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1 [The R.M.C. 803 session was called to order at 0908,
2 9 December 2015.]

3 MJ [COL POHL]: The commission is called to order. Any
4 changes in the prosecution team today?

5 CP [BG MARTINS]: No, Your Honor.

6 MJ [COL POHL]: I note that Mr. Mohammad and
7 Mr. al Hawsawi are absent. All other detainees are here.

8 Any changes from the defense, Mr. Nevin?

9 LDC [MR. NEVIN]: No, Your Honor.

10 MJ [COL POHL]: Ms. Bormann?

11 LDC [MS. BORMANN]: No, Judge.

12 MJ [COL POHL]: Mr. Harrington?

13 LDC [MR. HARRINGTON]: No, Judge.

14 MJ [COL POHL]: Colonel Thomas?

15 DDC [Lt Col THOMAS]: No, sir.

16 MJ [COL POHL]: And Mr. Ruiz?

17 LDC [MR. RUIZ]: No, Judge.

18 MJ [COL POHL]: Okay. Let's go ahead and account for the
19 absent detainees.

20 CP [BG MARTINS]: Your Honor, we're going to swear the
21 witness in again.

22 CAPTAIN, U.S. ARMY, was called as a witness for the
23 prosecution, was sworn, and testified as follows:

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1 DIRECT EXAMINATION

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

3 Q. Captain, you're the same captain that is the liaison
4 between the Staff Judge Advocate's office and Camp VII; is
5 that correct?

6 A. I am, sir.

7 Q. You have testified on previous occasions and advised
8 these accused of their rights to attend in the morning; is
9 that correct?

10 A. That's correct.

11 Q. All right. The two of the individuals that I'm
12 looking to right now are Mr. Mohammad. What time did you
13 advise Mr. Mohammad of his rights this morning?

14 A. I began advising him of his rights at 0653 this
15 morning.

16 Q. And when did you complete those rights?

17 A. Approximately 0659 this morning.

18 Q. All right. Did you do that in English or in Arabic?

19 A. I read it to him in English. He stated he did not
20 want an interpreter.

21 Q. All right. Did he understand his rights to
22 attendance this morning as the judge has explained to them any
23 number of times in these proceedings?

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1 A. Yes, he did.

2 Q. All right. What did he tell you about his right to
3 attend this morning?

4 A. When I told him he had the right to be present for
5 both the a.m. and the p.m. commissions session this morning,
6 he asked about his ICRC appointment. I stated that he had an
7 ICRC appointment scheduled for today, but I was advising him
8 of his right to attend the commission session, both the
9 morning and the afternoon session.

10 Q. All right. So that ICRC appointment, as I understand
11 it, would have been about 1600 this afternoon; is that right?

12 A. That's correct, sir.

13 Q. With respect to the this morning's attendance, did he
14 indicate that he wanted to attend this afternoon's session of
15 the commission?

16 A. He stated he did not wish to attend this morning's
17 commission session and that he did not want to attend his
18 legal appointment either.

19 Q. So he had a scheduled legal appointment over at
20 Echo II this morning, too?

21 A. He did, sir, and he did not want to attend his
22 commission session this morning.

23 Q. Do you believe that he understood his rights to

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1 attend this morning?

2 A. Yes, I do.

3 Q. Now, with respect to Mr. Hawsawi, what time did you
4 advise him of his rights to attend this morning?

5 A. I began speaking to him at 0636 and then we went
6 through the advisement of his rights at approximately 0639
7 this morning.

8 Q. Did you do that in Arabic or did you do it in
9 English?

10 A. I read it in English. I asked him if he would like
11 an interpreter, and the interpreter read the Arabic portion to
12 him.

13 Q. All right. And you followed the forms as -- the same
14 forms that we have used in previous proceedings of this
15 commission, correct?

16 A. Yes, sir, exactly as it was written.

17 Q. All right. With respect to Mr. Hawsawi, what did he
18 tell you?

19 A. He asked whether or not he had an ICRC meeting today
20 after I advised him that he had the right to be present at
21 this morning's commissions hearing and this afternoon's. He
22 asked again about his ICRC meeting and I stated to him he did
23 have an ICRC meeting scheduled but I was here to advise him

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1 that he had the right to attend this commission proceeding.

2 Q. What did he say with respect is to his attendance
3 this morning?

4 A. He stated his waiver would not be voluntary this
5 morning because he had to choose between ICRC and commissions.
6 I then advised him that nobody was forcing him to attend
7 either because he had the right to attend commission this
8 morning and this afternoon; he had the right to attend his
9 legal appointment in the event he didn't wish to attend
10 commissions in the morning and the afternoon; and he had the
11 right to attend ICRC; but in no manner was he being forced to
12 attend any of the three.

13 Q. I think in advising him this morning, you
14 specifically directed your attention at paragraph 8, the
15 English version of the form, and it indicates, "I understand
16 that regardless of my voluntary waiver to attend a particular
17 session, I have a right at any time to decide to attend any
18 subsequent sessions"; is that correct?

19 A. That is correct, sir.

20 Q. All right. Now, what was the final answer or
21 conclusion with respect to what he wanted to do?

22 A. After I read Article 8 to him, sir, he stated that
23 his waiver would not be voluntary because of an ICRC conflict.

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1 I stated to him if he didn't feel his waiver was voluntary,
2 nobody was forcing him to sign this sheet.

3 I then re-read Article 8 to him again and asked him
4 whether or not he understood what Article 8 said. He said yes
5 and he would sign the sheet.

6 Q. And he signed the sheet, but he put a -- put
7 something on the sheet in Arabic; is that correct?

8 A. That's correct, sir.

9 Q. And what is your understanding of what the Arabic
10 version says?

11 A. In sum and substance, sir, I asked the translator
12 what it meant and it states, "My attendance is not voluntary
13 because of an ICRC conflict."

14 TC [MR. SWANN]: All right. I have nothing further, thank
15 you.

16 MJ [COL POHL]: Mr. Ruiz?

17 LDC [MR. RUIZ]: Your Honor, I don't have any questions of
18 this witness but I would like to address the court on this
19 issue.

20 MJ [COL POHL]: Okay. Go ahead.

21 LDC [MR. RUIZ]: In fact, I believe this likely was the
22 substance of the conversation ----

23 MJ [COL POHL]: Okay.

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1 LDC [MR. RUIZ]: ---- but I would like to give you
2 additional background on what has led us to this point.

3 MJ [COL POHL]: Okay. Let me ask you a question: Your
4 client said he's not voluntarily waiving his presence, so
5 we're going to stop and have him come; why shouldn't I do
6 that?

7 LDC [MR. RUIZ]: I think you should.

8 MJ [COL POHL]: Okay.

9 LDC [MR. RUIZ]: But I also think that Mr. Hawsawi and no
10 other detainee should be put in a position to choose between
11 two rights. You heard Lieutenant Colonel yesterday testify
12 under oath that the detainees did not have to choose between
13 rights. If that is to have any meaning in practice ----

14 MJ [COL POHL]: What time is his ICRC meeting?

15 LDC [MR. RUIZ]: I believe his ICRC meeting is at 11:00.
16 And, Judge, I will tell you ----

17 MJ [COL POHL]: No, I got it.

18 LDC [MR. RUIZ]: ---- this is something, I didn't know
19 about this until yesterday, Mr. Hawsawi was informed about it
20 the day before. And this is not an issue of our own creation.
21 We actually submitted a request last night as soon as I found
22 out about this issue to the special litigation team to
23 reschedule Mr. Hawsawi's ICRC meeting for a later time this

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1 week that didn't conflict with the commissions hearings so
2 that he could attend today, he could attend his ICRC meeting.
3 As of the time -- as of the time I came in court, I had not
4 received a response from the special litigation team on that
5 issue.

6 I also discussed this issue immediately after court,
7 not with this SJA, but with another representative who
8 represented himself to me as the SJA, a major, and I explained
9 to him that this was a conflict and would create a conflict
10 for our scheduling moving forward. And I will tell you,
11 Judge, that to my surprise, that SJA's response was that was
12 Mr. Hawsawi's problem. I then asked him whether Mr. Hawsawi
13 could come to court in the afternoon and he said he would not
14 be able to make that choice.

15 Now, I understand and I believe ----

16 MJ [COL POHL]: Well, that's not true.

17 LDC [MR. RUIZ]: Sure. I do -- and I believe that this
18 morning he was properly advised, but that is an issue.

19 The ICRC notifies the SJA's office a month ahead of
20 time of the windows and times of opportunity when they're
21 coming to court. And based on information and belief, the
22 SJA's office has a representative whose job it is to schedule
23 these meetings. So in making this decision, I'm only asking

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1 you to mitigate Mr. Hawsawi's circumstance with with those
2 facts on that background.

3 MJ [COL POHL]: Got it.

4 LDC [MR. RUIZ]: What I'm asking is that he have the
5 opportunity to attend this ICRC meeting and to come to court
6 and to listen to the testimony today and not have to choose
7 between those two rights.

8 MJ [COL POHL]: Got it.

9 Mr. Nevin, your client indicates he had a -- although
10 we could have adjusted his schedule -- had had an ICRC issue
11 also, because that's what I heard her say.

12 Didn't you tell me that Mr. Mohammad had a 1600 ICRC
13 meeting?

14 WIT: Yes, sir.

15 LDC [MR. NEVIN]: My understanding is that it's 1600. But
16 in any event, I know that Mr. Mohammad, for a variety of
17 reasons, wants to attend that ICRC meeting and ----

18 MJ [COL POHL]: Is his absence here voluntary, then?

19 LDC [MR. NEVIN]: It's -- yes, it is voluntary.

20 MJ [COL POHL]: Okay. Are there any ICRC issues before I
21 go to the government with the other detainees?

22 Thank you, Mr. Nevin.

23 DDC [Maj SCHWARTZ]: Your Honor, just that we have the

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1 same issue, that Mr. Bin'Attash chose to come to court but is
2 missing out on his ICRC ----

3 MJ [COL POHL]: When's his meeting?

4 DDC [Maj SCHWARTZ]: 10:30 this morning. I'm sorry 1:30
5 this afternoon.

6 MJ [COL POHL]: Okay. Got it.

7 Mr. Harrington?

8 LDC [MR. HARRINGTON]: I don't believe so, Judge. We're
9 checking right now.

10 MJ [COL POHL]: Mr. Connell?

11 LDC [MR. CONNELL]: Your Honor, my belief is that
12 Mr. al Baluchi's ICRC meeting is tomorrow morning at 9:15.
13 Last night we sent a request to the Special Judge Advocate --
14 excuse me, the Staff Judge Advocate's office asking them to
15 de-conflict it by moving his meeting to tonight. We do not
16 haven an answer to that yet.

17 MJ [COL POHL]: Okay.

18 Mr. Harrington?

19 LDC [MR. HARRINGTON]: We do not have a problem, Judge.

20 MJ [COL POHL]: Okay. Major Schwartz?

21 DDC [Maj SCHWARTZ]: Despite that, we don't have a problem
22 either, Judge. It's fine for today.

23 MJ [COL POHL]: Okay. So the only -- Mr. Connell, for

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1 tomorrow, is there a problem if the current schedule stays in?

2 LDC [MR. CONNELL]: A problem, yes, sir. The -- I mean,
3 the appropriate course of action is to de-conflict the two.

4 MJ [COL POHL]: Apparently that's beyond the scope of the
5 ability of people to de-conflict things. But go ahead. We're
6 about to ----

7 LDC [MR. CONNELL]: In that case, prophylactically, I
8 would ask the JTF to de-conflict the two appointments and
9 allow the ICRC and Mr. al Baluchi to do the appointment
10 tonight.

11 MJ [COL POHL]: Got it.

12 Trial Counsel?

13 CP [BG MARTINS]: Your Honor, we concur with your
14 assessment that, given the lack of a voluntary waiver pursuant
15 to your instructions and the ruling, longstanding ruling, that
16 we can't proceed and would recommend that he be brought here
17 to the proceedings. And we'll review this with the Joint Task
18 Force and determine how we can eliminate the conflicts.

19 Our strong urging is that we proceed with these
20 proceedings and that they determine how to provide ICRC
21 meetings to these accused.

22 MJ [COL POHL]: General Martins, I understand there's a
23 lot of fingers in this pie, and I understand, unlike a normal

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1 court-martial, that there's not really unity of command, and
2 therefore decisions are made by some people with one chain of
3 command and which aren't necessarily in your chain of command.
4 Okay, so I understand that.

5 But you and the government here is the only entity I
6 have to work through, and it doesn't strike to me that this
7 type of -- the commission schedule has been put out, and
8 again, I know things get canceled, but I put it out about a
9 year in advance. Apparently the ICRC puts their schedule out
10 about a month in advance. It doesn't strike me as very
11 difficult to de-conflict those schedules.

12 I don't run the confinement facility. Maybe it is
13 hard. But it's got to be done. Because it's a Hobson's
14 choice that the accused should not be forced to make.

15 CP [BG MARTINS]: Your Honor, I would respectfully
16 disagree with the Hobson's choice. You're running a capital
17 military commission. The right to presence is a right to
18 presence, not a right to be absent, as you advised them. They
19 can be compelled to come to any commission proceeding. They
20 could be here right in court right now and you could be
21 talking to them personally, which is the requirement under the
22 jurisdiction we're in, the cases that we talked about.

23 So our preference is that we use this valuable time

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1 with the commission and we work with the JTF to reschedule.
2 Obviously, he's not here and it's not going to happen
3 immediately, but that you direct that he be brought to court,
4 which is what the whole waiver process was about, and that we
5 get on with it. That would be our urging, and then
6 de-confliction happens thereby. They will get -- and we'll
7 work with the JTF to get them their ICRC meetings.

8 MJ [COL POHL]: Let me -- there's always somebody behind
9 the curtain on this who I have no idea who they are.

10 When Mr. Connell says, "I've requested to de-conflict
11 the schedules," apparently there was also another request to
12 de-conflict the schedules by Mr. Ruiz, and we get this --
13 according to Mr. Ruiz -- answer, "That's the choice of the
14 detainees," I mean, is that -- let me just understand. Is
15 that the government's kind of position?

16 CP [BG MARTINS]: Your Honor ----

17 MJ [COL POHL]: I understand.

18 CP [BG MARTINS]: I don't know precisely all of the
19 communications. I know when we get one side of the story and
20 we go in and we look and we ask all the different
21 questions ----

22 MJ [COL POHL]: Yeah.

23 CP [BG MARTINS]: ---- and we ask all of the questions of

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1 the JTF, it's not that simple.

2 MJ [COL POHL]: I understand. That's why I made the
3 remark I made earlier. There's all sorts of different fingers
4 in this pie and there's versions that come through the
5 detainees and versions that come through the Staff Judge
6 Advocate. I've got that. But it seems to me is do we need
7 just a band-aid solution for today's hearing, or do we need to
8 address this substantively?

9 Let me ask you this: I understand that the ICRC
10 meeting certainly is not the same kind of right, if you want
11 to call it a right, as a trial right. I understand that.
12 Okay. But as we discussed yesterday about treating them
13 humanely and they have ICRC visits, that's a whole part of
14 that process. Is there a way to de-conflict this now?

15 CP [BG MARTINS]: That's what I recommend ----

16 MJ [COL POHL]: What I'm saying is Mr. Mohammad, at least,
17 had a concern about it, but he's voluntarily -- the only
18 person really with a problem today apparently is Mr. Hawsawi,
19 and we've placed him in the position -- what time is his
20 meeting, Mr. Ruiz?

21 LDC [MR. RUIZ]: I understand it to be 11:00, Judge.

22 MJ [COL POHL]: Okay.

23 CP [BG MARTINS]: Your Honor, we're not minimizing the

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1 importance of the International Committee of the Red Cross
2 discussions with detainees. This is a law-of-war facility.
3 That's important.

4 MJ [COL POHL]: Okay.

5 CP [BG MARTINS]: Your military commission is critically
6 important, too.

7 MJ [COL POHL]: Got it.

8 CP [BG MARTINS]: We have this one week. We can
9 de-conflict this without moving you a bit, and that's what I
10 would recommend, except for the time needed to get the
11 detainee here.

12 MJ [COL POHL]: Okay. Okay. Got it. Thank you.

13 LDC [MR. RUIZ]: Judge, may I be heard?

14 MJ [COL POHL]: Sure. Mr. Ruiz, how long does the normal
15 ICRC visit take?

16 LDC [MR. RUIZ]: May I have a moment, Judge?

17 [Pause.]

18 MJ [COL POHL]: Captain, I think you can return to your
19 seat over there. Thank you.

20 WIT: Yes, sir.

21 [The witness was excused and resumed her seat in the
22 courtroom.]

23 LDC [MR. RUIZ]: Judge, as I understand it, it's about an

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1 hour in terms of the meeting time with the ICRC
2 representatives. There's been times when those meetings are
3 scheduled the same day as counsel meetings and my experience
4 has been that it's typically about an hour that they spend
5 with the ICRC representatives.

6 The -- what I wanted to add in terms of General
7 Martins' comments about de-conflicting the issue is I
8 understand that the Red Cross is only on island for a certain
9 period of time and some personnel are going to be leaving
10 perhaps as early as the next couple of days. So in
11 de-conflicting that, it would have to be done earlier rather
12 than later.

13 We certainly can de-conflict it. I'm not sure what
14 time it is now, but if Mr. Hawsawi can attend his ICRC meeting
15 and come over to the proceedings immediately after that, that
16 would certainly at least resolve his issue for today. But I
17 do agree that it's an issue that needs to be worked on moving
18 forward so that we can avoid doing that.

19 MJ [COL POHL]: Okay.

20 LDC [MR. RUIZ]: If you're inclined to have Mr. Hawsawi
21 brought to court, the only thing I'm going to ask you to do is
22 to order them to deliver a letter from me informing him of the
23 rationale so that there are no issues with bringing him to

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1 court. But I would ask that you not do that, based on the
2 circumstances.

3 MJ [COL POHL]: Got it. Thank you.

4 Mr. Connell, you wish to add something?

5 LDC [MR. CONNELL]: Yes, sir. Your Honor, in support of
6 my request for action by the military commission earlier, I
7 think it makes sense to make part of our record our request to
8 JTF to show exhaustion of our administrative remedies. May I
9 approach and have this ----

10 MJ [COL POHL]: Sure.

11 LDC [MR. CONNELL]: ---- marked as an appellate exhibit?

12 MJ [COL POHL]: Sure.

13 LDC [MR. CONNELL]: I will give a copy to the prosecution
14 and all parties.

15 MJ [COL POHL]: Mr. Swann, what's the exhibit number of
16 the exhibit of the appellate waiver?

17 TC [MR. SWANN]: 393, Your Honor, each consisting of two
18 pages.

19 MJ [COL POHL]: Okay. Put this in the 393 series, then.

20 Here's what we're going to do, given the time and how
21 long it takes to transport a detainee here anyway.

22 Mr. Hawsawi will be re-advised that he can attend the
23 afternoon session. I direct that to be done immediately. If

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1 he chooses to attend the afternoon session, we will pick up in
2 the afternoon and he will have his meeting and we will start
3 at 1315.

4 If he indicates he doesn't want to come to the
5 afternoon session, let me know immediately, and we will just
6 begin -- we will begin this morning. I'm just saying it's --
7 but to be clear in the future -- and how you want to do it is
8 up to you, but when an accused says, "I'm not voluntarily
9 waiving my presence," he comes.

10 And, Defense Counsel, make sure they -- when
11 Mr. Hawsawi told them, "I'm not voluntarily waiving it," for
12 whatever reason, he comes. We don't get in this situation
13 where I find out for the first time that it's not a voluntary
14 waiver and now we've had this issue and kicked the can down
15 the road again.

16 We're only missing a morning session. It's the not
17 the end of the world. But to make it clear, the process is
18 set up as it is. They were told what the rules are. You
19 either voluntarily waive without conditions -- they can make
20 decisions to say, well, I'd rather do this, I'd rather do
21 that, but I'm voluntarily waiving it. But if they don't
22 voluntarily waive it -- and the JTF needs to understand
23 this -- they come, and then we resolve it at that point.

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1 So this is a one-time pass that Mr. Hawsawi is going
2 to get and none of the other ones are going to get this again.
3 If this happens again, as soon as I come in and hear the
4 words, "I'm involuntarily waiving my presence," the answer
5 will be very quickly said: "Go get him." Actually, the first
6 question will be, "Why isn't he here?" And if he's not here,
7 the question will be to go get him. I hope that's all
8 understood.

9 I understand. I don't want to put him in a -- I
10 understand his position, but he also needs to understand we
11 cannot run this commission where he says I'm not -- I don't
12 want to come and it's involuntary and we just let him, okay,
13 and then we end up where we are today.

14 Mr. Ruiz?

15 LDC [MR. RUIZ]: Judge, I understand all of that. I
16 understood it coming in. But what I have not heard you direct
17 the government to tell JTF in quite as stern a fashion is not
18 to conflict the schedule and create these problems for the
19 commission or these Hobson's choices for these men between
20 rights, and I would ask that the commission issue the same
21 stern warning to JTF so they understand that.

22 MJ [COL POHL]: If you let me finish, you might find that
23 out.

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1 LDC [MR. RUIZ]: Very well, thank you.

2 MJ [COL POHL]: But you also understand -- if you call it
3 stern, that's your -- that's your word. But I'm not just
4 saying it to you, the defense, so your client understands, I'm
5 saying to the JTF so they understand. Because when I issued
6 the order, it says, if they voluntarily don't come, they don't
7 have to. Perhaps it wasn't clear. If it's not voluntary,
8 they come. So if you want me to be stern with them, I'm stern
9 with you, too. Because he should be here, under the rules.
10 Okay.

11 Now, the de-confliction issue. I understand these
12 are -- there are various priorities here. If possible,
13 de-conflict it; if they can't be de-conflicted, I need to know
14 why. And I need to know who makes these kind of decisions
15 because these continual -- rephrase that. We just need to
16 know why this has happened, if it does happen.

17 Okay. So the way ahead -- I have one other matter to
18 take up before we recess, is Mr. Hawsawi is to be immediately
19 re-advised; does he want to come to the afternoon session. If
20 the answer is yes, we will recess until 1315 with the four
21 detainees here. If the answer is no, let me know immediately,
22 and we will reconvene as quickly as we can thereafter. Okay?

23 LDC [MR. RUIZ]: Judge, can I also he get an order from

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1 you or a ruling that a letter from myself can be delivered to
2 him to explain -- to him to explain the situation? Normally,
3 it would have to go through the privilege team process to be
4 marked. But for today's purposes ----

5 MJ [COL POHL]: What is there to explain? I have already
6 told him, if you don't want to come to the morning session,
7 you can ask to come in the afternoon session. That's all
8 we're doing. I have already told him that a number of times.

9 LDC [MR. RUIZ]: I'm seeking to avoid any additional
10 friction or any additional misunderstandings, Judge, which in
11 my experience can happen in these circumstances. A letter
12 from me would alleviate that.

13 MJ [COL POHL]: How long will it take you to draft said
14 letter?

15 LDC [MR. RUIZ]: Maybe five minutes. I will do it by
16 hand.

17 MJ [COL POHL]: Okay. You've got five minutes to draft
18 the letter and give it to the JTF, but I want Mr. Hawsawi
19 contacted as quickly as possible about coming this afternoon,
20 because if he's not going to come -- I'm not going to wait all
21 morning and he doesn't come.

22 LDC [MR. RUIZ]: Yes, sir. Thank you.

23 MJ [COL POHL]: Thank you. Okay.

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1 ACC [MR. BIN'ATTASH]: Before the session ends, I would
2 like to raise my objection to the presence of my attorney. I
3 just want it to go on the record.

4 MJ [COL POHL]: Okay, Mr. Bin'Attash, I actually wanted to
5 talk to you about something on that issue. Okay. You are on
6 the record.

7 As discussed yesterday, you will be given a copy of
8 the -- of the ruling. Now, the way it's going to work, just
9 so you and your counsel understand, is there will be a stamped
10 copy given to the defense that says releasable to you. It's
11 in English. If the defense wishes to translate it, if you
12 need it translated, that's going to be their responsibility to
13 do it because I don't want it to go to outside people because
14 it contains information it should not.

15 And, Major Schwartz, if it is translated, okay, you
16 are to return it with a certificate of accurate translation to
17 the court security officer. That way he can mark it
18 releasable to the detainee, okay? So that's how that
19 procedure will work, so it's all clear.

20 DDC [Maj SCHWARTZ]: Yes, sir.

21 MJ [COL POHL]: Got it. Okay.

22 That being said, the commission is in recess ----

23 LDC [MR. NEVIN]: Could I ask, Your Honor, assuming that

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1 we don't come back until 1315, will the order of witnesses be
2 the same?

3 MJ [COL POHL]: I think we'll probably pick up with the
4 afternoon witness.

5 CP [BG MARTINS]: Yeah, Your Honor, the 1315 is the VTC.

6 MJ [COL POHL]: And I need to know as quickly as possible
7 as to when it comes a point of no return anyway, but whether
8 or not we can do anything this morning. So it just is whether
9 Mr. Hawsawi wishes to come this afternoon. If he doesn't, we
10 will just pick up where we're at.

11 CP [BG MARTINS]: Your Honor, if he -- if he now upon
12 re-advisement waives, you know, without any
13 qualifications ----

14 MJ [COL POHL]: Coming this afternoon. Only this
15 afternoon. Not this morning. This ----

16 CP [BG MARTINS]: Don't re-advise him about coming to the
17 proceedings other than this afternoon?

18 MJ [COL POHL]: Yeah. This morning's done.

19 CP [BG MARTINS]: Right.

20 MJ [COL POHL]: He's going to his ICRC meeting. If he
21 wishes to come this afternoon, he is to let us know after the
22 ICRC meeting. If the answer is, "I still don't want to come,"
23 then we'll just pick up as much as we can this morning.

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1 CP [BG MARTINS]: When you say, "I still don't want to
2 come," meaning I voluntarily waive ----

3 MJ [COL POHL]: Bingo.

4 CP [BG MARTINS]: ---- unqualified waive, my right.

5 MJ [COL POHL]: It's got to be a voluntary waiver.

6 Yes, ma'am?

7 ADC [MS. LACHELIER]: Your Honor, on behalf of
8 Mr. Hawsawi, we'd like to put in our special request form that
9 we put in yesterday evening asking for the ICRC meetings to be
10 de-conflicted.

11 MJ [COL POHL]: Okay. Just add it to the -- what was it,
12 393, Mr. Swann?

13 TC [MR. SWANN]: Yes, sir.

14 MJ [COL POHL]: Yeah. Okay. Good. Okay.

15 LDC [MR. HARRINGTON]: Your Honor, may we remain? Judge,
16 can we ask that our clients remain in the courtroom?

17 MJ [COL POHL]: Yes, clients remain in the courtroom. I'm
18 going to go back to my office and let me know what the
19 resolution is. We will either recess to -- when's the witness
20 for this afternoon scheduled for?

21 CP [BG MARTINS]: 1315, Your Honor.

22 MJ [COL POHL]: 1315. And if there's some way we can get
23 more stuff this morning, we will. Commission is in recess.

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1 [The R.M.C. 803 session recessed at 0935, 9 December 2015.]

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