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1 MJ [COL POHL]: Sure. Would it be helpful to take a
2 short recess?

3 DC [MR. NEVIN]: Yes, Your Honor.

4 MJ [COL POHL]: Okay. Commission will be in recess for
5 15 minutes.

6 **[The Military Commission recessed at 1402, 28 January 2013.]**

7 **[The Military Commission was called to order at 1426, 28**
8 **January 2013.]**

9 MJ [COL POHL]: Commission is called to order. All
10 parties again are present that were present when the
11 commission recessed.

12 Mr. Connell.

13 LDC [MR. CONNELL]: B.

14 MJ [COL POHL]: B? Okay, then we will do B. It took
15 one vote for B.

16 DC [MR. NEVIN]: No, no, we got five, six votes for B.
17 No question about that. But, Your Honor, I want to say, I
18 take it that B means that we are going to do this in a 505 and
19 that some portion of this will turn out to be closed or
20 secret. And on behalf of Mr. Mohammad, I object to
21 proceedings being closed, because they deal with preservation
22 of evidence of a detention facility. It's a critical matter
23 to Mr. Mohammad. It's central to the case as far as he's

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1 concerned.

2 MJ [COL POHL]: Mr. Nevin ----

3 LDC [MR. NEVIN]: I object to the proceedings being
4 closed here.

5 MJ [COL POHL]: Okay. Let's do the 505(h) hearing, and
6 then if we do close proceedings, you can object. Because
7 there's no decision been made whether proceedings will be
8 closed or not, got it.

9 LDC [MR. NEVIN]: Thanks, Your Honor.

10 MJ [COL POHL]: No problem.

11 LDC [CDR RUIZ]: Judge, I would just simply adopt Mr.
12 Nevin's argument on behalf of Mr. Hawsawi.

13 LDC [MS. BORMANN]: I'm sorry. I couldn't hear.

14 **[Due to the security button being pushed, chief**
15 **security advisor and attorney advisor conferred with the**
16 **military judge.]**

17 MJ [COL POHL]: Trial counsel, note for the record that
18 the 40-second delay was initiated, not by me. I'm curious as
19 to why. What Mr. Nevin said is, if we need to go into -- I
20 got the issue. What Mr. Nevin said is simply on the caption
21 of his motion that is unclassified. If you don't feel we can
22 discuss this now, let me know, but I'm just trying to figure
23 out.

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1 TC [MS. BALTES]: We can address it in 505(h).

2 MJ [COL POHL]: I want to address this too because I
3 want -- if some external body is turning the commission off
4 under their own view of what things ought to be, with no
5 reasonable explanation because I, there is no classification
6 on it, then we are going to have a little meeting about who
7 turns that light on or off.

8 TC [MS. BALTES]: I understand and I can provide
9 additional explanation at the 505(h) hearing.

10 MJ [COL POHL]: Sure. Exactly what he said.

11 Mr. Nevin.

12 DC [MR. NEVIN]: Your Honor, on behalf of Mr. Mohammad I
13 would like to know who has the permission to turn that light
14 on and off, who is listening to this, who is controlling these
15 proceedings, or controlling that aspect of these proceedings.

16 MJ [COL POHL]: Got it.

17 DC [MR. NEVIN]: I was under the impression that the
18 court CSO was, commanded that light in this process. So on
19 behalf of Mr. Mohammad respectfully I request ----

20 MJ [COL POHL]: I understand. We will address that at
21 the 505(h) hearing, then we will put it on the record if we
22 can. But I'm not sure -- I will leave it at that.

23 LDC [MS. BORMANN]: Judge, on behalf of Mr. Bin'Attash

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1 we join in Mr. Nevin's request and we note that Mr. Nevin
2 repeated the name of his motion which I won't repeat right now
3 for fear of setting off the 40-second delay, but my signature
4 is attached to that motion.

5 MJ [COL POHL]: I got it.

6 LDC [CDR RUIZ]: Judge, we adopt Mr. Nevin's argument as
7 well as Ms. Bormann's. I think the main concern is that
8 moving forward from this point forward we know there is
9 another body or party who is in control of this proceeding in
10 turning that light on and off. Before we proceed any further,
11 we can only assume that maybe they are monitoring additional
12 communications, perhaps when we are at counsel table. We know
13 we have green lights that have the ability to record. We
14 think this is an answer and question we have to have precedent
15 to proceeding with this commission.

16 MJ [COL POHL]: Got it. Got it. What we will do at
17 this time is discuss with each accused his right to be present
18 and his choice if he so desires to waive that presence. The
19 way I intend to proceed is to slowly go through the entire
20 list of rights and ask each accused individually if they
21 understand their rights rather than going through it five
22 times as I have done before.

23 Mr. Nevin.

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