would ask again that if the
7 military commission chooses to close the entirety of the
8 testimony from the interpreter, that the defendants be allowed
9 to attend.

10 MJ [Col PARRELLA]: I understand. Thank you.

11 ADC [MS. PRADHAN]: Thank you.

12 MJ [Col PARRELLA]: Ms. Bormann.

13 DC [MR. MONTROSS]: Your Honor, in AE 616C,
14 Mr. Bin'Attash's attorneys filed notice of conflict.

15 MJ [Col PARRELLA]: Mr. Montross, what was the AE again?

16 DC [MR. MONTROSS]: AE 616C. We filed notice of conflict
17 and, as a result of that notice of conflict, we are not able
18 to proceed to offer argument or to a position in terms of this
19 motion.

20 MJ [Col PARRELLA]: Okay. You understand, I think, the
21 commission's position hasn't changed and views this as a
22 waiver of your ----

23 DC [MR. MONTROSS]: It is not a waiver. Mr. Bin'Attash

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1 does not waive his right to representation. We are
2 proceeding ----

3 MJ [Col PARRELLA]: I understand your position.

4 DC [MR. MONTROSS]: ---- ethical professional
5 responsibilities.

6 MJ [Col PARRELLA]: I'm just reiterating what the
7 commission's position is.

8 DC [MR. MONTROSS]: I understand what your position is,
9 Judge. It is not our position as to waiver.

10 MJ [Col PARRELLA]: Thank you.

11 Mr. Harrington?

12 LDC [MR. HARRINGTON]: Nothing further, Judge.

13 MJ [Col PARRELLA]: Mr. Ruiz?

14 LDC [MR. RUIZ]: Nothing further, Judge. We adopt the
15 arguments of co-counsel -- I mean counsel.

16 MJ [Col PARRELLA]: Thank you.

17 Trial Counsel? Trial Counsel, if you can start off
18 by addressing the defense's position about the burden of proof
19 and whether you agree that the government bears the burden in
20 this instance.

21 MTC [MR. TRIVETT]: Thank you, sir. That was actually the
22 only reason I was going to get up was to address that.

23 The government's position is that the testimony needs

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1 to be in closed session. I'm not going to get into any
2 details as to why that is. But your ruling in 350RRR was
3 correct. The defense has objected to your ruling. Typically
4 they would file a motion; that would be a motion for
5 reconsideration for which they would bear the burden. They
6 have styled this as an objection, but we still think, based on
7 the relief they're asking, it's, in fact, a motion; that it's
8 a motion to reconsider and it's a motion for which they carry
9 the burden.

10 Subject to your further questions, that's all I was
11 going to say.

12 MJ [Co1 PARRELLA]: Thank you. I have no questions.
13 Ms. Pradhan?

14 ADC [MS. PRADHAN]: [Microphone button not pushed; no
15 audio.]

16 MJ [Co1 PARRELLA]: Okay. At this point, the commission
17 is going to take this matter under advisement, issue a ruling
18 as soon as practicable. What I intend to do is recess the
19 commission until tomorrow morning.

20 Mr. Trivett, did you have a ----

21 MTC [MR. TRIVETT]: I have an administrative note, sir.
22 There's a weather event coming into the area where the witness
23 is. We are making all arrangements to make sure that the

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1 testimony does, in fact, go off tomorrow, regardless of what
2 your ruling is. But that said, there's at least the
3 possibility that something may come up. If it does, I'll be
4 sure to inform the judiciary and the defense.

5 MJ [Col PARRELLA]: Okay. Thank you. And if that were to
6 occur, I do think we have some flexibility with the remainder
7 of the -- what's on the docket, that we could simply postpone
8 the testimony to perhaps Thursday, take up an earlier issue
9 tomorrow instead.

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

11 MJ [Col PARRELLA]: Mr. Ruiz?

12 LDC [MR. RUIZ]: Yes, Judge. Your -- your ruling in terms
13 of whether there will be an open session or portion of an open
14 session tomorrow will impact Mr. al Hawsawi's decision whether
15 to come to court tomorrow or not. So what I'm asking is if
16 the commission can urge for us to have an opportunity or a way
17 to communicate that to Mr. al Hawsawi, that would be very
18 helpful.

19 MJ [Col PARRELLA]: What I can propose, and maybe in light
20 of the weather event, is why don't we go ahead and postpone
21 the testimony until Thursday right now, and then that way we
22 can -- that gives the commission ample time to issue its
23 ruling; you, Mr. Ruiz, and your counterparts, to discuss the

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1 matter with your clients; and we can take up the unclass
2 portions of the remaining motion series tomorrow morning.

3 Mr. Trivett?

4 MTC [MR. TRIVETT]: There are many, many logistics
5 required for this witness and we would prefer, if at all
6 possible, to do it tomorrow. That's what we're working
7 towards. It involves a lot of different agencies. I don't
8 want to get into detail, but everyone is trying to do
9 everything they can to make this happen and we believe that we
10 are going to make it happen, so we would prefer that it
11 actually happen tomorrow. I just wanted to raise it to the
12 commission's attention, because everyone's -- everyone's
13 schedules would be impacted by that. I can't speak for all of
14 their schedules. I'm not just talking about the witness, I'm
15 talking about all logistical pieces to get him there safely.

16 MJ [Col PARRELLA]: I understand. So perhaps -- what are
17 the parties' thoughts about maybe delaying the start time one
18 hour, doing a 10:00 a.m. start time? Would that afford
19 defense a little additional time to maybe discuss it with your
20 clients?

21 LDC [MR. RUIZ]: Well, Judge, the determination has to be
22 made prior to departing the camp. So once they depart and
23 make it to the courtroom, it kind of defeats the purpose.

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1 So if the government can assist us in making sure
2 there is a communication, then that would be helpful. I know
3 there have been times where we have worked that out. But I
4 want to make sure that happens, because I don't want to come
5 in tomorrow and then raise an issue before the commission in
6 terms of a waiver of communications or those kinds of things.

7 MJ [Co1 PARRELLA]: Okay. Mr. Connell?

8 LDC [MR. CONNELL]: Sir, in part, the solution to that
9 problem may lie in what else, if anything, you intend to do
10 tomorrow. Because if there's -- if it's a closed session
11 tomorrow, none of the defendants are going to be offered the
12 opportunity to come to court.

13 MJ [Co1 PARRELLA]: Correct.

14 LDC [MR. CONNELL]: If it's a mixed session, then it
15 becomes a little more complicated.

16 So far, it is my understanding of the commission's
17 intent that tomorrow would be devoted to this issue, and then
18 we would take up the remaining classified and unclassified
19 issues on Thursday and Friday. If that's accurate, I think it
20 offers a solution to that problem. If the commission has
21 something else in mind, we may need to devise another
22 solution.

23 MJ [Co1 PARRELLA]: My course of action is the -- the

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1 former. Tomorrow is devoted to testimony, whether it be open,
2 closed, or a combination thereof. The remaining two days
3 would be to take up the remaining items on the docket, so if
4 that helps.

5 Mr. Harrington?

6 LDC [MR. HARRINGTON]: Judge, two suggestions. One is,
7 perhaps the court when it makes its decision could give us a
8 short order indicating what the decision -- without the
9 reasoning of the decision later -- a written decision later.

10 The second one is as to the government to facilitate
11 us getting messages to our clients after we get that -- that
12 message so they can know one way or the other. And then they
13 can make their decision in the morning, assuming part of it is
14 open.

15 MJ [Col PARRELLA]: Okay. So we're going to proceed with
16 the hope that it's tomorrow to -- and then, Trial Counsel, if
17 you can inform the commission as well as the other parties if
18 there's the slightest indication that that will not happen.
19 I'd also ask that you, per Mr. Harrington's request, do what
20 you can to facilitate communication in the meantime.

21 For our part, the commission will do everything I can
22 to get you an answer as soon as possible, even if it's just
23 a -- an answer followed up by a more formalistic written

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1 ruling.

2 Any other questions?

3 All right. The commission is in recess.

4 [The R.M.C. 803 session recessed at 1438, 29 January 2019.]

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