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1 [The R.M.C. 803 session was called to order at 0913,
2 19 October 2016.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All of the parties who were present when the court recessed
5 last night are again present.

6 Let me see. First, let me just check with both sides
7 to see if we have anything before we get underway with the
8 witness. Trial Counsel?

9 TC [MR. MILLER]: Nothing from the government, Your Honor.

10 MJ [Col SPATH]: Let me just ask, in relation to tab 3 and
11 10 for Appellate Exhibit 355, was there any decision or any
12 difference?

13 TC [MR. MILLER]: General Martins can address that, Your
14 Honor.

15 CP [BG MARTINS]: Your Honor, given that you have a
16 witness, it might be better to have ----

17 MJ [Col SPATH]: I just wanted to know if you have turned
18 it over to the defense have you turned it over to the defense?

19 CP [BG MARTINS]: No, we have not.

20 MJ [Col SPATH]: Is your plan to turn it over or not to?

21 CP [BG MARTINS]: May I come to the podium?

22 MJ [Col SPATH]: You may.

23 CP [BG MARTINS]: Your Honor, the government opposes ----

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1 MJ [Col SPATH]: Okay.

2 CP [BG MARTINS]: ---- the production of the e-mails
3 because they are not relevant, nor are they material to the
4 preparation of the defense. They are purely administrative.
5 When we argued the matter back in September, Mr. Kammen agreed
6 that if the government submitted them to you and you were to
7 review them and represent that they were purely
8 administrative, that he would accept that representation.

9 The government has complied with that -- its part of
10 the agreement, has produced them to you, and they are in the
11 appellate record. It is now time, we would respectfully
12 submit, for Mr. Kammen to honor his part of the agreement and
13 to accept your representations that they are purely
14 administrative.

15 So we -- subject to any questions you have, we submit
16 it to you for decision.

17 MJ [Col SPATH]: No, I appreciate that. That's all I
18 needed to know. It will help me. I said I wouldn't rule
19 overnight. I won't. I should have a ruling this afternoon.

20 Mr. Kammen, anything from the defense on any issues
21 before we get started?

22 LDC [MR. KAMMEN]: Not on that issue. Mr. al Nashiri has
23 asked me to just advise the commission that in his view, the

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1 administration who's responsible for the facility where he's
2 kept has begun embarking on a plan to pit inmates against each
3 other in a way that he finds very, very distressing. And he
4 wanted us to advise the commission that this seems to be going
5 on and has been going on for a time and is escalating in a way
6 that, I think, in the very near future we'll be filing a
7 motion and a request to investigate this and request for
8 witnesses about this.

9 But Mr. al Nashiri wanted us to address and put it on
10 the record that these things are occurring and they are very,
11 very distressing to him.

12 So thank you, Your Honor.

13 MJ [Col SPATH]: No, I appreciate that. Please, if things
14 develop where we need to file a motion and even if we need to
15 try to find a way to deal with it, if it's an emergency,
16 please file it and we'll get to it.

17 LDC [MR. KAMMEN]: Thanks.

18 MJ [Col SPATH]: Thank you.

19 Trial Counsel, is Mr. Gill available to testify?

20 TC [MR. MILLER]: Mr. Gill is available, Your Honor, and
21 he's at the Mark Center in the witness room.

22 MJ [Col SPATH]: All right. Then I think we are ready to
23 proceed. Let's get him on the screen. I'll take care of

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1 reminding him he's still under oath and then Mr. Kammen, you
2 can get underway with your redirect.

3 **STEPHEN D. GILL, civilian, was recalled as a witness for the**
4 **defense, was reminded of his previous oath, and testified as**
5 **follows:**

6 **REDIRECT EXAMINATION**

7 **Questions by the Military Judge [Col SPATH]:**

8 Q. Mr. Gill, this is Colonel Spath, the judge down here
9 at GTMO. Can you hear me?

10 A. Yes.

11 Q. I know you're the same Mr. Gill who testified
12 previously in this proceeding. I'm just going to remind you
13 are still under oath. Do you understand?

14 A. Yes.

15 Q. All right. I'm going to turn it over to Mr. Kammen
16 for redirect. Mr. Kammen.

17 **Questions by the Learned Defense Counsel [MR. KAMMEN]:**

18 Q. Good morning. How are you?

19 A. I'm not well, sir. I am under extreme duress, having
20 been taken from my home by 20 law enforcement officers
21 yesterday at gunpoint, being shackled and held in a jail cell
22 all night. I am not well. I'm under duress and, therefore,
23 whatever I may say here is inherently unreliable.

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1 Q. I notice you have a wristband; is that a shackle or
2 some form of identification?

3 A. No, they took the shackles off me moments ago. I had
4 ankle shackles on, a waist shackle, and handcuffs. This is a
5 band apparently identifying me at the jail -- the most recent
6 jail facility that I was housed in -- [no audio] --

7 Q. Then I'll move on. For the record, what facility
8 were you housed at last night?

9 ATC [LT MORRIS]: Your Honor ----

10 A. I believe it was ----

11 TC [MR. MILLER]: That's really not relevant. It's not
12 relevant.

13 A. ---- Alexandria ----

14 MJ [Col SPATH]: You need to wait, Mr. Gill, until I rule
15 on the objection. I know it's hard sometimes over the VTC.

16 Trial Counsel, your objection is overruled.

17 Mr. Gill, you may answer the question.

18 A. I was told it was the Alexandria County Detention
19 Facility.

20 Q. Have you been able to sleep at all?

21 A. Very little. There was -- the light was on in this
22 cell all night. I was awoken several times, once by a nurse,
23 another time just by noise in the cell block. I slept in

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1 these clothes. I tried to cover my eyes from the light, did
2 not sleep. And it was about 50 degrees in the cell. They
3 were pumping in extremely cold air. So I feel as if I have
4 not been well rested and my head is not clear.

5 MJ [Col SPATH]: All right. Give me a minute, Mr. Kammen.
6 I need to worry about the competence of the witness.

7 **EXAMINATION BY THE MILITARY COMMISSION**

8 **Questions by the Military Judge [Col SPATH]:**

9 Q. Mr. Gill, look, I know you don't probably appreciate
10 the warrant of attachment and what brought you there. We're
11 going to be back here in December. And what we need from you
12 is somebody who can competently answer questions. And if you
13 can't do it, I'm going to take you at your word. If you're
14 not well rested and you can't competently answer questions and
15 you're inherently unreliable, I'm going to take you at your
16 word, but we're not going to resolve this issue.

17 And if we don't resolve the issue, here's what I
18 think will happen. The government is going to issue another
19 subpoena. They're going to serve you. And you're going to
20 have to come back in December. So if I give you some time,
21 and you get to rest this morning, we can do it this afternoon,
22 or we can go through this process again.

23 But you've already told me you're not well rested and

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1 you're inherently unreliable.

2 A. Well, because I'm under duress, sir.

3 Q. I understand that. And the key for me is, of course,
4 to have a witness who's competent to testify, and so if
5 everything you tell me is inherently unreliable and you don't
6 feel that you're in a position to testify, similar to someone
7 who has taken medication or someone who is not of right mind,
8 the testimony is not going to be helpful. The rules, in fact,
9 indicate I wouldn't listen to the testimony.

10 But what I don't want to do is cause more duress and
11 have you get to go through this exercise a second time. So
12 I'm trying to find a way ahead that makes sense. So if the
13 way ahead is you have some time in between the event
14 yesterday -- I don't know what happened -- and the time you
15 testify, we can do that. We're here all day today. If that
16 won't do it, I can have you wait there until I talk to the
17 parties to get their options. I don't know what their options
18 will be.

19 But the key is to have you testify about matters
20 you've already testified about, and offer the parties a chance
21 to do a redirect and a recross. And we're going to do that
22 before I rule on this motion.

23 And so that's where we're at. And I'm being quite up

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1 front about the concerns that I have about your testimony, of
2 course. And so what would help, if anything, to get you
3 prepared to testify in a manner that's not inherently
4 unreliable, based on your words.

5 A. Well, for one thing, Your Honor, the fact that, you
6 know, as you know from my five-page legal brief that I
7 furnished the court, it's my understanding, based on the law,
8 that the ----

9 Q. Mr. Gill, I don't care. I don't care.

10 I'm going to be really clear. I don't care about
11 your opinion about the law. What I care about is having a
12 witness who is competent to testify, end, period; not why you
13 filed it, not what were you were thinking when you filed it,
14 not why you believe you're right. That's what I need to get
15 to. And if we can't get there ----

16 A. Sir. Yes, sir.

17 Q. ---- we're going to have to figure out a way that
18 your testimony is not inherently unreliable. And so if that
19 means ----

20 A. Well ----

21 Q. ---- if that means you get more rest, I'll give be
22 you more rest. If that means we do this again in December,
23 we'll do it again in December. But what's going to happen is

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1 you're going to provide testimony that is relevant to a
2 decision that I need to make in this case.

3 And I offered -- before I let you depart, I made
4 clear to the defense I was going to let them do a redirect.
5 And so I can't simply not let them do a redirect and then rule
6 on this motion. That wouldn't be very fair. I said, I'll let
7 you do a redirect, I'll make sure you have a full chance to do
8 a redirect, and allowed you to go make a flight and head home.
9 And frankly, ensure that what you needed to do was respected
10 because of your assertions, I know when it is, I've looked at
11 my calendar, I can testify.

12 All I need to do is find out if you believe you're
13 competent to testify about the matters at hand, or you don't.

14 A. I could never be competent to testify while being
15 under arrest from a -- an unlawful warrant as I am now,
16 so ----

17 Q. And so that's the basis for your belief that you're
18 not competent?

19 A. That's one of them, Your Honor. The other one is I
20 am extremely exhausted, not clear-headed from the treatment I
21 experienced yesterday when the attachment was issued against
22 me using deadly force against the actual scope of it, but ----

23 Q. All right. So what I'm going to do first is I'm

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1 going to talk to the parties, and you're going to wait there
2 with the marshals while we have that discussion. I hope I can
3 give you an update reasonably soon as to how long that
4 discussion will take and how long you will either be there or,
5 frankly, held wherever they're going to hold you. But right
6 now I want the marshals to keep you there. I know they're in
7 the room with you. And as soon as we have resolution, we'll
8 get back on the VTC screen.

9 For now, you're excused, and if we could cut off the
10 VTC feed.

11 A. Thank you.

12 [The VTC was terminated.]

13 MJ [Col SPATH]: So we can do just a straightforward
14 witness competency type exam to make sure the witness
15 understands that he needs to tell the truth, understands the
16 scope of the oath, and then if there's a concern -- I
17 recognize the witness self-reported as incompetent; that's not
18 enough.

19 We can go through the do you understand the oath, do
20 you understand the need to tell the truth, and then assess
21 credibility like I always would. But if we have a real
22 concern about competency, we need to address it. And again,
23 we can do this again, which seems -- you know ----

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1 LDC [MR. KAMMEN]: I mean, I -- if we're going to do it
2 again and he's going to be held for three months, he's not
3 going to get any better.

4 MJ [Col SPATH]: He will probably have time to rest,
5 Mr. Kammen. You know, I have great sympathy -- I have
6 empathy, I don't have sympathy. I have great empathy that
7 probably being held is uncomfortable. Thousands of people
8 across the United States every day testify competently who are
9 in jail, taken into custody. We know that and that's why I'm
10 asking you all, because it's your witness, what do we want to
11 do. If we want to just, hey, can you answer questions
12 and ----

13 LDC [MR. KAMMEN]: Let's start there, because I don't want
14 to -- I mean, this is just not going to get any better. It
15 sounds like, you know, it's a situation -- and I can
16 appreciate if the answer to this is no. I mean, if it's one
17 of these situations where, have you gotten the message, will
18 you come back, you know; but if we don't believe he's gotten
19 the message and we're not confident he's going to come back,
20 it's not going to get any better.

21 MJ [Col SPATH]: No, it might get worse, either staying
22 until December or having the exact same event. I'm not giving
23 any credence one way or the other as to conditions of his

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1 detention. I have no idea one way or the other. None of us
2 do.

3 LDC [MR. KAMMEN]: Well, I suspect it's not pleasant.

4 MJ [Col SPATH]: I concur with that and I agree. I doubt
5 it would be pleasant.

6 Let me just see what the government has to say on
7 that issue. We're just dealing with the competency of the
8 witness, obviously.

9 Mr. Miller.

10 TC [MR. MILLER]: The government's preference, Your Honor,
11 is to have you go through a colloquy with him and determine, I
12 think as the court pointed out, the -- having been a
13 prosecutor for 36 years, we bring people in from jail to
14 testify all the time. They're tired, they're in shackles ----

15 MJ [Col SPATH]: And they're unhappy.

16 TC [MR. MILLER]: --- they're unhappy, very unhappy.

17 MJ [Col SPATH]: I understand.

18 TC [MR. MILLER]: So I think here what he's trying to
19 create his own -- petulance is the word that sort of comes to
20 mind. I think he's more than competent to testify. I think
21 actually the colloquy -- the discussion we've already had with
22 him shows that he's competent. He's just angry. So our
23 preference would be to proceed today because we're just going

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1 to go through this all over again.

2 MJ [Col SPATH]: Typically what I do when there's an issue
3 of competency, be it medication or overtired or duress, is
4 there will be findings of fact entered into the record. Or a
5 child witness. Why the witness was competent to testify,
6 et cetera. So I envision that happening. And if for some
7 reason I don't find the witness competent, it's a pretty
8 narrow scope, as we know -- competent to testify, we can
9 readdress; but absent that, that's what we'll do.

10 TC [MR. MILLER]: Thank you, Your Honor.

11 MJ [Col SPATH]: Thank you. All right. If we could bring
12 him back on the screen. Mr. Kammen, I'll ask him a few
13 questions and then I'll turn it over to you.

14 [The VTC transmission was resumed with the witness.]

15 **EXAMINATION BY THE MILITARY COMMISSION**

16 **Questions by the Military Judge [Col SPATH]:**

17 Q. All right, Mr. Gill, this is Colonel Spath again, can
18 you hear me?

19 A. Yes, sir.

20 Q. All right. Do you understand that you're under an
21 oath to tell the truth?

22 A. Yes.

23 Q. Do you understand what telling the truth means?

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1 A. Yes.

2 Q. Are you comfortable that if you don't feel like you
3 can tell the truth or you are confused by a question, you will
4 at least let us know that, if you can?

5 A. I don't know.

6 Q. If you're confused by a question, do you feel
7 comfortable saying I'm confused by a question?

8 A. Well, I don't know. Again, Lieutenant Morris's
9 inability to make a straight question, I don't know. So ----

10 Q. We'll deal with that when we get there.

11 A. The question.

12 Q. That's why I'm asking, if they ask you a straight
13 question, are you comfortable giving an answer or let me know
14 if you don't understand the question?

15 A. I can try.

16 Q. All right. If you find an area where you're having
17 trouble, let me know. And another thing, if you find that you
18 need to break to take a nap, get a rest, have some water and
19 use the restroom, tell me, okay?

20 A. Yes.

21 Q. I have your warrant of release here. If we get
22 through your testimony, I will get it signed, and we'll move
23 this process along.

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1 Mr. Kammen. Questions.

2 LDC [MR. KAMMEN]: Thank you.

3 **REDIRECT EXAMINATION**

4 **Questions by the Learned Defense Counsel [MR. KAMMEN]:**

5 Q. Mr. Gill, I want to focus on three discrete periods.
6 The first is from January when you began with the convening
7 authority to March at the time of the unlawful influence
8 hearing. Are you with me so far?

9 A. Somewhat. January before -- can you say it one more
10 time, repeat it one more time?

11 Q. To March, late February, early March when there is
12 the hearing on unlawful influence will be the first period,
13 okay?

14 A. Could you just say that one more time more concisely.

15 Q. Let's start with the period. You started your
16 employment in -- with the convening authority in January; is
17 this correct?

18 A. Yes.

19 Q. And during that time in January and February, you
20 were a legal advisor, true?

21 A. January, February. Yes. Yes.

22 Q. Were you working on only the Nashiri case during
23 January and February or were you working on multiple cases?

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1 A. I think more than one case.

2 Q. Okay.

3 A. I think, yeah.

4 Q. So you were working on the Nashiri case and other
5 cases as well, right?

6 A. I would say, as best of my recollection, yes.

7 Q. And you've told us on direct examination, and I just
8 want to flesh it out a little bit, the head legal advisor at
9 that time was Mr. Toole, true?

10 A. I think -- I was never quite sure what his title was.
11 Sometimes he -- at some point, he was the legal -- acting
12 legal advisor, but I think he was the deputy legal advisor
13 and the acting deputy. I don't really know. I never really
14 knew what his role was.

15 Q. But he was your superior; isn't that correct?

16 A. Yes.

17 Q. And he would have, as you've told us, meetings in his
18 office every Monday morning in which he would make
19 assignments; true?

20 A. Yeah. That was supposed to be the way things went,
21 yeah.

22 Q. And from -- in January and February, was that, for
23 the most part, the way things went?

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1 A. In January and February?

2 Q. Yes.

3 A. Yes.

4 Q. Okay.

5 A. Yes.

6 Q. He would simply delegate responsibilities. One
7 responsibility might go to Ms. Adams, one responsibility might
8 go to you, another responsibility might go to Mr. Rich, sort
9 of take them as they come; is that correct?

10 A. Yeah. It was sort of a chronological batting order,
11 so to speak.

12 Q. Okay. Now, in January and February, did Mr. Toole
13 advise you and make any complaints about the work you were
14 producing?

15 A. What time frame?

16 Q. January and February.

17 A. No, not at all.

18 Q. Did he ever suggest to you that your work, your
19 written work was substandard or not adequate?

20 A. No, not at -- no, not at all. He used to like to
21 change words. He was like a thesaurus unto himself. He
22 didn't like this word, he would change it to another one like
23 changing happy to glad. It was six of one and half dozen of

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1 the other.

2 Q. Did he ever -- I understand that he edited stuff, but
3 did he ever say to you, no, this is unacceptable or words to
4 that effect?

5 A. No. No.

6 Q. Did he ever -- did you ever think -- did he ever say
7 or do anything that made you think that he thought your work
8 was substandard?

9 A. No. It was very odd, if I could elaborate somewhat
10 on that. And Lieutenant Colonel Patricia Lewis and I had the
11 same issue with him, in that he would tell -- he would say,
12 oh, write the memo this way, A, B, C, and then you would go
13 and write the memo, A, B, C. And then you'd bring it to him
14 and he would say, no, no, no, write the memo C, B, A. So
15 you'd change it to C, B, A and you would bring it back to him
16 and he would say, make it X, Y, Z. And then you would make it
17 X, Y, Z and then he would say, no, make it A, B, C. It was
18 like these perpetual edits that were mind-numbingly
19 nonsensical, but that's how it was. We never knew. He would
20 tell you to do one thing and then tell you do do it the other
21 and tell you to do it the first way, and it was very haphazard
22 and illogical.

23 Q. And however that was, did he ever say to you, you're

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1 just not measuring up, your work's not adequate ----

2 A. Never.

3 Q. ---- anything like that?

4 A. Never.

5 Q. Okay.

6 A. In fact, they had extended my -- I asked early on, I
7 said I know it's early on, but can you guys extend my orders.
8 And I want to say that was in February. And they said, yeah,
9 no problem. You're doing a fine job. In fact, Mr. Toole was
10 the one who said that. He said, go tell Colonel Ed Sheeran to
11 get the paperwork in to extend you. So I -- he okayed it
12 right then and there. He said, you're doing fine. And from
13 there I went to Ed Sheeran and then there was a Yeoman Chief
14 Harvey, who was also involved in the operations, orders
15 writing side of things, so ----

16 Q. I need to interrupt you, Mr. Gill.

17 LDC [MR. KAMMEN]: Your Honor, may we approach?

18 MJ [Col SPATH]: You may.

19 LDC [MR. KAMMEN]: I have just --

20 [Mr. Kammen and Mr. Miller conferred with Judge Spath].

21 MJ [Col SPATH]: All right. We're going to mark -- first
22 off, let me do this: Can we take Mr. Gill off the VTC for a
23 moment?

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1 [The VTC was terminated.]

2 MJ [Col SPATH]: 332WW is already going to come out. It
3 hasn't quite yet. It's the findings of fact I made when
4 issuing the warrant of attachment. So we're not going to mark
5 that as WW. 332XX then is the next open number we can use.
6 So we're going to mark what I was just handed as 332XX.

7 We're going to talk to the parties about it first
8 before we have Mr. Gill come back.

9 LDC [MR. KAMMEN]: Your Honor, for the record, and so
10 everyone is clear, I was handed an -- Appellate Exhibit 332XX
11 is a letter from the Federal Public Defender addressed to
12 Mr. Gill, but -- and I don't know if it's been delivered to
13 him or not.

14 And the letter reads as follows. "Dear Mr. Gill, I
15 understand you've been detained by the United States Military
16 and that you are present in the Eastern District of Virginia
17 and that you are a civilian citizen of this country.

18 "I am the Federal Public Defender for the Eastern
19 District of Virginia, and my office may be able to assist you
20 if you are eligible for court-appointed counsel under these
21 circumstances and my office is appointed to represent you. In
22 particular, substantial question may exist whether the U.S.
23 Military possesses any authority under our Constitution to

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1 detain you outside of ordinary civilian processes in time of
2 peace. See Ex Parte Merryman, with the citation. If you
3 would like to request our assistance, please do so and I will
4 endeavor to determine whether my office can be appointed to
5 represent you in this matter." And it's signed Jeremy Kamens.
6 And I just want to make it clear ----

7 MJ [Col SPATH]: I know.

8 LDC [MR. KAMMEN]: ---- it is no relation. Different
9 spelling. Don't know him, not a relative. He was the Eastern
10 Public -- he's the Federal Public Defender of the Eastern
11 District of Virginia.

12 What I would propose, Your Honor, and I think
13 we're -- I feel obligated to at least advise him that we have
14 received this. I don't know if he has. Maybe he has, maybe
15 he hasn't. If he has, we can continue; if he hasn't, I think
16 he has to decide what he'd like to do.

17 MJ [Col SPATH]: I don't know if it's that clean, but I
18 agree with advising him.

19 Mr. Miller.

20 TC [MR. MILLER]: I think it's -- we're in the middle of
21 testimony. Other entities don't get -- I'm sorry, Judge.

22 MJ [Col SPATH]: You can use either mic.

23 TC [MR. MILLER]: I prefer the podium. He's in the middle

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1 of testimony. It's a day late and a dollar short. The fact
2 of the matter is, public defenders from whatever district
3 don't get to step in and stop the military commissions from
4 operating in a lawful manner. If somebody wanted to enter
5 their appearance and come in, and I guess be an impleader or
6 whatever the civil term is for it, they could have done so.
7 It's a little late for this at this particular point.

8 Mr. Gill doesn't get to run this courtroom and that's
9 what's going on here. We -- Mr. Kammen likes to talk about
10 kangaroo court. This is what -- that's correct -- this is
11 what he, Gill, is trying to turn this into. Every time we
12 turn, I don't feel competent, I'm tired. I don't know who
13 contacted the public defender; I'm assuming -- did you,
14 Mr. Kammen?

15 LDC [MR. KAMMEN]: No.

16 TC [MR. MILLER]: So I don't know who may have done it,
17 but I just presume that we shouldn't -- or I would suggest
18 strongly, Your Honor, that we just continue. We can't allow
19 other outside entities to interfere in this particular
20 process. We talk about giving it legitimacy. This is a real
21 court. I am a real lawyer. We have -- this is a real case.
22 We have 17 dead soldiers and one dead Bulgarian seaman. I
23 suggest that we continue.

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1 MJ [Col SPATH]: Mr. Kammen, any other comments?

2 LDC [MR. KAMMEN]: First I heard any of this was when this
3 letter was handed to me. To my knowledge, I know nobody here.

4 MJ [Col SPATH]: No, I again, as officers of the court,
5 when you guys tell me this stuff, I have no dispute with that.

6 LDC [MR. KAMMEN]: You know, if you say we move ahead, we
7 move ahead. I do suggest, Your Honor, that the letter
8 certainly does suggest there's a question of whether he's
9 being lawfully held and that's troubling to me, but ----

10 MJ [Col SPATH]: I understand that -- that I should not
11 say -- what I'm going to say is it doesn't cause me much pause
12 because he wasn't detained by military authorities, he was
13 detained by the U.S. Marshals Service. And whether or not the
14 U.S. Marshal -- the U.S. Marshals can execute military writs
15 of attachment has long been settled. We all know that's the
16 case. There's no doubt about it. Now, whether or not a
17 public defender knows that or has had much experience with
18 that, I don't know. Doesn't matter.

19 The commissions, we haven't issued a warrant of
20 attachment before. Statutorily seems pretty clear we can.
21 The U.S. Marshal certainly recognized it, and again, the U.S.
22 Marshals detained him. And he's not going to be detained and
23 tried after this, is my pretty strong belief, because I have a

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1 release order here to let him go back to wherever he's going
2 to go.

3 However, my only pause he -- he's not represented yet
4 because I haven't had the opportunity yet to talk, that's
5 clear. I haven't read Wainwright, maybe I have, it's been a
6 long time if I have. It doesn't jump out at me. And I --
7 while I take grief for it occasionally, I appreciate case law
8 and rules and I take it seriously. I can't just look it up
9 down here. And so we're not going to talk to Mr. Gill about
10 it. We're going to leave him sitting there and I'm going to
11 pull up and suggest that he take a nap for the next half hour
12 and I'm going to go up the hill, open up that case, and just
13 make sure I understand what it says, because that's an
14 obligation I do feel strongly about.

15 LDC [MR. KAMMEN]: Which case, sir, are we talking about?
16 Merryman or some other case?

17 MJ [Col SPATH]: Yes, the one cited, Merryman -- I thought
18 it was Merrick, but I just saw it. I'm requesting to go read
19 it. That seems like a reasonable approach for a trial judge.
20 When a lawyer gives me a case and says this is on point, I
21 tend to go look at it. And so if I could do it here, I would.
22 I can't. My guess is somebody's printing it for me right now
23 and it will be here when I get off the record. So that's what

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1 I'm going to do. We're not going to discuss it with Mr. Gill.

2 I'm just going to give Mr. Gill a chance to relax, use the
3 restroom, and have some food or water if he wants to, and go
4 from there. Would you bring Mr. Gill back up on the screen.

5 [The VTC resumed with the witness.]

6 MJ [Col SPATH]: All right, Mr. Gill, this is Colonel
7 Spath. Can you hear me?

8 WIT: Yes, sir.

9 MJ [Col SPATH]: All right. I need to take a reasonably
10 short recess, I think. I just need to look at a case that has
11 been cited to me and I don't know it offhand.

12 I want this process to be over for you sooner than
13 later, and I am attempting to do that. On this break -- I
14 know you're there with the marshals. I would again suggest if
15 you need to rest, rest; if you want some water, have water.
16 Hopefully somebody can assist you with food. I anticipate it
17 will be about 20 to 30 minutes and we'll be back on the record
18 and continue with this direct ----

19 WIT: Yes, sir.

20 MJ [Col SPATH]: ---- I don't need to hear from counsel or
21 anything. I just want to go look at the case and I'll be
22 right back with you.

23 Commission's in recess. Carry on.

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1 [The R.M.C. 803 session recessed at 0946, 19 October 2016.]

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