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1 [The R.M.C. 803 session was called to order at 1120,
2 7 September 2016.]

3 MJ [Col SPATH]: This commission is called to order.
4 Question, Mr. Miller.

5 TC [MR. MILLER]: Yes, Your Honor. Before we begin,
6 another housekeeping matter, I should have had Lieutenant
7 Jolly put her qualifications on the record. And if the court
8 would indulge us.

9 MJ [Col SPATH]: You can do that.

10 ATC [LT JOLLY]: Yes, good morning, sir. My name is
11 Lieutenant Jolly. I have been detailed to the prosecution by
12 the chief prosecutor. I'm detailed and qualified under the
13 Rules for Military Commissions 502 and 503. I have been
14 previously sworn under Rule for Military Commissions 807. I
15 have not acted in any manner which might tend to disqualify me
16 from these proceedings.

17 MJ [Col SPATH]: Thank you.

18 TC [MR. MILLER]: Two other matters, Your Honor. First is
19 that we have an update on Commander Mizer. We expect that he
20 will be available to testify at noon. He should be -- he is
21 making his way to the site to testify, so we expect that to
22 occur. And we also have a second witness who is only
23 available today, and I'm going to ask Lieutenant Morris to

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1 speak to that to the court.

2 MJ [Col SPATH]: All right. Lieutenant Morris, can you
3 tell me what motion that's in relation to and then whatever
4 time windows we have?

5 ATC [LT MORRIS]: Good morning, Your Honor. That is in
6 relation to 332X. It's my understanding Your Honor wishes to
7 proceed with this one-hour window before Commander Mizer
8 arrives with 350. The government makes an alternative
9 proposal that, as 332AA is required to be heard before we hear
10 332X, and Commander Gill is only available this afternoon,
11 it's our request that we hear 332AA now; and then this
12 afternoon when we get to 332X, that way we're not waiting, you
13 know, as he is only available today.

14 MJ [Col SPATH]: What time today is he available?

15 ATC [LT MORRIS]: He flies out later this evening, and so,
16 you know, originally he was going to come and then had let the
17 government know he's only available via VTC and added the
18 additional constraint that he's only available today. So that
19 is what we are left with.

20 MJ [Col SPATH]: All right. Thank you.

21 With regard to Commander Mizer, is he able to be
22 around later than 1200? Can he wait to testify until 1300?

23 ATC [LT CANTIL]: Your Honor, that's unclear at this

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1 point, but I'll look into that for you.

2 MJ [Col SPATH]: All right. Sorry to keep doing this, but
3 let's resolve that, because I do want to make sure we take a
4 lunch break. I want to make sure that we also have a plan
5 this afternoon to move forward.

6 And if we don't have 802s, that's fine, we'll just --
7 I'll be more clear in my scheduling orders so that we can
8 schedule these a little easier so that we'll still be reacting
9 when we're in here, and -- but it will be a little clearer and
10 I'll work on that as we move forward.

11 LDC [MR. KAMMEN]: We'll say that you had indicated that
12 you suspected that the government -- that there have been
13 communications, there really haven't been, and perhaps that
14 while the government's responsible for scheduling our
15 witnesses, which is somewhat peculiar, it would also be
16 helpful if they would figure out what order we want them since
17 they're our witnesses. And, of course, we -- and we're all
18 just getting back on track.

19 MJ [Col SPATH]: We are, and ----

20 LDC [MR. KAMMEN]: That would be more than helpful.

21 MJ [Col SPATH]: I think they're trying to assist. We're
22 trying to get them here and I appreciate everyone's effort to
23 do that.

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1 TC [MR. MILLER]: And we will, Your Honor. This is the
2 first time I have actually met Mr. Kammen, so from here
3 forward we'll try to accommodate him as best we can.

4 MJ [Col SPATH]: So let me ask this, Mr. Kammen. I know
5 you had indicated a preference for 350. Here's, I think, the
6 bottom line for everybody. If dealing with witnesses is
7 important, and at least resolving that, are you in a position
8 where we can talk 332AA? The government knows the risk. If
9 I'm -- if -- I haven't ruled yet. If ultimately I rule to
10 abate, we'll stop; and if I'm wrong on whether or not
11 Commander Mizer comes to the team or not, the way to figure
12 that out is to move forward in a way that makes sense. So I
13 don't want to get to some of the more substantive motions
14 today, but 332 is the -- 332AA is a discovery motion. Can we
15 take that up before lunch so that we can resolve this issue
16 with Commander Dill [sic]?

17 LDC [MR. KAMMEN]: I defer to Lieutenant Commander Pollio
18 because she was going to do that, but we would like to be
19 heard. And we understand that you you've ruled on the motion
20 to compel witnesses, but because your ruling has some
21 consequences to the defense, at least before we go forward
22 with other motions, we would like to be heard with respect to
23 that. We can do that now or whenever. Our preference,

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1 though, is really to stay focused on the lawyer matters first,
2 348, 350. Those are the most pressing from our perspective.

3 MJ [Col SPATH]: Understand. My only question, given the
4 hour, and we're going to run quickly to a lunch break, and we
5 need to figure out if Commander Mizer is available later, and
6 if we have the limitations with Commander Dill of just today,
7 taking the testimony won't necessarily change how long we're
8 going to spend arguing the motions, it's just a matter of
9 making sure that we are responsive to other people's
10 calendars, which I understand. Let me just ask, Lieutenant
11 Commander Pollio, are you prepared to talk 332AA?

12 DDC [LCDR POLLIO]: I believe we're prepared to talk about
13 it today. I still believe that, given that we were just told
14 we are going to come back to argue 350, it might perhaps make
15 the most sense to do 350, see if Commander Mizer is available,
16 take his testimony perhaps before lunch, come back from lunch
17 and conclude with 348. And my understanding is that
18 Lieutenant Commander Gill is on standby all day and then we
19 can take him up as the next order of business this afternoon.

20 MJ [Col SPATH]: He is. And we can do the two 505
21 hearings first thing tomorrow if we need to. Let me check
22 this, then: Any objections to a later lunch today from the
23 prosecution?

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1 TC [MR. MILLER]: None, Your Honor.

2 MJ [Col SPATH]: Any worries about that from the defense?

3 DDC [LCDR POLLI0]: No, sir.

4 MJ [Col SPATH]: Just looking around at everyone in front
5 of me to make sure the court reporters, no issues. All right.
6 That's a negative. And I never know if there's some
7 logistical issue that I'm unaware of that I want to make sure,
8 any issues -- silence is okay. We'll take silence. We'll
9 find out how we're doing with Commander Mizer. Maybe we can
10 get him on the record and get moving.

11 So then let's do this, let's do 350 quickly. Defense
12 Counsel.

13 DDC [LCDR POLLI0]: Good morning, sir.

14 MJ [Col SPATH]: Good morning.

15 DDC [LCDR POLLI0]: In this case, the issue on this
16 particular motion is two civilian defense counsel, Ms. Rosa
17 Eliades and Ms. Mary Spears, both of whom have been detailed
18 to this case but as of yet have not received their full TS
19 clearances or the requisite and required SAP read-ons and
20 other security-measured programs that are necessary to, one,
21 become full members of the defense team; and two, and most
22 importantly, meet with Mr. al Nashiri and form an
23 attorney-client relationship.

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1 In this setting, the government has the
2 responsibility to adequately resource this capital criminal
3 case, which has been ongoing for years. Mr. Kammen talked at
4 the very beginning today, we have two counsel here. And we
5 compare that to the government's seemingly unlimited
6 resources. And Your Honor even alluded to it, whether or not
7 it's the prosecution or some other agency, they're all the big
8 G. It's all the government, and it's the government's job to
9 make sure that the counsel here are adequately able to meet
10 with their client.

11 MJ [Col SPATH]: It is. Let me ask just a couple of
12 things that will help with this. I've talked to the
13 government about the need to process security clearances and
14 recognizing they're likely frustrated as well.

15 Under the rules as currently provided, your client is
16 entitled to a learned counsel and one detailed military
17 counsel. I know you don't concur with the rule. Concur that
18 that is the state of the rule.

19 DDC [LCDR POLLIO]: I concur that that is the state of the
20 rule, yes, Your Honor.

21 MJ [Col SPATH]: And, again, this is not just because of
22 the commissions. I say this in my day job as the Chief Judge
23 of the Air Force in trials. I recognize people not agreeing

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1 with the rules. I'm limited, and I say it a lot. People
2 should vote and run for office more. I get it.

3 So then we have the next piece, which is -- in your
4 client's case, we have two more counsel that he has acquired,
5 the two civilians. So he can certainly do that at no expense
6 to the government. We know that part of the rule. And so I
7 understand that we have two counsel who are not here who he
8 wants here, in addition to what is statutorily required. Got
9 it.

10 But we're at a pretrial stage, and we're at a
11 pretrial stage where we've had an 18-month break and we're
12 only talking about -- not "only," but we are talking about
13 procedural and other motions. We're not doing evidence
14 admission, the hearsay admissions, those types of things. Are
15 you with me so far?

16 DDC [LCDR POLLIO]: Yes, sir.

17 MJ [Col SPATH]: Doesn't that -- as I look through R.M.C.
18 805C, I can move forward without the consent of the accused if
19 a continuance isn't warranted and his ability to be adequately
20 represented isn't impaired.

21 DDC [LCDR POLLIO]: Sorry.

22 MJ [Col SPATH]: And that's what I'm asking -- I recognize
23 that the other two need to be here, again, because he has the

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1 right to do that with civilians, but we're talking about
2 pretrial matters and a team that has had some period of time
3 within the 18 months to prepare for the matters here. So why
4 would I abate starting now as opposed to as we get closer to
5 the more significant evidentiary and other issues that are
6 coming our way?

7 DDC [LCDR POLLIO]: Your Honor, part of being detailed
8 defense counsel is not just sitting here in the courtroom.
9 There is a lot more that goes into becoming a full member of
10 the defense team, and things that are important throughout the
11 entire process from the beginning, whether it's starting to
12 formulate defense strategy and where ----

13 MJ [Col SPATH]: But they weren't here from the beginning.
14 They were here from a year ago. They were here from a year
15 ago where significant work had already occurred, so they're
16 going to have to catch up. I get that. I was in the boat
17 catching up a while ago. I recognize that.

18 My question is, here, right now, I again recognize
19 you're going to be formulating defense strategies and such,
20 but isn't the need -- the government needs to assist where
21 they can, and the other agencies need to get this done, which
22 I have been clear to. But is abatement right -- ripe now, or
23 do you think it's going to become ripe if we continue to move

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1 forward and you're not getting that assistance?

2 DDC [LCDR POLLIO]: We believe it is ripe now, Your Honor,
3 and there's a couple of reasons for that. The first is you
4 identified that there's a need for them to catch up. They
5 cannot catch up on this case until they receive those
6 clearances, and until they receive their SAP read-on, and
7 until they are able to meet and establish an attorney
8 relationship with the client. So part of playing catch-up is
9 the fact that this needs to happen.

10 The other thing that is important, and you alluded to
11 that you might not have the power personally to ensure that
12 they have a clearance, but it is remarkable to note that
13 within this commission system, the day after the defense filed
14 this particular motion, after Ms. Spears and Ms. Eliades had
15 been at the command for nearly a year, on 9 July, the day
16 after the defense files this motion, Ms. Spears gets a phone
17 call to initiate the investigation. And that on 15 August,
18 Mrs. Eliades receives a phone call from an investigator saying
19 that they have ten days to complete her investigation.

20 So while perhaps Your Honor does not think that you
21 have any power, it is clear that the commission and the idea
22 of abatement does get things moving. And remarkably,
23 yesterday afternoon, on the eve before litigation of this

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1 important motion, the defense received notification that
2 Ms. Eliades would now be receiving her TS indoctrine. Your
3 Honor, that doesn't include the wait and delay that will still
4 ensue with trying to get a SAP read-on. We have had members
5 of the defense team that have a TS clearance that still takes
6 months to get a SAP read-on.

7 And with regards to whether or not an abatement is
8 ripe now, the government chose to refer charges. The
9 government said that it was ready to proceed to court on
10 numerous occasions. Whether or not it is ready or not, the
11 defense is entitled to time to prepare for that. Whether it's
12 a hearing on evidentiary issues, all of the motions that we're
13 going to be arguing in this hearing here in September are
14 going to impact the entire hearing and case, whether it's
15 pretrial strategy, whether it's additional motions that need
16 to be filed, whether it's additional investigative avenues to
17 approach. Everything that we're doing today in court and
18 everything that the defense team is working on today impacts
19 the entire commission and the entire case.

20 So to say to the defense that it's unreasonable to
21 wait so that it can have its full team in place, it doesn't
22 hold any weight. What the defense is asking for here is an
23 abatement of perhaps six months from the day that Ms. Spears

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1 and Ms. Eliades receive their SAP read-on and all of their
2 security requirements, because in this case it is not just a
3 SAP read-on, there are several other programs that they need
4 to be read on to. And we're asking for that period of six
5 months so that they can become full members of the defense
6 team, so that they can be involved in team discussions,
7 strategy, how to prepare for the next set of hearings. You
8 know, we come down for this September hearing, and we have two
9 lawyers that can discuss the strategy fully.

10 Perhaps one of the other critical parts is there is a
11 world of information and discovery that those two attorneys
12 cannot read, and it is impossible in this case to make
13 decisions about case strategy and how to proceed forward when
14 you don't know all the pieces to the puzzle. And it takes
15 time. This is a complex case that has taken the government
16 years to investigate. The government has said that discovery
17 is ongoing. Surely there can be no harm to an abatement of
18 the hearings until the defense members have a complete team
19 going forward in a case where the government has admitted that
20 it has not completed its discovery obligations at this point.

21 And at this point, Your Honor, we propose that the
22 six-month abatement is ripe. Those two members are critical.
23 Right now the defense is severely short-manned. It impacts

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1 everything, not just their involvement on the case going
2 forward, but it has a spillover impact. You heard briefly
3 when we were discussing the motion of Commander Mizer's
4 withdrawal, the fact that those two lawyers are detailed
5 counsel, they're not just volunteers, they're not, you know,
6 paid for. They have been detailed by the chief defense
7 counsel, and they have a duty and obligation. And right now
8 the defense is just severely undermanned.

9 MJ [Col SPATH]: I just want to make sure the -- so our
10 record is clear, Commander Cooper is detailed, no
11 attorney-client relationship yet; is that accurate?

12 DDC [LCDR POLLIO]: She -- sir, Your Honor, she was
13 recently detailed and briefly received her TS and the defense
14 is prepared to make perhaps an ex parte presentation, but
15 defense resourcing and what goes on on the defense strategy,
16 that there are a lot of other pieces and moving parts to that
17 and we're not prepared to discuss that in open court.

18 And so, Your Honor, in this case it is entirely
19 reasonable and it is ripe at this moment to ask for an
20 abatement to the proceedings until the defense can be fully
21 manned and fully resourced and have full participation from
22 the defense team moving forward for trial strategy, pretrial
23 motions, pretrial hearings, and all of the other things that

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1 will impact this trial, whether it's in six months or a year
2 from now.

3 MJ [Col SPATH]: But -- I agree for the pretrial strategy.
4 Pretrial motions, absent new information, should be -- have
5 been coming to a close 18 months ago. I mean, we were through
6 the pretrial motions stage. I recognize, as discovery
7 continues to make its way to you, there may be motions that
8 come from that. I understand that.

9 But there was a trial schedule in order that had been
10 worked towards, and then we had the discovery -- the discovery
11 regarding -- I don't want to talk about it in here. We had
12 significant discovery orders that came with Judge Pohl. The
13 government has been complying with that discovery requirement.
14 So I recognize some motion practice springs from that
15 discovery. But in large part, pretrial motions, we have filed
16 and dealt with a significant amount of pretrial motions well
17 before one year ago where these two came on board.

18 DDC [LCDR POLLI0]: Your Honor, it's not just about this
19 ongoing discovery, though, and I think there were more reasons
20 to why the legal perhaps scheduling was scrapped. And part of
21 that difficulty is, as you know, I was not a part of that
22 case. And, in fact, the only counsel present from the
23 beginning is Mr. Kammen. So I believe that there were a lot

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1 of other factors that went into the determination that a
2 scheduling order on motions was not prudent. It's not just
3 discovery. It's the fact that new investigative issues arise.
4 We have a situation where there has been talk recently of
5 trying to change -- legislatively change the rules in which we
6 operate on, once again, which will, of course, raise the need
7 for additional motion practice.

8 So I think given the system that we're operating
9 under, there were a lot of different factors in play for that.
10 Again, recognizing that I was not part of the defense team at
11 that time.

12 MJ [Col SPATH]: I understand. All right. Thank you.

13 DDC [LCDR POLLIO]: Thanks.

14 LDC [MR. KAMMEN]: Your Honor, if I may, I just want to
15 make sure the record reflects, and it's in the motions.
16 Ms. Eliades and Ms. Spears are GS employees, approved by the
17 convening authority at the request of the chief defense
18 counsel.

19 MJ [Col SPATH]: Yes, and that is in the motions.

20 LDC [MR. KAMMEN]: Okay. I just wanted to make sure ----

21 MJ [Col SPATH]: Absolutely.

22 LDC [MR. KAMMEN]: ---- because you were talking about two
23 lawyers.

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1 MJ [Col SPATH]: Oh, I had talked about civilian
2 attorneys. Thank you. Accurate enough.

3 LDC [MR. KAMMEN]: And so they're not civilian attorneys,
4 as the rule sort of contemplates.

5 MJ [Col SPATH]: Civilian attorneys hired by the DoD
6 detailed to your team.

7 LDC [MR. KAMMEN]: Exactly, and there's a different
8 situation.

9 MJ [Col SPATH]: All right. Trial Counsel.

10 ATC [LT CANTIL]: Good morning, Your Honor. This issue
11 has already been addressed by this commission with the Nancy
12 Hollander issue in AE 178E where the court declined to abate
13 the proceedings to wait for Ms. Hollander to obtain other
14 security clearance. In that ruling -- it was Judge Pohl at
15 the time, as I'm sure you're aware -- Judge Pohl based his
16 reasoning on the fact that the accused already had what was
17 provided in the MCA. Specifically, a detailed defense counsel
18 and a learned defense counsel.

19 Now, there is no reason to depart from that reasoning
20 in this case. In fact, as the defense just stated, they have
21 more than what's provided, as Commander Cooper has been
22 assigned to their team, as was pointed out in footnote 1 of
23 AE 350.

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1 MJ [Col SPATH]: Well, Ms. Spears and Ms. Eliades have
2 been detailed to their team. I recognize why they're not
3 effectively working on their team.

4 ATC [LT CANTIL]: Your Honor, for Ms. Spears and
5 Ms. Eliades to be detailed, Rule 4 of the Rules of Court
6 states that the chief defense counsel has the responsibility
7 of detailing qualified defense counsel, and qualified is
8 defined under Rule for Military Commission 502. And to be
9 qualified, one must have a -- must have a security clearance
10 of SECRET or higher.

11 Ms. Spears and Ms. Eliades don't maintain that --
12 maintain the security clearance that is required in this case
13 so to the extent that they're detailed, they were improperly
14 detailed as they are unqualified. Additionally, no detailing
15 memo with their information or filings in this case has been
16 filed.

17 MJ [Col SPATH]: That is not really your strongest point
18 here.

19 ATC [LT CANTIL]: Yes, sir. Roger.

20 MJ [Col SPATH]: We know that office of the defense
21 counsel is going to give them to the defense. We have seen
22 that in the motion practice. We've seen that as we move
23 forward. It has taken almost a year or a year to get them a

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1 security clearance, to get them read on. Those were offers of
2 proof on the timing. I have no idea if that information is --
3 what's being presented or not. Here's the bottom line, we
4 talked about it earlier: If the big G government wants to
5 move this case forward, as they say so often, then they need
6 to do the things they need to do to move this case forward.

7 That is, we dealt with Change 1 where I did make a
8 ruling on UCI. I understand the pressures to move cases
9 forward. That's the same in, again, my other job as it is
10 here. That is a normal part of the process that everybody
11 understands. There is an interest in moving cases to closure
12 for the people involved who need these things resolved, for
13 many reasons from both sides.

14 But part of that is, as the government says so often,
15 we need to move these things forward, and then those same
16 agencies aren't taking the steps necessary to move these
17 things forward.

18 So here my focus is on the rules. And we do have the
19 rule ----

20 ATC [LT CANTIL]: Yes, sir.

21 MJ [Col SPATH]: ---- that requires a learned defense
22 counsel and a detailed military defense counsel which the
23 defense team has ----

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1 ATC [LT CANTIL]: Yes.

2 MJ [Col SPATH]: ---- because we -- plus we also have now
3 Commander Cooper detailed without an attorney-client
4 relationship is my understanding.

5 ATC [LT CANTIL]: Yes, sir. And that rule for one learned
6 defense counsel and detailed defense counsel is consistent
7 with federal practice as well. And I direct Your Honor's
8 attention to 18 U.S.C. S3005 which states in federal capital
9 cases, an accused there is entitled to a learned counsel and
10 an additional counsel.

11 So in this commission's holding in AE 178E they
12 recognize that principle. This commission recognized that
13 principle, and said to the extent that additional counsel are
14 part of the defense team, they are not compensated by the
15 government, and there is no right to specific additional
16 counsel recognized in the 2009 MCA or the Rule for Military
17 Commissions.

18 Now that ruling is consistent with other military
19 commissions rulings as well. Just last month in the United
20 States v. Hadi Al Iraqi, in AE 056F in that case, the court
21 declined to abate the proceedings pending the grant of
22 security clearance to three additional counsel beyond what was
23 required in the statute. And the court reasoned that the

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1 accused may retain additional counsel, however, it is
2 unreasonable to delay these proceedings to do so. In both of
3 those, both our commission's required ruling and the Hadi
4 ruling is consistent with federal practice as well. Several
5 federal circuits have heard cases where the accused had
6 multiple counsel and one of the counsel was not available for
7 a period of time, that includes the First, Sixth, and Tenth
8 Circuit.

9 And, in fact, the D.C. Circuit in the United
10 States v. Burton stated that once a fair and reasonable
11 initial opportunity to retain counsel has been provided, and
12 adequate counsel obtained, a court is free to deny a
13 continuance to obtain additional counsel.

14 However, despite this, the defense contends there is
15 some right. And they rely on the fact that Ms. Spears and
16 Ms. Eliades were detailed. However, as I stated earlier, to
17 be detailed to serve as counsel in this case, you have to
18 first have a security clearance. That's laid out in Rule for
19 Military Commissions ----

20 MJ [Col SPATH]: Understand. I would stick with your
21 strong points.

22 ATC [LT CANTIL]: Yes, Your Honor. The bottom line is we
23 cannot abate these proceedings every time a new defense

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1 counsel is detailed. We cannot wait 6, 12, 18 months every
2 time a new defense counsel is added to the defense team.
3 There's nothing in the law that requires that and it's
4 contrary to the prior decisions of this commission.

5 Pending your questions, Your Honor.

6 MJ [Col SPATH]: No. Thank you.

7 ATC [LT CANTIL]: Thank you.

8 MJ [Col SPATH]: Defense Counsel, it's your motion, so
9 you've got the last word.

10 DDC [LCDR POLLIO]: Yes, sir. I'd just like to make a few
11 points.

12 While I understand that the rule says learned counsel
13 and detailed military counsel, there is a right to effective
14 assistance of counsel. And in recognizing that the defense in
15 a capital litigation requires effective counsel, the lead
16 counsel, the chief defense counsel, and the convening
17 authority have collectively determined and agreed that
18 Ms. Spears and Ms. Eliades are necessary members of the
19 defense team.

20 Counsel alluded to federal court practice. And I
21 think it's interesting, if you look at federal court practice,
22 particularly in some of the higher visibility cases lately,
23 look at the Tsarnaev case, there were two learned counsel,

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1 there were three other counsel on that case. Moussaoui, there
2 were also two learned counsel. McVeigh, there were also a
3 team of lawyers. In no other situation in federal practice
4 would you see one learned counsel with a -- one military
5 counsel, but the government's position is as long as there's
6 somebody in a military uniform, that that's sufficient,
7 regardless of their particular experience, background, or
8 qualifications.

9 And at the end of the day, the defense, Your Honor,
10 the defense is asking for an abatement of six months now so
11 that Mrs. Eliades and Mrs. Spears can be fully integrated into
12 the defense team so as to not cause undue delay down the road.

13 The government says that they cannot delay every time
14 there's a new defense counsel. The government created this
15 system. The government created a system and preferred charges
16 in 2011 when it wasn't ready to go to trial. So the fact that
17 there are new defense counsel is a predicament that the
18 government has created. The defense counsel present require
19 resources to make sure that they are effectively representing
20 Mr. Nashiri. And at the end of the day the effective
21 assistance and effective counsel is what requires that
22 Ms. Spears and Ms. Eliades be given their SAP read-ons
23 immediately and that these proceedings be abated until they

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1 are given adequate time to become full members of the defense
2 team. Thank you.

3 MJ [Col SPATH]: Thank you.

4 Any update on Commander Mizer?

5 ATC [LT CANTIL]: Your Honor, Commander Mizer is still en
6 route. We expect him around -- right about now.

7 MJ [Col SPATH]: Then Commander Dill relates to Appellate
8 Exhibit 332 or that series, correct? And that he -- or she is
9 available anytime this afternoon? He is available?

10 ATC [LT MORRIS]: That's correct, Your Honor.

11 MJ [Col SPATH]: My hope would be take a short break.
12 We'll take Commander Mizer's testimony and then we'll take a
13 lunch break and then we'll come back, likely take the
14 testimony before any argument, or take the argument on 332AA,
15 then take Commander Dill from there. That should ----

16 LDC [MR. KAMMEN]: Just for your clarification, it's Gill,
17 Commander Gill.

18 MJ [Col SPATH]: For 332AA.

19 LDC [MR. KAMMEN]: Yes, sir. Yes.

20 ATC [LT CANTIL]: Your Honor, if I could just make one
21 additional point.

22 MJ [Col SPATH]: You may.

23 ATC [LT CANTIL]: The word from Commander Mizer is he's

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1 about 25 minutes out.

2 MJ [Col SPATH]: Might change the math a bit. Clearly,
3 there's a late lunch break and no lunch break. We should --
4 why don't we take advantage -- by the time he -- if he's not
5 there yet, gets there, makes his way through the Mark Center
6 to the VTC that they test here to make sure it works and have
7 him ready, I would guess that will take close to a normal
8 one-hour lunch break, just based on what we just heard.

9 So why don't we do that. We'll come back. If
10 there's any updates, provide them to each other, please, so
11 that you all are all on the same page. If there's going to be
12 a delay in Commander Mizer's availability, let somebody from
13 the trial judiciary know so that we can pause before we come
14 back from lunch.

15 First order of business, we'll take up Commander
16 Mizer, we'll take up argument on Appellate Exhibit 332AA, and
17 we'll take Commander Gill. That might take us through a good
18 part of the afternoon. Anything else before we recess for the
19 60 minutes?

20 Trial Counsel?

21 TC [MR. MILLER]: Nothing further from the prosecution,
22 Your Honor.

23 MJ [Col SPATH]: Defense counsel?

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1 LDC [MR. KAMMEN]: No, Your Honor.

2 MJ [Col SPATH]: All right. Court's in recess.

3 [The R.M.C. 803 session recessed at 1150, 7 September 2016.]

4 [END OF PAGE]

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