[The R.M.C. 803 session was called to order at 0913, 11 August 2014.]

MJ [COL POHL]: The commission is called to order. Pursuant to a previous order of the commission, at this time the only accused present is Mr. Ramzi Binalshibh.

Trial Counsel, who is here for the government?

CP [BG MARTINS]: Good morning, Your Honor. Present for the prosecution are myself, Brigadier General Mark Martins, Mr. Robert Swann, Mr. Clayton Trivett, Ms. Danielle Tarin. The other prosecutors are absent. Also at counsel table are paralegals Mr. Dale Cox, Mr. Rudy Gibbs and Legalman 1 Melissa Albright. And then also in the courtroom is Ms. Molly Scullin of the Federal Bureau of Investigation.

MJ [COL POHL]: Thank you. Mr. Harrington, who is here for Mr. Binalshibh? Good morning.

LDC [MR. HARRINGTON]: Present today are Lieutenant Commander Bogucki, Major Balfantz, and Commander Tri Nhan myself. That's all of our detailed counsel, Judge.

MJ [COL POHL]: Thank you. The issue that we are to address initially is a government request for reconsideration. Just to put on the record, the order of events in this case, in April and June the commission considered issues raised by AE 292. Subsequently the commission issued an order

1 addressing the issues raised by 292 for all five of the
2 accused.
3 The commission's order, which understands that there
4 may be additional litigation on it, basically said that for
5 four of the five accused there appears to be no issue under
6 292. The commission was not confident that there was a
7 similar resolution at that time with regards to
8 Mr. Binalshibh.
9 Also out there was a request for the government to
10 have Mr. Binalshibh examined under Rule for Military
11 Commissions 706. That request was filed in December.
12 According to the pleadings, Mr. Binalshibh did not cooperate
13 with the 706 examination, nonetheless, the government has
14 requested a hearing to determine the competency of
15 Mr. Binalshibh. The defense position is, at least apparently,
16 that they are not raising the issue of his competency to stand
17 trial. That, again, as I said, started in December.
18 In April the issue about the potential conflict of
19 interest as discussed in 292 came up, resulting in a delay in
20 any other issue being addressed in both April and June
21 hearings. Subsequently, with the outstanding issues with 292
22 with regards to Mr. Binalshibh's team and the outstanding
23 requests by the government to litigate his competency, the

1 commission issued a severance order.
2 After issuing the severance order, given the nature
3 of the -- given the status of the case at the time, the
4 commission issued the order without input from the parties.
5 Subsequently the government has filed a request for
6 reconsideration by the regular trial counsel team. Subsequent
7 to that, there has been some additional filings by the Special
8 Review Team. That brings us to here today.
9 The issue before me today is more of a procedural
10 than a substantive issue. The government has requested
11 reconsideration of the severance order. This is not -- this
12 hearing is not to address the substantive issues of 292. That
13 being said, Trial Counsel, it is your motion. Do you wish to
14 be heard?
15 MDTC [MR. TRIVETT]: We do, sir.
16 MJ [COL POHL]: Go ahead.
17 CP [BG MARTINS]: Your Honor, as my co-counsel is making
18 his way to the podium, I would like to announce that these
19 proceedings are being transmitted by closed-circuit television
20 to sites in the United States.
21 MJ [COL POHL]: Thank you.
22 As I just said, I want to make sure both sides
23 understand this, we are not here to discuss the substance of

1 any issue of 292 as results to Mr. Binalshibh's team.
2 Go ahead, Mr. Trivett.
3 MDTC [MR. TRIVETT]: Thank you, sir, and good morning.
4 MJ [COL POHL]: Good morning.
5 MDTC [MR. TRIVETT]: We appreciate you giving the
6 government the opportunity to be reheard on a reconsideration
7 request, because I cannot emphasize how much this severance
8 order will have a serious impact on the 2,976 victim family
9 members in this case, ten of whom are with us here today in
10 the gallery, the approximately 100 trial witnesses we intend
11 to call in our case-in-chief, the over 200 family members who
12 have expressed an interest in testifying in the sentencing
13 proceedings should there be one, as well as everyone in the
14 U.S. Government responsible for making the military
15 commissions prosecutions move forward.
16 When Your Honor issued his order to sever -- if I can
17 just have a moment, sir. I would ask that the slide be
18 published to the military judge and the gallery. These were
19 pre-approved by the court security officer and provided to
20 defense counsel.
21 MJ [COL POHL]: Go ahead.
22 MDTC [MR. TRIVETT]: When Your Honor issued AE 312, Ramzi
23 Binalshibh's severance order, you stated that the -- were the

1 military commission fully confident that both issues
2 concerning Mr. Binalshibh would be resolved in a manner
3 conducive to a timely continuation of the joint-trial, the
4 problem of severance would not be before it now. In this
5 argument, sir, I am hoping to convince you that it can be
6 both -- that both issues can be resolved in a manner that's
7 conducive to a timely continuation and that severance isn't
8 necessary at this time.
9 Whenever a party moves for reconsideration of a
10 motion, they need to establish that there is either new
11 evidence or manifest injustice that would result from the
12 order. We didn't have an opportunity to respond to the very
13 specific bases that Your Honor had in regard to severance at
14 this time, namely, the issue in 292, which I won't talk about
15 substantively, as well as the 909 hearing.
16 It seemed as if there was a misunderstanding as to
17 the government's position and/or the defense's position
18 regarding the 909 hearing, and I will address that in a little
19 bit. But those are the reasons we wanted to be sure that we
20 had a chance to argue the government's position on what we
21 believe is a drastic measure in the severance order.
22 Now, rule 906, which is the motion for severance, if
23 you look at the appendix in the Manual for Courts-Martial

1 which the military commission rule is identical to, it is
2 based on Rule 14 of the Federal Rules of Criminal Procedure,
3 and as such the federal law interpreting severance, as well as
4 speedy trial as it applies to the severance claims and for
5 joint trials, is the main body of law that you really need to
6 look to. And clearly as in here with this case, the joinder
7 initially was proper; and that's one of the analyses, whether
8 or not the defendants were joined in a way that's proper to
9 begin with. And clearly here all five individuals are alleged
10 to have participated in the same act or transaction that
11 constitute the offenses that are charged. So they were
12 clearly here properly from a joinder perspective.
13 The government charged them identically. They are
14 all charged with the identical conspiracy charge. They are
15 all charged within the 167 overt acts that belie the
16 conspiracy charge. There were also charges that the
17 government decided not to go forward on for certain of the
18 defendants in order to maintain this as a joint trial. There
19 are certain charges, I won't get into the specifics of them,
20 for Khalid Shaikh Mohammad, for Ali Abdul Aziz Ali, for Walid
21 Bin'Attash, that we decided not to prosecute at this time in
22 order to maintain the best possible posture we could to
23 maintain a joint trial.

1 And we came at this with the understanding that the
2 military is generally not a joint trial justice system. I
3 certainly have practiced within the military justice system
4 for the better part of over a decade. I know Your Honor has
5 been in it for close to 30 years. We don't do a lot of
6 severance cases in the military, and there are some reasons
7 why, but those reasons don't necessarily apply to military
8 commissions, in the military commissions context and law of
9 war offenses.
10 First of all, there is no forum decision issue in
11 military commissions. The forum decisions in military
12 court-martial, whether you go with enlisted representation,
13 officer-only panel, military judge, would make it a fairly
14 easy thing to have a severance for any co-accused should they
15 elect to do that.
16 Furthermore, and just because of the nature of the
17 military and the type of people who serve within it, we don't
18 have large long-term conspiracies that often happen that are
19 prosecuted. I am not saying it never happens, it certainly
20 does happen, but it is certainly not as frequent as the
21 large-scale conspiracies that are prosecuted in federal court
22 all of the time.
23 So it is instructive to look towards federal

1 jurisprudence on this issue. The policies behind joint trial
2 and the efficiency and the economy and the impact to the
3 victims all are in play in this case, much more so than would
4 normally be in a typical court-martial context.
5 Now, Your Honor cited Zafiro in his order. And I did
6 want to call your attention Zafiro, because it is important to
7 reiterate, and I can't reiterate enough in this argument, what
8 a drastic measure that severance is. And in Zafiro it talks
9 about how it is always the defense burden, and clearly it is
10 almost unheard of without the parties asking for.
11 Now, I understand one party did ask for it here, and
12 two of the three bases for which he asked for it were also
13 cited by Your Honor in the severance order. Mr. Ruiz has
14 asked for severance based, at least in part, on the continuing
15 delays regarding Ramzi Binalshibh's competency as well as the
16 time that was taking or will possibly be taken in the AE 292
17 context as that resolves through the independent counsel
18 determination and also the government's motion to reconsider
19 in a public filing. The Special Review Team, who is available
20 and on island today -- and if you have any specific procedural
21 questions regarding for them regarding 292 they are available
22 to you to be able to answer those questions. The prosecution
23 team, of course, is walled off from that.

1 And then a third basis that Mr. Ruiz addressed was
2 the availability of certain evidence that he had, but the
3 government is in a tough position here only because we are not
4 necessarily responding to a motion for severance from a
5 defense counsel. We reiterated how difficult it is to answer
6 severance in a vacuum in response to our order to show cause
7 at the very beginning of the proceedings, and that is simply
8 because we have to establish if the defense met its burden and
9 what prejudice, if any, that they would suffer from continuing
10 with a joint trial.
11 So because we did not get to brief it, I would like
12 to discuss some of the federal case law that discusses the
13 speedy trial aspect of the prejudice as towards the joint
14 trial, only because that's one of the things that Your Honor
15 seemed to be concerned about. In his order he said that he is
16 doing it in order to ensure some modicum of timely justice as
17 to the other four accused.
18 In the order to show cause Your Honor also said that
19 the speedy trial issue seems to be an individual right of the
20 accused. We would disagree with that from the government
21 perspective. If, in fact, they are properly joined, then the
22 speedy trial clock, certainly under federal jurisprudence
23 under the Speedy Trial Act becomes a unitary clock, and

1 provided all of the delays attendant with the aspects of the
2 joint trial are reasonable, then we will continue to have one
3 unitary clock. It's when those delays become unreasonable
4 that an accused may be entitled to a speedy trial claim under
5 the Speedy Trial Act.
6 In federal court there are really two circumstances
7 under Rule 14 when cases are to be severed. And the first
8 circumstance is there is a serious risk that a joint trial of
9 one of the defendants would compromise a specific trial right
10 of one of the defendants, and then the second is when a joint
11 trial would prevent the jury from making a reliable judgment
12 about guilt or innocence.
13 To the extent that Your Honor was severing based on a
14 serious risk of a specific trial right, we don't believe that
15 any right that they have under R.M.C. 707 would be an
16 individual right in which they were able to advance at
17 whatever speed they wanted if they were, in fact, properly
18 joined, and we assert that they had been properly joined.
19 Clearly, a joint trial in this case would not prevent
20 the jury from making reliable judgment about guilt or
21 innocence. And it's important to note under Zafiro, which was
22 quoted by the military judge, that even if prejudice is shown
23 under the Zafiro analysis for severance, even if prejudice is

1 shown, it does not require severance. Such is the strength of
2 the policy and the preference for joint trial. Even when
3 there is prejudice, severance is not required and you could
4 still tailor some other remedy within your sound discretion.
5 So I think that's an important sort of step back to
6 look at even when the defense establishes prejudice, and it is
7 the government's position, and General Martins will speak
8 later of the aspects of Hawsawi's severance in the proceedings
9 tomorrow, is that even when there is prejudice, it's still a
10 last resort to sever a case. And I'll talk a little bit about
11 that as I discuss some of the other cases that we cited,
12 because I did want to call the military judge's attention to
13 other aspects of the cases we have cited that we might not
14 have spelled out in our brief.
15 But in the case of Richardson v. Marsh, which is a
16 1987 Supreme Court case, it casts Bruton in the limited scope
17 that Bruton was intended and the Supreme Court clarified that
18 Bruton wasn't supposed to be a wide net whereby every case
19 with a codefendant's statement would need to be severed or
20 every case in which in which codefendants were joined, we
21 would have to put the prosecution in a position where we are
22 either deciding to go with separate trials in the same
23 conspiracy or we are deciding to forego valid statements for

1 which the public policy has a strong preference for getting to
2 the truth with confessions and admissions that are part of
3 many federal trials.
4 So in Richardson v. Marsh, which was authored by
5 Judge Scalia, he goes into very specific reasons why there is
6 this preference for joint trials, that it would impair both
7 the efficiency and the fairness of the criminal justice system
8 to require in all these cases to exist that prosecutors bring
9 separate proceedings, presenting the same evidence again and
10 again and, importantly, requiring victims and witnesses to
11 repeat the inconvenience and sometimes trauma of testifying
12 and randomly favoring the last tried defendants in all these
13 cases where incriminating statements exist.
14 So clearly the Supreme Court has supported this
15 concept that only as a last resort, drastic measure, should
16 severance ever be granted. Only if the prejudice is
17 established -- and it's not just prejudice as set forth in
18 Zafiro, it's compelling prejudice. You have to be convinced
19 as the military judge that there is no way that the jury is
20 going to be able to discard whatever spillover evidence that
21 there may have been and render a fair verdict on a defendant.
22 That's why it's a very high standard, the burden is very high,
23 and ultimately it's not something that's often granted and

1 certainly almost never granted when it's not been requested.
2 Now, understand this is a little bit of a reverse
3 situation, because at least one way of looking at Your Honor's
4 order is that Mr. Hawsawi complained of three specific
5 concerns that he had going forward in a joint trial, two of
6 which were -- were related to Mr. Binalshibh's issues. So one
7 way of looking at it is if you remove Mr. Binalshibh's issues
8 from Mr. Hawsawi's case, then Mr. Hawsawi's reasons for
9 severance are no longer valid, or at least two of the three
10 are off the table.
11 So we are in a little bit of a reverse situation
12 here, because usually we would simply be arguing about the
13 prejudice that Ramzi Binalshibh's counsel was able to
14 establish in their own motion to sever. So that's why I asked
15 for a little leeway and permission to discuss certain aspects
16 of Mr. Ruiz's claim, because that's the only motion that we
17 have for severance. We have no other motion for severance at
18 this time. And that's the easiest way to address and bring in
19 the public policy concerns that are surrounding the need for a
20 joint trial in a case where, quite frankly, we have more
21 victims and more victim families than any case in the history
22 of the United States.
23 Now, in our motion to reconsider we listed a string

1 cite, and I would like to call the military judge's attention
2 to that, specifically the case of United States v. Vasquez.
3 And United States v. Vasquez was considering both a statutory
4 as well as constitutional speedy trial argument. And in doing
5 so the statute that governs is the Speedy Trial Act, and part
6 of, the Speedy Trial Act deals with the unitary time clock for
7 all codefendants as well as the fact that that time has to be
8 reasonable.
9 And I know it's been referenced by Mr. Ruiz that a
10 motion for severance is one of the things that a court looks
11 to in determining whether or not there has been ultimately a
12 speedy trial violation. He has reiterated several times, and
13 obviously he will have an opportunity to argue this tomorrow
14 and have the opportunity to be heard on this, but the issue of
15 whether or not a speedy trial violation has occurred in a
16 codefendant case when the delay is attendant to another
17 codefendant is whether or not the delays are reasonable, and
18 if they are reasonable -- and some of the cases go into how
19 long has been reasonable -- then there is no other clock for
20 the other accused.
21 It is only when the delays become unreasonable,
22 attributed to the government in some way or otherwise against
23 the notions of fairness, that at that point in time when the

1 delays go from being reasonable to unreasonable under the
2 Speedy Trial Act, at that period of time the Speedy Trial Act
3 may trigger, and the time runs from there on.
4 So the cases -- I would implore you to look at the
5 cases in the string cite that we cite to that discuss that
6 aspect of it, but that's not constitutional speedy trial.
7 Obviously we are not under the Speedy Trial Act here. We are
8 under Rule 707, that's what governs these proceedings. But we
9 would argue that the reasonableness factor is analogous to
10 our -- the military judge's ability to find that the interests
11 and the delay are in the interests of justice and outweigh
12 either the defendants' right or the public's right in an
13 expeditious trial resolution. We believe it's the same
14 structure under which you should analyze any of these
15 concerns, but that's the 707 aspect of it.
16 And when you look then to the constitutional aspect
17 of it, you know, without getting too far into the weeds of
18 what applies and what doesn't apply in the military
19 commissions, courts look to four different factors: The
20 length of the delay, the reason for the delay, the defendant's
21 assertion of the right, and then ultimately the prejudice to
22 the defendant. And we are calling the military judge's
23 attention to this. We string cited it and put parentheticals

1 in, but we didn't obviously put long quotes in there, but I
2 just wanted to highlight a certain aspect. In Vasquez they
3 talk specifically about the length of the delay, and I wanted
4 to address the length of the delay where we are at right now.
5 As Your Honor laid out in the record before my
6 argument, the 706 issue was requested by the government in
7 December and we are now in August. The 292 issue I think
8 became an issue in the April hearings, but it's important to
9 note that although Your Honor ultimately found that four of
10 the five did not have any conflict, all five of them joined
11 292. They are all party to that motion. To the extent that
12 any time is attributable at this point from a delay
13 perspective when you consider a speedy trial issue or a
14 prejudice in regard to severance, that only the time from the
15 period in which you have announced that only Mr. Binalshibh's
16 conflict issue needs to be considered to the point in time
17 where that issue is resolved is the time that's attributable
18 to one of the codefendants. Really all of the remainder of
19 the time is attributable to all of the remaining four
20 codefendants in that they have raised the motion.
21 So furthermore, to take -- and what we put in our
22 filings, to take the next session, whether it be this session
23 or the next session, the next few scheduled sessions, in order

1 to resolve these issues surrounding 292 and whether or not
2 there is a conflict with Ramzi Binalshibh, ultimately would
3 still be reasonable time. It would still be under the unitary
4 clock theory under the Speedy Trial Act. It's reasonable that
5 we need to resolve some issues. In a few months at this point
6 when we believe we are almost at the end, coupled with our
7 position, the government's position on the 909 hearing is that
8 we can do that whenever. We are not -- we don't believe that
9 the proceedings need to be delayed or other issues need to be
10 held up before we get a hearing on 909.
11 MJ [COL POHL]: Mr. Trivett, the difficult -- I understand
12 the speedy trial right, and I understand the federal statute.
13 When this case started, I issued a show cause order of whether
14 they should be severed or not. My concern was how the case
15 could be moved efficiently with five accused and that was
16 looking prospectively, and it's always difficult to do.
17 Now, what I hear you telling me is prospectively from
18 here the case can move along relatively expeditiously by
19 resolving the Binalshibh unique issues. But when we look
20 back, I mean, we have had unique Mr. Binalshibh issues since
21 December that's basically -- at least December through April
22 has stopped any other issue being addressed. And at least the
23 date of my 292 order forward again the Mr. Binalshibh unique

1 issues will stop the case. So I understand the speedy trial
2 right, but I am also talking about the efficiency of running
3 this case.
4 So looking forward, you say in your motion, and I
5 believe you inferred it now, that we can resolve all of these
6 issues in August or at least by October. So the government's
7 position is when we get -- and I'm not going to -- right now
8 we are talking about just one particular accused.
9 MDTC [MR. TRIVETT]: I understand.
10 MJ [COL POHL]: The government's position is issues that
11 are unique to one accused necessitates a delay of ten months
12 or a year, which in October will be ten months.
13 MDTC [MR. TRIVETT]: Yes, sir.
14 MJ [COL POHL]: So be it, it's more important to resolve
15 those issues and keep a joint trial than it is to perhaps
16 sever and move the other ones along more expeditiously. Is
17 that what the government is saying?
18 MDTC [MR. TRIVETT]: That's our 100 percent unequivocal
19 position.
20 MJ [COL POHL]: I just want to make it clear, because on
21 other motions the government is always discussing the need to
22 move the case along, and I understand different motions and
23 different rationales, and I got that, but essentially the

1 government's position is the need to keep it as a joint trial
2 at least through October means that the government's position
3 is that -- you call it a unitary delay, and the federal cases
4 may say that. There is nothing in 707 that says that, that I
5 read.
6 MDTC [MR. TRIVETT]: I believe it's analogous to finding
7 in the interest of justice.
8 MJ [COL POHL]: I understand that. Just so I'm clear, the
9 government's position is understanding that these are unique
10 to one accused may necessitate another again, I would say
11 December to April has all been Mr. Binalshibh. And from the
12 date of my order, which I don't have in front of me, I think
13 it's sometime in July until it's resolved, would also
14 specifically be to Mr. Binalshibh, that your position is that
15 it's better to take the time to do that and keep them together
16 rather than sever those issues with him to move the other four
17 along more expeditiously.
18 MDTC [MR. TRIVETT]: One hundred percent. Now, there are
19 certain things that need to happen and hopefully will happen
20 based on arguments that we make tomorrow in the session
21 regarding the signing of the MOU and discovery and those types
22 of things. So we still want the case to move expeditiously,
23 but we don't think those two things are mutually exclusive.

1 MJ [COL POHL]: Let me ask you about the two issues in
2 front of you. I am unclear from your motion on the
3 competency-to-stand-trial issue. This has been an issue that
4 was raised by the government, as is your right to do under the
5 rules.
6 MDTC [MR. TRIVETT]: Yes, sir.
7 MJ [COL POHL]: Mr. Binalshibh did not cooperate in the
8 706 board.
9 MDTC [MR. TRIVETT]: Right.
10 MJ [COL POHL]: The default is always competent until
11 evidence to the contrary.
12 MDTC [MR. TRIVETT]: Correct.
13 MJ [COL POHL]: Nonetheless, the government has requested
14 a hearing on it, submitted declarations on it, and then in 312
15 appears -- and I need to -- I'm not sure what your position is
16 about further litigation on that issue, because on page 7, the
17 first sentence, the second half says, "The prosecution need
18 not present any additional evidence to support the presumption
19 of his competency." The middle sentence on the bottom --
20 starting on the bottom of the page, other than the colloquy,
21 the prosecution has made the record it sought.
22 So are you done with 909 or not done with 909, the
23 909 issue?

1 MDTC [MR. TRIVETT]: Our position regarding 909 is we
2 would still like the colloquy certainly -- now, we don't know
3 if he is going to cooperate with the colloquy. We don't know
4 what that's going to cooperate ----
5 MJ [COL POHL]: Just so I am clear ----
6 MDTC [MR. TRIVETT]: Right.
7 MJ [COL POHL]: ---- you believe -- the government's
8 position is you have not withdrawn your motion requesting a
9 hearing on the 909 competency issue; is that correct?
10 MDTC [MR. TRIVETT]: That is correct.
11 MJ [COL POHL]: Okay. And we still have the 292 issue out
12 there.
13 MDTC [MR. TRIVETT]: That is correct. Those are the two
14 issues.
15 MJ [COL POHL]: So understanding those two are still
16 pending and they are unique to one accused, the government's
17 position is resolve them for one accused but keep all five
18 together?
19 MDTC [MR. TRIVETT]: One hundred percent unequivocally.
20 MJ [COL POHL]: Okay.
21 MDTC [MR. TRIVETT]: To clarify, I think we said the next
22 several sessions for the remainder of the year. We are a
23 little bit in the dark because we are walled off from all

1 litigation surrounding 292. It is our understanding
2 independent counsel was appointed Friday. I don't know the
3 timeframes for that. I don't know what the Special Review
4 Team's responses are. There are lots we don't know. I don't
5 want to hem them into if we are not done by October, Ramzi
6 Binalshibh gets severed, but clearly there are two scheduled
7 hearings for the remainder of the year and we fully anticipate
8 being able to accomplish both of these two issues within that
9 timeframe barring some unforeseen circumstance.
10 MJ [COL POHL]: Good.
11 MDTC [MR. TRIVETT]: That is our position.
12 MJ [COL POHL]: Okay.
13 MDTC [MR. TRIVETT]: Getting back to just some of the
14 things I want you to call your attention to, I know Your Honor
15 said you understand the speedy trial aspects of the case. I
16 would just cite you to Vasquez, understanding that delays of
17 24 months, 26 months are far more than what we currently have,
18 and even those periods of time were not found to violate a
19 substantial right, i.e., the speedy trial right, of a
20 codefendant who was properly charged.
21 The Vasquez case is probably the closest thing on
22 point. It was a case where there was a competency hearing.
23 There was actually some institutional dysfunction within the

1 case in that the judge ordered a competency hearing be held
2 and that person wasn't transferred to the Butner Correctional
3 Facility for five or six months.
4 All tolled, it was almost a total of two years before
5 that competency hearing was resolved. The codefendant then
6 challenged his conviction later on speedy trial grounds. It
7 was upheld. That time was found to be considerably shorter
8 than that of other cases in which no Sixth Amendment violation
9 has been found.
10 And, again, I am arguing a little bit in a vacuum
11 here because we are not arguing specifically against Ramzi
12 Binalshibh's right to speedy trial or even Mr. Hawsawi's,
13 because he has reiterated in his filings that there is no, at
14 this time, argument for speedy trial from Mr. Hawsawi.
15 They will also look to how long a defendant waited
16 before advancing speedy trial claims. Again, we have been at
17 this for over two years. There has been no request for speedy
18 trial. There is no trial date. There is no deadlines on any
19 motions. And the defense has, for all intents and purposes,
20 pushed back on any attempt to schedule anything. So when they
21 looked at that under the Vasquez case, I think the language
22 was this hardly renders plausible their contention that an
23 expeditious resolution of their cases was a measure of

1 pressing constitutional importance for them. So it's clearly
2 a factor you need to look at. We don't look at this in a
3 vacuum, we look at what the defense has done in this case, how
4 many motions they have filed, whether or not they say that
5 they are ready.
6 We will argue the MOU issue clearly, hopefully, this
7 week, but -- and it's important to know either for Hawsawi's
8 case or for all of the other defendants' cases who haven't
9 signed the MOU that there is over 7100 pages of classified
10 information that we are prepared to disclose to them upon
11 signing of the MOU. Those pages have been provided to
12 Mr. Connell. There was also a hard drive found in the home
13 where Khalid Shaikh Mohammad and Mustafa al Hawsawi were
14 captured that we have turned over in its entirety in
15 classified form to Mr. Connell that's awaiting Mr. Hawsawi and
16 Mr. Mohammad's attorneys signing the MOU, as well as a hard
17 drive full with almost 2 gigabytes of electronic media that
18 was seized at the various other seven raid sites that are
19 relevant to our case.
20 So there is a tremendous amount of discovery that we
21 have not been able to provide, and I am not going to beat the
22 dead horse on this one, but it's important to note that they
23 are going to get that at some point if they sign the MOU. And

1 at that point in time, in my mind they are not going to be
2 arguing for any speedy trial within the next week or so upon
3 receiving that.
4 So it's important to note that all five defense
5 counsel have been extremely litigious in the filing of
6 motions, which is their right, but which must be considered
7 when deciding whether or not there is any prejudice to any of
8 the accused, and it must be more than mere speculative
9 prejudice. Right now we are speculating about a speedy trial
10 right or we are speculating about whether or not Mr. Ruiz is
11 going to have access to Khalid Shaikh Mohammad's testimony
12 when we are nowhere near the part where we need to decide
13 that. It shouldn't be a valid grounds for severance.
14 And I don't want to take the entire argument from
15 General Martins. I know he may get up to speak on this
16 important issue as the chief prosecutor as well, but we did
17 want you to go to those cases that are in the string cites,
18 read them with detail -- not to suggest that you haven't --
19 but it's clear that these types of delays, although
20 unfortunate, occur often in codefendant trials. And providing
21 that those codefendants are in fact properly joined, the
22 unitary clock follows all of them. We take care of what we
23 need to take care of for each codefendant because the policy

1 is so strong and the drastic -- and the measure of severance
2 is so drastic that it's clearly something that's worth the
3 time and effort of the government to do and is clearly within
4 the law.
5 So just to wrap up, sir, all five individuals were
6 charged in a conspiracy to commit the series of armed attacks
7 that culminated in the September 11th attacks that killed
8 2,976 people. They are all charged as principals for the
9 murders, and they all knew each other. The evidence will show
10 that they knew each other, that they were acting in concert
11 with one another. And as I said before, there are charges we
12 decided not to proceed against on several of the accused, if
13 not all of the accused, based on our desire to keep it
14 together.
15 We believe it would be reasonable to take the next
16 couple of sessions -- if that's required, I know that there is
17 a motion to reconsider from the Special Review Team, and they
18 are going to hopefully have the opportunity to argue that
19 tomorrow, but even if required, the next several sessions
20 would be time well spent by the military commission to
21 adjudicate those issues so that we can move forward in a joint
22 trial.
23 We would ask that Ramzi Binalshibh be moved back into

1 the joint trial and rejoin his four confederates. And absent
2 any questions, sir, that's my argument.
3 MJ [COL POHL]: No. Thank you.
4 Defense, do you wish to be heard on this issue?
5 LDC [MR. HARRINGTON]: Good morning, Judge.
6 MJ [COL POHL]: Good morning, Mr. Harrington.
7 LDC [MR. HARRINGTON]: Judge, the first issue is one of
8 procedure procedure, which is, back in May you issued an
9 amendment to the rules of the court and indicated that the
10 word "emergency" would not be something that was considered
11 outside of the normal schedule of events, and the full 14 days
12 has not gone for us to respond. Our first request is that we
13 be allowed to have the full 14 days to respond in writing to
14 what the government's position is. If the court directs me to
15 proceed beyond it, I will do so, but that's our first request.
16 MJ [COL POHL]: Let me ask you something,
17 Mr. Harrington -- and you are correct, the fact that they say
18 it is an emergency doesn't necessarily mean that -- it doesn't
19 mean it goes -- that there is any change in the briefing
20 schedule. That's not normally done. And yes, I will give you
21 time to file a pleading, but I would like your thoughts on
22 what you currently have, because in your -- in the certificate
23 of conference from the motion you indicated that you needed to

1 discuss with your client whether or not you oppose severance
2 or not, and that -- I am assuming you have had an opportunity
3 to do that.
4 Do you have a position of whether or not -- moving
5 the reconsideration issue to the side for the second, do
6 you -- given the nature this was a motion from -- it was a
7 ruling from the court without an order from the court --
8 without input from the parties, and I think given the nature
9 of where we are at with 292, there was no other way that I
10 could figure out how to do it. Do you oppose severance?
11 LDC [MR. HARRINGTON]: We have had discussions with our
12 client about it and they are ongoing discussions. It's a very
13 difficult issue for him to understand, and I'm not sure he
14 fully understands it right now. We have had discussions about
15 it, what the pros and cons of it are in terms of his case, and
16 that's a process that's still going on. And that's part of
17 the reason that we are asking for additional time to file a
18 written pleading so we can get a clear indication from him of
19 what his preference would be with respect to this case. And
20 there are competing interests both ways in terms of whether
21 it's beneficial for him or not beneficial for him. I guess
22 that's my way of saying that I don't have a position.
23 MJ [COL POHL]: You don't have a position.

1 LDC [MR. HARRINGTON]: I do have a position with respect
2 to their arguments.
3 MJ [COL POHL]: Yeah. Let me ask you this.
4 Understanding when you say it's confusing to your client, I
5 think it's also confusing to the lawyers, at least it is
6 confusing to the judge. If we were to put the severance issue
7 aside and simply returned to the status quo ante to address
8 292, giving you an opportunity to respond to severance,
9 basically what I am then understanding is that if we do -- if
10 I do reconsider, put the severance issue to the side for now,
11 basically saying, okay, I have reconsidered my order and I am
12 going to vacate it currently until you have had a chance to
13 respond, since it didn't come from you, would you suffer any
14 prejudice for the rejoinder today and then fully have an
15 opportunity to fully brief the issue and then we could revisit
16 the severance issue?
17 LDC [MR. HARRINGTON]: Well, we have an order right now,
18 which means that in order for you to do that, I guess you are
19 temporarily vacating your order?
20 MJ [COL POHL]: Yes. Basically what I am saying is this,
21 Mr. Harrington, because this did not come from the parties, it
22 came straight from me, is that if I were to choose to vacate
23 the order, the severance order right now, with the

1 understanding that I will let you fully brief your response to
2 it and then we could revisit it down the road, so we can get
3 to 292, because they are interconnected substantively, would
4 you suffer any prejudice?
5 LDC [MR. HARRINGTON]: I guess the only prejudice we would
6 suffer, Judge, is we have an order from the court, and it's
7 our position, if we went on to the further comments today,
8 that procedurally there is no -- there is nothing under the
9 rules for reconsideration that would allow the court to vacate
10 that order. I mean, Mr. Trivett argued as if this was just a
11 motion between the parties, and I don't fault him for that,
12 that's the position that he should take.
13 But we have an order in place and you have been very
14 firm before about that when an order is made, yes, you can
15 make a motion for reconsideration, but it's like an appeal
16 where you are arguing clear error or something like that. So
17 our position is that we do suffer some prejudice in the fact
18 that if we were to agree with the severance, that we would be
19 at least temporarily abating that severance. So yes, there is
20 some prejudice to us.
21 MJ [COL POHL]: Okay. Do you wish to be heard ----
22 LDC [MR. HARRINGTON]: I do. I do have some other
23 comments, Judge.

1 MJ [COL POHL]: Go ahead.
2 LDC [MR. HARRINGTON]: Judge, an additional follow-up to
3 what I just said is that we are -- our team is in a very, very
4 difficult position here with 292 with the 909 pending, because
5 the questions become are we conflicted counsel that are making
6 arguments, substantive arguments to the court? Are we lawyers
7 in a situation where our client has a competency issue that's
8 pending, we are proceeding with other substantive issues, and
9 can we make those arguments if those issues are still hanging
10 there?
11 And I think that's implied in the decision that you
12 made with respect to the severance, that in order for the
13 Binalshibh team to be arguing properly before the court on any
14 issues, that those things really need to be -- need to be
15 cleared up before the court can proceed, and so we are in a
16 very difficult position in terms of what position that we
17 have, and I would suspect that in the event that -- let's say
18 there was a conflict, it wasn't waived or something like that,
19 and new counsel came in, the first thing that they would do is
20 probably come back and say, well, we want to reargue or we
21 want to address issues that were litigated while there was an
22 impairment of the attorney-client relationship with
23 Mr. Binalshibh.

1 MJ [COL POHL]: But the only -- currently the only issue
2 that we have discussed since April has been 292 and the
3 severance issue, which fully implicates 292 down the road on a
4 substantive matter, so at this point I don't know that there
5 would be ----
6 LDC [MR. HARRINGTON]: I am not saying so far that it's a
7 problem, but obviously depending upon what happens this week
8 it could be a problem.
9 MJ [COL POHL]: Okay. I got it.
10 LDC [MR. HARRINGTON]: Because there is a full docket of
11 all sorts of other substantive motions that are ready to go.
12 MJ [COL POHL]: This sounds like it may be sliding into
13 the 292 issue substantively, but would it be fair to say on
14 that issue that you need a decision on 292 for your team to
15 see the way forward on any other issue?
16 LDC [MR. HARRINGTON]: There is no question about that,
17 Judge.
18 MJ [COL POHL]: Okay. I think I have understood that to
19 be the defense position all the way along. Okay.
20 LDC [MR. HARRINGTON]: Judge, just a few other comments.
21 I think Mr. Trivett tried to focus everything on the speedy
22 trial issue and -- but the rule that he put up and that
23 applies here is -- the severance rule is different than in

1 federal court. It's clearly written in a much broader context
2 and talks about the -- it really gives almost unlimited
3 discretion to the court. I am not saying you don't consider
4 those other factors, and there is always a balancing test with
5 this kind of an issue, but it's a much broader rule than you
6 would apply in federal court.
7 And he didn't -- he didn't show the slide, Judge, but
8 he had given to us before a case where he indicated -- they
9 indicated they could find nothing where a court severed a case
10 at an appellate level. Judge, I am involved in a case right
11 now in Buffalo. It's a major RICO that involves multiple
12 murders and four defendants. It's been going on since 2009.
13 It's scheduled for trial early next year. And one of the
14 defendants finished a sentence and started complaining about
15 he wanted bail and he was denied bail and he started
16 complaining about speedy trial and he was denied that.
17 And he appealed to the Second Circuit, and the Second
18 Circuit sent the case back to the trial court and said because
19 the other three defendants are nowhere near ready to go to
20 trial because of complex motions that are pending and hearings
21 that have to happen, the Second Circuit sent it back and said
22 no, this has been going on long enough, try him separately or
23 let him out on bail. And the prosecutor, the government said

1 okay, we will try him separately. This is a case -- it's not
2 like the 9/11 case, but it's a case that's going to take six
3 weeks or so to try, and the government will have to do it
4 twice.
5 And I mention that because when you cite the cases
6 like is Zafiro and Vasquez and those, those are all defendant
7 appeals where trials have been had, done, convictions, and you
8 are going to an appellate court asking the court to reverse on
9 the denial of a severance. And the courts, clearly they are
10 going to look at that differently than a trial court does when
11 the trial court analyzes it. And there are many cases where
12 severance is granted, but you are never going to see a
13 decision about that. You are never going to see an appellate
14 decision about that because it's not appealed.
15 When a trial court grants a severance, the
16 prosecution goes ahead and they try the people individually.
17 They don't have any right of appeal on the denial of a
18 severance. So you never see cases that go the other way.
19 They are all cases that are looked at with a much higher
20 standard of review when they get there, so that it's a little
21 more complicated than it might appear to be.
22 Judge, in addition to the history here with the 706
23 to the 909 to the 292, this really started also with our

1 filing of the motions under 152, which were the complaints
2 about confinement conditions for Mr. Binalshibh in terms of
3 what were alleged to be the treatment of him in the facility
4 with respect to noises, and almost immediately after that was
5 filed was when the 706 proceeding came, and now that has
6 evolved into the point where we have never said that he was
7 incompetent, the government says he is not incompetent, but
8 they still filed declarations, which we filed a response
9 saying we thought they were improper, with basically testimony
10 about -- not about the 909 issue, but about the 152 issue, in
11 a backdoor way of trying to prejudice that.
12 And the only reason I bring up the 152 issue is that,
13 again, affects Mr. Binalshibh's ability to participate in
14 these proceedings. And that issue has to be resolved at some
15 point relatively soon, too, once these other issues are
16 resolved, to determine whether that is the case and whether,
17 in fact, the government is doing something that contributes to
18 his difficulties in assisting in his case.
19 Judge, I don't want to -- as you requested not to go
20 into the 252 -- or 292 issues, but -- and I assume that we are
21 going to -- if the court does what you indicated with your
22 question to me, I assume we are going to address that in the
23 morning if we are here, but I raise this because Mr. Trivett I

1 think is optimistic in terms of the rapidness with which this
2 issue can be resolved. It's already been several months and
3 you have had filings from Colonel Mayberry about the
4 difficulties in terms of her getting somebody to be conflict
5 counsel, which you are aware of.
6 But in addressing that issue with our client, we are
7 hampered now by the fact that we don't have any disclosure
8 from the special trial counsel of what it is that the
9 investigation was about. We know some issues from our own
10 investigation, but we don't know what they did. There has
11 been no disclosure on that. They are stonewalling in terms of
12 giving us that, for whatever reason, and we are about to enter
13 into a period of litigation about that. And I suspect that
14 you are going to have litigation from the conflict counsel,
15 because just like we need to know that so we can make
16 representations to our client of whether we believe there is a
17 counsel, whether we can represent to him that we can continue
18 aggressively on his behalf or not, the conflict counsel has to
19 know everything about the whole issue in order to properly
20 advise him.
21 And if we are going to be in a position where that's
22 going to have to be litigated and that's going to be a real
23 problem in terms of getting the information, it may be beyond

1 months and months, an extended period of time before anybody
2 can stand in front of you and say they really know what the
3 conflict -- potential conflict is and they can meaningfully --
4 and Mr. Binalshibh can either waive it or not waive it.
5 So I would just like you to keep in mind that this
6 projection that we can do it by October or we can do it by the
7 end of the year is not something -- I am not saying that we
8 are intending to do that. In fact, we have attempted to help
9 in terms of finding conflict counsel for Colonel Mayberry.
10 And judge, in addition to that, each of our lawyers
11 on the team is going to have to analyze what's happened to him
12 or her and be able to sit down with Mr. Binalshibh and say
13 that to Mr. Binalshibh and say how does this affect me, and
14 can I represent to you that I can continue to represent you
15 when I know what has happened to me.
16 And on our team, just over this issue -- we have lost
17 four team members over this issue, and obviously that's a
18 dramatic hurt in terms of manpower, but the people that remain
19 on this team have this cloud over them and have this worry
20 that they have, and it affects them, and that has to be told
21 to Mr. Binalshibh and they have to make their own ethical
22 decision of whether they can represent that they can overcome
23 that and still be his attorney. I mean, obviously these

1 things will be fleshed out more, but in terms of your
2 considering here of even vacating this order temporarily, I
3 think you need to have those things in mind.
4 If the court has any other questions?
5 MJ [COL POHL]: No. Thank you, Mr. Harrington.
6 Trial Counsel, anything further?
7 CP [BG MARTINS]: Your Honor, I know the court has a
8 general rule of one counsel per issue, but I beg your
9 indulgence here.
10 Counsel spoke to reconsideration. You will have to
11 consider both in this unusual situation whether counsel ----
12 MJ [COL POHL]: Why should I not apply the rule?
13 CP [BG MARTINS]: Because you have two issues here that
14 are intertwined that you seem to be taking under advisement.
15 One will be the threshold issue of reconsideration.
16 Mr. Trivett has provided in the nature of new facts and new
17 law given that Your Honor made the decision about facts and
18 law to be begin and acknowledge that, and we appreciate that.
19 As to the substance of severance, that's something
20 within our division of labor on issues that I have taken. I
21 would have argued 039 had we argued 039 ----
22 MJ [COL POHL]: Do you have anything -- well, didn't
23 Mr. Trivett argue the substance of severance?

1 CP [BG MARTINS]: There are matters of the substance of
2 severance that I think, based on your questions, go to that,
3 and I believe it would be -- I request the opportunity to be
4 heard on that.
5 MJ [COL POHL]: Why can't Mr. Trivett respond?
6 CP [BG MARTINS]: Your Honor, the case law shows -- and
7 this is an important point I wish to make -- in the area of
8 severance, that the representation of the government, the
9 authoritativeness be something that be under the consideration
10 of the court.
11 In Richardson v. Marsh, in the Scalia opinion, which
12 was joined by ----
13 MJ [COL POHL]: General Martins, I am just saying why
14 can't Mr. Trivett argue this? Why should I give the
15 government the advantage of two different attorneys arguing
16 the same issue when I wouldn't give do it to anybody else?
17 CP [BG MARTINS]: I don't think it is an advantage. There
18 is a government motion for reconsideration with a government
19 burden, and that's one of the unusual pieces of this that I
20 wish to go to ----
21 MJ [COL POHL]: But, General Martins, again, I hear what
22 you are saying, but I come back to if I permit you to argue a
23 variation of the same theme because you are quoting the case

1 that Mr. Trivett quoted, maybe for a different purpose, then
2 now when the defense walks up and says Mr. Nevin wants to
3 argue one thing and Major Wright wants to argue the
4 rebuttal ----
5 CP [BG MARTINS]: Your Honor, I believe this is a slightly
6 different situation because you have a reconsideration motion
7 before you and because of the way you have sought argument in
8 this, it's compressed with a substantive issue of severance.
9 Now, you will hear more about severance tomorrow, but
10 you are going to go back into chambers and reconsider
11 something and you are going to be considering the substance of
12 a motion of severance, and in the way we have divided things
13 up, I believe it's fully within the spirit and intent of your
14 rules to allow it.
15 MJ [COL POHL]: Okay.
16 CP [BG MARTINS]: Could I ask you ----
17 MJ [COL POHL]: General Martins, I hear what you are
18 saying, okay? But this is one pleading, and how you divide
19 your labor up is up to you, but I'm not going to permit two
20 counsel to argue on the same issue. The issue before me is
21 312A, I believe is the number, and that's the one before me.
22 Now, tomorrow if you wish to argue the severance -- substance
23 of the severance as it relates to Mr. Hawsawi's case, you may,

1 but right now I am not going to hear from a different counsel.
2 If Mr. Trivett has more to say, he can.
3 CP [BG MARTINS]: Will you hold -- I guess I don't want to
4 be prejudiced by that decision. You stated that you will
5 allow me to speak to severance tomorrow but you may make a
6 decision this evening that makes that really no relief at all.
7 Your Honor, this is an important issue that courts have
8 given ----
9 MJ [COL POHL]: I understand, but I don't understand why
10 if you wanted to argue this motion you could have argued at
11 the start and now because -- and quite frankly, in my
12 experience, when you got multiple attorneys, some sitting,
13 some talking, there is always good ideas by the sitting
14 attorneys.
15 So I hear what you are saying ----
16 CP [BG MARTINS]: Bodies of law, reconsideration law,
17 speedy trial law, severance law, Your Honor that has --
18 you're honoring this in the breach, I would say, this is a
19 rule that we have had in this case. I am giving a experiences
20 spelled reason why you could hear something that I would
21 submit is valuable. Take it under advisement, provisionally
22 consider it and then decide not to, but I would request that
23 you hear me out.

1 MJ [COL POHL]: Okay. I understand your position, General
2 Martins. I disagree with it. I am not going to permit it.
3 If Mr. Trivett wants to add things, he may, but I'm not going
4 to hear two attorneys on the same issue. I understand your
5 position, but that's my ruling.
6 CP [BG MARTINS]: Okay. Thank you.
7 MJ [COL POHL]: Mr. Trivett, do you have anything you want
8 to add?
9 MDTC [MR. TRIVETT]: May I have a moment, sir?
10 MJ [COL POHL]: Sure.
11 MDTC [MR. TRIVETT]: To address a couple of issues that
12 Mr. Harrington raised regarding the conflict -- and, again,
13 this is a very challenging argument to make without
14 referencing 292, obviously not getting into the substance of
15 it.
16 But when Mr. Harrington says that there is this
17 question as to whether or not he can even represent his client
18 on this issue or any other issue under this cloud of conflict,
19 I did want to just point out that they continue to file
20 motions. They filed the motion just the other day with you
21 regarding how Mr. Binalshibh should have his mail delivered.
22 They have continued to file discovery requests. They can't
23 have it both ways. They can't just represent him on the stuff

1 that they want to advance and then use it as a sword, turn it
2 into a shield when it is that they don't want to go forward on
3 certain things.
4 This is a capital case and clearly capital defense
5 counsel's goal, every day that their client is still living is
6 a victory. So I did want to point out the Binalshibh team has
7 been talking out of both sides of their mouth on these issues,
8 including even the competency issue when they address issues
9 whether or not, you know, clearly that they are not
10 challenging the competency, and then in other conferencing, in
11 motions they are talking about how they can't move forward on
12 anything until the competency determination is made.
13 I did want to just point that out that clearly if
14 they believe that they were operating under a conflict, they
15 wouldn't be filing motions, they wouldn't be sending
16 discovery, they would really be waiting for a resolution. If
17 they themselves believed that, they couldn't represent their
18 counsel.
19 So I also wanted to draw Your Honor's attention to a
20 case that we cited, which is the bin Laden case. It's
21 09 F.Supp. 211 -- 109 F.Supp. 211, I apologize. We would ask
22 you to look very closely at those facts because it is a very
23 close analogy to what you are dealing with now. We think it

1 would be instructive and helpful to the military judge. Thank
2 you, sir.
3 MJ [COL POHL]: Thank you.
4 Mr. Harrington, do you have anything you wish to add?
5 LDC [MR. HARRINGTON]: Briefly.
6 MJ [COL POHL]: Please do.
7 LDC [MR. HARRINGTON]: Judge, I take it as a high
8 compliment that I have been accused of talking out of both
9 sides of my mouth.
10 But, Judge, it just emphasizes the difficulty of the
11 position that we are in, and I never would have raised the
12 issue of competency in the cloud, but they won't let it go.
13 They are the ones. From the beginning we said -- we are not
14 claiming he is not competent. We have never said that. In
15 everything we have done, we have never said he is not
16 competent. They come in and say he is competent but we want
17 to have a hearing anyway and we want to put some things on the
18 record. You made a decision from the bench when you said
19 defense doesn't say he is not competent, the prosecution
20 doesn't say he is not competent. There is a presumption we
21 are moving ahead. We thought the issue was over, but they
22 keep bringing it up.
23 But when I say there is a cloud, there is a cloud.

1 It's still there. If something is going to happen at this
2 hearing that perhaps I don't know about, I don't know, but
3 it's still a cloud. That's the reason that this was brought
4 up.
5 But, Judge, in your order here, I mean, I think the
6 way that you have to go back and look at this is to say is
7 there something that they said in their motion for
8 reconsideration that I didn't know about, that I didn't
9 consider. Maybe there is a little twist on some of the things
10 that you said, but you considered all of the issues, and
11 procedurally it's our position that that order should stand.
12 Thank you.
13 MJ [COL POHL]: Thank you. The commission is in recess
14 until tomorrow morning at 0900. At that time we will
15 reconvene with the other four accused, and there will be an
16 order issued sometime today to indicate the status of
17 Mr. Binalshibh. The commission is in recess.
18 **[The R.M.C. 803 session recessed at 1019, 11 August 2014.]**
19 **[The R.M.C. 803 session was called to order 11 August 2014.]**
20 **[The video feed resumed at 1025, 11 August 2014.]**
21 CP [BG MARTINS]: ---- in accordance with the judgment and
22 the law and sound discretion ----
23 MJ [COL POHL]: Let's set the schedule up like this.

1 Tentatively we will set up a session for 1400 on Wednesday --
2 the reason I pick that time is because prayer time is at
3 1300 -- with only Mr. Binalshibh to see whether or not there
4 is any other outstanding issues that have come up. We will
5 reconvene on Thursday at 0900 with the other four at least,
6 and then with the understanding that after I get the defense
7 pleading, I may very well cancel the session with
8 Mr. Binalshibh on Wednesday at 1400.
9 Trial Counsel, back to Mr. Harrington's thing. Any
10 problem with Mr. Binalshibh staying with counsel in the
11 courtroom for a couple of hours?
12 MDTC [MR. TRIVETT]: No problem, sir, if we could just get
13 them to commit to how much time they need.
14 MJ [COL POHL]: Mr. Harrington? It's now 1020. I think
15 prayer time is 1300.
16 LDC [MR. HARRINGTON]: We would like as much time as
17 possible, all the way up to 1600 if we could have it. Because
18 we are not going to be able to visit him over at the facility
19 when they take him back, so if he is here, the longer we could
20 stay, the better.
21 MJ [COL POHL]: Okay. What I am going to do is this,
22 understanding that -- but you've also got the afternoon prayer
23 at 1630, so therefore you can stay until 1500, which will give

1 them time to transport him back to the facility for afternoon
2 prayer and the need for any type of chow, okay?
3 The commission is in recess.
4 **[The R.M.C. 803 session recessed at 1027, 11 August 2014.]**
5 **[END OF PAGE]**
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