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1 [The R.M.C. 803 session was called to order at 1020,
2 19 October 2015.]

3 MJ [COL POHL]: The commission is called to order. All
4 parties again are present that were present when the
5 commission recessed.

6 Ms. Bormann.

7 LDC [MS. BORMANN]: You asked me whether or not I advised
8 Mr. Bin'Attash about his pro se rights, and I need to explain
9 to you what happened.

10 MJ [COL POHL]: Major Poteet, I don't mind you consulting
11 with your client, but the noise is -- so try to keep it down,
12 please.

13 LDC [MS. BORMANN]: Can you hear me now?

14 MJ [COL POHL]: I can hear you fine. There was just
15 background noise. Go ahead.

16 LDC [MS. BORMANN]: Mr. Bin'Attash just took the time here
17 to explain to me the following, but I need to preface it a
18 little bit. He has refused to communicate with me over the
19 last several weeks, and today specifically ordered me not to
20 file a particular motion I had anticipated filing. He
21 explained to me today that he believes that he is still
22 subject to torture; that where he is in Camp VII and the
23 constantly changing scenarios in Camp VII are a duplicate of

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1 what he experienced in the black sites.

2 He feels like he has no relief from the torture and
3 that everything is orchestrated by the United States
4 Government here so that it takes away any of his ability to
5 make voluntary decisions. We discussed some of that, and he
6 tells me that he believes that there is a coordinated effort
7 on behalf of the United States Government to push him to just
8 stop challenging what's going on in this commission.

9 He believes that the psychological trauma that
10 he was -- suffered early on from 2003 to 2006 is continuing,
11 and it has interfered with his ability to communicate with
12 counsel, with me, and with Major Schwartz.

13 He believes that if he tries to complain about what's
14 going on here in court or in the camp, he will only receive
15 further trauma and that that will prevent him from
16 communicating even further. So it's a spiralling down effect.

17 He explained to me that he cannot and does not trust
18 me nor Major Schwartz, and he tells me that he cannot trust us
19 because we have proven that he can't trust what we say. He
20 tells us that because we told him that his attorney-client
21 privileged materials would be sacred, they would never be
22 seized and read, that we lied to him about that. He tells
23 us ----

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1 MJ [COL POHL]: Now, Ms. Bormann, I just want to make it
2 clear, is that you're voluntarily disclosing this
3 communication.

4 LDC [MS. BORMANN]: I am.

5 MJ [COL POHL]: With consent of your client?

6 LDC [MS. BORMANN]: I am. Absolutely.

7 MJ [COL POHL]: Go ahead.

8 LDC [MS. BORMANN]: He tells us he doesn't trust us, that
9 he can't trust us. He tells us he is in a system that what he
10 tells us at the table, as it turned out, was being piped in an
11 ungated feed to an intelligence organization who actually shut
12 down this courtroom without your permission early on in these
13 proceedings.

14 He tells us that he doesn't know whether or not there
15 is an FBI agent on his team. Why? Well, because there were
16 FBI informants on other teams. He tells us that as he sits
17 here today he has no idea if there is a CIA operative on his
18 team. Why? Well, because in this bizarre setting that
19 actually has occurred. He identified who he believed to be
20 somebody that worked with the CIA in a black site. So when I
21 say to him you can trust that what you say to me won't go back
22 to the United States Government, he believes I have lied to
23 him. He believes I am ineffective.

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1 He explained that he doesn't think any of these
2 situations can be fixed. And he believes that because, even
3 though we have filed motions on these various issues, the CIA,
4 the FBI, the seizure of legal materials, the overhearing of
5 attorney-client conversations, the listening at the table,
6 none of it has actually ever been granted, no motions to
7 protect his materials from being seized have been granted,
8 that nothing -- even the judge's order gets ignored by the
9 camp and the SJA.

10 He says that when his lawyers try to fix the
11 problems, the SJA refuses to meet with his lawyers. The very
12 man charged with trying to facilitate the legality of the camp
13 system refuses to provide his name to Mr. Bin'Attash's
14 lawyers. So Mr. Bin'Attash says to me what good can you do,
15 and I can't tell him that I can do him any good.

16 There is -- you asked me whether or not I advised him
17 of his pro se rights. And if this were any other courtroom
18 that I have ever practiced in, I would be able to say to you
19 with clarity yes. This is like no other court. This is a
20 court where the government has taken the position that the
21 Sixth Amendment to the United States Constitution doesn't
22 apply. So I can't possibly advise Mr. Bin'Attash of his
23 rights because I, frankly, don't know what they are. In a

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1 system ----

2 MJ [COL POHL]: We will come back to that. If you were in
3 federal court, okay, and assuming that those rules applied,
4 you would know what you would tell him, right?

5 LDC [MS. BORMANN]: Absolutely.

6 MJ [COL POHL]: What part of that don't you know applies
7 here?

8 LDC [MS. BORMANN]: Everything. So let me just give you
9 an example.

10 I would tell a client in federal court you are going
11 to have to prepare your own motions and do your own legal
12 research. It's going to be very difficult because you are not
13 a trained lawyer. But you will have access to a law library,
14 you will be able to compile that information, you will be able
15 to check your research, that you can Shepardize cases to see
16 if they are actually there; and then if you have a question
17 about some legal procedure, you can pick up the phone and call
18 me and I can, as your standby counsel, give you some guidance.

19 In this system all of the things that I just said,
20 legal library, access to material, being able to Shepardize
21 something, a simple way to compile a motion and being able to
22 pick up a phone to call me, none of it has been provided by
23 the United States Government. So I don't know what to tell

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1 him.

2 MJ [COL POHL]: In federal court, in the Moussaoui case,
3 he appeared -- he went back and forth, I understand that, but
4 he was also pro se for a period of time there.

5 LDC [MS. BORMANN]: That's correct.

6 MJ [COL POHL]: He also would not have had access to
7 classified information. Are you familiar with what procedures
8 he was permitted to use?

9 LDC [MS. BORMANN]: The access to classified information.
10 That's a very separate issue. We haven't gotten there yet.

11 MJ [COL POHL]: I know. I don't want to get there right
12 now because that's a separate issue.

13 LDC [MS. BORMANN]: That is very different.

14 MJ [COL POHL]: I am simply ----

15 LDC [MS. BORMANN]: I am absolutely not ----

16 MJ [COL POHL]: You are not aware of ----

17 LDC [MS. BORMANN]: I am not aware of what access he had.

18 MJ [COL POHL]: That would be an analogous situation to
19 what we have here today.

20 LDC [MS. BORMANN]: Absolutely not. Mr. Moussaoui was not
21 held in incommunicado detention without access to his
22 attorneys, it would be standby counsel at that point, and
23 without the ability to pick up a phone and make a phone call.

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1 He had access to a law library. He had access to legal
2 materials.

3 MJ [COL POHL]: So your basic premise is, when you said
4 I'm not sure, I don't know what procedures would apply to a
5 pro se client here, you believe that the situation here may
6 be -- is certainly different than what would be in federal
7 court, particularly the Moussaoui case.

8 LDC [MS. BORMANN]: I know the procedure here would be
9 different.

10 MJ [COL POHL]: Okay.

11 LDC [MS. BORMANN]: There is absolutely no doubt in my
12 mind. And because this is a case of first impression, I -- I
13 mean, Mr. Bin'Attash wishes to know what his rights are, and I
14 can't advise him.

15 MJ [COL POHL]: Okay.

16 LDC [MS. BORMANN]: And that's where we are.

17 MJ [COL POHL]: Is that where we are?

18 LDC [MS. BORMANN]: That's where we are.

19 MJ [COL POHL]: But at this time it's your understanding
20 that Mr. Bin'Attash wants to know what those rights are and
21 then decide whether or not he wishes to appear pro se; is that
22 where we are at?

23 LDC [MS. BORMANN]: Let me check, but I believe so. I got

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1 a head nod. The answer is yes, Mr. Bin'Attash would like to
2 know what his pro se rights are.

3 MJ [COL POHL]: Okay.

4 LDC [MS. BORMANN]: Thank you.

5 MJ [COL POHL]: Trial Counsel, I know this is not your
6 issue, so don't -- what we are going to do is -- this issue
7 impacts on the regular trial team, so we will switch out trial
8 teams and perhaps return to 292 later on. Stand by for that.

9 How long will it take for the other people to get
10 here? If you know. If you don't know, that's fine.

11 STC [MR. CAMPOAMOR-SANCHEZ]: I don't know the answer, but
12 I would assume no more than ten minutes. Their trailer
13 is ----

14 MJ [COL POHL]: Let's go ahead and we will recess until
15 the other team convenes, and we will pick up where we are,
16 which means we will probably have to repeat a few things, and
17 then we will see the way ahead at that point.

18 The commission is in recess.

19 [The R.M.C. 803 session recessed at 1032, 19 October 2015.]

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