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1 [The R.M.C. 803 session was called to order at 0957, 2 August  
2 2017.]

3 MJ [Col SPATH]: This commission is called to order. The  
4 same parties who were present in our last open session are  
5 again present.

6 Mr. Miller, regarding transmission of the  
7 proceedings, what is the -- where are we today?

8 TC [MR. MILLER]: It is my understanding that they are not  
9 being transmitted, Your Honor.

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

11 TC [MR. MILLER]: For the reasons given on Monday.

12 MJ [Col SPATH]: Mr. Kammen.

13 LDC [MR. KAMMEN]: Yes, Your Honor. Mr. al Nashiri is  
14 present but has requested that he would like to go back just  
15 to the cell here for the next couple of hours until the  
16 testimony of Mr. al Darbi begins, if with the court's  
17 permission.

18 MJ [Col SPATH]: Absolutely. We went through your rights  
19 to be present, Mr. Nashiri, when we began on Monday, so I know  
20 you understand them.

21 Now, let me just ask: Going through the normal  
22 discussion process, usually somebody would come in and you  
23 would go through that form and you'd fill out the various

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1 rights you have. Most importantly, do you understand you have  
2 a right to attend this session?

3 ACC [MR. AL NASHIRI]: [Microphone button not pushed; no  
4 audio.]

5 MJ [Col SPATH]: That was a yes. I'll cover. Thank you.  
6 Are you voluntarily and willingly waiving your right  
7 to be present at this session?

8 ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes, this two  
9 hours. This open session right now, I understand.

10 MJ [Col SPATH]: And do you understand, given that you're  
11 right next door, you're welcome to come back if you want to,  
12 just let the guards know that?

13 LDC [MR. KAMMEN]: And he will.

14 MJ [Col SPATH]: Okay, you know that.

15 LDC [MR. KAMMEN]: Just to be clear ----

16 MJ [Col SPATH]: I know he plans to just for the  
17 deposition. But I mean right now during our open session, if  
18 you decide you want to come back, just tell the guards and you  
19 can come right back over; do you understand that?

20 ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes.

21 MJ [Col SPATH]: And you understand your rights to attend  
22 and not attend these sessions, correct?

23 ACC [MR. AL NASHIRI]: **[Speaking in English]** Yes.

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1 MJ [Col SPATH]: Okay. I'm going to let you go back to  
2 the waiting area. Let me know if you change your mind, just  
3 let the guards know and we'll continue. Thank you.

4 Thanks, Mr. Kammen.

5 LDC [MR. KAMMEN]: You're welcome.

6 MJ [Col SPATH]: While that's going on, I'm going to  
7 summarize some of our 802 conferences. We've had a couple  
8 during this week, so I want to make sure that we cover them.

9 So yesterday we had two. The first was in the office  
10 I'm using back here yesterday morning prior to the beginning  
11 of our deposition. And what I was looking for were updates on  
12 the implementation of our classified order, which I received.

13 LDC [MR. KAMMEN]: For you to finish before they ----

14 MJ [Col SPATH]: Oh, please, you all just -- you may go  
15 with Mr. Nashiri when he's ready to go, it will not interrupt  
16 me at all. Thanks.

17 And I was looking for those. And some of those  
18 updates just had to do with what was going to be looked at and  
19 kind of the timing of that. Those were the updates I was  
20 looking for.

21 The other discussion we had in the 802 is whether or  
22 not the deposition was going to be translated simultaneously  
23 or consecutively. And I indicated I was just going to let

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1 Mr. al Darbi let me know what he preferred.

2           There were other matters discussed in the 802. They  
3 all had to do with that classified order and kind of the  
4 implementation of it, the verbal order and then the follow-on  
5 written order. But in an unclassified environment, I'm pretty  
6 comfortable that's what we discussed.

7           Then later in the day we had another 802; it was  
8 after we finished the deposition. And part of that was  
9 discussion of moving forward this week. Part of that  
10 discussion was I wanted to make sure we get the deposition  
11 direct done this week, but because we're using simultaneous  
12 translation, it's moving a little quicker than we anticipated.  
13 And so we have all day tomorrow and Friday and this afternoon  
14 to continue to move through that. And so I indicated I'd like  
15 to use a little bit of time this morning to continue to  
16 resolve some odds and ends that we can resolve on the record  
17 in open court.

18           I informed the parties I try to keep going at 50,  
19 55-minute intervals and take breaks because I think it's best  
20 for everybody to get out of the courtroom on regular breaks  
21 before we get too tired. Said we'd start a little later today  
22 with the open session to account for an inspection that was  
23 going to go underway -- or get underway, I had hoped, during

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1 the evening recess, and so we would start a little later today  
2 to assist with that and give the defense team some time to get  
3 that done, or at least begin that process.

4           Then I indicated I wanted to discuss on the record  
5 379B, or the 379 series. I wanted to discuss the timing of  
6 the 513 hearing in relation to Mr. al Darbi's privilege. I  
7 wanted to talk about 369PP and the implementation of that  
8 classified order. And I also wanted to discuss the  
9 availability of some of the CIA witnesses that I had ordered  
10 in relation to a series of appellate exhibits. I'll find the  
11 numbers in a minute, but we know which one I was talking  
12 about; it was a motion to produce by the defense, and I  
13 ordered their production. And the prosecution has some  
14 discussion they want to have about the timing of those  
15 witnesses, and I said we'd take that up on the record.

16           And I said we'd continue with the deposition of  
17 Mr. al Darbi post-lunch. So first, let me ask trial counsel,  
18 do you want to add anything to my summary in an unclassified  
19 environment of the 802s?

20           TC [MR. MILLER]: Nothing from the government. Thank you,  
21 Your Honor.

22           MJ [Col SPATH]: All right. For the defense, for the  
23 unclassified portion of the 802s, do you want to add anything

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1 to my summary?

2 LDC [MR. KAMMEN]: No.

3 MJ [Col SPATH]: All right. Are you going to want to add  
4 anything to the summary of the 802s in a classified session?

5 LDC [MR. KAMMEN]: Yes.

6 MJ [Col SPATH]: Okay.

7 LDC [MR. KAMMEN]: And, in fact, in light of the events  
8 last night, I think we will need a closed session.

9 MJ [Col SPATH]: In order to be able to fully discuss  
10 the -- kind of what occurred and what we're trying to get  
11 done, is that --

12 LDC [MR. KAMMEN]: In order to discuss the outrageous  
13 misrepresentations by the government, Your Honor.

14 MJ [Col SPATH]: Nothing's easy. I understand. If we  
15 can -- if there's stuff we can discuss in an open -- first, I  
16 want to deal with the 802 portion, so we'll have a classified  
17 session to finalize the 802.

18 Trial Counsel, at least at this point, do you think  
19 you want to add anything to my summary of the 802 in a  
20 classified session?

21 TC [MR. MILLER]: No, Your Honor. Thank you.

22 MJ [Col SPATH]: All right. I recognize to discuss the  
23 369 series we may well have to have a classified session.

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1 We'll figure out the timing of that so we can do that.

2 Let's first take up the timing of the witnesses.

3 That one seems -- I know you had asked in our initial 802, and  
4 I had summarized that portion earlier, to have some discussion  
5 about that. Mr. Miller, can you give me an idea?

6 TC [MR. MILLER]: Colonel Wells is going to handle that  
7 matter, sir.

8 MJ [Col SPATH]: All right. And that was 377 series and  
9 354 series of appellate exhibits for the court.

10 MATC [COL WELLS]: Yes, sir. The update is all four  
11 witnesses, as the prosecution has notified the commission and  
12 the defense, are involved either as defendants or witnesses in  
13 a civil proceeding in the Eastern District of Washington State  
14 that is set to proceed by scheduling order as we talk today, I  
15 believe, on 5 September. It's expected to last at least two  
16 weeks, we're told. In the notice, we highlighted that the  
17 parties request full time to prepare for that, so earlier  
18 appearance they asked not be imposed.

19 They're willing to travel to Guantanamo to appear.  
20 We asked that it be moved from the September session to the  
21 November session. At the same time, sir, in addition to that  
22 scheduling conflict, we also realized that there are a number  
23 of discovery matters that need -- I think would be beneficial

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1 to the substance of the testimony and the issues that the  
2 defense seeks to explore. And so we specified those matters  
3 in the AE 120 series.

4 And then it was brought to our attention by your  
5 staff that we had a clerical error, at least in one of the  
6 listings. This would be Appellate Exhibit 120L to the sixth,  
7 six L's. We only listed five, which made no sense when your  
8 clerk referenced that, so that needs to be corrected.

9 Subsequent to that, we said we better look at each  
10 tab carefully and the summaries compared to the original, and  
11 we realized that we think additional matters should be  
12 addressed. And so we would have a list of substitutes. And  
13 I'm willing to present that to the commission and also to the  
14 defense. And I'm willing to specify them now on the record.

15 MJ [Col SPATH]: Okay. Let's do it.

16 MATC [COL WELLS]: All right, sir. Let me pass this to  
17 the ----

18 MJ [Col SPATH]: And he said he was going to pass that to  
19 the defense counsel.

20 LDC [MR. KAMMEN]: [Microphone button not pushed; no  
21 audio.] ---- to me a document entitled Update to AE 377B,  
22 List of Discovery Pending Protective Orders That Would Assist  
23 the Defense During the Examination of the Four Witnesses, and

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1 it looks like there is, one, two -- approximately --  
2 approximately 20 documents that apparently need to be amended,  
3 which brings us back to our concern that what we're getting is  
4 not what you're approving.

5 MJ [Col SPATH]: And, Colonel -- I'll wait until you're  
6 ready.

7 Colonel Wells, I was just going to talk through -- is  
8 it easier, do you think, do you want to mark that as an  
9 appellate exhibit and then we don't have to read it? The  
10 court can just have it and see all the numbers?

11 MATC [COL WELLS]: Yes, sir, I think that's prudent. And  
12 then my colleagues have asked me to correct the record to make  
13 sure that I'm clear on what we're doing here, so I'll do that  
14 in a second. May I approach the clerks, please?

15 MJ [Col SPATH]: You may. It's going to go into the 377  
16 series, so whatever is next in order. The court reporters  
17 will let me know where we're at, which number that will be in  
18 the 377 series.

19 You wanted to correct the record, Colonel Wells. I'm  
20 going to let you do that.

21 MATC [COL WELLS]: Yes, sir. What we have provided here  
22 in the appellate exhibit and the notice are additional items  
23 that we think the commission should review, our request for

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1 substitutions and approve that needs to go to the defense for  
2 production that's relative to these witnesses.

3 MJ [Col SPATH]: All right. I'll do that. I don't have  
4 my list with me. I have a list of what I've reviewed and then  
5 sent back. I thought I had been through a number of these,  
6 the letters, but I'll double check.

7 MATC [COL WELLS]: So the clarification, this is not new  
8 material that we are producing to the commission; it is in the  
9 hands of the commission. We're just highlighting that we  
10 think that these are information and tabs that should be  
11 reviewed and -- as a priority to produce prior to the  
12 testimony of these witnesses.

13 MJ [Col SPATH]: And that is going to be Appellate Exhibit  
14 377F, Foxtrot. Okay.

15 MATC [COL WELLS]: All right, sir.

16 MJ [Col SPATH]: Thanks, Colonel Wells.

17 MATC [COL WELLS]: Thank you.

18 MJ [Col SPATH]: I know there are issues with discovery,  
19 Mr. Kammen, I know you're concerned about. This is not to  
20 open that door yet. All I want to know is, with regard to the  
21 four witnesses -- I've ordered them produced, they're going to  
22 be produced -- any issues given the timing of their -- their  
23 issues in other courts being moved out of September into

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1 November or further out?

2 LDC [MR. KAMMEN]: No. I mean, obviously if November is  
3 continued at our request ----

4 MJ [Col SPATH]: Correct.

5 LDC [MR. KAMMEN]: ---- and we do want to discuss that  
6 with you, then obviously that can't happen.

7 We are aware of the other proceeding. It does occur  
8 to me there's some possibility that other proceeding may be  
9 resolved and who knows then? But what it looks like, we're  
10 going to be getting discovery. That may be prudent.

11 MJ [Col SPATH]: And if we have not reviewed these --  
12 again, I don't have my list with me. I thought some of these  
13 had already gone back, but we will double check. The ones we  
14 haven't reviewed, even if it's all of them, we'll get to and  
15 get them back so we can get them over to the defense.

16 I don't see any of Mr. al Darbi's defense counsel  
17 here. Not that they need to be, this isn't the 513 hearing,  
18 so that's fine. Maybe they're in the back. But I just want  
19 to talk through with you. It's an interesting issue. You  
20 know, you look at MRE 513 here and it is substantially  
21 different than what we have in the military, the exceptions  
22 seem a little bit broader, which is fine.

23 And so what I want to do is make clear to both sides,

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1 I did see the records because they were produced by the  
2 government to me. So I am in a position where I've already  
3 seen them. But what I have not done is disclose them yet to  
4 either side -- or -- well, to either side, but to the defense,  
5 because it's their request.

6 And what I'm really going to be asking Mr. al Darbi's  
7 counsel, so you all have a highlight -- they have the records,  
8 I want to know what in their -- they think is covered by the  
9 psychotherapist privilege, given how it's defined. It's not  
10 anything a mental health provider ever touches; it's not a  
11 record they ever write; it's not ever anything they do; there  
12 are particular things that are covered. So they need to  
13 identify in the records what they think is covered so that I  
14 can then deal with it under the privilege. If it's not  
15 covered, different assessment before I turn it over, if I turn  
16 it over to the defense.

17 That's part of the reason I want to get them in here  
18 at one point over this week and talk to them about their 513  
19 concerns, since they have filed a written notice. But just  
20 asserting the privilege is helpful. But since they have the  
21 records, I'd sure want to know what they think is privileged.

22 LDC [MR. KAMMEN]: Just for our planning purposes, does  
23 the commission contemplate that being open or ex parte?

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1 MJ [Col SPATH]: Open.

2 LDC [MR. KAMMEN]: Okay.

3 MJ [Col SPATH]: Open. It's just -- they're a party of  
4 limited standing. I'm going to let them come in front of all  
5 of you and let me know what their issues are.

6 You all know 369 and I think you recognize the  
7 classification issues. Is there anything we can discuss in  
8 here or both sides do not think that given -- given the nature  
9 of the argument and that -- the inspection might be wrapped up  
10 with the issue. I get it. Colonel Wells has already  
11 indicated he's concerned, and probably in a classified  
12 session.

13 And so let me just turn over to the defense. Same,  
14 it will give you freedom to talk, that's for sure.

15 LDC [MR. KAMMEN]: I mean, there's a number of  
16 unclassified e-mails that are part of this. But it does seem  
17 to me that it would be awfully easy to stray into areas. So  
18 given the reality, Mr. al Nashiri is out of the room anyway,  
19 it probably makes sense at some point to go into a closed  
20 session.

21 MJ [Col SPATH]: It does. It takes about a half an hour  
22 to set up.

23 TC [MR. MILLER]: The government agrees.

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1 MJ [Col SPATH]: Okay. Colonel Wells indicated that back  
2 there as well.

3 I was up last night working on how to talk about 379  
4 in a manner that is helpful for both sides, since we haven't  
5 had the discussion on the record. What we had was an  
6 abatement order, request for reconsideration, ultimately  
7 clearly some reconsideration because we're here, and that was  
8 in response to the filing by the government in 379A for both  
9 sides. So I'll start there and then I'll narrow it down.  
10 Again, I've worked through this so that I'm cautious in what I  
11 say.

12 To my right as I look at the defense, occasionally  
13 comments on what they suggest to the outside audience is a  
14 sham proceeding. I'm not sure there's many judges who would  
15 take that, frankly, as civilly and as calmly as I do. And I  
16 take it because Mr. Kammen has -- multiple times has suggested  
17 it is not a personal attack; it is an attack on the system.  
18 And he certainly has a client to represent and I try to take  
19 it in that vein.

20 I also take it, though, in the -- so the government  
21 knows, I'm not oblivious to the amount of discovery, the  
22 amount of effort, the amount of experts and support that I  
23 have turned over to the defense, both ex parte and in

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1 contravention of the convening authority's declination to  
2 provide the support, and the staff that has been added to the  
3 defense team as the years have gone on and the years it has  
4 taken to get this case moving forward. A sham proceeding  
5 would have been done, frankly, in 2011.

6           That does not mean there aren't problems and issues,  
7 systemic issues that have caused us to be delayed as we move  
8 forward. And some of those issues, frankly, are in the  
9 discovery when we hear there is ongoing discovery and we turn  
10 over terabytes of information in Arabic and then say, well,  
11 it's irrelevant anyway.

12           Well, if it's irrelevant, I wouldn't turn it over  
13 because the defense counsel have an obligation -- I mean, we  
14 know this. As lawyers, we have obligations to do certain  
15 things. And you all certainly don't mind not turning over  
16 irrelevant information, as you've made clear multiple times.  
17 And so to hand it to them and say don't worry about it, it's  
18 tough for the defense to do that; any defense counsel, not  
19 just here, anywhere in the world -- well, anywhere in the  
20 United States.

21           What I am trying to say, poorly, is civility is  
22 important on both sides. Civility in our filings and civility  
23 in our commentary in here. I'm not suggesting you're not

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1 zealous; I'm not suggesting you don't fight these battles; I  
2 am not suggesting you do not dedicate yourself to your causes,  
3 not for a moment. You must know that by now. But word choice  
4 is important. So I'm not just picking on you all, Government,  
5 as I just made clear.

6           The 379A filing, though, was as close to calling this  
7 a sham court as I've seen. I'm not a prima donna. I don't  
8 care how you transport me. But I don't know a judge in the  
9 world who wants to sit near the press, near victim family  
10 members, near the defense, near the prosecutors, near the  
11 witnesses, and near everybody else. Go find an Article III  
12 judge, tell him to go sit with everybody, and see how it goes.

13           I'm not asking for unwarranted special treatment. I  
14 have tolerated sitting on an airplane in uncomfortable  
15 environs. I'm happy to take the rotator. I've already done  
16 it. It works for me. It will work for my staff. It will cut  
17 down the number of days we're down here. Because, frankly,  
18 that's a better way for me to travel.

19           What I haven't done is ask for two separate aircrafts  
20 or told you all to take the rotator, frankly. It is a  
21 difficult environment and I am uncomfortable on that aircraft,  
22 because it's going to take an untoward comment -- and we have  
23 had a couple on the aircraft, not with me there, but that I've

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1 heard about, that people have had to disclose in issues at  
2 hand.

3           And as we get into heated issues, the danger for  
4 something occurring becomes greater. And we can fool  
5 ourselves -- this is not a knock on security. They clear me  
6 in security and then they put me in an uncleared room and put  
7 me back on an airplane with victim family members in close  
8 proximity. And I do that without a comment.

9           And so I don't need a fast boat. I don't need a  
10 U-boat. I need space. And I tolerate, where I can, that lack  
11 of space. In the filing it talks about, one, the fact that we  
12 sit in restaurants together and tolerate it. For those of you  
13 who have noticed, it's hard for me to just walk out when you  
14 all walk in because the restaurant isn't going to understand  
15 my lack of payment. But if you're paying attention, we finish  
16 eating and we leave. There's limited places down here. I  
17 guess I could eat in my room every night. I know that's what  
18 some of the judges have chosen to do. It's an uncomfortable  
19 environment. It is what it is, but it is not a desire to be a  
20 prima donna; it is a desire to be kept separate.

21           The Air Force had a case that has led to a  
22 professional responsibility inquiry on a judge and an SDC who  
23 is not a party because of a conversation they had. And the

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1 Air Force appellate court frowned upon that situation because  
2 it was ex parte and many people are, well, it can't be  
3 ex parte if it's not a party. But it can be problematic for a  
4 trial judge to be around people who know about cases who are  
5 talking.

6           What I am looking for, as I read 379A, and we get the  
7 offer of -- it didn't say it this way, but it did. If you  
8 want to be treated special, use the U-boat. If you don't want  
9 to be treated special, join us on the ferry. I wish it were  
10 that simple. And I know the issues are going to get more  
11 heated and I know the dangers only increase of something  
12 happening. It's common sense.

13           And so we, writ large as a process, are trying to  
14 figure out the best way to do this. I'm looking for it.  
15 That's why I ended the abatement order. I got an e-mail -- or  
16 I got a filing in 379A that said we're going to do A through  
17 Z. It was really like A through J. When I got down here, it  
18 didn't happen that way. It happened in part that way. But I  
19 didn't immediately abate the proceedings. Because my staff  
20 had to go down and had your-all's boat arrived at the same  
21 time, yet again be commingled, I didn't abate. We sent them  
22 down to get the luggage and deal with that.

23           But the prohibition against ex parte conduct and

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1 contact and discussions, it isn't just me; it's everybody in  
2 the trial judiciary. And my Bar rules say I'm responsible,  
3 then, for the legal services then being provided. So I have  
4 to continue to remind, not that they need reminding, they know  
5 the rules, but you understand what I am saying. I have to be  
6 worried that somebody is going to say something to them when  
7 they're out and about.

8           It's not just taking me and putting me in a corner  
9 somewhere; it is a trial staff that have to be very cautious.  
10 We had litigation here about communications with the CMC, and  
11 it was their staff. But that counts, as we know.

12           So I'm not looking for unwarranted special treatment.  
13 I'm looking for appropriate protections. And when I hear,  
14 we're trying to come up with a process that will be  
15 longstanding, which is what I found in 379A after the  
16 suggestion that I wanted special treatment, when I look in  
17 there, the process that was longstanding appears to have been  
18 separate travel arrangements when we got here. Because that  
19 had been going on for, it appears, having talked to the other  
20 judges, multiple years. What we have now is a new process  
21 that we're trying to work through.

22           So I'm unwilling to engage with the CLO because it is  
23 a matter still open, frankly, in litigation, in other

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1 commission practices and in mine. But I know what was offered  
2 by the prosecution that they were going to work occurred part  
3 way. And again, I didn't immediately come in here, I  
4 certainly am not going to throw a temper tantrum, I'm not  
5 going to abate the proceedings because things are going to go  
6 bump, because they are. But what I am looking for is an  
7 understanding of I think what I was trying to say in this  
8 abatement. I don't think it is a good idea to commingle us  
9 any more than we need to because issues arise.

10           And the fact that they haven't arisen is, frankly, in  
11 large part by luck and because some of the measures we have in  
12 place have been helpful. But when I get to Andrews, it's a  
13 free-for-all. It's a free-for-all. After I had ruled on the  
14 motion regarding unlawful influence, unbeknownst to me, right,  
15 we were firing lawyers back in the convening authority's  
16 office. Unbeknownst to me, a convening authority apparently  
17 was thinking about resigning and leaving his post. Those  
18 people were on the airplane with me. Those attorneys that I  
19 had segregated from the case, they were sitting next to me on  
20 an airplane.

21           It is normal that people aren't happy to be moving  
22 jobs or worried about their jobs or worried about a ruling,  
23 and I don't know of many other judges who would sit next to

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1 those very same people, be able to see them closer than I am  
2 to Ms. Eliades, and think that was a good situation. They  
3 were in the row behind me apparently. It is ripe for an issue  
4 occurring. And that's what I was trying to communicate with  
5 379.

6           The other part that I did not put in the ruling but I  
7 was trying to communicate, and I will communicate here, is the  
8 Joint Task Force commander had just gone through having a  
9 number of his people called into the courtroom to go through  
10 what were entertaining, right, for you all, informational for  
11 me, cross-examinations and direct examinations. We had the  
12 doctor in here; we had the camp commander in here. And the  
13 next time we have sessions down here, they've changed all of  
14 the procedures. Fascinating.

15           I didn't put that in the ruling. I didn't think it  
16 was intentional. I don't think that's an appearance issue.  
17 But, you know, again, these are the issues we have to think  
18 about. And these are real issues when we're traveling down  
19 here together like that, because I have a feeling they're  
20 going to testify more. Am I going to fly down on a prop plane  
21 because they don't like a ruling? I don't think so.

22           But the real issues at hand here are we need to be  
23 mindful of the trial judiciary, the prosecutors, the defense

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1 teams, and the other people who are traveling and find ways to  
2 draw lines between them when we are out and about in a small  
3 area.

4           So that's what I was trying to communicate. And the  
5 other part in a global area that I'm trying to communicate is  
6 please be zealous, continue your fights, but can we make sure  
7 that we are watching that line of civility? Now, that's both  
8 sides. We're going to be here for a long time. Some of us  
9 more than others, right? The civilians, who knows? The  
10 military turn over a bit. But we're going to be here a long  
11 time and tempers are going to get short, but that doesn't  
12 change our obligations under the standards and under our  
13 canons and under our Bar rules. We've got to maintain our  
14 civility.

15           Frankly, that's why I got up and left the courtroom  
16 the other day. It couldn't have been not noticed that I  
17 called a recess in short order. That is because I'm human,  
18 too, and even I get frustrated. I don't have the patience of  
19 some of the people in the Bible, that's for sure. So my  
20 remedy for that, both in the military and down here, when I  
21 feel that boil point hit, I just take a recess and I head off  
22 to a quiet space. And I need you all to do the same in here  
23 when we do this.

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1           Just -- it struck me as 379A, in my case, was a  
2 little more aggressive, I felt, in language. And I've seen  
3 that in the defense as well occasionally, as I mentioned. I  
4 am doing the best I can in a difficult situation, trying to  
5 ensure this process is perceived and is fair. And you all  
6 have different jobs to do, which I so appreciate and I've  
7 tried to include that with you.

8           All right. What I would like to do, we've got a  
9 classified session we need -- can probably have before lunch.  
10 Takes about a half an hour to get everybody down here and get  
11 set up. Hopefully it will move along. Our lunch break might  
12 be a little shorter today, that's okay. We'll work through  
13 some more deposition this afternoon.

14           The other thing I would like to do, I would like to  
15 get the ex parte presentation from the defense at some point  
16 about November but we don't have to do it today. We can do it  
17 on the record at any point moving forward. But I think the  
18 unclassified -- or the classified argument on the 369 series  
19 is important, because this week is going now quickly. It's  
20 already Wednesday. And whatever we can do to -- since we had  
21 agreement, whatever we can do to continue that, if we can,  
22 continue that if we can, it would be good to do that.

23           So let me ask this, Mr. Miller: Just as an estimate,

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1 given where we are in Mr. al Darbi's deposition, how many  
2 deposition hours do you think you're going to need?

3 TC [MR. MILLER]: At the pace we're going, I am hopeful we  
4 can conclude late tomorrow afternoon.

5 MJ [Col SPATH]: And that would be if we went all of this  
6 afternoon ----

7 TC [MR. MILLER]: And all ----

8 MJ [Col SPATH]: ---- all of tomorrow morning and tomorrow  
9 afternoon?

10 TC [MR. MILLER]: Yes, sir.

11 MJ [Col SPATH]: And you know kind of the pacing I'm  
12 running at.

13 TC [MR. MILLER]: I appreciate the pace and I'm taking  
14 that into account, sir.

15 MJ [Col SPATH]: Perfect. Thank you. That helps me with  
16 timing for the issue we're going to discuss in our closed  
17 session -- or a classified session.

18 I think it behooves us to do that ---- [no audio.]

19 We're in recess.

20 [The R.M.C. 803 session recessed at 1035, 2 August 2017.]

21 [END OF PAGE]

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