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1 [The R.M.C. 803 session was called to order at 0905,
2 10 December 2015.]

3 MJ [COL POHL]: The commission is called to order.
4 Trial Counsel, any changes in your team since
5 yesterday when we recessed?

6 CP [BG MARTINS]: No, Your Honor.

7 MJ [COL POHL]: Mr. Nevin, any changes?

8 LDC [MR. NEVIN]: No changes.

9 MJ [COL POHL]: Ms. Bormann?

10 LDC [MS. BORMANN]: No, Judge.

11 MJ [COL POHL]: Mr. Harrington?

12 LDC [MR. HARRINGTON]: No, sir.

13 MJ [COL POHL]: Mr. Connell?

14 LDC [MR. CONNELL]: No.

15 MJ [COL POHL]: Mr. Ruiz?

16 LDC [MR. RUIZ]: No changes.

17 MJ [COL POHL]: I note for the record that the only
18 detainee who is not present is Mr. al Hawsawi.

19 Mr. Swann.

20 CAPTAIN, U.S. Army, was recalled as a witness for the defense,
21 was reminded she was previously sworn, was reminded he was
22 previously sworn, and testified as follows:

23 DIRECT EXAMINATION

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1 Questions by the Trial Counsel [MR. SWANN]:

2 Q. Good morning, Captain.

3 A. Good morning, sir.

4 Q. Are you the same captain who testified yesterday in
5 these proceedings?

6 A. Yes, I am.

7 Q. All right. I again remind you you are under oath.

8 Did you have occasion to advise Mr. Hawsawi of his
9 rights to attend this morning?

10 A. Yes, I did.

11 Q. All right. Did you use the same forms that we have
12 used for many months now?

13 A. Yes, I did.

14 Q. All right. You have those documents in front of you;
15 is that correct?

16 A. I do.

17 Q. Those documents are marked Appellate Exhibit 393,
18 consisting of three pages.

19 What time did Mr. Hawsawi -- what time did you begin
20 advising Mr. Hawsawi of his rights?

21 A. I began advising him of his rights at 0548 this
22 morning.

23 Q. Did you use the English version or the Arabic version

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1 of the form?

2 A. I read to him from the English version, and there was
3 interpreter present who read to him from the Arabic form.

4 Q. All right. And did you read the form as it is
5 sitting there before you?

6 A. Yes, I did.

7 Q. All right. What did Mr. Hawsawi tell you of his
8 decision this morning?

9 A. He stated he did not wish to attend his commission
10 sessions today and that he wished to attend his a.m. and p.m.
11 legal meetings today instead.

12 Q. All right. Now, yesterday we had a question about
13 his voluntariness. Is there any question this morning in your
14 mind that he voluntarily decided not to attend?

15 A. No question, sir.

16 TC [MR. SWANN]: All right. I have nothing further, Your
17 Honor.

18 MJ [COL POHL]: Mr. Ruiz, do you have any questions of
19 this witness?

20 LDC [MR. RUIZ]: I do not.

21 MJ [COL POHL]: Thank you. Thank you, Captain.

22 [The witness was warned, excused, and withdrew from the
23 courtroom.]

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1 MJ [COL POHL]: Commission finds that Mr. Hawsawi has
2 knowingly and voluntarily waived his presence at the hearing
3 today.

4 Trial Counsel?

5 LDC [MR. HARRINGTON]: Your Honor, before we begin, can I
6 put something on the record?

7 MJ [COL POHL]: Sure.

8 LDC [MR. HARRINGTON]: Judge, I'm back about a familiar
9 issue I just need to apprise the court of something on. You
10 entered an order on November the 2nd with respect to the
11 complaints that we had registered on behalf of Mr. Binalshibh
12 concerning noises and vibrations. Part of your order was that
13 the order was to be distributed or served on the Joint Task
14 Force, the company commander, the JDG and the SJA, and that it
15 was to be posted outside his cell.

16 It has been posted outside his cell, according to
17 what Mr. Binalshibh tells me, and the notice that was filed by
18 the government. We have received no notice that it has been
19 served or distributed to the other people that you directed.

20 We are filing a motion with respect to this order and
21 violations of this order, but we don't know whether it's been
22 served or not. Since that time, there have been repeated
23 problems with -- including not only the noise and vibrations

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1 but also comments made to Mr. Binalshibh such as, "The SOP is
2 above and beyond the judges's order. We're not required to
3 follow the judge's order. If you file a complaint, I'll make
4 it worse for you. You can't prove anything. We are
5 protected."

6 And your response to me, obviously, is going to be to
7 file a motion, which we will do. Even though there are
8 obstacles under the Military Commissions Act, unlike the
9 Uniform Code of Military Justice, since there is no provision
10 in the Military Commissions Act regarding contempt for
11 disobedience for a court order, like there is in the UCMJ, but
12 we'll file a motion with the other arguments.

13 Judge, we have obviously now -- because of this
14 continuing issue being brought to you, we have been
15 investigating this case with enormous obstacles toward getting
16 witnesses and develop witnesses in and outside of the camp,
17 which we hope that a hearing can finally convince the Court of
18 the validity of these claims.

19 I would ask you, Judge, if you would, to inquire now
20 of the government whether your order has been served, why it
21 has not been noticed to us that it has been served. We gave a
22 notice of filing this motion for conference; we have not
23 received a response from the government about that. And we

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1 are going to seek also in our relief access to witnesses
2 within the facility and that, somehow or another, the
3 government and the camp here has to know that there are going
4 to be consequences of one form or another if your order is not
5 going to be obeyed.

6 MJ [COL POHL]: Okay. On the first piece of that, you
7 want -- the basic question is whether it's served on the
8 JDG ----

9 LDC [MR. HARRINGTON]: Yes.

10 MJ [COL POHL]: ---- Commander and the SJA.

11 LDC [MR. HARRINGTON]: Yes.

12 MJ [COL POHL]: Trial Counsel, do you know whether that
13 happened or not?

14 TC [MR. SWANN]: Your Honor, one of the SJA members is in
15 the courtroom this morning. She just testified. And we're
16 going to have the JDG Commander testify in a few moments. I
17 suppose it's best that we ask him.

18 But I understand what Mr. Harrington said, but the
19 answer is all of those individuals are aware of your order in
20 152. And while I didn't file a notice of compliance, I didn't
21 see a need to do that. We complied with the Court's order.

22 MJ [COL POHL]: Did you send the court order to the SJA?

23 TC [MR. SWANN]: Oh, yes, sir. Absolutely. In fact, I

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1 talked to the SJA the very next day saying, hey, just tell me
2 when this is posted outside his door and make sure everybody's
3 aware of it.

4 MJ [COL POHL]: So what you're saying is the SJA got the
5 order?

6 TC [MR. SWANN]: It's done.

7 MJ [COL POHL]: And the JDG Commander, you don't know
8 whether he got it or not?

9 TC [MR. SWANN]: I ----

10 MJ [COL POHL]: You didn't confirm it. You think he did,
11 but you don't know.

12 TC [MR. SWANN]: In light of Mr. Harrington's notice of a
13 motion yesterday, I confirmed it this morning. But we'll have
14 the JDG Commander on the stand, too.

15 MJ [COL POHL]: Got it. I understand.

16 TC [MR. SWANN]: So all of the parties know.

17 MJ [COL POHL]: Okay. Okay, Mr. Harrington, I think the
18 rest of your requested relief deals with a motion you're going
19 to file; is that correct?

20 LDC [MR. HARRINGTON]: It does, Judge, but obviously it's
21 the continued frustration and the inability to get anything
22 done that ----

23 MJ [COL POHL]: Understand.

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1 LDC [MR. HARRINGTON]: ---- we'd ask the court again to
2 remind the government of the obligations of your order.

3 MJ [COL POHL]: Okay. Thank you.
4 Mr. Ruiz.

5 LDC [MR. RUIZ]: Judge, I have one housekeeping matter.
6 Yesterday during the testimony of Major Prior in response to
7 Mr. Swann's questions, Major Prior discussed his time in
8 operations in Camp Cropper. As you recall in response to
9 that, I questioned him on a number of issues that were raised
10 in the Army's 15-6 final report. I would like to ask the
11 court leave to supplement the record with the entire report
12 that was in the cross-examination. It has been previously
13 marked as Appellate Exhibit 254Y (MAH), Second Supp. I have
14 shown a copy to the prosecutor and they object to
15 supplementing the record with this document.

16 MJ [COL POHL]: Grounds for objection?

17 TC [MR. SWANN]: I have no objection to it being
18 submitted.

19 MJ [COL POHL]: Okay. Have we given a copy to the court
20 reporters or is that in your hand? Okay. Go ahead and put it
21 in.

22 ACC [MR. BIN'ATTASH]: Judge, I have a point that I would
23 like to add to the record.

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1 MJ [COL POHL]: Sure. Go ahead.

2 ACC [MR. BIN'ATTASH]: I would like to continue to
3 register that I am opposed to the presence of my lawyer here
4 and I don't believe that she represents me.

5 MJ [COL POHL]: Okay. Thank you. It's part of the
6 record.

7 Mr. Ryan.

8 TC [MR. RYAN]: Your Honor, the next witness -- I'm sorry.
9 Sir, the next witness requested by the defense is present and
10 ready.

11 Before he comes in, I just do want to circle back
12 quickly and report back to the commission on AE 254EE
13 Government Attachment C. That was the letter from the accused
14 Binalshibh to the prior -- the former camp commander who
15 testified from Massachusetts.

16 Our staff did verify that it has been released
17 publicly, although it has been reported to me that on the
18 website apparently the -- in the process of getting to the
19 website, it's very, very difficult to read, and even -- it's a
20 handwritten document, so it was difficult even in the
21 beginning.

22 MJ [COL POHL]: Just so we're clear ----

23 TC [MR. RYAN]: I'm not going to be asking anybody about

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1 it.

2 MJ [COL POHL]: No, I understand that.

3 Were there other attachments that were the result of
4 their motion, what they called a motion to strike?

5 TC [MR. RYAN]: Yes, sir. All of them were released. All
6 of them were part of the release.

7 MJ [COL POHL]: Got it. Okay.

8 TC [MR. RYAN]: That's all I have, sir. Thank you.

9 DDC [Maj SCHWARTZ]: This will be part of our conversation
10 in 254FF.

11 MJ [COL POHL]: Got it. I think Mr. Ryan said we would
12 put -- one of your issues is about release to the public and
13 that appears to be OBE, and ----

14 DDC [Maj SCHWARTZ]: Well, Your Honor, to some extent it
15 is, but not completely. That's why I wonder why this is being
16 brought up now. The version that was released ----

17 MJ [COL POHL]: I think they're just clarifying the
18 record, that's all.

19 DDC [Maj SCHWARTZ]: I don't know, but I think we can wait
20 and discuss this in FF. I just ----

21 MJ [COL POHL]: Okay.

22 DDC [Maj SCHWARTZ]: The version that's been released is
23 completely illegible, so effectively, it hasn't been released.

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1 If in the next few hours a more legible copy were released
2 pending your ruling on this, that would be ---

3 MJ [COL POHL]: I tell you what we're going to do, because
4 I don't want this to linger, is we're going to address this
5 today or next in order. I mean, when we talked yesterday, it
6 seemed to me there was a question of whether we are going to
7 get to it or not, but it appears to me we need to get to it so
8 it doesn't linger for two more months.

9 Okay. That being said, we're ready for the witness.

10 CP [BG MARTINS]: Your Honor, if the defense is still
11 calling that witness, we will swear him in.

12 MJ [COL POHL]: Defense?

13 LDC [MR. CONNELL]: Yes.

14 MJ [COL POHL]: I got an affirmative response from
15 Mr. Connell.

16 CP [BG MARTINS]: Colonel Heath, if you would proceed to
17 the witness stand and remain standing and raise your right
18 hand for the oath. Please be seated.

19 COLONEL DAVID E. HEATH, U.S. Army, was called as a witness for
20 the defense, was sworn, and testified as follows:

21 **DIRECT EXAMINATION**

22 Questions by the Chief Prosecutor [BG MARTINS]:

23 Q. Please state your full name and rank for the record.

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1 A. David Eugene Heath, Colonel, United States Army.

2 Q. And what is your current duty position?

3 A. I'm the commander of the Joint Detention Group, Joint
4 Task Force-Guantanamo.

5 CP [BG MARTINS]: Thank you. Your witness.

6 Questions by the Learned Defense Counsel [MR. CONNELL]:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. My name is James Connell. I'm the attorney for Amar
10 al Baluchi.

11 I notice that when you approached the stand, you
12 brought some documents with you; is that correct?

13 A. Yes.

14 Q. Could you tell us what documents you brought with
15 us -- or brought with you today?

16 A. I brought a copy of my declaration that I wrote in
17 November of 2014, and I brought a copy of one of my SOPs
18 dealing with religious accommodation of detainees.

19 Q. Okay. And for the record, was that declaration that
20 you wrote -- that was the declaration in this case, not the
21 declaration in the Hadi case?

22 A. I -- I don't recall which case it was for.

23 Yes, it is for this case.

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1 Q. All right, sir. And the SOP that you have, that is
2 SOP Number 39? Is that right, sir?

3 A. That's correct.

4 Q. Thank you. The judge has divided the questioning
5 into two phases, one involving unclassified matters and one
6 involving classified matters. Today, I'd only like to ask you
7 about unclassified matters. Do you understand?

8 A. Yes.

9 Q. If I ask you a question that you believe calls for an
10 answer which is classified, you can tell the judge, "I believe
11 that the answer to that is classified," and he will take
12 appropriate action. Does that make sense?

13 A. Yes.

14 Q. I'd like to begin with getting our definitions
15 straight. So what do you understand the phrase "guard force"
16 to mean?

17 A. In the context of JTF-Guantanamo, "guard force" is
18 all personnel who deal with detainees.

19 Q. So that includes both the -- in your mind, "guard
20 force" includes both the guards who work on the tiers in
21 Camp VII and those who are in escort capacity; is that
22 correct?

23 A. Yes.

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1 Q. And does it include the uniformed members who work in
2 the operations section?

3 A. Yes, under that definition.

4 Q. Okay. What phrase do you use to describe the
5 person -- the people who work on the tiers?

6 A. "Guards."

7 Q. "Guards." Okay.

8 So "guards" is a subset of "guard force"?

9 A. Correct.

10 Q. And "escorts" is also a subset of "guard force"?

11 A. That's correct.

12 Q. And those two groups are distinct from each other;
13 the guards are distinct from the escorts?

14 A. Yes.

15 Q. And those two groups are distinct from the uniformed
16 members who work in operations, correct?

17 A. Yes.

18 Q. Okay. Does the phrase "movement team" mean the same
19 thing as "escorts," in the way we're talking about it here?

20 A. Essentially.

21 Q. Okay. And when you used the phrase in your
22 declaration "guard force escorts," you mean that portion of
23 the guard force who are escorts, correct?

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1 A. Yes.

2 Q. Other than those three groups that we've described,
3 the guards, the escorts, and the operations, are there any
4 other personnel who are directly affected by the judge's order
5 regarding the use of guards in this case?

6 A. Not to my knowledge.

7 Q. The second thing that I'd like to clarify is that
8 different things have happened at different times in this
9 case. Obviously, you wrote your declaration in November and
10 there is a different guard force that was in place then than
11 is now. And we have heard testimony that it was the 193rd
12 that was in place until December of 2014; is that accurate?

13 A. That is who was here when all of this originally
14 started, yes.

15 Q. All right. And in December of 2014, the 256th took
16 over; is that right?

17 A. Yes.

18 Q. Okay. Is there another unit on the horizon?

19 A. Oh, yes, sir, absolutely.

20 Q. Has that unit already been identified?

21 A. As far as I know, yes.

22 Q. And without telling us what it is, do you know what
23 the male and female composition of that unit is?

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1 A. No, I do not.

2 Q. Okay.

3 MJ [COL POHL]: Colonel Heath, did you see the tasking
4 documents for the new unit?

5 WIT: I don't believe I've read them, no.

6 MJ [COL POHL]: Okay. When you came down here, did you
7 see the tasking unit documents for your unit, the current
8 unit?

9 WIT: I don't -- unless there's a question about timing or
10 clearance requirements, I don't necessarily review those
11 documents.

12 MJ [COL POHL]: Okay. Just so it's clear, your assignment
13 here is separate and apart from the soldiers who work there?

14 WIT: Correct.

15 MJ [COL POHL]: Okay. So you'd get this assignment, and
16 then they would -- there would be a force provider who would
17 give you the guards that that work for you?

18 WIT: Yes. I'm an active duty officer on a two-year
19 assignment here for a brigade command. The units that come
20 in, that rotate in and out of Guantanamo Bay, are identified
21 through what's called a force tracking number, which means we
22 need this number of people to do these jobs. That goes to a
23 force provider being between the Joint Staff and Forces

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1 Command of the U.S. Army. They task out between the three
2 components who's going to come and fill that mission. I don't
3 get involved in that.

4 MJ [COL POHL]: So you say you have no role in the tasking
5 process?

6 WIT: No, sir.

7 MJ [COL POHL]: Do you do any requests for forces or
8 any -- or are you involved in that at all?

9 WIT: The forces that we get here have been rotating in
10 and out well before my arrival, the types of units and what
11 their missions are here. I have not submitted any new
12 requests for forces since I have been in command.

13 MJ [COL POHL]: So you have not modified the normal
14 tasking process for what you see as a need here that's not
15 being met?

16 WIT: No. No, I have not.

17 MJ [COL POHL]: Okay. Thank you.

18 Mr. Connell.

19 Questions by the Learned Defense Counsel [MR. CONNELL]:

20 Q. Thank you. Just to be completely clear, that means
21 you yourself are not a member of the 193rd or the 256th,
22 correct?

23 A. No, I am not.

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1 Q. So when the judge asked you a question about your
2 unit, you're referring to the Joint Detention Group, you
3 consider that to be your unit?

4 A. Yes. I command the Joint Detention Group, which
5 includes the 193rd, the 256th, and numerous other units.

6 Q. Thank you. You made a reference a moment ago to sort
7 of what kicked this all off, so I'd like to take you back for
8 a moment to the case of Hadi al-Iraqi. Do you know to whom I
9 refer?

10 A. Yes.

11 Q. Okay. I'd like to ask you questions about the events
12 which eventually led to the order in that case. Do you
13 understand?

14 A. Yes.

15 Q. The -- there was a forced cell extraction of
16 Hadi al-Iraqi on 8 October 2014; is that correct?

17 A. I believe that's correct.

18 Q. And after that forced cell extraction -- oh, let me
19 say, that forced cell extraction took place at Echo II,
20 correct?

21 A. Yes.

22 Q. After that forced cell extraction, attorneys for
23 Mr. Hadi filed a motion with the military commission dated

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1 16 October 2014; does that sound right?

2 A. I'll take your word for it.

3 Q. I'm not going to make you take my word for it.

4 A. I don't recall the date.

5 Q. That's fine.

6 LDC [MR. CONNELL]: The -- Your Honor, I have previously
7 marked Appellate Exhibit 254JJJJ (AAA), and we will distribute
8 a copy to each of the parties. It is AE 021, Emergency
9 Defense Motion for Appropriate Relief to Cease Physical
10 Contact With Female Guards in the case of United States v.
11 Hadi al-Iraqi, 16 October 2014. May I approach the witness?

12 MJ [COL POHL]: You may. Go ahead.

13 Questions by the Learned Defense Counsel [MR. CONNELL]:

14 Q. Sir, have you had the opportunity to review AE
15 254JJJJ (AAA) to your satisfaction?

16 MJ [COL POHL]: You mean ----

17 Q. One question I'm going to ask you about is the date.

18 A. Okay.

19 Q. 16 October 2014, is that the date of that motion?

20 A. Yes.

21 Q. Now, when did you first hear of the filing of that
22 motion?

23 A. I don't recall the date. I would assume it was

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1 sometime after 16 October 2014.

2 Q. Okay. Was it a long time after or ----

3 A. I don't remember.

4 Q. Okay. The -- had you known of the forced cell
5 extraction prior to the filing of that motion?

6 A. Yes.

7 Q. Who brought the filing of that motion to your
8 attention?

9 A. I don't recall.

10 Q. Okay. Do you -- you have legal staff, the Staff
11 Judge Advocate, correct?

12 A. I do not have judge advocates that work directly for
13 me.

14 Q. Okay.

15 A. They work directly for the JTF.

16 Q. So you do not have your own legal staff?

17 A. I do not.

18 Q. Are any of the assistant Staff Judge Advocates
19 assigned to support your unit, JDG?

20 A. Only for military justice.

21 Q. Okay. Was it an attorney who brought the motion to
22 your attention?

23 A. I don't recall.

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1 Q. Okay. Or was it through the chain of command?

2 A. I don't -- I don't recall.

3 Q. Okay. Are there any other options other than those
4 two that I just mentioned?

5 A. No.

6 Q. Did someone ask you to prepare a declaration?

7 A. Yes.

8 Q. And who was that?

9 A. The Staff Judge Advocate at the time.

10 Q. Okay. And approximately when was that?

11 A. I don't remember. I mean, it was after the order
12 went into effect and before the hearing, but I don't remember.

13 Q. Okay. What instructions were you given about the
14 declaration?

15 A. I was told to discuss the facts of who I am, what I
16 do, what my responsibilities are, and the impact of that order
17 on my guards.

18 Q. Okay. Were you given the phrase "legitimate
19 penological interests" to use in the declaration?

20 A. I used that, yes.

21 Q. All right. Was that a phrase that you yourself came
22 up with or one that was suggested to you?

23 A. I have a background in corrections and detention, so

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1 I'm familiar with the term.

2 Q. Were you the first author of the declaration, or were
3 you given a draft?

4 A. I was given a draft.

5 Q. And who had prepared that draft?

6 A. Specifically, I don't know. An attorney, I assume.

7 Q. In what state of completeness was the declaration
8 when you received it?

9 A. I worked on it for probably two days to make sure it
10 said what I wanted it to say.

11 Q. And by "two days," you mean you worked on it on two
12 calendar days, or you worked on it for 16 hours?

13 A. Two calendar days.

14 Q. Okay. How many hours would you say you spent on it?

15 A. Two or three.

16 Q. After you had your chop on the declaration, did
17 anyone else get a chop on it?

18 A. No one changed anything that I wrote, no.

19 Q. So you were the final author of the declaration.

20 A. Yes.

21 Q. At any time during the production of your
22 declaration, did you consult with any member of the Office of
23 the Chief Prosecutor?

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1 A. No.

2 Q. Your declaration has been previously -- in the
3 Hadi al-Iraqi case has been previously marked as
4 254KKKK (AAA). Do you need a copy?

5 A. Yes. I did not bring that.

6 LDC [MR. CONNELL]: May I approach, Your Honor?

7 MJ [COL POHL]: Sure.

8 Colonel Heath, did you do two declarations or one?

9 WIT: Two, sir.

10 MJ [COL POHL]: Okay. Thank you. Excuse me. Let me
11 clarify my question.

12 You signed two declarations, and there were two
13 different cases, so they have different captions at the top of
14 them.

15 WIT: Yes. I signed two different declarations.

16 MJ [COL POHL]: Is there any difference between the one
17 you submitted for the Hadi case as the one you submitted in
18 this case?

19 WIT: I don't recall ----

20 MJ [COL POHL]: Okay.

21 WIT: ---- how much difference there would be. I'd have
22 to look at both of them. Since the Hadi case was over with, I
23 haven't reviewed that one.

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1 MJ [COL POHL]: Okay. Thank you.

2 Mr. Connell.

3 Questions by the Learned Defense Counsel [MR. CONNELL]:

4 Q. Sir, at this point, all I'm going to ask you about is
5 the date of the Hadi declaration. So if at any point you need
6 more time to review it so, you're the witness, you get as much
7 time as you want. Do you understand?

8 A. Yes.

9 Q. On what date did you sign your declaration in
10 United States v. Hadi al-Iraqi which is Appellate
11 Exhibit 254KKKK (AAA)?

12 A. 29 October 2014.

13 Q. And sometime after the filing -- excuse me, after the
14 signing of that declaration, the -- you learned that the
15 military commission in the person of Judge Waits had issued an
16 interim order governing the Hadi al-Iraqi case; is that
17 correct?

18 A. Yes.

19 LDC [MR. CONNELL]: And my last exhibit, Your Honor, is
20 AE 254LLLL (AAA). I have previously had it marked and a copy
21 is being provided to all of the parties.

22 Would you like to see a copy of that, sir?

23 MJ [COL POHL]: What is it?

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1 LDC [MR. CONNELL]: It's the interim order AE 021B in
2 United States v. Hadi al-Iraqi.

3 MJ [COL POHL]: Do you have a question of the witness
4 about it?

5 LDC [MR. CONNELL]: I'm going to ask him about the date.

6 MJ [COL POHL]: Okay. Go ahead.

7 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

8 Q. Would you like to see a copy of it, sir?

9 A. Yes.

10 Q. Yes, 254LLLL (AAA). Sir, at this point, all I'm
11 going to ask you about is the date, but if you want more time
12 to review it, you're welcome to it.

13 Sir, was that order dated 7 November 2014?

14 A. Yes.

15 Q. So am I correct that when you initially prepared or
16 chopped your declaration in the Hadi al-Iraqi case, you had
17 not yet had any experience of the operation of such an order;
18 is that correct?

19 A. I would say that's right.

20 Q. Okay. And so when you give opinions in your
21 declaration in the Hadi al-Iraqi case, those opinions are
22 predictions, correct, not based on what has already happened
23 under the operation of the order; is that right?

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1 A. They're based on my experience of what I believe
2 would be the effect of such an order, yes.

3 Q. Sure. Prospectively.

4 A. Yes.

5 Q. Okay. Now, sir, I'd like to ask you about the
6 interim order in this case, United States v. Khalid Shaikh
7 Mohammad, et al. Do you understand?

8 A. Yes.

9 Q. That order is already in the record at AE 254JJ, the
10 interim order dated 7 January 2015. The parties already have
11 a copy, but I have a copy for you if you would like it, sir.

12 A. Please.

13 LDC [MR. CONNELL]: May I approach, Your Honor?

14 MJ [COL POHL]: Sure.

15 Q. Sir, that order is dated 7 January 2015; is that
16 correct?

17 A. Yes.

18 Q. Now, when did you receive that order? Or let me back
19 up.

20 Did you initially hear of that order from someone
21 else, or did you see the paper -- a paper copy first?

22 A. I don't recall specifically.

23 Q. Let me ask it a better way then.

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1 Under what circumstances did you first learn of the
2 existence of the order?

3 A. To the best of my recollection, it was from the Staff
4 Judge Advocate at Joint Task Force.

5 Q. Okay. And what information did you receive?

6 A. I believe it was essentially that the judge had
7 issued an order similar to the order issued for Hadi al-Iraqi.

8 Q. And at that time, in early January of 2015, the Hadi
9 order was still in effect as well; is that right?

10 A. I believe you're right.

11 Q. Okay. And at some point after 7 January 2015, did
12 you receive a copy of the order itself?

13 A. I don't recall that I ever received a copy of it, no.

14 Q. Okay. Did you ever receive an abstract? Did you
15 ever know what language -- what the judge had actually
16 ordered?

17 A. Yes.

18 Q. Okay. And was that an -- if it wasn't in the order
19 itself, was it in an e-mail or an abstract some way?

20 A. I would say it was an e-mail, if I remember
21 correctly.

22 Q. Okay. And to the best of your recollection, that
23 e-mail included the specific order of the judge that what --

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1 not necessarily all of the -- all of his reasoning, but the
2 language limiting the use of female guards to physically touch
3 the accused during movements to and from attorney-client
4 meetings and commission hearings absent exigent circumstances;
5 is that right?

6 A. Yes.

7 Q. And when you received the information that that order
8 had gone into effect, what steps did you take to implement the
9 order?

10 A. I discussed it with the camp commander at the time to
11 make sure that he understood what -- the restrictions the
12 judge had placed upon us; and from that point on, I let the
13 camp commanders run the camp. I don't run the camp for them.
14 So he had the left and right limits. He knows my intent,
15 knows my guidance, and he did what he was supposed to do.

16 Q. Okay. And what was your intent, sir?

17 A. To follow the judge's order.

18 Q. Okay. And what was your guidance?

19 A. To follow the judge's order.

20 Q. So we're just talking about the -- we're just talking
21 about the language that I just read to you. That's basically
22 the sum and substance of the direction that you gave?

23 A. Yes, that's correct.

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1 Q. Okay. The -- I'd like to direct your attention to
2 page 3 of the interim order, which is AE 254JJ. It's the
3 second half of paragraph 5, which appears at the top of
4 page 3. Can you tell me when you've had a chance to look at
5 that language?

6 A. You're talking the first paragraph on the top of the
7 page? Not paragraph 6, but ----

8 Q. Yes, sir. The beginning words are "The Commission."

9 A. Yes. Okay.

10 Q. All right. And you see that the judge makes a
11 finding there that defense counsel are not permitted to see
12 the accused at the detention center but rather at a facility
13 specifically for client meetings, thus necessitating the
14 movement of the accused? Do you see that?

15 A. Yes.

16 Q. That's true, right, sir?

17 A. It is.

18 Q. And that facility that we're talking about is
19 Echo II?

20 A. Yes.

21 Q. And without being specific at all, it is not
22 physically proximate with Camp VII, correct?

23 A. It is not.

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1 Q. And who made the determination that attorney-client
2 meetings would take place at a remote facility like
3 Echo II ----

4 MJ [COL POHL]: Mr. Connell, please slow down.

5 LDC [MR. CONNELL]: Slow down. Yes, sir. Thank you.

6 Questions by the Learned Defense Counsel [MR. CONNELL]:

7 Q. Let me ask it slower, sir.

8 A. What's that?

9 Q. I will repeat my question.

10 Who made the determination that attorney-client
11 visits would take place at a remote location like Echo II as
12 opposed to someplace -- a facility attached to Camp VII?

13 A. I don't know. Not me.

14 Q. Okay. Was that determination before -- made before
15 your time?

16 A. That was the procedure in place when I took command,
17 yes.

18 Q. All right, sir. But you continued that policy, fair
19 to say?

20 A. Yes.

21 Q. And if meetings were held at a location physically
22 proximate to Camp VII, that would decrease the needs for
23 movement, correct?

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1 A. I assume so.

2 Q. But there might be other counterbalancing
3 considerations, correct?

4 A. Yeah.

5 Q. I'm sorry, you will have to -- we have a microphone
6 and a record, and so you will have to answer.

7 A. Yes.

8 Q. Yeah. Thank you.

9 But the judge's order in 254JJ did not limit your
10 discretion in any way about where to hold meetings, correct?

11 A. No.

12 Q. He didn't say you have to hold meetings at a remote
13 location like Echo II, right?

14 A. No.

15 Q. Are you aware of how, if at all, the order in this
16 case is different from the Hadi order?

17 A. No.

18 Q. Okay. Would -- are you aware with the -- of the
19 exigent circumstances exception which is placed in this order?

20 A. Yes.

21 Q. Did you -- how was that exigent circumstances
22 provision implemented, if at all?

23 A. I don't recall that it was.

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1 Q. Was this order incorporated into any written policy?

2 A. No.

3 Q. Was it incorporated into an informal electronic
4 policy, such as e-mail?

5 A. Not by me. I discussed the restrictions of the judge
6 with the camp commander, as I already stated.

7 Q. Okay. Did you explain the parameters of the exigent
8 circumstances exception?

9 A. No.

10 Q. Did you, or did anyone, issue a temporary order such
11 as a temporary standing order?

12 A. To my knowledge, there was no written orders issued,
13 no.

14 Q. In your interpretation, or at -- in the orders that
15 you -- or the directives that you gave to the commander of
16 Camp VII, did you define what "physical contact" meant?

17 A. I did not make a definition other than what the
18 common definition would be.

19 Q. Okay. To your knowledge, has the exigent
20 circumstances exception ever been invoked?

21 A. Not to my knowledge.

22 Q. So as far as you know, no exigent circumstances have
23 ever required that a member of the guard force physically

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1 touch one of the five detainees in this case?

2 A. There's never been an emergency that required us to
3 violate the judge's order, no.

4 Q. But why do you say "violate"? Because it has an
5 exception for exigent circumstance written right in it; that
6 wouldn't be a violation, would it?

7 A. I think it would be going against the intent the
8 judge had when he issued the order.

9 Q. And did you communicate that understanding to the
10 commander of Camp VII, or is that your private understanding?

11 A. That's my private understanding.

12 Q. Okay.

13 A. We did not discuss exigent circumstances. If there
14 had -- some had come up, he would have called me and sought
15 guidance from me, and he never did.

16 Q. Sure. So it's pretty fair to assume that the exigent
17 circumstances have never arisen?

18 A. Not to my knowledge.

19 Q. Sir, I'd like to turn your attention now to your
20 declaration in this case, which is already in the record at
21 AE 254EE, Attachment D. I'm correct, you have a case -- you
22 have a copy of that with you already, sir?

23 A. I brought one, yes.

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1 Q. Thank you. I'd like to begin with paragraph 1 of
2 your declaration ----

3 A. Okay.

4 Q. ---- in which you state, "I am familiar with all
5 areas of detention within JTF-GTMO."

6 A. That's correct.

7 Q. Do you consider -- when you wrote that, did you
8 consider that "within JTF-GTMO" to be a geographical
9 delineation or an operational delineation?

10 A. Within the organization.

11 Q. Within the organization.

12 So does JTF-GTMO have geographical responsibility for
13 an area?

14 A. They have responsibility for our area of operations
15 on the Naval Station Guantanamo Bay, yes.

16 Q. And without telling us what those boundaries are, is
17 that a bounded geographical space that you're responsible for?

18 A. Yes.

19 Q. But in your declaration, when you say that you are
20 familiar with all areas of detention within JTF-GTMO, you
21 don't mean in the geographical space, right? You mean within
22 the operational space?

23 A. I am directly responsible for all of the detention

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1 facilities within JTF-GTMO, so I am familiar with their
2 operation, all of them.

3 Q. Okay. And when you say that they're within JTF-GTMO,
4 you mean both geographically and organizationally?

5 A. Yes.

6 Q. Okay. Sir, I'd like to turn your attention to
7 paragraph 4, briefly. It's at the top of page 2. At the top
8 of page 2, you say that -- you use another geographical
9 reference, which is to "U.S. Naval Station Guantanamo Bay,
10 Cuba."

11 Is the geographical and organizational space that
12 you're talking about in paragraph 1, "within JTF-GTMO," is
13 that smaller than all of Naval Station Guantanamo Bay?

14 A. Yes.

15 Q. Sir, I'd like to turn your attention now to
16 paragraph 3, in which you state that because of your position
17 and knowledge of applicable JTF-GTMO practices, you're
18 qualified to describe how those practices are consistent with
19 applicable DoD regulations. Do you see that?

20 A. Yes.

21 Q. What do you consider to be the applicable DoD
22 regulations?

23 A. There is a DoD instruction regarding detainee

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1 operations. There are Army field manuals. There is -- we
2 reference AR 190-47, which is Army Corrections. Many of our
3 SOP procedures come from those.

4 There's others, and I don't know all of them off the
5 top of my head.

6 Q. Sure. Which ones did you have in mind when you
7 wrote or chopped this paragraph?

8 A. Specifically talking about the requirements for
9 detention, the treatment of detainees that's in the DoD
10 instruction, and also Army and DoD equal opportunity policies.

11 Q. Okay. So you say "the DoD instruction." Are you
12 referring to DoD Directive 2310.01E on detention policy?

13 A. I don't remember. I don't recall.

14 Q. Have you reviewed that document recently?

15 A. Yes.

16 LDC [MR. CONNELL]: With the court's indulgence, may I
17 approach the witness?

18 MJ [COL POHL]: Sure. Let the record reflect Mr. Connell
19 handed to the witness a document which is ----

20 LDC [MR. CONNELL]: I'm not going to make it a part of the
21 record.

22 Questions by the Learned Defense Counsel [MR. CONNELL]:

23 Q. I just want to know, sir, does that refresh your

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1 recollection reviewing that document?

2 A. Yes.

3 Q. And having had your recollection refreshed, do you
4 recall that the relevant directive is 2310.01E?

5 A. I agree with you.

6 MJ [COL POHL]: What's the date on the document?

7 LDC [MR. CONNELL]: 19 August 2014.

8 Q. Now, just a moment ago, you told us that sort of
9 the -- one of the primary sources to which you refer is Army
10 regulation 190-47 on army corrections?

11 A. Yes.

12 Q. Why do you refer -- why do you consider 190-47 on
13 army corrections to be the principal document as opposed to
14 Army Regulation 190-8 on law of war detention?

15 A. I didn't say it was the principal document. I said I
16 referred to it for some of the procedures that we have in
17 place inside the facility.

18 Q. Okay. Do you refer to 190-8 on law of war detention?

19 A. It's -- yes, we do.

20 Q. Do you consider that to be authoritative?

21 A. Yes.

22 Q. Okay. The 190-8 on law of war detention sets out a
23 number of categories of prisoners or detainees and with the

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1 relevant treatment obligations. Would you agree with that
2 characterization?

3 A. Yes.

4 Q. Of the categories in AR 190-8, which do you consider
5 to be the person -- the people who you have custody of?

6 A. I have custody of law of war detainees.

7 Q. And of the variety of categories of law of war
8 detainees governed in AR 190-8, which are these detainees?

9 A. I don't know all of the categories. That's why I
10 have a copy of the regulation, so I can refer to it.

11 Q. Okay. When you do refer to it, it's -- you know,
12 it's pretty long, right? It's like, let's see, 30 or so pages
13 long, is that right, plus attachments? Sound right?

14 A. Yep. I don't know, but I'll take your word for it.

15 Q. Okay. Well, I ask you -- I'm not trying to trick
16 you, but you said you have a copy of it that you refer to.

17 A. I do. I don't memorize how many pages are in every
18 regulation that I have on my desk.

19 Q. Sure. So the 190-8 sets out -- it has rules for
20 enemy prisoners of war, right, EPWs?

21 A. Yes.

22 Q. And it has rules for civilian internees, correct?

23 A. Yes.

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1 Q. And within those, it has rules for retained persons,
2 correct?

3 A. Yes.

4 Q. Okay. Well, of those categories, which do you
5 consider to be the detainees under your custody?

6 A. The detainees under my custody are law of war
7 detainees, and we treat them in accordance with the Geneva
8 Convention and give them as much freedom and deference as we
9 can, but I'm not going to categorize them of anything in
10 AR 190 -- AR 190-8.

11 Q. Okay. Well, without characterizing them, when you
12 are trying to determine the appropriate -- excuse me, the
13 applicable DoD regulation, to which category -- to which
14 section of AR 190-8 do you refer?

15 TC [MR. RYAN]: Objection, Your Honor, relevance and
16 beyond the knowledge of this witness. It gets into legal
17 argument, sir.

18 LDC [MR. CONNELL]: Sir, may I be heard.

19 MJ [COL POHL]: The objection is overruled. You may
20 answer the question.

21 WIT: Restate the question, please.

22 Questions by the Learned Defense Counsel [MR. CONNELL]:

23 Q. Sure.

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1 When you are attempting to determine the applicable
2 DoD regulations which you wrote about in your declaration, do
3 you refer to the section of AR ----

4 A. The section that would most closely apply to these
5 defendants is enemy prisoner of war.

6 Q. And so are those the -- when you are looking for
7 applicable DoD regulations, is that where you go to find out
8 what the governing policy is, governing DoD policy?

9 A. Do I go to AR 190-8?

10 Q. Yes, sir.

11 A. It is -- there are many references in AR 190-8 that
12 one can go look at after their reading of that regulation.

13 Q. Sure. Of course.

14 And what I -- you wrote about applicable DoD
15 regulations, and I'm trying to find out what those are.

16 So in this situation, I'm asking you, do you consider
17 the EPW sections of AR 190-8 to be the applicable DoD
18 regulations?

19 A. That is one, yes.

20 Q. Okay. And you've told us about AR 190-47, Army
21 Corrections?

22 A. Yes.

23 Q. And we have discussed DoD Directive 2301.01E,

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1 correct?

2 A. Yes.

3 Q. Is there any other applicable DoD regulation that you
4 had in mind when you wrote or chopped your declaration?

5 A. No.

6 Q. Now, a moment ago, you told us that you treat the law
7 of war detainees in compliance with the Geneva Convention; is
8 that correct?

9 A. Yes.

10 Q. And which Geneva Convention did you have in mind when
11 you gave that testimony?

12 A. Common Article 3.

13 Q. The -- do you consider the remainder of -- you are
14 familiar with the four different Geneva Conventions, I assume?

15 A. Vaguely.

16 Q. Okay. The Geneva Convention (III) governs enemy
17 prisoners of war; would you agree with that as a broad
18 characterization?

19 A. Yes.

20 Q. And Geneva Convention (IV) governs the treatment of
21 civilians as a broad characterization; would you agree with
22 that?

23 A. Yes.

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1 Q. Do you consider -- when you said we treat them in
2 accordance with the Geneva Convention, do you consider either
3 Geneva Convention (III) or Geneva Convention (IV) to be
4 applicable regulations?

5 A. I stated that we treat them in accordance with Common
6 Article 3 of the Geneva Convention.

7 Q. Okay. So in formulating your policies and in
8 preparing your declaration, the only aspect of the Geneva
9 Conventions that you considered to be applicable regulations
10 is Common Article 3; is that correct?

11 A. I didn't say that I referred to the Geneva Convention
12 when I wrote my declaration. I said that we treat them in
13 accordance with the Geneva Convention.

14 Q. Sir, can I draw your attention to paragraph 16 of
15 your declaration?

16 A. Okay.

17 Q. In the first clause of paragraph 16, do you see where
18 you write, "While JTF-GTMO continues to respect the religious
19 and cultural sensitivities of the detainees in accordance with
20 U.S. laws, DoD regulations and policy"?

21 A. Yes.

22 Q. Do you consider the Geneva Conventions to be one of
23 those U.S. laws ratified by the Senate?

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1 A. It is a treaty ratified by the Senate, yes.

2 Q. And thus, a U.S. law?

3 A. It's a treaty ratified by the U.S. Senate. Is it a
4 law or not, I don't know. I'm not a lawyer. I'm not going to
5 speculate.

6 Q. Okay. Do you consider it to be binding on your
7 actions?

8 A. We abide by it, yes.

9 Q. That's a slightly different question. Do you
10 consider it to be binding on your actions?

11 TC [MR. RYAN]: Objection, Your Honor.

12 MJ [COL POHL]: Hold.

13 LDC [MR. CONNELL]: You may answer the question.

14 MJ [COL POHL]: No. No. Not yet.

15 LDC [MR. CONNELL]: I thought you said "overruled."

16 MJ [COL POHL]: No. No. I said "hold."

17 Overruled. You may answer the question.

18 A. Yes, I believe that if I violated the Geneva
19 Convention, I would be held accountable for it.

20 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

21 Q. Okay. And when you say "the Geneva Convention" in
22 that sentence, do you mean only Common Article 3 or all of the
23 four Geneva Conventions?

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1 A. If it all were ratified by the Senate, then I would
2 say all.

3 Q. Okay. Are you familiar with the provisions of
4 Additional Protocol I to the Geneva Conventions?

5 A. No.

6 Q. Are you familiar with the provisions of Additional
7 Protocol II to the Geneva Conventions?

8 A. No.

9 Q. Okay. Let's turn, then, to Department of Defense
10 Directive 2310.01E that you had said was one of the three
11 applicable DoD regulations that you described in your
12 declaration.

13 A. Yes.

14 Q. Are you with me?

15 I'm not going to ask you to recite it or anything,
16 but are you familiar with the DoD policy that the principles
17 in Articles 4 through 6 of Additional Protocol I are
18 applicable during detention in noninternational armed
19 conflict?

20 A. I don't recall that, no.

21 Q. Has there ever been a situation where you considered
22 the applicable DoD regulations that you described in the
23 formulation of your standard operating procedures?

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1 A. Repeat the question, please.

2 Q. Sure. When you formulate SOPs, do you consider the
3 applicable DoD regulations in the U.S. law that you describe
4 in your declaration?

5 A. Most of the SOPs that we have in place have been
6 formulated for years and I review them. And if I see
7 something in there that I think doesn't make sense, then yes,
8 I'll refer to other regulations and policy.

9 Q. Okay. If you review an SOP and you do not think it
10 needs a change, do you reissue it?

11 A. Yes.

12 Q. Okay. And what is the schedule for reissuance?

13 A. At least every nine months.

14 Q. Okay. So SOPs are -- each SOP is reviewed and
15 reissued every nine months or so?

16 A. Or more frequently, if it needs a change.

17 Q. Okay. In the situation that you thought something
18 needed to change based on applicable DoD regulations, what is
19 the process by which you would resolve that perceived
20 conflict?

21 A. Most of the SOPs that have been changed since I have
22 been the commander have been based on operational need.
23 Something has been identified within the facility that doesn't

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1 make sense, or that one of the rotations that come through, I
2 get various corrections experts or professionals who work in
3 civilian facilities, who work in military facilities, and they
4 may recommend a better way to do things. And if I think it's
5 a better way, then we'll explore the policy. It's reviewed by
6 applicable stakeholders, medical, legal, and then I am the
7 approval authority.

8 Q. Okay. Do you have an unclassified example of one of
9 those?

10 A. Well, I have SOP 39, but I believe you already have
11 that in -- on the record.

12 Q. And so SOP 39, which is AE 254IIII, for the record,
13 is an example of taking input from the outside and making it a
14 change in SOP based on something that seemed like a good idea?

15 A. It's -- it was last updated 14 September of 2015, so
16 yes.

17 Q. Okay. And -- excuse me. I don't have another
18 question now.

19 I'd like to turn your attention to paragraph 4 of
20 your declaration.

21 A. Okay.

22 Q. In which you say that JTF-GTMO is responsible for the
23 safe, humane, legal, and transparent execution of the law of

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1 war detention mission at U.S. Naval Station Guantanamo Bay,
2 Cuba.

3 A. Yes.

4 Q. Yes. "Humane" is not your personal opinion, correct?

5 A. I believe we treat them humanely, yes.

6 Q. Fair enough. But your mission is defined not by
7 personal opinion, but by the law of war, correct?

8 A. Yes.

9 Q. When you say "transparent," what do you mean?

10 A. I mean that we're open to scrutiny from Congress.
11 We're open to scrutiny from the ICRC, open to scrutiny from
12 this court. That's what I mean.

13 Q. Okay. And in what way are you open to scrutiny from
14 this court, in your use of the word "transparent" in your
15 declaration?

16 A. Because we provide SOPs, documents, testimony, for
17 issue -- issues before the court. That's what I mean.

18 Q. Okay. And to whom do you provide those SOPs?

19 A. I don't know personally who our SJA gives the SOPs
20 to, but that's the process it goes through.

21 Q. Okay. And the intent of that process is to allow
22 transparency, supervision in appropriate matters by the
23 military commission, among others, correct?

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1 A. Yes.

2 Q. Would it surprise you to learn that the SOP 39 that
3 you brought with us -- brought with you was never provided to
4 the defense by the prosecution?

5 A. I have no knowledge.

6 Q. Okay. Does -- would such practice be consistent with
7 the transparency that you describe in your declaration?

8 TC [MR. RYAN]: Objection, Judge.

9 MJ [COL POHL]: Sustained.

10 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

11 Q. I'd like to now direct your attention to paragraph 5.

12 A. Okay.

13 Q. You say in paragraph 5 that the standard operating
14 procedures for the Camp VII detainees and the general
15 population differ in some ways based on differences in threat
16 level.

17 A. Yes.

18 Q. Now, at this point, I just want to remind you that if
19 I ask you a question that you believe calls for a classified
20 answer, you just tell the judge and he will take appropriate
21 action. Do you understand?

22 A. Yes.

23 Q. How are those differences in threat level assessed?

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1 A. Essentially, the threat level is assessed by the
2 facility commander on what they believe the threat that the
3 detainee poses to the guard force.

4 Q. So is your paragraph 5 talking about individual
5 detainees, or is it talking about the difference between
6 Camp VII detainees and the general population?

7 Would you like to read it again?

8 A. No. It's talking about differences between the
9 Camp VII detainees and the general populations in Camp V and
10 VI.

11 Q. But you didn't mean that the Camp VII commander makes
12 individual determinations about the threat level of ----

13 A. Based on the discipline or indiscipline of individual
14 detainees in Camp VII, yes, he does make a threat assessment
15 of -- and compliancy level recommendations to me.

16 Q. Okay. About individual detainees?

17 A. Yes. I just stated that.

18 Q. All right. But does the Camp VII commander make
19 determinations about differences in threat level between
20 Camp VII detainees and the general population?

21 A. No.

22 Q. So the Camp VII commander doesn't, for example, have
23 the power to step down a detainee from Camp VII to another

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1 camp based on his assessments of threat level, correct?

2 A. No, nor do I.

3 Q. Okay. Nor do you, sir?

4 A. No.

5 Q. Who does have that authority?

6 A. I don't know.

7 Q. Okay. The -- how do you know you don't have that
8 authority?

9 TC [MR. RYAN]: Objection, Judge.

10 LDC [MR. CONNELL]: Basis, please?

11 MJ [COL POHL]: Overruled.

12 A. I know that I don't have that authority because it's
13 not within my purview to change the location of detainees from
14 HVD to non-HVD.

15 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

16 Q. Okay. Who determines who is an HVD and who is a
17 non-HVD?

18 TC [MR. RYAN]: Judge, before ----

19 A. That was well in place before I got here. I don't
20 know.

21 MJ [COL POHL]: The objection would have been sustained
22 but the answer is already there, so go ahead. Next question,
23 Mr. Connell.

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1 LDC [MR. CONNELL]: May I ask that we have bases for the
2 objections? I could respond much better if there was a second
3 word to follow "objection."

4 MJ [COL POHL]: If I need one, I'll ask for one.

5 LDC [MR. CONNELL]: All right. Because I get to be a
6 participant in the objection process.

7 MJ [COL POHL]: I know. I know. Well, when I -- unless I
8 overrule them.

9 LDC [MR. CONNELL]: Well, yes.

10 MJ [COL POHL]: I got it.

11 LDC [MR. CONNELL]: Fair enough.

12 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

13 Q. So let's return to paragraph 5 of your declaration.
14 So in paragraph 5, you say that the SOPs for Camp VII and the
15 general population differ, correct?

16 A. Yes.

17 Q. Okay. Is that true in every case? Is there a
18 one-to-one correspondence between SOPs?

19 A. No. There are ----

20 Q. I'll just finish -- I know you -- let me just finish
21 the question ----

22 A. Okay.

23 Q. ---- and you will have a complete opportunity to

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1 answer.

2 Are there one-to-one correspondence between SOPs for
3 Camp VII and SOPs for the general population?

4 A. No, there is not.

5 Q. Okay. And why is that?

6 A. When I first got here, most of the SOPs for those two
7 different populations were separate. I have tried to make
8 SOPs that can be consistent with each other consistent. Ones
9 that don't -- are not applicable to one camp or the other,
10 then they're not.

11 Q. All right. And in your declaration, you write that
12 where there are differences between the SOPs for Camp VII and
13 the other camps, those are based on differences in threat
14 level, correct?

15 A. Yes.

16 Q. Okay. And who -- what is the process for assessment
17 of threat level of the general population versus Camp VII, as
18 opposed to individual detainees?

19 TC [MR. RYAN]: Objection, relevance, Your Honor.

20 MJ [COL POHL]: Sustained.

21 LDC [MR. CONNELL]: Your Honor, since you sustained it,
22 may I be heard?

23 MJ [COL POHL]: I'm not going to have long arguments on

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1 every single objection, okay? The issue before me is -- and
2 I've given you a great deal of leeway here, and quite frankly,
3 it's -- I'm not sure where you are going with most of the
4 stuff, but I'll give you leeway. But I don't find this as
5 relevant.

6 LDC [MR. CONNELL]: Okay. So it's a relevance objection?

7 MJ [COL POHL]: Well, that's what he just said.

8 LDC [MR. CONNELL]: No, sir, he just said "objection."

9 TC [MR. RYAN]: No, sir, I said "relevance."

10 MJ [COL POHL]: No. He said "relevance" this time.

11 LDC [MR. CONNELL]: Okay. The fundamental question with
12 this witness is what level of deference the military
13 commission should give to his ultimate opinions found in
14 paragraph 17 of his declaration. This witness is different
15 from all other witnesses. He -- the government has tendered
16 expert opinion from this witness, and so the relevance is to
17 explore the basis of that expert opinion. This is not like
18 the other fact witnesses.

19 MJ [COL POHL]: I got that, and I have given you leeway to
20 do that. But on that question, the objection is sustained.
21 Next question.

22 Questions by the Learned Defense Counsel [MR. CONNELL]:

23 Q. Sir, I'd like to draw your attention to paragraph 7

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1 of your declaration.

2 A. Okay.

3 Q. In paragraph 7, you describe standard operating
4 procedures which limit women from performing certain duties in
5 the all-male detainee population, correct?

6 A. Yes.

7 Q. And you give two examples, full-frisk searches and
8 observing male detainees while they're unclothed, correct?

9 A. Correct.

10 Q. And that's not unlawful discrimination under DoD
11 policy, correct?

12 A. No.

13 Q. And that's because the judicial authority has
14 determined that those limits are acceptable, correct?

15 A. Yes.

16 Q. Okay. And then in paragraph 8, you go on to describe
17 other necessary duties which are performed by female personnel
18 at JTF-GTM0, correct?

19 A. Yes.

20 Q. And the -- and you give, as examples, medics,
21 corpsmen, mail delivery, et cetera, correct?

22 A. Yes.

23 Q. And the judge's order in this case did not affect any

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1 of those operations, correct?

2 A. Correct.

3 Q. Okay. And you give, as another example, armed
4 overwatch?

5 A. Yes.

6 Q. And the judge's order in this case did not affect a
7 soldier's ability to carry out armed overwatch, correct?

8 A. Correct.

9 Q. And you also give as an example driving the escort
10 vehicle, correct?

11 A. Yes.

12 Q. And the judge's order in this case did not limit a
13 soldier's ability to drive the escort vehicle, correct?

14 A. Correct.

15 Q. Paragraph -- I'd like to turn your attention now to
16 paragraph 8. Do you understand?

17 A. Yes.

18 Q. In paragraph 8, you write, "The female guards have
19 taken part in guard and escort duties for years," correct?

20 A. Yes.

21 Q. What research did you conduct for the basis of that
22 statement?

23 A. I asked my camp commander at the time to go back

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1 through the records of Camp VII and tell me how far back we
2 had female guards at Camp VII, and that camp commander came
3 back with examples of female guards at Camp VII from 2006 on
4 up.

5 Q. Would it be 2007 -- so let me just make sure that
6 the ----

7 A. 2006, '7, '8, '9, '10, '11, '12. Yeah.

8 Q. And then it stops at '12 and picks up again in '14?

9 A. For a period of time, yes.

10 Q. Are you aware if the individual to whom you refer as
11 the camp commander at the time testified in this case?

12 A. Yes.

13 Q. There's no name for her, so I just want the record to
14 be clear we're talking about the same person.

15 A. Yes.

16 Q. So you relied on her research, correct?

17 A. Yes.

18 Q. Did her research describe, during the periods of time
19 where female guards have been assigned to Camp VII, whether
20 the female guards had touched the detainees directly?

21 A. From the duty descriptions that she described to me
22 that, yes, they would have had physical contact with
23 detainees.

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1 Q. Okay. The -- and what -- so she was just going off
2 personnel rosters and duty descriptions, correct?

3 A. She was going off personnel rosters, duty logs,
4 forced cell extraction videotapes, just all -- anything that
5 she could find, is what she was going off of.

6 Q. Okay. The -- I'd like to turn your attention now to
7 paragraph 11.

8 A. All right.

9 Q. In paragraph 11, you talk about the next rotation of
10 the guard force personnel. And at the time this was written,
11 "the next rotation" referred to the 256th, right?

12 A. No, it referred to the 193rd.

13 Q. Wasn't the 193rd already in place when you wrote this
14 in November of 2014?

15 A. No, the 193rd was the rotation after the camp
16 commander who testified first in this case.

17 Q. What unit did the camp commander who testified in
18 this case belong to?

19 A. I don't remember the specific unit. They were from
20 the Massachusetts Army National Guard, and the one that
21 replaced them was from the Colorado National Guard, and then
22 the one that replaced them was the 256th MP Company.

23 Q. Okay.

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1 A. So when I wrote this declaration, the unit on the
2 ground was from the Massachusetts Army National Guard.

3 Q. Okay. And so the next -- the phrase "next rotation"
4 refers to the 193rd?

5 A. Yes.

6 Q. Okay. And when you wrote this, there was an
7 estimation that approximately 20 percent of inbound guards and
8 escort members would be female, correct?

9 A. Yes.

10 Q. And did that turn out to be roughly accurate?

11 A. You know, honestly, I don't know.

12 Q. Okay. But as we speak now, there are female guards
13 serving as -- there are women serving as both guards and as
14 escort team members, correct?

15 A. Yes.

16 Q. Okay. I'd like to turn your attention to
17 paragraph 13.

18 A. Okay.

19 Q. Okay. And in paragraph 13 you wrote that, "Demanding
20 that female personnel not touch male detainees would
21 effectively prevent female servicemembers from serving as
22 guards." Do you see that?

23 A. Yes.

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1 Q. And that prediction turned out not to be accurate,
2 right?

3 A. As long as the females that are serving in those
4 positions are at the lowest level and nonsupervisory
5 positions, yes, you're correct.

6 Q. The -- I'd like to also -- in paragraph 13, you
7 write, "Absent female guard force members at Camp VII." Do
8 you see that sentence?

9 A. Yes.

10 Q. And even after the order in this case went into
11 effect, there are still female guard members at Camp VII,
12 correct?

13 A. That's right.

14 Q. And you predicted that JTF-GTMO's effort to fulfill
15 its mission of providing safe, humane, transparent and legal
16 detention operations will be severely and negatively impacted,
17 correct?

18 A. Yes.

19 Q. The assumption for that turned out not to be true,
20 correct, that there would be no female guards at Camp VII,
21 right?

22 A. I didn't say that there wouldn't be any female
23 guards.

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1 Q. What does "absent" mean?

2 A. I said "without female guards." We have female
3 guards there.

4 Q. Right. So the -- when you wrote that, you thought
5 that an order might -- an order prohibiting female guards from
6 touching prisoners might mean that there could be no female
7 guards at all at Camp VII, correct? That was one of the
8 possibilities?

9 A. One of the possibilities is that if this order stood
10 to not -- for females not to touch male detainees, that it
11 would grow from that order to all of them, for anything.
12 That's what the assumption was.

13 Q. I see. And that -- that possibility turned out not
14 to eventuate.

15 A. So far, but here we are more than a year later and we
16 haven't settled it.

17 Q. Has the order grown?

18 A. Not yet.

19 Q. All right. Has the order shrunk from when this was
20 written?

21 A. Well, the Hadi order is not in effect anymore.

22 Q. I'd like to turn your attention to paragraph 14.

23 A. Okay.

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1 Q. Paragraph 14, you write "Without the ability to
2 utilize female guards in positions that require escort
3 duties."

4 A. Yes.

5 Q. Was that the same sort of assumption, that the order
6 might grow, in which case there would be no female escorts?

7 A. That was my assumption.

8 Q. And that -- I don't want to say you assumed that was
9 going to happen, but that possibility turned out not to have
10 happened, correct?

11 A. So far, yes.

12 Q. Okay. The -- in that -- under that scenario, you
13 predicted that JTF-GTM0's efforts to accommodate defense
14 counsel meeting requests will be hampered going forward.

15 A. Yes.

16 Q. Has -- to your knowledge, has JTF ever declined an
17 attorney meeting request because of the judge's order?

18 A. I don't know.

19 Q. But to your knowledge, there has been no such
20 declining of a meeting request?

21 A. Not to my knowledge.

22 Q. I'm sorry?

23 A. I said not to my knowledge, but I don't know.

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1 Q. Thank you. I'd like to turn your attention to
2 paragraph 16. In paragraph 16 you predicted that "JTF-GTMO
3 cannot conduct safe, humane, legal and transparent detention
4 operations without utilizing assigned females as guards and
5 detainee escorts within Camp VII," correct?

6 A. Yes.

7 Q. And when you wrote that, there was the same
8 possibility -- you had in mind the same possibility that the
9 order might grow and no women might be allowed to work at
10 Camp VII, right?

11 A. Correct.

12 Q. Okay. And so that possibility did not eventuate.

13 A. Not at this time.

14 Q. And at this time JTF-GTMO is, in your opinion,
15 carrying out its mission to provide safe, humane, legal and
16 transparent detention operations, correct?

17 A. Yes.

18 LDC [MR. CONNELL]: Your Honor, that is all of the
19 questions that I have on unclassified topics.

20 MJ [COL POHL]: Okay. Thank you. Let's go ahead and take
21 our 15-minute morning break a little bit early because it's a
22 logical time to take it, and we'll reconvene at 10:30.
23 Commission is in recess.

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1 [The R.M.C. 803 session recessed at 1013, 10 December 2015.]

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