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1 [The R.M.C. 803 session was called to order at 1104,
2 25 February 2015.]

3 MJ [Col SPATH]: These commissions are called to order. I
4 had an 802 session on the break. In the 802 session
5 prosecution let me know that in an unrelated case, at least
6 for here -- I'll use the abbreviation KSM, but in the KSM
7 et al. trial an order has been issued, which is 343C -- or a
8 ruling, and the ruling is on an unlawful influence motion
9 regarding Change 1. And in that case Chief Judge Pohl has
10 directed abatement of the KSM proceedings until Change 1 is
11 rescinded. There may be more in there, but that was the
12 provision that was highlighted for me during the 802 session.

13 Also at the 802 session Mr. Kammen asked if he would
14 be able to reference that ruling during the cross -- or the
15 examination of Mr. Ary, and I told him I wasn't going to give
16 him a ruling in the 802, that I would wait to discuss it in
17 the record.

18 First, Trial Counsel, would you like to add anything
19 to the summary of my 802 session?

20 DCP [COL MOSCATI]: No, Judge, that was accurate.

21 MJ [Col SPATH]: Defense Counsel, do you want to add
22 anything to my summary?

23 LDC [MR. KAMMEN]: No.

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1 MJ [Col SPATH]: Now, as for whether or not we can discuss
2 it with Mr. Ary, let me ask, that's your request, correct?

3 LDC [MR. KAMMEN]: That's one of them. We have got some
4 others, but that's one of them.

5 MJ [Col SPATH]: Okay. Let me start with that one.

6 Trial Counsel, do you oppose them asking if Mr. Ary
7 has any knowledge of this ruling?

8 DCP [COL MOSCATI]: No, Judge. It was filed. It's public
9 record. No objection.

10 MJ [Col SPATH]: That makes that part easy. And it's
11 possible Mr. Ary can hear. Let's keep that in mind as we go
12 forward. We haven't given any details yet, but he is on the
13 monitor still. Is there a way to -- let me ask: Mr. Ary, can
14 you hear us?

15 WIT: I had not heard the last few seconds, 40 seconds.

16 MJ [Col SPATH]: Okay. Then what we're probably going to
17 have to do, Mr. Ary, we're going to need to have a discussion.
18 There -- of course, being commissions at Guantanamo, there are
19 always issues that crop up, it appears, and we've had one come
20 up here that we need to deal with.

21 What I would ask for you is, yesterday it was
22 communicated to me that you're available all day. I don't
23 want this to be more burdensome than it's going to be, but we

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1 are going to need you to come back. Is it possible for you to
2 come back -- let's tentatively plan on 1230. Is that
3 something you can do?

4 WIT: Yes, I can, Your Honor.

5 MJ [Col SPATH]: All right. So a little bit before 1230
6 the IT and all of the people will work with you. What I'm
7 going to do in the interim is I'm going to talk with the
8 parties for both sides and figure out if that's feasible and
9 try to deal with some of the issues we have here and hopefully
10 have you on video feed at 1230, or let you know through
11 somebody in your office what time, and then we'll pick up with
12 you today, I would assume. Thank you for your patience. I'll
13 have them disconnect this and we'll talk to you at 1230.

14 WIT: Yes, sir.

15 MJ [Col SPATH]: All right. Thank you. Whoever is in
16 charge of the feed, we can just cut it off.

17 **[The witness was temporarily excused and VTC was terminated.]**

18 MJ [Col SPATH]: All right. Mr. Kammen, the answer to
19 your first question is yes, the ruling has been published.
20 That should give us time to deal with release and all of that
21 through the OCAs. One would hope it would be easy, since it's
22 a ruling in a case and it has been reviewed. But that will
23 give us a little bit of time.

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1 So yes, you can ask him questions about it. You may
2 object, of course, if you find the questions are outside the
3 bounds of relevance, as you have been through this process,
4 but all right.

5 Other requests?

6 LDC [MR. KAMMEN]: Well, I guess, the one that's probably
7 easy, we need some time, because we haven't seen the ruling,
8 but my sense is -- I understand that there are two separate
9 commissions, but I think we've got to be mindful of the
10 realities, and so I ----

11 MJ [Col SPATH]: Let me ask what realities. My
12 independence we have made clear both through this motion and,
13 frankly, through the recusal motion that started. Absent
14 somebody directing me to do something, which I don't think
15 they can do, I'm moving forward with this commission, unless
16 somebody steps in and orders an abatement of my proceeding, an
17 appellate court that I answer to, or if there is -- if the
18 Chief Judge of the Commissions has that authority and orders
19 it. But so far he has not done that. He has ordered an
20 abatement in his particular case, not mine.

21 LDC [MR. KAMMEN]: Okay. And I just -- let me -- I just
22 want to say something, and I want to say it, and I'm afraid it
23 won't sound respectful, but I mean it with respect.

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1 Here's the problem with what Mr. Ary has done. It's
2 all about pace of litigation. Every time you say we've got to
3 forge ahead, every time you say, as you did yesterday time and
4 time again, I want to keep this moving, it seemed to the
5 public ----

6 MJ [Col SPATH]: I appreciate that. I disagree with that,
7 so I will tell the public this: Pace of litigation to me
8 means what Mr. Ary said, frankly, which is litigation causes
9 its own pace. Pace of litigation to me, when I try any case
10 is, it is unfair to the accused and it is unfair to people who
11 have suffered acts, not necessarily by the accused, just acts
12 in general, victims and alleged victims -- to them it is
13 getting answers to these questions.

14 If it requires me to do something like dismiss
15 charges, you know I'll do it. If it requires me to stay a
16 proceeding, we don't go forward, I'll cancel it. We did a
17 couple. I didn't come down and hold hearings.

18 What we're going to do is waste time right now that
19 we can spend on the record.

20 LDC [MR. KAMMEN]: Okay.

21 MJ [Col SPATH]: But for the public, hopefully they can
22 pick this up: I feel no pressure to move the case forward
23 inappropriately. What I feel pressure is for everybody

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1 involved in this process, that it has gone on far too long
2 and, where appropriate, we're going to move forward. Where
3 not appropriate, we're going to stop. And obviously the UI
4 issue has caused me to stop. I have already told you we're
5 not moving on to the evidentiary stuff next week, so clearly,
6 I'm not just forging ahead.

7 And I didn't take it disrespectfully. I appreciate
8 your comments about the perception, and I think they're
9 important. That's part of what this whole UI issue is about.
10 But absent an order to abate, we have a witness, we're getting
11 testimony, and we need to finish the UI motion, and that is a
12 good use of our time right now.

13 I also think it is important for any perception -- I
14 appreciate Judge Pohl's dealing with the KSM case. If you all
15 want to ask questions as well from the trial side, you may.
16 His opinion in that case has no reflection on what we're going
17 to do in this case. It appears to me he didn't have an
18 evidentiary hearing before he issued his order, because I know
19 of the KSM proceedings a week ago or two weeks ago or whenever
20 they were, I did not think this issue was addressed, so it
21 appears to me this was issued on brief. And we clearly are
22 having an evidentiary hearing and even having witnesses, and
23 so I want to move forward as we work through that.

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1 LDC [MR. KAMMEN]: Fine.

2 MJ [Col SPATH]: So that is what I mean when I make those
3 comments. Those are the -- the people with equities that I'm
4 speaking about are any accused and anybody affected in the
5 public. It is not the press. It is not the NGOs. It is not
6 perception. And it's not, frankly, the defense or the trial
7 team. It's the people impacted by these charges.

8 So that's why I say what I say, and that's why I mean
9 to move forward with Mr. Ary. I picked that so that we can
10 take a lunch break and you all could have time to read that
11 ruling. I didn't notice how many pages it was, but it was
12 more than the single paragraph I looked at in the final form.
13 So I'll give you all time to look through it, and then we'll
14 plan to be here at 1230 with Mr. Ary to continue with his
15 testimony.

16 Trial Counsel, anything to take up before the lunch
17 break?

18 DCP [COL MOSCATI]: No, Your Honor.

19 MJ [Col SPATH]: Defense Counsel?

20 LDC [MR. KAMMEN]: No, sir.

21 MJ [Col SPATH]: Court's in recess. Commission is in
22 recess.

23 [The R.M.C. 803 session recessed at 1113,

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1 25 February 2015.]

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