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1 [The Military Commission was called to order at 1052, 24 April
2 2014.]

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

6 Doctor, I remind you you are still under oath.

7 WIT: Yes, sir.

8 MJ [COL POHL]: Major Hurley.

9 ADDC [MAJ HURLEY]: Sir, before we continue the direct
10 examination of Dr. Crosby, I'd like to ask you to reconsider
11 your ruling on the defense inquiry into the basis of
12 Dr. Crosby's testimony. Specifically, if we look at Rule 702,
13 it indicates that an expert may testify to their opinion or
14 testify in the form of opinion or otherwise, if the testimony
15 is based on sufficient facts or data, and that's all that
16 we're looking to get from Dr. Crosby, is the sufficient facts
17 or data that underscore her opinion or that serve as the basis
18 for her opinion.

19 MJ [COL POHL]: So it's your view of the law that an
20 opinion witness can come in and give an opinion, and then the
21 proponent of that opinion testimony can then say tell me all
22 the facts you based it on? That's how you read that rule?

23 ADDC [MAJ HURLEY]: Yes. Yes, sir.

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1 MJ [COL POHL]: Okay. I read it differently. Your
2 request for reconsideration is denied. I adhere to my
3 original ruling. I mean, that's not what it says, but I'm not
4 going to debate it any further.

5 ADDC [MAJ HURLEY]: Sir, may we -- may I continue the
6 argument if for no other reason than to make a complete
7 record?

8 MJ [COL POHL]: Is it your position that you can ask her
9 what facts you base this on?

10 ADDC [MAJ HURLEY]: Yes, sir, it is. It is. And that's
11 the -- that's our opinion, and that seems to be underscored by
12 Rule 702, that she can talk -- that she can testify as to the
13 opinion if it's based on sufficient facts or data.

14 MJ [COL POHL]: Right.

15 ADDC [MAJ HURLEY]: So in order to convince the person
16 who's got to make a decision, in this instance you, that this
17 is an adequately grounded opinion, that she is going to
18 testify as to the facts or data that underscore that opinion,
19 so you have -- so now you're in a position to evaluate it
20 based on this information. It is a logically relevant
21 question, sir. What do you think about this, Doc? I think
22 this. Oh, really? What makes you say that?

23 MJ [COL POHL]: Because so-and so told me A, and so-and so

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1 told me B. I read a piece of paper C, and in that piece of
2 paper it said this. That's your opinion, that you're allowed
3 to bring all of that in?

4 ADDC [MAJ HURLEY]: Sir, I ----

5 MJ [COL POHL]: No, I'm just asking. Is that your
6 opinion? Is that your view of the law?

7 ADDC [MAJ HURLEY]: She is allowed to talk about the --
8 those other things, if they underscore the basis of her
9 opinion, yes. Yes, that's the position of the defense, that
10 she can talk about hearsay. As I understand the rules, she
11 can talk about inadmissible evidence.

12 MJ [COL POHL]: Okay.

13 ADDC [MAJ HURLEY]: Or evidence which otherwise may ----

14 MJ [COL POHL]: Since you want to continue this
15 discussion, I'm always willing to listen. Okay.

16 So if an opinion witness comes in before the
17 fact-finder and says -- and I am basing this opinion on this
18 inadmissible hearsay, that an expert is allowed to testify to
19 that inadmissible hearsay in front of the fact-finder to
20 persuade the fact-finder to give weight to said opinion. That
21 is your view?

22 ADDC [MAJ HURLEY]: Yes, sir. It goes to the
23 credibility -- if this is the type of information normally

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1 relied on an expert with scientific or otherwise specialized
2 knowledge, if that's the type of information normally relied
3 on, yes. But the analogy that you draw or factual situation,
4 that's not what we have here. We have the trial judge
5 deciding an interlocutory question, if I'm using that phrase
6 right, and I rarely do.

7 So in this situation, sir, it's the position of the
8 defense to satisfy your question, yes, you bet. In this
9 situation, certainly, what forms her -- the basis of her
10 testimony is appropriate for your consideration in deciding AE
11 205.

12 MJ [COL POHL]: Okay. 705, the expert may testify in
13 terms of opinion or inference and give the expert's reasons
14 therefor without prior disclosing underlying facts or data
15 unless the military judge requires otherwise, right?

16 ADDC [MAJ HURLEY]: Yes, sir.

17 MJ [COL POHL]: That's what that rule says. I'm not
18 requiring otherwise; therefore, the underlying facts and data
19 are not going to be discussed by the proponent of the opinion
20 testimony.

21 ADDC [MAJ HURLEY]: Sir, again, I -- and perhaps -- and
22 obviously the ----

23 MJ [COL POHL]: We're never going to agree on this, Major

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1 Hurley. You guys are reading it one way. I'm reading it
2 another way. I got it. I understand your position. You've
3 made the record what you want to do. I've got it. It's
4 there. We moved on. That's my decision. That, quite
5 frankly, in my experience has always been the rule, but others
6 may disagree.

7 ADDC [MAJ HURLEY]: Yes, sir. Sir, just a second.

8 Sir, the distinction that we would draw, sir, is the
9 difference between a lay witness and a scientific or otherwise
10 specialized knowledge witness, specifically between 701 and
11 702, that this is a witness testifying with her scientific
12 knowledge that she is allowed to get into 1, 2, and 3, and,
13 sir. Your reading disclosure of the facts underlying expert
14 opinion is the way I read that, because of the word "prior,"
15 without prior disclosure of the underlying facts, is that if
16 the notice that we may have to provide of an expert's
17 testimony and what that expert is going to talk about, but you
18 may otherwise require us -- it doesn't require it, but you may
19 otherwise require us to put that information out there for the
20 government to assist or, in this case, the government to
21 assist in their confrontation of this witness.

22 That's our reading, is that this is a 702 witness,
23 not a 701 witness; therefore, she gets to get into those three

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1 areas identified by the rule.

2 MJ [COL POHL]: And why would -- if you read the rule that
3 way, why wouldn't that apply to expert testimony in front of
4 the fact-finder? Why wouldn't it, if it's how the rule is
5 read?

6 ADDC [MAJ HURLEY]: If that's what an expert typically
7 relies on, yes. And the government -- or the opponent of this
8 particular expert can bring in witnesses to say that expert
9 opinions based on that are wrong. They can bring -- they can
10 cross-examine the expert on that information to say you relied
11 on this, that's wrong. You can't do that.

12 MJ [COL POHL]: So let me just make it clear so I
13 understand your position.

14 ADDC [MAJ HURLEY]: Yes, sir.

15 MJ [COL POHL]: Because I agree that an expert may rely on
16 inadmissible evidence, hearsay, all sorts of stuff. I've got
17 that. The opinion can be based on that.

18 But your view is that if an expert relies on
19 inadmissible evidence, that the proponent of such expert
20 testimony can inquire on inadmissible evidence before the
21 fact-finder?

22 ADDC [MAJ HURLEY]: Yes, sir. And, sir ----

23 MJ [COL POHL]: Okay.

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1 ADDC [MAJ HURLEY]: And, sir, what we would say in this
2 situation is I understand the hypothetical that you are
3 drawing or the inference that you are drawing, but that's
4 different from our current situation, which is this is an
5 interlocutory matter to be decided on by the military judge.
6 This is relevant information. We would submit to the court
7 that this is relevant, non-objectionable data. It may or may
8 not be relevant in the trial judge's determination, but
9 it's -- let me strike that.

10 It's relevant and it's appropriate for your
11 consideration.

12 MJ [COL POHL]: Well, let me -- hold on a second here.
13 Okay. You know, you're reading the rule one way, I'm reading
14 it another.

15 Trial Counsel, how do you read it?

16 ATC [LT DAVIS]: Your Honor, the government reads it
17 certainly in line with Your Honor, that these underlying facts
18 are not necessary.

19 MJ [COL POHL]: Okay. I just thought I would give you a
20 chance to weigh in.

21 Go ahead, Major Hurley. Do you have something more
22 to add on this issue?

23 ADDC [MAJ HURLEY]: Sir, I do. I just direct the court's

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1 attention to 703, the bases of the opinion testimony by
2 expert, and the last sentence, "Facts or data that are
3 otherwise inadmissible should not to be disclosed unless there
4 is a finding by the military judge of their probative value."

5 So they can be, in the realm of possibility, yes.
6 We could make an application to you, in your hypothetical,
7 with members present, hey, sir, the probative value of this
8 type of evidence substantially outweighs danger of unfair
9 prejudice, essentially 403 analysis.

10 This situation is different, in that this is -- goes
11 to the -- for you to decide as the trial judge, decide for us
12 AE 205, and that the analysis that the court's doing is
13 inappropriate for the situation we currently find ourselves
14 in.

15 MJ [COL POHL]: Okay. Point well taken on the 703. I got
16 it. I got that point. Don't ----

17 ADDC [MAJ HURLEY]: I'm just going to go get some more
18 water.

19 MJ [COL POHL]: Sure. Okay. I've got it. I assume my
20 hypothetical may not have been appropriate, I got it, but I
21 still think the rule is the same.

22 So you asked me to reconsider my ruling about a
23 proponent of opinion testimony putting in the underlying

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1 facts, and I adhere to my original opinion. You made your
2 record. Go ahead.

3 ADDC [MAJ HURLEY]: Yes, sir. Sir, just a second, please.

4 **Questions by the Assistant Detailed Defense Counsel**

5 [MAJ HURLEY]:

6 Q. Dr. Crosby?

7 A. Yes, sir.

8 Q. So in conclusion of your direct examination, can you
9 say with a reasonable degree of medical certainty that there
10 are physical findings on Mr. Nashiri that support your current
11 diagnosis of torture?

12 A. Yes.

13 Q. They're consistent with your current diagnosis of
14 torture?

15 A. Yes, there are physical findings. But recall, to
16 come to the diagnosis of torture, I take many elements into
17 consideration, not just the physical examination. I analyze
18 everything and come to a conclusion.

19 Q. Ma'am, similarly, have you -- can you say with a
20 reasonable degree of medical certainty or have you ----

21 ATC [LT DAVIS]: Your Honor, objection. These questions
22 have already been answered.

23 MJ [COL POHL]: Well, let him ask the question first.

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1 Go ahead.

2 Q. Can you say with a reasonable degree of medical
3 certainty that there are any mental health problems that
4 Mr. Nashiri suffers from as a result of torture?

5 ATC [LT DAVIS]: Objection, Your Honor. The doctor has
6 already shared her diagnosis.

7 MJ [COL POHL]: Sustained. You have already given the
8 PTSD diagnosis. Is that what you are talking about?

9 ADDC [MAJ HURLEY]: Yes, sir.

10 Q. I'm sorry, Dr. Crosby. Dr. Crosby, do you have any
11 opinion as to the adequacy of the medical treatment that
12 Mr. Nashiri has received during the course of his confinement
13 here in Guantanamo Bay?

14 ATC [LT DAVIS]: Same objection, Your Honor.

15 MJ [COL POHL]: Overruled. You may answer the question.

16 A. My opinion is, based on my vast experience of
17 treating people who have been tortured and who experience
18 problems from torture, including PTSD, including pain,
19 including other physical ailments that may have a
20 psychological component, that Mr. al Nashiri has not been
21 properly diagnosed or treated, to my knowledge, up until this
22 time.

23 Q. And he is currently not being properly treated, in

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1 your opinion?

2 A. Yes, sir. That is my opinion.

3 ADDC [MAJ HURLEY]: Thanks, Your Honor. Nothing
4 further ----

5 MJ [COL POHL]: Go ahead. Trial Counsel.

6 ADDC [MAJ HURLEY]: ---- on direct exam.

7 MJ [COL POHL]: Trial Counsel, do you have any questions?

8 ATC [LT DAVIS]: Your Honor, if we could have a
9 five-minute break, please. Recess in place, Your Honor.

10 MJ [COL POHL]: Go ahead. Take your five minutes.

11 ATC [LT DAVIS]: Your Honor, the government has no
12 questions for this witness.

13 MJ [COL POHL]: Okay. Dr. Crosby, I want to thank you for
14 your testimony. You are excused.

15 **[The witness was excused and withdrew from the courtroom.]**

16 WIT: Thank you very much, sir.

17 MJ [COL POHL]: I think we're going to -- the plan is
18 we'll pick up with the rest of 205 tomorrow.

19 LDC [MR. KAMMEN]: Sorry?

20 MJ [COL POHL]: The plan is to pick up the rest of 205
21 tomorrow.

22 LDC [MR. KAMMEN]: Well, we might as well address this,
23 because if your position with respect to this other guy is

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1 going to be the same, you know -- Rule 702 is very, very
2 clear. Rule 703 is very, very clear. And if your position --
3 and so if your position is that we have to call an expert or,
4 you know, the guy they propose, that we don't have a choice.
5 We don't get to call the witnesses we want. So they get to
6 select our witnesses and then you prescribe the way in which
7 we present evidence. If that's the way this is going ahead,
8 we need to make a decision as to whether we want to continue.

9 MJ [COL POHL]: Okay. Let's -- okay. Mr. Kammen, I
10 understand that either side may disagree with my rulings.
11 I've got that. That's the way the process works.

12 My understanding of opinion testimony is as I said.
13 You apparently disagree with that. Fine. Okay.

14 LDC [MR. KAMMEN]: Well ----

15 MJ [COL POHL]: But I believe that's what the law is.

16 LDC [MR. KAMMEN]: Well, no, that's not what the law is.
17 That's what the law is in this room, and we understand that.

18 MJ [COL POHL]: Mr. Kammen, I'm not going to take that as
19 a personal comment.

20 LDC [MR. KAMMEN]: It wasn't meant that way.

21 MJ [COL POHL]: Well, it certainly came across that way.

22 LDC [MR. KAMMEN]: I apologize.

23 MJ [COL POHL]: I'm saying in my view, that's what the law

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1 is. You disagree with it, that's fine.

2 LDC [MR. KAMMEN]: Fine.

3 MJ [COL POHL]: Okay. But what I'm saying is, this guy
4 tomorrow, is he an opinion witness or a fact witness? That's
5 all I'm asking. If you're -- see, I think maybe that's where
6 the confusion is. If a person is coming as a fact witness,
7 that's one thing. But if a person is coming as an opinion
8 witness, that's different. And your view is an opinion
9 witness can give an opinion and then say in great detail what
10 the opinion is based on factually.

11 LDC [MR. KAMMEN]: Yes. Under 702 and 703, that's
12 correct.

13 MJ [COL POHL]: That's how you read it. I don't read that
14 rule that way for opinion witnesses. That's it. Okay.

15 LDC [MR. KAMMEN]: Well ----

16 MJ [COL POHL]: So whether you wish to call the witness or
17 tomorrow or not, is up to you. I don't know whether he is an
18 opinion witness or a fact witness.

19 LDC [MR. KAMMEN]: Well, see -- we didn't pick him.
20 That's the problem here.

21 MJ [COL POHL]: Okay. Well, then.

22 LDC [MR. KAMMEN]: Under the rules -- under the way
23 this ----

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1 MJ [COL POHL]: I understand.

2 LDC [MR. KAMMEN]: ---- they get to pick our witnesses.

3 So I don't know.

4 MJ [COL POHL]: I understand. Okay. But let's -- I
5 understand that. Okay. And Dr. Crosby was a defense picked
6 witness ----

7 LDC [MR. KAMMEN]: Yes.

8 MJ [COL POHL]: ---- and, therefore, I applied the rules
9 to her.

10 The nature of this witness, because of how he was
11 developed, arguably the defense would be given more leeway
12 because this is really not -- this may or may not have been
13 the person that you wanted to call, but it is ----

14 LDC [MR. KAMMEN]: I guarantee you, it is not.

15 MJ [COL POHL]: ---- it is the one that was provided.

16 LDC [MR. KAMMEN]: No. It's the one that the government
17 selected for us.

18 MJ [COL POHL]: Okay. And if he turns out to be
19 inadequate and there is another individual that would have
20 been better, that's -- we can always address it. Okay?

21 LDC [MR. KAMMEN]: Well ----

22 TC [CDR LOCKHART]: Actually, sir, I think it would be
23 better to address that now. So if this is Mr. Kammen's

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1 opinion and wants to be heard on it, I think that's better to
2 be addressed now. And I would like to say this ----

3 MJ [COL POHL]: Address what?

4 TC [CDR LOCKHART]: Well, Mr. Kammen keeps saying this is
5 a witness -- if I may.

6 Mr. Kammen keeps saying this is a witness that the
7 government chose, and I am assuming that he's referring to the
8 prosecution. That's not accurate. We were given a judicial
9 order that said provide one witness who was familiar with the
10 medical care, treatment of the accused. That's what we
11 provided, the treating physician. And if that's not what he
12 now wants, it doesn't seem logical to bring that witness in,
13 which complies with Your Honor's order, only to then have the
14 defense say, well, we didn't get what we wanted, we don't have
15 what we want, and then bring another witness in.

16 We attempted to comply with your judge's order. It
17 said one person familiar with treating the accused. That's
18 who we provided. On top of that, because Dr. Crosby is a
19 medical doctor and not a psychologist and not a psychiatric
20 doctor -- no, I did not say that correctly -- we provided a
21 medical doctor. If that's not what the defense wants and they
22 want to be re-heard on that issue, the government would submit
23 that should be done prior to calling witnesses to the stand.

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1 MJ [COL POHL]: Okay. Mr. Kammen. Go ahead. I'm
2 listening.

3 LDC [MR. KAMMEN]: Thank you. I mean, the predicate for
4 all of this, which is laid out in the motion, is that since at
5 least 2013 Mr. al Nashiri has been diagnosed with chronic,
6 complex, untreated PTSD.

7 Now, if this guy is the guy who's providing the
8 inadequate treatment for this chronic, complex PTSD, fine. If
9 he's not, and if he's going to say I don't know about PTSD, I
10 don't know anything about that, then it's not fine. But
11 there's never been a secret about the inadequacies of the
12 treatment.

13 MJ [COL POHL]: Okay. So we started this discussion with
14 your contrary view to me of what an expert can testify to, and
15 then you said if that's going to be the rule, I'm not going to
16 share it. We're going to call ----

17 LDC [MR. KAMMEN]: Because, you know -- I mean, look,
18 let's be honest, I don't want to call a guy who's going to
19 come in and say, oh, by the way, he gets the greatest care in
20 the world, and then we're not allowed to challenge that.

21 MJ [COL POHL]: Of course you are. Of course you are. I
22 don't know why you would think not.

23 LDC [MR. KAMMEN]: Well, under what -- I'm sorry, and I

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1 apologize, and perhaps I'm mis-seeing this.

2 MJ [COL POHL]: No, because I understand -- because ----

3 LDC [MR. KAMMEN]: Because I'm the -- you're making me be
4 the proponent of this witness. And so if I'm the proponent of
5 the witness and I can't get into the basis --

6 MJ [COL POHL]: You are. No, I understand that,
7 Mr. Kammen. He is the witness that -- he's not a --
8 Dr. Crosby was a defense-requested expert to provide an
9 opinion. Okay. Clearly your witness, clearly knew what she
10 was going to say.

11 LDC [MR. KAMMEN]: Absolutely.

12 MJ [COL POHL]: Clearly you weren't going to call her if
13 she wasn't going to say things that you wanted me to hear.
14 Nothing unusual about this. This guy really doesn't fit in
15 that category. You're calling him, I understand, and the way
16 the rule is read, the way I read the rule, is that what I'm
17 saying is the rule of underlying data does have exceptions to
18 it, in the judge's discretion. Okay.

19 And given the nature of this witness, depending on
20 how it flows, there's a very good chance that because,
21 although you are calling him, you are not really a proponent
22 of his opinion if his opinion is contrary to Dr. Crosby's.
23 Would that be a fair statement?

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1 LDC [MR. KAMMEN]: Yes.

2 MJ [COL POHL]: You may be a proponent in the sense that
3 you are calling the witness, but you are certainly, I don't
4 suspect, calling this witness to say that his testimony you
5 agree with, but simply to establish basically the inadequacy
6 of his current treatment plan, assuming he has one.

7 LDC [MR. KAMMEN]: Yeah. That's true, you know, but I
8 don't want to -- in order to do that, a competent doctor would
9 have looked at all of his medical records. And so I intend to
10 question him about what is or is not in Mr. al Nashiri's
11 medical records.

12 MJ [COL POHL]: Yeah. Okay.

13 LDC [MR. KAMMEN]: Which I think I would have the right to
14 do, as we understand the rules.

15 MJ [COL POHL]: No. But -- okay. And what I'm -- he's
16 not -- he's not a hostile witness in the sense of that term.

17 LDC [MR. KAMMEN]: He, in the civilian world ----

18 MJ [COL POHL]: He may turn into that.

19 LDC [MR. KAMMEN]: ---- he's what's called an adverse
20 witness. And under an adverse witness in Article III courts,
21 I would be able to call him, but have the right to lead,
22 cross-examine, and treat him as a witness as though he were
23 called by the prosecution.

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1 MJ [COL POHL]: Okay. Understanding this, we'll see how
2 it plays, but you will certainly be given much greater leeway
3 with that type of witness than when the defense offers their
4 own expert.

5 LDC [MR. KAMMEN]: Well ----

6 MJ [COL POHL]: Okay. That being said, do you ----

7 LDC [MR. KAMMEN]: I mean, candidly, if we could adjourn
8 until 1:00. We expected Dr. Crosby to take long. We have
9 some things to gather up.

10 MJ [COL POHL]: Okay.

11 LDC [MR. KAMMEN]: I mean, we ----

12 MJ [COL POHL]: Just -- and, again, Mr. Kammen, I
13 understand your position on this. I know you don't agree with
14 mine. And that's not the first attorney that disagrees with
15 what I say. And you may be right and I may be wrong. I
16 recognize that. But that's a professional disagreement that
17 comes along. If you wish to call the witness, that is your
18 option. Understanding you are using the term adverse witness,
19 and without being familiar with how that procedure necessarily
20 goes, because we don't necessarily use that term in military
21 courts.

22 LDC [MR. KAMMEN]: Right.

23 MJ [COL POHL]: I do understand why this witness is being

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1 called by the defense, but the defense is not necessarily
2 endorsing his testimony and, therefore, you will be given
3 greater leeway to explore. And he may be -- and also, quite
4 frankly, from your proffer earlier, from what we've discussed
5 earlier, he may be more of a fact witness anyway, and so as to
6 factually what have you done as opposed to an opinion witness,
7 if you are with me on that. Do you understand what I'm
8 saying?

9 LDC [MR. KAMMEN]: Candidly, no, but we are where we are.
10 Excuse me.

11 MJ [COL POHL]: Okay.

12 TC [CDR LOCKHART]: I just wanted to add one fact, sir.
13 If you look at the defense's initial request for this witness,
14 they actually requested this witness. So I don't want to get
15 into the pattern, and I don't want them -- the defense to come
16 later if he testifies and they're not satisfied, to have
17 this ----

18 MJ [COL POHL]: I got it.

19 TC [CDR LOCKHART]: ---- this wheel going. So I want to
20 make sure that the witness that we call is the witness per the
21 order, sir.

22 MJ [COL POHL]: Okay.

23 LDC [MR. KAMMEN]: And perhaps the way to resolve this and

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1 to make this go more smoothly, if he could be available for an
2 hour towards the end of the day where we can meet with him
3 and ----

4 MJ [COL POHL]: Do you have a problem with that?

5 TC [CDR LOCKHART]: He is not willing to meet with the
6 defense prior to testimony, sir. He has been asked, and
7 not -- that was the subject at the very beginning of the
8 motion, much like Dr. Crosby didn't want to meet with the
9 prosecution.

10 LDC [MR. KAMMEN]: Ergo the dilemma because you're -- I'm
11 required to call the witness who won't talk to me, and ----

12 MJ [COL POHL]: Well, then, I guess ----

13 LDC [MR. KAMMEN]: ---- and I wouldn't have picked.

14 MJ [COL POHL]: We are where we're at. Okay. So,
15 Mr. Kammen, it's -- I mean, with the understanding that he's
16 refused to talk to you, with the understanding that this is a
17 witness that -- that the defense may not agree with what he's
18 going to say in terms of if he thinks -- since you don't know
19 what he will say and I don't know what he will say ----

20 LDC [MR. KAMMEN]: I guarantee you the prosecution isn't
21 bringing him here to say that the standard of care is
22 deficient. We all know that.

23 MJ [COL POHL]: Okay. Okay. I think we've discussed this

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1 sufficiently. Your decision what you want to do. You
2 understand, I think, the way forward. Is there any clarity or
3 lack thereof? When I talked to you earlier, you said you
4 weren't quite sure what I meant.

5 LDC [MR. KAMMEN]: Well, I mean, I don't want to continue
6 the argument. I understand where you are. The frustration we
7 have is, you know, we read the rules and the rules seem quite
8 clear, and then you say, well, yeah, but I'm endorsing the
9 rule -- understanding the rule differently, but I'm creating
10 an exception to suit your situation. And so when we have
11 nothing in writing to go on. It's always this -- that's what
12 leaves us -- because I don't really care to be in the middle
13 of something and then, you know, find that I'm limited or
14 hamstrung in a way that's adverse to our interests.

15 MJ [COL POHL]: Okay. Understand. But you want -- you
16 need some time?

17 LDC [MR. KAMMEN]: Only just because we need to gather up
18 stuff to be fully prepared for the afternoon.

19 MJ [COL POHL]: Okay.

20 TC [CDR LOCKHART]: Just to be clear, the witness is not
21 testifying until tomorrow at 09, as we had previously said.

22 MJ [COL POHL]: Correct.

23 TC [CDR LOCKHART]: I didn't know if there was conclusion

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1 on the defense side for prepping for that, but Your Honor had
2 said to make him available at 09 tomorrow.

3 MJ [COL POHL]: That's ----

4 LDC [MR. KAMMEN]: Would he be available today?

5 TC [CDR LOCKHART]: I certainly can ask, but he was told
6 per what Your Honor said to be available at 09.

7 MJ [COL POHL]: Let's do this. If he's available at 1300,
8 time certain, have him here. That work for ----

9 LDC [MR. KAMMEN]: Let us -- can we talk just for five
10 minutes?

11 MJ [COL POHL]: Okay. I'll tell you what. We'll recess
12 for lunch. You guys talk it over. If you tell the defense,
13 the government, let's have him here at 1300, if possible,
14 that's fine; and then if it works out, if it works out. If it
15 doesn't work out, we'll do him tomorrow as scheduled at 0900,
16 and we'll pick up where we left off with the other motions.

17 Commission is in recess until 1300.

18 [The Military Commission recessed at 1120, 24 April 2014.]

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