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1 [The R.M.C. 803 session was called to order at 0904,  
2 19 October 2015.]

3 MJ [COL POHL]: The commission is called to order. Trial  
4 Counsel, please account for who is here representing  
5 government.

6 STC [MR. CAMPOAMOR-SANCHEZ]: Good morning, Your Honor.  
7 Kevin F. Driscoll and Fernando Campoamor on behalf of the SRT  
8 for the United States.

9 MJ [COL POHL]: Mr. Nevin?

10 LDC [MR. NEVIN]: David Nevin, Gary Sowards and Derek  
11 Poteet for Mr. Mohammad.

12 MJ [COL POHL]: Ms. Bormann?

13 LDC [MS. BORMANN]: Cheryl Bormann on behalf of  
14 Mr. Binalshibh along with Major Michael Schwartz. Not present  
15 today, who had been present at a previous hearing, is Major  
16 Todd Swensen. Major Swensen is now attached to a different  
17 assignment within the Air Force.

18 MJ [COL POHL]: Is he no longer part of the defense team?

19 LDC [MS. BORMANN]: Correct, he is no longer a member of  
20 the military commissions defense organization.

21 MJ [COL POHL]: Okay. And you may have done this, have  
22 you filed a notice to that effect?

23 LDC [MS. BORMANN]: I don't think so. I'm not -- I can't

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1 remember, frankly.

2 MJ [COL POHL]: Would you, please?

3 LDC [MS. BORMANN]: Sure.

4 MJ [COL POHL]: Mr. Harrington?

5 LDC [MR. HARRINGTON]: Judge, Major Alaina Wichner and I  
6 are here for Mr. Bin'Attash, I'm sorry, Mr. Binalshibh, and  
7 Commander Tri Nhan is not here and I mentioned that to the  
8 court the other day.

9 MJ [COL POHL]: At the 802 you indicated there was an  
10 issue you wanted to discuss on that, but as we discussed at  
11 the 802, we will discuss that when the regular prosecution  
12 team is here.

13 Mr. Connell.

14 LDC [MR. CONNELL]: James Connell and Lieutenant Colonel  
15 Sterling Thomas on behalf of Mr. al Baluchi.

16 MJ [COL POHL]: Mr. Ruiz.

17 LDC [MR. RUIZ]: Walter Ruiz, Suzanne Lachelier, Jennifer  
18 Williams, Lieutenant Colonel Sean Gleason, Your Honor.

19 MJ [COL POHL]: Ms. Lachelier, you are new.

20 Could you come to the podium and put your detailing  
21 qualification on the record, please.

22 ADC [MS. LACHELIER]: I am licensed to practice law in the  
23 State of California. I am qualified in accordance with

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1 Article 502(d) of the Rules for Military Commission. I have  
2 filed my detailing letter and the notice of obligations or  
3 acknowledgment of obligations and they are Appellate  
4 Exhibit 004I, and I have not acted in any manner that might  
5 disqualify me.

6 [MS. LACHELIER was sworn.]

7 MJ [COL POHL]: Thank you.

8 In accordance with commission practice, I'm now going  
9 to advise the accused of their rights to be present and to  
10 waive said right. Mr. Mohammad, Mr. Bin'Attash,  
11 Mr. Binalshibh, Mr. Ali and Mr. Hawsawi, as I have told you  
12 before, you have the right to be present during all stages,  
13 all sessions of the commission. You also, if you request,  
14 have the right to absent yourself from any session as long as  
15 such absence is voluntary and of your own free will. Now,  
16 your voluntary absence from any session of the commission is  
17 unequivocal waiver of the right to be present during that  
18 session.

19 Your absence from any session may negatively affect  
20 the presumption -- presentation of the defense in your case.  
21 Your failure to meet with and cooperate with your defense  
22 counsel may also negatively affect the presentation of your  
23 defense.

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1 Under certain circumstances your attendance at a  
2 session can be compelled regardless of your personal desire  
3 not to be present. Also, regardless of your voluntary waiver  
4 to attend a particular session of the commission, you also  
5 have the right at any time to decide to attend any subsequent  
6 session. If you miss the morning session and wish to attend  
7 the afternoon session, you are notified -- you are to notify  
8 the guard force and, if possible, they will arrange for you to  
9 come to the afternoon session.

10 Now, each morning you will be informed of the time  
11 and date of each commission session prior to the session to  
12 afford you the opportunity to decide whether or not you wish  
13 to attend. Now, this advisement will apply for this week and  
14 next week, so I won't be going over it again.

15 Mr. Mohammad, do you understand what I have just  
16 explained to you?

17 ACC [MR. MOHAMMAD]: Yes.

18 MJ [COL POHL]: Mr. Bin'Attash? Do you understand what I  
19 just explained to you?

20 ACC [MR. BIN'ATTASH]: Before I respond I have some  
21 questions that are related to self-representation.

22 MJ [COL POHL]: Okay. I'll come back to that, okay? We  
23 will come back to that in a second, okay?

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1           Mr. Binalshibh, do you understand what I just told  
2 you? I'm sorry?

3           ACC [MR. BIN'ATTASH]: [Microphone button not pushed; no  
4 audio].

5           MJ [COL POHL]: The whole what I explained to you about  
6 your rights to be present are just whether you understand your  
7 rights to waive your right to be present. Okay. Thank you.

8           Mr. Ali and Mr. Hawsawi?

9           ACC [MR. AZIZ ALI]: Yes.

10          ACC [MR. AL HAWSAWI]: Yes.

11          MJ [COL POHL]: Ms. Bormann, is there an issue about  
12 representation?

13          LDC [MS. BORMANN]: Judge, not that I am aware of.

14          MJ [COL POHL]: Did your client just tell me there was?  
15 No.

16          ACC [MR. BIN'ATTASH]: I have a problem, it's not the  
17 attorney.

18          MJ [COL POHL]: Ms. Bormann, talk to your client and let  
19 me know what the issue is.

20          LDC [MS. BORMANN]: If my client will speak with me, I  
21 will be glad to speak with my client.

22          MJ [COL POHL]: Okay.

23          LDC [MS. BORMANN]: Judge, Mr. Bin'Attash wishes to

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1 address the court. He tells me that he will not speak to me  
2 about the issue. He believes that, based on all of the things  
3 that have gone unaddressed in this system, that he can no  
4 longer put any trust in his defense counsel.

5 MJ [COL POHL]: Okay. Ms. Bormann, you are currently  
6 representing him. He is not representing himself. So explain  
7 to me his standing to raise legal issues now on his own.

8 LDC [MS. BORMANN]: Judge, I am still his learned counsel.  
9 Major Schwartz is still his detailed counsel. But  
10 Mr. Bin'Attash wants to raise issues with the commission that  
11 I am not apprised of, so I can't raise those issues. I would  
12 ask the court to direct the questions to Mr. Bin'Attash.

13 Mr. Bin'Attash just relayed a question, and that is:  
14 Does he have the right to represent himself.

15 MJ [COL POHL]: Have you discussed this with him?

16 LDC [MS. BORMANN]: I have not.

17 ACC [MR. BIN'ATTASH]: I have questions. Before I can  
18 speak --

19 MJ [COL POHL]: Mr. Bin'Attash, I will tell you when you  
20 can talk. I will tell you when you can talk. It's not your  
21 time to talk now. I will tell you when you have the  
22 opportunity. Just be patient.

23 Ms. Bormann, you have discussed his right to

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1 represent himself?

2 LDC [MS. BORMANN]: In previous times, yes, but not -- not  
3 recently.

4 MJ [COL POHL]: Okay. Mr. Bin'Attash, okay. I am going  
5 to ask you a question or two. Just answer my question.

6 Do you wish to represent yourself, or do you wish to  
7 spend, to talk it over with your defense team and then tell me  
8 what you wish to do?

9 ACC [MR. BIN'ATTASH]: First, I would like to know what  
10 are the procedures for self-representation, the procedures on  
11 my behalf and then the procedures that the judge will take. I  
12 ask the judge -- I asked the attorneys a long time ago, I  
13 asked them what are the procedures that the judge will take or  
14 the steps he will take if I decide to represent myself. They  
15 said "we don't know."

16 We have so many problems in the camp that take  
17 precedence over anything that they are discussing here in  
18 court. We are still in the black sites.

19 MJ [COL POHL]: Okay. Mr. Bin'Attash, you have answered  
20 the question I asked. Okay.

21 Ms. Bormann.

22 LDC [MS. BORMANN]: Yes, Judge.

23 MJ [COL POHL]: I don't want to get into privileged

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1 information, obviously. Do you have any questions of me and,  
2 since this just came up, of what the procedures would be for a  
3 pro se representation in the commission as opposed to normal  
4 pro se representation in federal court?

5 LDC [MS. BORMANN]: Judge, at this point, because I am  
6 surprised by this development, I need to take a few moments to  
7 discuss with Mr. Bin'Attash and with Major Schwartz the  
8 ramifications here, and then I can answer your question.

9 MJ [COL POHL]: Okay. You understand what his question to  
10 me was?

11 LDC [MS. BORMANN]: I do understand what his question to  
12 you was.

13 MJ [COL POHL]: Okay. How much time do you think you will  
14 need? Ms. Bormann, we are going to take a recess. I just  
15 want to ----

16 LDC [MS. BORMANN]: I would anticipate -- I don't know how  
17 long it will take, Judge.

18 MJ [COL POHL]: Due to the significance of this type of  
19 issue, we will recess for 30 minutes, and if that's not enough  
20 time, just let one of my staff know and we will adjust fire  
21 accordingly.

22 LDC [MS. BORMANN]: Thank you.

23 MJ [COL POHL]: The commission is in recess.

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1 [The R.M.C. 803 session recessed at 0915, 19 October 2015.]

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