1 **[The R.M.C. 803 session was called to order at 1115,**
2 **17 February 2016.]**
3 MJ [COL POHL]: The commission is called to order. Are
4 any parties absent that were present when the commission
5 recessed? Other than Mr. Bin'Attash is no longer here?
6 Trial Counsel?
7 CP [BG MARTINS]: No, Your Honor.
8 MJ [COL POHL]: Mr. Harrington, your whole team is here
9 now?
10 LDC [MR. HARRINGTON]: Yes, Judge.
11 MJ [COL POHL]: Okay. That brings us to 406.
12 Mr. Nevin.
13 LDC [MR. NEVIN]: Thank you, Your Honor. 406 is our
14 motion to abate the proceedings or, in the alternative, for
15 the commission to issue an order regarding our interpreter.
16 And I want to just quickly give you some background about our
17 interpreter and about our -- about why he is on our team, and
18 some of this I think the commission understands but I will
19 touch on it briefly so that it is in the record.
20 The ABA guidelines require us to form a team. They
21 require us to include people within the team who are necessary
22 to provide effective assistance of counsel, a defense for the
23 defendant. And that specifically is said to include, in

1 appropriate cases, an interpreter, a translator, someone who
2 is fluent in both a native language of the accused, if it is
3 different from the attorneys, and also in the language that we
4 use. And of course Mr. Mohammad is not -- his native language
5 is not English. In fact, his native language is probably it
6 would be said to be Baloch or Arabic. But in any event,
7 that's not my native language and it's not the native language
8 of the people on the team, and so we are required to have an
9 interpreter.
10 MJ [COL POHL]: But is he fluent in English?
11 LDC [MR. NEVIN]: Mr. Mohammad?
12 MJ [COL POHL]: Yes.
13 LDC [MR. NEVIN]: No, he is not fluent in English.
14 MJ [COL POHL]: I heard him on the record talk fluently in
15 English for about ten minutes in a prior session.
16 LDC [MR. NEVIN]: If the military commission can assess
17 his fluency based on that, or if I can, I would say he has
18 conversational fluency or conversational ability in the
19 English language.
20 MJ [COL POHL]: Maybe we are just quibbling over how
21 fluent is fluent. I got you.
22 LDC [MR. NEVIN]: Exactly.
23 MJ [COL POHL]: But he is not totally illiterate of the

1 English language, for want of a better term.
2 LDC [MR. NEVIN]: The government made reference to him
3 attending university in the United States and he has
4 conversational ability in the English language, but nothing
5 like the kind of fluency in English that's necessary to engage
6 in discussions about the legal issues in this case, first.
7 But in addition, there is an awful lot more than just
8 translating things that are being said in English into a
9 native language and vice versa. Many of the materials in this
10 case are in the Arabic language. Many of the discovery
11 materials and the research and background materials are in the
12 Arabic language and they need to be understood, vetted and
13 processed, and counsel, of course, are completely unable to do
14 that, so our interpreter needs to do all of that.
15 But in addition, our interpreter is a member of our
16 team, by which I mean he is one of the people on the team with
17 whom our client has a relationship, and we have developed a
18 relationship of trust between the interpreter and
19 Mr. Mohammad, and a relationship of trust between the
20 interpreter and us, and counsel. And I heard Mr. Ryan just a
21 minute ago talking about the importance of longevity and
22 continuity and so on, and the fact that everybody has put in a
23 lot of time here getting to where we are today and the

1 difficulties that would be attendant to losing that, and I
2 thought that was all pretty right on with respect to exactly
3 what I was going to be getting up to talk to you about in this
4 AE 406.
5 We have worked a long time to develop these
6 relationships. When they fall apart, problems arise, and when
7 people who have developed that kind of a relationship somehow
8 get excluded from the team, it's not a trivial matter and it
9 creates genuine hardship for the team and it leads to all
10 sorts of problems, foreseen and unforeseen.
11 So, you know, here's -- that's what motivates us, and
12 I have mentioned this to you in each of our last two rounds of
13 hearings that we were having problems with our interpreter.
14 Back in -- in last summer, in June or July of last summer, we
15 were told that there was a problem with our interpreter's SAP
16 read-on. And just so we are clear, our interpreter -- our
17 interpreter's background in the -- in doing interpretation in
18 the military commissions and before that extends back some
19 14 years.
20 MJ [COL POHL]: Let me ask you this, Mr. Nevin, just so
21 I've got the playing field here. And I don't think we use
22 interpreters' names, so let's just -- when was he first part
23 of your team, as best you recall? I don't need an exact date.

1 LDC [MR. NEVIN]: The interpreter first became a part of
2 our team in August of 2012.
3 MJ [COL POHL]: Okay. And at that time he had all the
4 appropriate clearances?
5 LDC [MR. NEVIN]: Correct. And he still ----
6 MJ [COL POHL]: Okay. And sometime in July ----
7 LDC [MR. NEVIN]: Of 2015.
8 MJ [COL POHL]: ---- there is an issue about his
9 clearances. Okay.
10 Now, I would assume he is a contract employee?
11 LDC [MR. NEVIN]: Yes.
12 MJ [COL POHL]: Okay. Okay. So was he told specifically
13 what the problem was?
14 LDC [MR. NEVIN]: No. Well, it depends on what you're
15 asking. Let me -- he joins our team, and I have just been
16 handed a note that says June of 2012, and if it is important
17 to the commission, I will sort out the exact day.
18 MJ [COL POHL]: No. No.
19 LDC [MR. NEVIN]: But sometime in 2012.
20 MJ [COL POHL]: For two and a half years he is operating
21 with an approved clearance?
22 LDC [MR. NEVIN]: Correct.
23 MJ [COL POHL]: A DoD-approved clearance or is that the

1 problem.
2 LDC [MR. NEVIN]: His clearance was a DoJ clearance
3 because he did work on the habeas side before he came to work
4 on the commission side.
5 MJ [COL POHL]: I don't understand this very well. I have
6 been told ----
7 LDC [MR. NEVIN]: I don't either.
8 MJ [COL POHL]: ---- there is an executive order out there
9 that says clearances should be good across the agency, I am
10 not going to get into that, is his problem with the clearance
11 saying somebody looked at it and said this is a DoJ clearance
12 and not a DoD clearance?
13 LDC [MR. NEVIN]: That may be. The sequence of events
14 works like this: Sometime last summer, it has come to people
15 that his clearance was through DoJ and not through DoD, and he
16 actually had had a periodic investigation at the end of 2014
17 and was approved and was read back on again ----
18 MJ [COL POHL]: The periodic investigation was done by
19 DoD? It's done by OMB, but I'm just saying, it's for a DoD
20 clearance, right?
21 LDC [MR. NEVIN]: It may have been. We have -- and I'm
22 sorry not to have more precise answers to the commission's
23 questions, but we have been trying to acquire information

1 about these specific matters and we can't get it. That's part
2 of what we've come here for.
3 MJ [COL POHL]: Has he been -- is he still hired as a
4 contractor?
5 LDC [MR. NEVIN]: Yes.
6 MJ [COL POHL]: He has not been terminated?
7 LDC [MR. NEVIN]: Correct.
8 MJ [COL POHL]: Because as I understand the rules, if
9 somebody loses his clearance, that causes a loss of job, that
10 he has a right of notice and a right to appeal that loss?
11 LDC [MR. NEVIN]: That's right.
12 MJ [COL POHL]: But that's not been triggered?
13 LDC [MR. NEVIN]: That has not occurred.
14 MJ [COL POHL]: Okay. So the best as you can say,
15 apparently it is that this appears to be the DoJ/DoD lack of
16 transparent interface issue; is that where we are at?
17 LDC [MR. NEVIN]: It seems to be the case. But what we
18 have also been told is that he is now approved for a TS
19 clearance, and he has also been briefed to the secure
20 compartmented information, so he is now fully TS/SCI, but he
21 is not briefed to the SAP.
22 MJ [COL POHL]: Is that because they just haven't gotten
23 to it, or he is not going to be allowed to?

1 LDC [MR. NEVIN]: Really the reason I am here, you might
2 say, is because I don't know the answer to that question. We
3 have asked ----
4 MJ [COL POHL]: Maybe the government will have that answer
5 when it's their turn.
6 LDC [MR. NEVIN]: Maybe they will, and I have a strategy
7 for the commission to resolve this. But I guess my point is
8 this: We -- our interpreter, whom we see as an important
9 asset, has been taken away from us, and no one is saying
10 precisely why. We have been told -- and I mentioned this to
11 the commission the other day. We have been told from month to
12 month and from week to week he'll -- there is not a problem,
13 he will be read back on, it's just a matter of it should
14 happen next week, it should happen the week after that. We
15 have heard this many times and it keeps on not happening. And
16 we have tried to get by and have gotten by, and I have
17 mentioned it to you on the record a couple of times.
18 But now finally, once again, we are told that he will
19 not be read on prior to these hearings, to the February
20 hearings, and that's when we decided that we needed to file a
21 motion.
22 MJ [COL POHL]: Okay.
23 LDC [MR. NEVIN]: Because, as you know, this arises in a

1 broader context. It arises in the context not only of -- not
2 only of the issues, some of the issues that Ms. Bormann was
3 just talking about a few minutes ago, but the specific
4 application of problems to our team and to our previous
5 interpreter, which we brought to the military commission's
6 attention. And our previous interpreter came under FBI
7 investigation, it was done in a secretive way so that it was
8 kept -- the existence of the investigation was kept from the
9 team. We weren't advised of it, told about it, until the
10 military commission issued an order directing team members to
11 reveal this -- any kind of contact like that to us, and at
12 that point, it came to our awareness over a year after it had
13 occurred. And so we see, then -- in the current setting, we
14 see all of these issues, we see a delay. We see a failure to
15 offer any reasonable explanation for what the situation is.
16 We see the continued delays. And then we see two other
17 things.
18 One is that we see -- we see Major Seeger here at the
19 podium yesterday and Major Seeger was the subject of a motion
20 in AE 405, I believe, saying Mr. Bin'Attash has now -- in view
21 of Mr. Schwartz' leaving the military, Mr. Bin'Attash no
22 longer has a military lawyer and Major Seeger has been waiting
23 for a read-on for quite a long time, and my understanding is

1 within 24 to 48 hours of that motion being filed, Major Seeger
2 had been read on. That's one. That's one recent factual
3 development.
4 The other is this: We were offered a stand-in
5 interpreter to work with us for these -- for the hearings here
6 in February, and we told the people who were behind delivering
7 or making arrangements for this person to be with us, we said
8 we don't want -- we don't want another interpreter. We don't
9 need a translation machine; we need our team member.
10 MJ [COL POHL]: Uh-huh.
11 LDC [MR. NEVIN]: A person was assigned anyway, for
12 whatever reason. But it developed that that person had a
13 conflict of interest. The person had done work on another
14 team or in another setting.
15 MJ [COL POHL]: I saw that in your motion.
16 LDC [MR. NEVIN]: Okay. So this person -- this person
17 turns out not to be available, and so it turns out that we
18 were coming down here without anyone having been assigned as a
19 stand-in interpreter.
20 But then a new person was presented to us within a
21 day or two of when we came here and this person, however, had
22 not been read on to the SAP. This person had, apparently, a
23 TS/SCI clearance and had an active clearance; in other words,

1 but had not been read on to the SAP, the special access
2 program.
3 MJ [COL POHL]: Would this person be in the same position
4 as your current interpreter?
5 LDC [MR. NEVIN]: Yes, that's correct. So the solution to
6 the problem ----
7 MJ [COL POHL]: I understand your current interpreter ----
8 LDC [MR. NEVIN]: Has a TS/SCI.
9 MJ [COL POHL]: ---- is just missing the SAP read-on?
10 LDC [MR. NEVIN]: Correct.
11 MJ [COL POHL]: And the new one ----
12 LDC [MR. NEVIN]: Is in the same position.
13 MJ [COL POHL]: ---- was in the same position?
14 LDC [MR. NEVIN]: As the military commission knows, before
15 the sun went down, that person had a read-on, and that person
16 is here on the island somewhere and we have some issues with
17 that person, and ----
18 MJ [COL POHL]: They were able to do the SAP read on right
19 here?
20 LDC [MR. NEVIN]: Sir?
21 MJ [COL POHL]: You said the SAP read-on was done right
22 here?
23 LDC [MR. NEVIN]: I believe it was done in the National

1 Capital Region.
2 MJ [COL POHL]: This person flew home?
3 LDC [MR. NEVIN]: Say again?
4 MJ [COL POHL]: Wasn't the person here physically?
5 LDC [MR. NEVIN]: No. This person is here physically now.
6 I understand the read-on occurred right at the end of last
7 week before we came down.
8 MJ [COL POHL]: I got it. It was a female, right?
9 LDC [MR. NEVIN]: Yes.
10 MJ [COL POHL]: When she came down this week, she had her
11 SAP read-on?
12 LDC [MR. NEVIN]: Correct. When they arrived here on
13 Saturday.
14 MJ [COL POHL]: I got it.
15 LDC [MR. NEVIN]: So I -- I mentioned this to say if the
16 problem is a SAP read-on, we all know that can happen in a
17 matter of minutes. We have been through it. It doesn't take
18 very long. It can happen readily, and we have been asking for
19 seven months for it to happen with respect to our interpreter.
20 It keeps on not happening.
21 MJ [COL POHL]: Okay.
22 LDC [MR. NEVIN]: Now, this stand-in interpreter that I
23 have referred to who was read on right at the end of last week

1 has -- there are certain components of this person's history
2 which we have seen in the form of a LinkedIn résumé that
3 raises questions about whether this person would be an
4 appropriate interpreter of Mr. Mohammad's team. I will put it
5 that way.
6 MJ [COL POHL]: Okay.
7 LDC [MR. NEVIN]: I mention that -- I mention that for one
8 reason but not for another, and I want to be clear about this.
9 First, we know that when Mr. Binalshibh stood up in
10 this courtroom and said, "The interpreter who has been
11 assigned to me was with me in the black sites," we know that
12 when we complained about that, about that fact, and I'm
13 referring now to AE 350, we know that the government's
14 response to that was to say, "It's your fault. You should
15 have vetted this person," and the government made a demand to
16 see what materials had been submitted to the CA's -- to the
17 Convening Authority's office.
18 MJ [COL POHL]: You are talking about the government's
19 immediate response?
20 LDC [MR. NEVIN]: Say again?
21 MJ [COL POHL]: You are talking about the government's
22 immediate response to 350?
23 LDC [MR. NEVIN]: No, I am talking about their subsequent

1 response. I am referring to 350B.
2 MJ [COL POHL]: Okay. I believe, for what it's worth,
3 they reconsidered that position and have withdrawn that
4 motion.
5 LDC [MR. NEVIN]: I understand that.
6 MJ [COL POHL]: That doesn't change what happened at the
7 time. I got it.
8 LDC [MR. NEVIN]: It doesn't. And it's interesting that
9 it took place so recently, but whatever.
10 But the point is we come to you in that context. We
11 come to you in the context of knowing that we can't just say,
12 "Okay, sure, come on. Someone has certified you." The
13 government has asserted that doing that would violate our
14 professional responsibility.
15 So why has -- why has our interpreter -- why has our
16 interpreter not been read on? It's either some kind of
17 bureaucratic inertia or there is some kind of substantive
18 problem with our interpreter that we are not being told about.
19 MJ [COL POHL]: Is that where you raise the conflict
20 issue?
21 LDC [MR. NEVIN]: Yes, sir, it is.
22 MJ [COL POHL]: It was unclear to me from reading your
23 pleadings, so let me understand this. The conflict issue is

1 if there is some type of investigation that may implicate the
2 defense team -- and I am giving kind of the short version --
3 that would be where the conflict would arise?
4 LDC [MR. NEVIN]: Yes, sir.
5 MJ [COL POHL]: We discussed earlier with another team.
6 Okay. Right.
7 LDC [MR. NEVIN]: When I stood up yesterday and said could
8 I address this with you today, we had the same situation, I
9 didn't mean we had the same situation that Mr. Bin'Attash has.
10 I just meant that we had a conflict situation and I was going
11 to ask the commission to take a particular type of action and
12 to abate, to stand down until that was completed because we
13 need to have our interpreter.
14 But you are exactly right. I mean, I -- I and the
15 members of my team have to use our common sense and exercise
16 our best professional judgment, and I think we would -- if we
17 looked around at this and said, well, gosh, the bureaucratic
18 process is just taking a long time, that's really too bad,
19 what shall we do? I mean, for us to look at the situation
20 that way and to assume that there was no -- that there was
21 nothing behind this puts us in the position of essentially
22 being ineffective lawyers.
23 MJ [COL POHL]: You are assuming risk that you're correct.

1 What I am saying is if you did that, you would assume risk
2 that it was this bureaucratic issue and it wasn't something
3 else.
4 LDC [MR. NEVIN]: Exactly.
5 MJ [COL POHL]: And if you don't know, it could be one or
6 the other.
7 LDC [MR. NEVIN]: Right. Exactly.
8 MJ [COL POHL]: I got you. I understand.
9 LDC [MR. NEVIN]: That's why I said to you this morning,
10 we take it at this point that Mr. Mohammad is without counsel,
11 because we perceive ourselves to be in a conflict position.
12 Now, my proposed solution for this is the one that's
13 expressed in the motion. Would you kindly direct the
14 government to either read our interpreter on or, in the
15 alternative, to explain to us that he can't be read on and to
16 explain why, and then let the chips fall where they may from
17 there.
18 MJ [COL POHL]: Got it.
19 LDC [MR. NEVIN]: My suspicion is that if you say, well,
20 there is no necessarily clear showing about where this goes
21 from here and so let's go on with our arguments and you can
22 raise this again later, Mr. Nevin, and so on, then this will
23 bump down the road for another six or seven months.

1 However, my suspicion is that if the military
2 commission says, okay, we are stopping until someone tells me
3 what's going on here, that we will have an answer to this
4 question on the next bolt of lightning. And that's all we are
5 asking for, is clarity, so that we can -- and failing clarity,
6 in the absence of clarity, we have to assume, I think -- in
7 the correct application of caution, we have to assume the
8 worst, and that's what we are doing.
9 MJ [COL POHL]: But could it -- but the facts you
10 currently have -- and, again, when I ask people a question,
11 you understand I am not deciding anything, I am simply asking.
12 The current facts you have is that he has a TS/SCI
13 and he just needs a SAP read-on, correct?
14 LDC [MR. NEVIN]: Yes, sir.
15 MJ [COL POHL]: Okay. So that would be at least some
16 evidence that there is no investigation going on.
17 LDC [MR. NEVIN]: Well ----
18 MJ [COL POHL]: But on the other hand, if that's all it
19 is, that's an easily solvable problem in a very short time.
20 LDC [MR. NEVIN]: Our last interpreter had a TS/SCI and a
21 SAP read-on and met with our client and an investigation was
22 going on. So the presence of the TS/SCI means nothing, on
23 this question.

1 MJ [COL POHL]: The presence of it doesn't mean the
2 absence of an investigation.
3 LDC [MR. NEVIN]: Yes.
4 MJ [COL POHL]: But if the reason why he doesn't have a
5 clearance or can't perform on your team is simply a SAP
6 read-on, that would indicate some presence of the absence of
7 an investigation. What I'm saying, if they read him on,
8 because anybody could -- what I'm saying, Mr. Nevin, is at any
9 point in time, as you have pointed out in other motions, there
10 is always a possibility there may be some type of
11 investigation going on.
12 LDC [MR. NEVIN]: Right.
13 MJ [COL POHL]: But what I am simply saying if they take
14 this guy, they give him his SAP read-on and he is back as a
15 member of your team, you have to assume that there is no
16 investigation going on because you are not aware of anything.
17 LDC [MR. NEVIN]: Right.
18 MJ [COL POHL]: The possibility there may be other -- do
19 you understand what I am kind of saying?
20 LDC [MR. NEVIN]: This is the "I don't know what I don't
21 know" thing and I agree with that; I don't know what I don't
22 know. But what I do know, I mean, I do know some things and I
23 do know what I do know and what I do know indicates to me, at

1 least it's possible, there is an investigation.
2 MJ [COL POHL]: You're right.
3 LDC [MR. NEVIN]: And I think I would be ineffective if I
4 didn't bring this to some point of resolution.
5 MJ [COL POHL]: I got it. Let's hear what the government
6 has to say because hopefully they can clarify this.
7 Trial Counsel. Mr. Trivett.
8 MTC [MR. TRIVETT]: Thank you, sir. We certainly stand on
9 our brief regarding the legal aspects of the interpreter and
10 what the accused is entitled to, so I am -- I will certainly
11 try to answer any questions that you have about the process to
12 the extent I can. My understanding, though, is that either
13 the Chief Defense Counsel or the Deputy Chief Defense Counsel
14 got specific details regarding where this individual is in
15 regard to whether or not he gets a SAP. So I think they might
16 be the better person to answer the question for the defense
17 than for the government. We generally don't get involved in
18 the clearance process.
19 MJ [COL POHL]: Did you get involved in Major Seeger's
20 read-on?
21 MTC [MR. TRIVETT]: We did not. We would certainly track
22 where it was.
23 MJ [COL POHL]: So let me ask you this: They filed a

1 motion for Major Seeger to get his read-on. Okay? Now, they
2 filed that with the commission process and somehow it gets
3 over to WHS, whoever does this, and energized the process and
4 he gets his read-on. And you're saying the motion process
5 itself had nothing to do with that, that it just -- that you
6 guys can't energize the process? You guys -- I mean, you are
7 the government. We can sit here and point fingers all over
8 the place.
9 MTC [MR. TRIVETT]: Yes, sir.
10 MJ [COL POHL]: But the bottom line is this, all of a
11 sudden Major Seeger is able to get read on and that process
12 was energized by whom?
13 MTC [MR. TRIVETT]: Certainly General Baker reached out as
14 early as October or December, I don't recall exactly when, to
15 talk about Major Seeger's clearance.
16 MJ [COL POHL]: But nothing was done.
17 MTC [MR. TRIVETT]: I don't think it is safe to say
18 nothing was done. The process takes time. It is not as if it
19 all got done in the last two days because we had a hearing.
20 We certainly communicate any motions that come up.
21 MJ [COL POHL]: I would just say perhaps not, but it was
22 an amazing coincidence that, you know, three days before the
23 hearing all of a sudden he is read on because there is a

1 potential that no hearing could be held at all without
2 detailed military counsel. I understand is, it's a process.
3 I got it and I hear it all the time. I hear it all the time.
4 And I understand the bureaucratic wheels may move slowly. I
5 have got it. I have got it. Okay? I have a guy in my office
6 who is still doing this process and I am doing what I can to
7 energize it for him and I hear it. And I don't know what
8 these people do. I've have got it. It's slow. But what I am
9 simply saying is all of a sudden it went very fast for Major
10 Seeger and my simple question is fact-specific on this issue,
11 is why did his clearance get pulled -- Mr. Nevin's
12 interpreter's clearance get pulled?
13 MTC [MR. TRIVETT]: We did not get into any of those
14 details, sir.
15 MJ [COL POHL]: Okay. How ----
16 MTC [MR. TRIVETT]: The Chief Defense Counsel has been
17 told, is what I am saying, but we stay out of the actual
18 substantive decision as to whether or not anyone on the
19 defense gets a clearance, we don't involve ourselves with. If
20 there is a motion that's filed, what we will do is inform the
21 people there is a motion. To the extent they ask us if a
22 hearing is going to be canceled, we will give them a legal
23 decision.

1 MJ [COL POHL]: Let me ask you this. Let me ask you this.
2 MTC [MR. TRIVETT]: Yes, sir.
3 MJ [COL POHL]: If a person who has a clearance, purely a
4 contract employee, and loses that clearance for some
5 misconduct reason or something like that, doesn't that person
6 have to be told that, because now he is going to lose his job
7 and he has a right to appeal it? I'm not an expert on the
8 civilian personnel law, but isn't that what would happen if a
9 person gets his clearance suspended for some reason like that?
10 MTC [MR. TRIVETT]: Yes, sir. I mean, there is a certain
11 due process, yes.
12 MJ [COL POHL]: Apparently, according to Mr. Nevin, that
13 never happened with this guy. What we are talking about here
14 is the DoJ/DoD interface, and all we are worrying about is he
15 can't get a SAP read-on. Now, I'm not saying -- again, I'm
16 not -- I don't have evidence of any of this stuff. I got
17 Mr. Nevin's good-faith proffer, which I always take in good
18 faith. I've got your position that I don't get involved. I
19 have got something out there that maybe General Baker has
20 something. But at the end of the day, it is that what I am
21 being told is all this guy needs is a SAP read-on. Okay?
22 And my simple question is: How can you guys make
23 that happen, or say he is not getting it? Just a decision?

1 MTC [MR. TRIVETT]: That wouldn't be our decision, sir. I
2 know that's disappointing to you.
3 MJ [COL POHL]: No, it's not disappointing to me. That's
4 not what I am asking. I am not asking you to decide. I'm
5 simply asking you to ask. Is that unreasonable?
6 MTC [MR. TRIVETT]: It is not unreasonable for us to ask.
7 What we don't want to do is if in fact there is a reason ----
8 MJ [COL POHL]: I don't need a why. Don't need a why.
9 Don't need a why.
10 MTC [MR. TRIVETT]: Okay.
11 MJ [COL POHL]: What I am being told is we think this may
12 be a DoJ/DoD problem.
13 MTC [MR. TRIVETT]: That was the initiation of it.
14 MJ [COL POHL]: If that's the problem, they are saying he
15 is not getting it. Okay. When I say I don't need a why, I do
16 need one non-why, if that makes sense. It's kind of the known
17 unknowns. I got it. What I am saying is simply ask whoever
18 is in charge, is this guy, whatever his name is, is he
19 eligible for a SAP read-on.
20 MTC [MR. TRIVETT]: He is not currently eligible for the
21 SAP read-on, I do know that.
22 MJ [COL POHL]: Has he been told why?
23 MTC [MR. TRIVETT]: I don't know.

1 MJ [COL POHL]: When you say "not eligible," what do you
2 mean?
3 MTC [MR. TRIVETT]: They are not prepared to read him into
4 the SAP at this time, and I don't know that it's inevitable
5 that he will be receiving a SAP. But the reasons behind that,
6 I do not know and do not want to know. But I do believe the
7 Chief Defense Counsel or the Deputy Chief Defense Counsel was
8 given more information about this.
9 MJ [COL POHL]: Why wouldn't they convey that to
10 Mr. Nevin?
11 MTC [MR. TRIVETT]: I don't know. Maybe they have.
12 MJ [COL POHL]: Mr. Nevin, let me just ask. Do
13 you have ----
14 LDC [MR. NEVIN]: I just looked around to see if Captain
15 Filbert, the assistant Chief Defense Counsel -- Deputy Chief
16 Defense Counsel who is on the island now -- General Baker is
17 in D.C. this week -- was in the courtroom and I would ask him
18 to come up and express it to you.
19 But what they have told me is they have not been
20 told. They've been told it should happen soon, it might
21 happen next week, and then most recently no, it won't happen
22 before the February hearings.
23 MJ [COL POHL]: Okay. Who is the -- you say "they" have

1 been told, so we are in the passive voice here. Let's change
2 it to the active voice.
3 Who tells them this? Because apparently that's the
4 guy I've got to ask. I'm just saying is what I am hearing
5 from the government is they don't want to get involved, they
6 don't even want to ask; so, fine, I'll ask. Who is the "who"
7 here? Who is the faceless bureaucrat? That's an unkind
8 thing, I didn't mean it that way, but I'm saying that's what I
9 have now before me, I have this whole machinery of clearance
10 reviews out there of people say, well, you know, it's
11 somewhere, it's somewhere, it's somewhere in the system and
12 nobody is held accountable, and I don't mean to be pejorative
13 when I say that.
14 But on this issue I need a name of somebody who is
15 making that decision because you are telling me, Mr. Trivett,
16 you are not going to ask -- you don't want to ask, and I
17 understand that -- and Mr. Nevin says just let me know who is
18 the decision-maker here and what I am being told is "they."
19 Who is the "they"?
20 MTC [MR. TRIVETT]: I will find out who the right person
21 is within Washington headquarters.
22 MJ [COL POHL]: What we are going to do, we are going to
23 break for lunch.

1 MTC [MR. TRIVETT]: Yes, sir.
2 MJ [COL POHL]: I will make it very clear. What I want to
3 know, is Mr. Nevin's representation accurate? And, again, it
4 is made in good faith so I am not saying anything else, that
5 all this guy is waiting for is a SAP read-on or there is
6 something more, a bigger barrier to this. It gets very
7 frustrating on this type of an issue that we don't -- nobody
8 can make a -- we don't know who the decider is. I believe
9 that's all Mr. Nevin, quite frankly, is asking, what's the
10 status of this. Because if there is an investigation for
11 something, that could implicate the rest of the team. If it
12 is simply a bureaucratic issue, that's a different issue. But
13 we have done this before, though, with interpreters in
14 investigations, and maybe there is one going on, maybe there
15 isn't, but the issue I want to know is simply is is all this a
16 matter of making an appointment of getting a SAP or is there
17 more to it. Not necessarily that I need the "more to it," but
18 that raises a different -- a different way ahead.
19 MTC [MR. TRIVETT]: Understood.
20 MJ [COL POHL]: Understood?
21 MTC [MR. TRIVETT]: Yes, sir.
22 MJ [COL POHL]: We will go ahead and recess for lunch and
23 reconvene at 1330. The commission is in recess.

1 [The R.M.C. 803 session recessed at 1150, 17 February 2016.]

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