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1 [The R.M.C. 803 session was called to order at 1035,  
2 10 December 2015.]

3 MJ [COL POHL]: Commission is called to order. All  
4 parties are again present that were present when commission  
5 recessed.

6 By the way, when I say that, if I'm wrong, let me  
7 know, because there's so many people here, sometimes I miss,  
8 but I believe it's the same.

9 That being said, please recall Colonel Heath.

10 Colonel Heath, please take a seat. I just want to  
11 remind you, you are still under oath.

12 WIT: Yes, sir.

13 MJ [COL POHL]: Mr. Nevin.

14 LDC [MR. NEVIN]: Thank you, Your Honor.

15 **DIRECT EXAMINATION CONTINUED**

16 **Questions by the Learned Defense Counsel [MR. NEVIN]:**

17 Q. Colonel Heath, David Nevin, one of the lawyers for  
18 Mr. Mohammad.

19 You have been in your position since June of 2014; is  
20 that right?

21 A. That's correct.

22 Q. And I believe you said it's a two-year appointment,  
23 so you will continue through June of 2017 -- 2016, sorry,

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1 right?

2 A. That's correct.

3 Q. Have you been to Camp VII?

4 A. Yes.

5 Q. On how many occasions have you been to Camp VII?

6 A. I don't know. A hundred.

7 Q. Okay. And have you met with detainees there?

8 A. No.

9 Q. Only met with camp commander, operations, guards as  
10 well, correct?

11 A. Correct.

12 Q. All right. And have you had conversations with them  
13 at Camp VII?

14 A. Yes.

15 Q. Have you been on the tier there?

16 A. Yes.

17 Q. On -- and there is more than one tier there. Have  
18 you been on all of the tiers?

19 A. Yes.

20 Q. And have you had conversations while you were on the  
21 tiers?

22 A. No.

23 Q. Now, you were asked some questions before about

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1 the -- about the new force that would be coming in to serve as  
2 guards, to comprise the guard force, and you were saying that  
3 that's -- undoubtedly there's a process there where people are  
4 on their way here, but that's not a process you're part of,  
5 correct?

6 A. I am not directly involved in it, no.

7 Q. Are you involved in any way?

8 A. Other than vague knowledge of where they're coming  
9 from. Other than that, I don't know.

10 Q. So you do know where the next group of folks are  
11 coming from?

12 A. I have been told. I don't remember right this  
13 minute.

14 Q. Okay. And you don't recall or you don't know, as you  
15 sit here, what percentage of the guard force will be female?

16 A. No, I do not.

17 Q. And do you know whether or not the guard force that's  
18 coming was all drawn from a single unit or whether it was  
19 drawn from multiple units?

20 A. I don't know.

21 Q. It is possible to draw the members of the guard force  
22 from multiple units, correct?

23 A. I don't know.

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1 Q. Okay. And can you say who is making that decision,  
2 at what level, just generally at what level that decision is  
3 being made?

4 A. My knowledge of the process is that the requirement  
5 for forces goes to the Joint Staff, the Joint Staff validates  
6 the need for forces here, and then that is sent out to the  
7 service -- whether it be the Army or the Air Force, whatever,  
8 for -- to fill. And where it goes from there, I don't know.

9 Q. Okay. But this is not like a random process. It's  
10 not like a lottery or something. There are people who  
11 actually make affirmative decisions that particular soldiers  
12 will come or not come to Guantanamo to the guard force,  
13 correct?

14 A. I would -- that would have been my assumption, but I  
15 don't know.

16 Q. Okay. So you think it's possible it is a lottery?

17 A. I don't know.

18 Q. Okay. So your counsel had some conversations with  
19 you about your declaration, and I'm talking about the  
20 declaration in this case. Do you still have that in front of  
21 you?

22 A. I do.

23 Q. Right. I wanted to direct your attention to several

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1 portions of it as well, and particularly the paragraph 6 on  
2 page 2.

3 A. Okay.

4 Q. And the first sentence of that paragraph begins, "The  
5 JTF-GTMO guard force responsible for the general population  
6 has long been gender neutral." Is that one that you wrote, or  
7 is that one that was in the declaration when it arrived on  
8 your desk?

9 A. I don't recall.

10 Q. What does that mean, "gender neutral"?

11 A. It means that the -- all duty positions depend on the  
12 soldier's qualification, not on any other factor.

13 Q. Okay. That doesn't go to the process by which  
14 soldiers were selected for service at -- in Camp VII, in the  
15 JTF-GTMO guard force?

16 A. Can you restate the question, please?

17 Q. This statement that you -- that I just read to you,  
18 that applies to -- that does not apply to the process by which  
19 soldiers are selected for service at JTF-GTMO?

20 A. We don't select servicemembers to come to JTF-GTMO  
21 based on their gender, no.

22 Q. Okay. And the same is true once the soldier arrives;  
23 what you have them do and what -- and the way that you train

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1 them, you intend that to be gender neutral, correct?

2 A. Yes. And the soldiers that arrive here are already  
3 trained for the duty position that they're projected to fill.  
4 I don't control that.

5 Q. Who controls that?

6 A. Well, the unit commander would control what position  
7 he's going to place the soldier into when they get here for  
8 this mission.

9 Q. Yes. And referring to the training, who controls the  
10 training?

11 A. The training is several phases. It starts at home  
12 station for reserve component units or the active duty base.  
13 These are the tasks that the soldiers need to be able to  
14 accomplish, based on their grade.

15 Then reserve component soldiers go to Fort Bliss,  
16 Texas, for six weeks of training, and they will be trained  
17 specifically for what position or what camp they're going to  
18 work at when they get here.

19 Q. So by the time they get to Fort Bliss for the six  
20 weeks, you said, of training ----

21 A. Yes.

22 Q. ---- they are being told then where they will be  
23 assigned when they get to JTF-GTM0?

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1 A. Being told which camp they're going to work in, yes.

2 Q. Yes, which camp.

3 A. Yes.

4 Q. And would they be told at that time also -- referring  
5 now to Camp VII, would they be told whether they would be on  
6 the escort platoon or whether they would be on the tier side?

7 A. I don't know.

8 Q. Who controls that aspect of the training?

9 A. The unit commander, as I stated.

10 Q. All right. And the unit commander controls the  
11 training for all of the training at Fort Bliss; is that  
12 correct?

13 A. The unit commander controls the training for their  
14 unit. The training brigade that's at Fort Bliss, Texas  
15 executes the training.

16 Q. All right. So the unit commander controls the  
17 content of the training at Fort Bliss, but the training unit  
18 at Fort Bliss delivers the training?

19 A. That's accurate.

20 Q. All right. How does the unit commander acquire  
21 information about the training that's necessary?

22 A. They acquire the information based on -- the training  
23 brigade at Fort Bliss will tell them what common tasks they

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1 need to be ready to execute, but the unit commander can say I  
2 want to focus on these more than those because I know how --  
3 where my unit needs training and where it doesn't.

4 Q. And how does the unit commander acquire the  
5 information about what training is necessary?

6 A. Through the deployment order.

7 Q. And so that's contained in an order that comes to the  
8 unit commander, and who does -- where does that deployment  
9 order come from?

10 A. I don't know specifically.

11 Q. Okay. So that deployment order would have specific  
12 information about the -- all of the duties and  
13 responsibilities of the guard force?

14 A. Yes.

15 Q. And does the unit commander come to Guantanamo and  
16 actually arrive here physically and look around before  
17 conducting the training that you've been describing?

18 A. Many of them do. Not all.

19 Q. It's not a requirement?

20 A. It's not possible in some cases.

21 Q. And what training occurs once the unit arrives here  
22 at Guantanamo?

23 A. They have two weeks of a left-seat/right-seat, is

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1 what we call it, where they shadow the people that they're  
2 replacing ----

3 Q. Right.

4 A. ---- to learn the nuances and specific things that  
5 are difficult to train out at Fort Bliss.

6 Q. Is there a formal training in the sense of classroom  
7 training once they get here?

8 A. Yes.

9 Q. And who conducts the classroom training?

10 A. My battalion commanders.

11 Q. And who conducts the -- who conducts the  
12 left-seat/right-seat training? Would that just be the  
13 individual soldier that they replacing -- soldiers?

14 A. Well, the battalion commander responsible for  
15 whichever camp they're going into is responsible for the  
16 program of training. The individual units that work in those  
17 camps are responsible for training the units that are  
18 replacing them, under the supervision of the battalion.

19 Q. Do you keep information secret from the soldiers  
20 before they come to work here at JTF-GTM0?

21 A. Keep it secret?

22 Q. I mean, do you tell them what the conditions are  
23 under which they'll be serving?

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1 A. Yes.

2 Q. And -- because if you didn't -- they need to know  
3 that before they arrive, of course, right?

4 A. I would say.

5 Q. Yeah.

6 So that would include training them on SOPs,  
7 regulations, Judge Pohl's order, whatever else might be  
8 applicable to their service, correct?

9 A. I would say that's accurate.

10 Q. Right. And let me ask you to turn your attention now  
11 to paragraph 7, which begins on page 2 but continues over to  
12 page 3. Are you with me?

13 A. Yes.

14 Q. And I just want to draw your attention to the  
15 sentence that crosses the page. It begins at the bottom, and  
16 it begins "For example."

17 A. Yes.

18 Q. And it says, "For example, female guards do not  
19 conduct full-frisk searches, including a pat-down of the groin  
20 area of male detainees, and female guards do not observe the  
21 male detainees while they're showering or while they are  
22 otherwise unclothed."

23 Their responsibilities are not gender neutral, at

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1 least to that extent, correct?

2 A. Their position that they're in is -- I don't take  
3 account for their gender. There are specific things that, for  
4 common decency, that are afforded to all detainees and inmates  
5 in the military facilities that we don't do. It has nothing  
6 to do with being Muslim or not Muslim. It's having to do with  
7 males and females and common decency. We don't -- we don't  
8 pat down -- males don't pat down female inmates. Males don't  
9 watch female inmates in the shower at a women's facility, just  
10 as we don't do it here.

11 Q. I mean, only the genders would be reversed, of  
12 course, because you have no female detainees.

13 A. Exactly.

14 Q. You say that's a basis of common decency?

15 A. Yes.

16 Q. Can you say what you mean by that?

17 A. I would say that's just the American values. I mean,  
18 we try to treat people respectfully, and I would not have a  
19 female soldier observing you unclothed, nor would I expect  
20 that we would have you observing a female soldier unclothed.

21 Q. Yes. It makes me a little uncomfortable that you  
22 imagine me as a detainee, but ----

23 A. Well ----

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1 Q. ---- nonetheless. But I take you're meaning common  
2 decency, meaning just cultural norms, so to speak?

3 A. Okay. I agree.

4 Q. Do you agree with that?

5 A. Yes.

6 Q. And so you referred to SOP 39 previously, the one  
7 that deals with religious accommodation of detainees. I  
8 believe that's the title of it, generally, correct?

9 A. "Religious Support of Detainees."

10 Q. "Religious Support of Detainees," thank you.

11 And you have with you the version of that -- what's  
12 the date of the version that you have of that?

13 A. 24 September 2015.

14 Q. Okay. And I'll represent to you that we previously  
15 have spoken of a version of that that was dated June of 2014.

16 A. Okay.

17 Q. Are you familiar with that June of 2014 version as  
18 well, sir?

19 A. Not specifically, but ----

20 Q. Do you know whether the version you have in front of  
21 you there has been changed from the June of 2014 version?

22 A. I would say it has been, since it's been updated.

23 Q. Yes. Do you know in what respect it's been changed?

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1 A. No. I don't remember.

2 Q. You haven't compared the two?

3 A. No.

4 Q. Have there been additional revisions after June of  
5 2014, before this one of September 2015?

6 A. I don't remember.

7 Q. Oh. And does that -- does that version of the SOP  
8 that you have in front of you, does it contain a reference to  
9 various aspects of Islamic faith that impose cultural  
10 obligations, let's say, that are different from the ones that  
11 you were referring to before when you spoke of common decency?

12 A. Yes.

13 Q. And do those include a provision that touching  
14 between males and females is considered culturally  
15 inappropriate?

16 A. No, this one does not.

17 Q. Okay. So I would like to address your attention to  
18 paragraph 39-5 in the version that you have.

19 A. Okay.

20 Q. And is that still entitled "Cultural Considerations"?

21 A. Yes.

22 Q. And is there a subsection (a) that says, "The  
23 following list consists of basic Islamic considerations that

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1 will be observed by all JDG personnel when practicable"?

2 A. Yes.

3 Q. And then a list of 1 through 12 that follows that?

4 A. Yes.

5 Q. And could you you take a look at paragraph 11,  
6 please?

7 A. Okay.

8 Q. And would you read that?

9 A. "Guard force personnel and interpreters should not  
10 insist that detainees make eye contact with them during  
11 interactions."

12 Q. That's all?

13 A. That's what it says.

14 Q. Now, is there a sentence that follows that that  
15 says, "Close contact with unrelated females is culturally  
16 inappropriate"?

17 A. No.

18 Q. It's not there anymore?

19 A. No.

20 Q. When did it leave?

21 A. I don't know.

22 Q. Who was responsible for causing it to leave?

23 A. I don't remember.

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1 Q. It's signed by you, is it?

2 A. Yes.

3 Q. Did you review it before you signed it?

4 A. Certainly.

5 Q. Of course you did. Did you note that that was not  
6 there?

7 A. No.

8 Q. Did anyone advise you that that had been removed?

9 A. Not to my knowledge.

10 Q. Was it your intention that it be removed?

11 A. No.

12 Q. Why did you sign it?

13 A. I did not notice that it had been removed.

14 Q. So you didn't read it beforehand?

15 A. Yes, I read it.

16 Q. You read it, but you just didn't notice it?

17 A. Yes.

18 Q. Okay. All right. Does knowing that it's been  
19 removed change your opinion of whether you should sign it?

20 A. No.

21 Q. Do you no longer believe that close contact with  
22 unrelated females is culturally inappropriate?

23 A. Depending on what you mean by "close."

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1 Q. Well, what did you mean when you signed the SOP that  
2 is in front of me?

3 A. What's the date of that one?

4 Q. June of 2014.

5 A. What's the date?

6 Q. June of 2014.

7 A. That's a month. What's the date?

8 MJ [COL POHL]: The day.

9 LDC [MR. NEVIN]: Yes, sir.

10 Q. 24 June of 2014.

11 A. Okay. That's the day I took command, so if it was in  
12 there, it was in there from previous versions. I did not  
13 review every single SOP to the letter to where I would notice  
14 these little nuances, so I don't remember when it was taken  
15 out.

16 Q. You did -- I'll represent to you, you did sign this  
17 one ----

18 A. Yes.

19 Q. ---- on June the 24th.

20 A. Yes.

21 Q. Was that the -- you signed SOPs on the day you took  
22 over?

23 A. Yes. That's the date of the signature, and I took

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1 command on the 24th of June.

2 Q. I see.

3 But your testimony is you weren't aware of the  
4 nuances of this before you signed it?

5 A. It's common practice in the military ----

6 Q. No, my question was, were you saying that you were  
7 not ----

8 TC [MR. RYAN]: Objection, Judge. Could he finish his  
9 answer?

10 LDC [MR. NEVIN]: I submit it was nonresponsive.

11 MJ [COL POHL]: The objection is overruled. You may ask  
12 the question, and he can give a full answer.

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

14 Q. Okay. And my question is, you signed it without  
15 being aware of its nuances?

16 A. I was not aware of any and every detail in the SOP.

17 Q. Okay.

18 A. It's common practice in the military that when a  
19 commander takes over ----

20 LDC [MR. NEVIN]: I ask that be stricken, Your Honor. I  
21 didn't ask that.

22 TC [MR. RYAN]: Objection, Your Honor. Can he finish his  
23 answer?

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1 MJ [COL POHL]: Okay. Stop. Well ----

2 LDC [MR. NEVIN]: I just asked him ----

3 MJ [COL POHL]: You asked a question, he's giving you a  
4 complete answer to explain why he signed it without the  
5 nuances.

6 LDC [MR. NEVIN]: I didn't ask him ----

7 MJ [COL POHL]: He's saying what the practice is and  
8 that's responsive to your question. You may complete your  
9 answer.

10 LDC [MR. NEVIN]: Could I just say for the record, I  
11 didn't ask him why he did that.

12 MJ [COL POHL]: You can say that for the record.

13 LDC [MR. NEVIN]: Thank you. So -- go ahead, sir.

14 MJ [COL POHL]: You may fully explain your answer of why  
15 you signed things.

16 A. It is common practice in the military that, when a  
17 new commander takes over, that the statement is made that all  
18 current policies and procedures remain in effect, so that  
19 procedures that are in place are not immediately scrapped  
20 under the new commander, that the new commander has a chance  
21 to review and change, if necessary. And that's what happened.

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

23 Q. But to achieve that, you review each SOP

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1 individually?

2 A. Yes.

3 Q. As opposed to simply signing an order that says all  
4 of the existing SOPs stay in effect until changed?

5 A. In this case.

6 Q. I'm sorry. I don't understand your answer.

7 A. Yes, I sign each individual SOP.

8 Q. I see. And -- but notwithstanding that, you didn't  
9 look at the ----

10 A. I read the SOP ---

11 Q. You read it?

12 A. ---- and I signed it.

13 Q. Uh-huh.

14 A. I didn't ----

15 Q. You agreed ----

16 A. I didn't see anything objectionable at the time.

17 Q. Okay. So you didn't find it objectionable that the  
18 SOP said "Close contact with unrelated females is culturally  
19 inappropriate"?

20 A. Obviously I didn't if I signed it.

21 Q. Obviously you didn't because you signed it. Right.  
22 And if I understand you correctly also, you don't know how it  
23 got -- how that sentence got removed?

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1 A. I don't remember.

2 Q. Well, sorry, not to pick nits with you, but are you  
3 saying you knew at one time, but you don't remember now?

4 A. I'm saying I don't remember when the sentence was  
5 removed.

6 Q. Okay.

7 A. Okay?

8 Q. Do you remember it being removed, but you just don't  
9 remember the exact day?

10 A. No.

11 Q. Okay. You don't have any recollection of it at all?

12 A. No, I don't.

13 Q. And I guess what I'm getting at is, was the decision  
14 to remove that sentence an affirmative decision that you made?

15 A. No.

16 Q. Okay. And just so I'm clear, you don't know who made  
17 that decision?

18 A. I don't know who recommended it be taken out, no.

19 Q. Okay.

20 A. Somebody would have recommended it to me. I don't go  
21 through these and just cross things out because I want to.

22 Q. I see.

23 A. That's why I depend on lawyers and other people to

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1 make recommendations based on law and policy.

2 Q. I see. Okay.

3 LDC [MR. NEVIN]: Your Honor, could I have just a -- could  
4 I have just like a recess in place for just a minute? I just  
5 want to consult my client about a matter.

6 MJ [COL POHL]: Go ahead. We won't recess. Just go ahead  
7 and talk to him.

8 LDC [MR. NEVIN]: Okay. Thank you.

9 [Pause.]

10 LDC [MR. NEVIN]: Thank you, Your Honor.

11 MJ [COL POHL]: Go ahead, Mr. Nevin.

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

13 Q. Sir, does it seem to you that that provision of the  
14 SOP is inconsistent with the objection of the guard force to  
15 having females touch male detainees, so it was taken out for  
16 that reason?

17 A. The objection of the guard force?

18 Q. Yeah. Does the guard force not object to the judge's  
19 rule that the female guards will not touch the male detainees  
20 when -- do you not understand my question I'm getting at?

21 A. No, I don't.

22 Q. You know that Judge Pohl has issued an interim order?

23 A. Yes.

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1 Q. And with respect -- and that interim order has to do  
2 with female guards touching male detainees under certain  
3 circumstances.

4 A. Yes.

5 Q. And does it strike you that that provision in the  
6 prior SOP 39 is inconsistent with the guard force's objection  
7 to Judge Pohl's order?

8 A. I wouldn't care to speculate.

9 Q. I see. And do you imagine or suspect that that  
10 sentence was taken out because it was inconsistent with the  
11 position you're taking now?

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

13 MJ [COL POHL]: Basis?

14 TC [MR. RYAN]: Asked and answered, beyond his realm, asks  
15 for speculation.

16 MJ [COL POHL]: Overruled. You may answer the question.

17 A. Restate the question.

18 **Questions by the Learned Defense Counsel [MR. NEVIN]:**

19 Q. Does it strike you that this provision in 39-5,  
20 subsection (a)(11), that says close contact with unrelated  
21 females is culturally inappropriate, that's really the exact  
22 argument we're making here and that the guard force's  
23 objection to that is inconsistent with that?

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1           So I'm asking, do you think that's why this got taken  
2 out?

3           A.    I don't know.

4           Q.    Okay. Now, let's just return to this idea of common  
5 decency that you referred to, and I believe you have also used  
6 the term -- and I'll just represent to you or I'll tell you  
7 that others who have testified have used this term as well --  
8 humane treatment of the detainees.

9           A.    Okay.

10          Q.    Right. And so when you mention "common decency,"  
11 you're talking about that being part of humane treatment,  
12 correct?

13          A.    Yes.

14          Q.    Right. But humane treatment includes other matters  
15 besides common decency as well, doesn't it?

16          A.    I would say so.

17          Q.    And the counsel before me, Mr. Connell, asked you a  
18 number of questions about regulations that guide your  
19 detention operation, and I'm not going to ask you to go back  
20 over all of those. But, generally speaking, that requirement  
21 for humane treatment comes up a lot in the materials that  
22 govern your detention operations, right?

23          A.    Yes.

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1 Q. And that reaches physical -- treating people in a  
2 humane fashion physically, of course, right?

3 A. Yes.

4 Q. So it prevents cruel and unusual punishment or  
5 humiliating and degrading treatment, that kind of thing, that  
6 would be physically -- that would present a physical problem  
7 for a detainee, correct?

8 A. Yes.

9 Q. And that's something that, if an American soldier  
10 were captured in a law of war facility and held in a law of  
11 war detention facility, we would expect that they would be  
12 treated -- or we would hope that they would be treated  
13 humanely as well, correct?

14 A. Yes.

15 Q. All right. And that requirement for humane treatment  
16 includes a requirement on your part that, if you know of a  
17 particular vulnerability that a person has, you respect it.  
18 So if a person has an amputated leg, you are aware of that and  
19 you treat them accordingly, correct?

20 A. Yes.

21 Q. And if they are unable to sit, for example, you  
22 provide them with padding, those kinds of things, correct?

23 A. We do.

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1 Q. All right. And the same thing would apply to mental  
2 health and well-being, correct?

3 A. Yes.

4 Q. So that if you know that a person has a particular  
5 vulnerability or condition as a result of something in their  
6 background, you're attentive to that and you -- you're not  
7 allowed to just ignore that and go forward, correct?

8 A. Yes.

9 Q. And have you made an effort to accommodate the ideas  
10 I've just been describing in your treatment of the detainees  
11 at Camp VII?

12 A. Yes.

13 Q. Okay. And are you aware of the treatment that the  
14 detainees at Camp VII had in the CIA's RDI program?

15 A. I've read parts of the Senate report, yes.

16 Q. Right. And you're aware of that, from that, I take  
17 it, that aspects of the treatment in the black sites included  
18 preventing prisoners from being able to practice their  
19 religion?

20 A. I don't recall reading that specific thing, but I  
21 won't argue with you.

22 Q. Okay. Well, or did you read that some of them were,  
23 from time to time, suspended from the ceilings of their cells

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1 wearing only diapers, leaving them in an unclean state?

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

3 MJ [COL POHL]: What's the relevance of this?

4 LDC [MR. NEVIN]: I want to just be clear with the witness  
5 that the treatment that Mr. Mohammad received and others  
6 received in the black sites included degradation of the  
7 religion and prevention of their being able to practice their  
8 religion, and that impacts how they -- what equals humane  
9 treatment for them today.

10 MJ [COL POHL]: Okay. But, of course, you're testing what  
11 he knows.

12 LDC [MR. NEVIN]: Yes, sir.

13 MJ [COL POHL]: I got it.

14 LDC [MR. NEVIN]: Yes.

15 MJ [COL POHL]: The objection is overruled. You may  
16 answer the question. Restate ----

17 A. I've read part of the report. I haven't read the  
18 whole, and I know that the defendants were physically and  
19 mentally mistreated.

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

21 Q. Right. But I guess my question was, did it -- did  
22 you notice in your reading of it that part of the mistreatment  
23 had to do with keeping them from being able to practice their

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1 religion? And I mentioned this thing of hanging and being in  
2 an unclean state. Let -- or were you aware of that as a  
3 result ----

4 A. I don't recall that specifically, no.

5 Q. Okay. Let me just back up one level of generality  
6 and ask, are you aware that within the religion of Islam,  
7 there's a requirement for prayer five times a day?

8 A. Yes, I am.

9 Q. Right. And you're aware that there's a requirement  
10 for being in a clean state at the time of prayer, so there are  
11 certain things that would cause you to be unclean,  
12 religiously, and those have to be corrected before you can  
13 pray; are you aware of that?

14 A. Yes.

15 Q. And what I'm asking you is, did you -- were you aware  
16 that a result of the treatment they received made them -- in  
17 an unclean state, made them unable to clean themselves and  
18 prevented them from praying as a result of that?

19 A. As I said, I don't remember reading that in the  
20 report.

21 Q. Are you aware that being -- that for a male, being  
22 touched by -- for a male Muslim, that being touched by a  
23 female to whom he -- an adult female to whom he's not married

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1 puts him in an unclean state and makes him unable to pray?

2 A. No.

3 Q. All right. But your operation of the -- your humane  
4 operation of the detention facility would be required to take  
5 these kinds of things into account, generally, even if you're  
6 not aware of them, of all of the specifics of them, as you sit  
7 here, correct?

8 A. We -- yes.

9 Q. All right. Now, I just wanted to ask you to return  
10 to your declaration of -- and I should have said before but  
11 didn't, this is -- I understand this to be AE 254EE,  
12 Attachment D.

13 MJ [COL POHL]: I think Mr. Connell had identified it  
14 earlier.

15 LDC [MR. NEVIN]: Yes.

16 MJ [COL POHL]: But that is correct. Go ahead.

17 **Questions by the Learned Defense Counsel [MR. NEVIN]:**

18 Q. I wanted to ask you to look at paragraph 8 on page 3.

19 A. Okay.

20 Q. And this was the reference to female guards having  
21 participated in various duties at JTF-GTMO over the years.

22 A. Yes.

23 Q. And I believe you said before that the person who --

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1 the woman who was the camp commander at Camp VII at the time  
2 did some research, either on her own or at your direction, and  
3 came up with some information about this, correct?

4 A. Yes.

5 Q. And that -- was that research directed only at  
6 Camp VII, or was it directed at the entirety of JTF-GTM0?

7 A. The research that the Camp VII commander did was for  
8 Camp VII.

9 Q. Only for Camp VII. Okay.

10 And the -- I'll just direct your attention to a  
11 sentence about ten lines down that begins over on the  
12 right-hand side, "Female guards." Do you see that?

13 MJ [COL POHL]: Just read the whole sentence, Mr. Nevin.

14 LDC [MR. NEVIN]: Sure.

15 Q. "Female guards have taken part in guard and escort  
16 duties for years."

17 A. Yes.

18 Q. Yeah. Was that -- did you intend that to refer to  
19 Camp VII only or to the entirety of JTF-GTM0?

20 A. It refers to the entirety of JTF-GTM0.

21 Q. Okay. Because, in fact, there have been significant  
22 periods where there were no females at all at Camp VII,  
23 correct?

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1       A.    I don't know.  There have been females at Camp VII  
2 since I got there.

3       Q.    Yes, but now I'm asking you about what you know about  
4 prior times.

5       A.    Yeah.  As I stated on my last testimony, that there  
6 has been females at Camp VII from 2006 up until 2013, and then  
7 there was a period of time that there weren't, and then  
8 they -- there are females again.  I've already said this.

9       Q.    Okay.  So if I understand you correctly, you're  
10 saying there were no female guards from 2013 to ----

11       A.    I believe that's what's already been entered into the  
12 record, yes.

13       Q.    So there were female guards from 2006 to 2013; is  
14 that your testimony?

15       A.    That's the research that the camp commander provided  
16 me, yes.

17       Q.    Or at least that's the way you understand it?

18       A.    Yes.

19       Q.    And then no female guards between 2013 and 2014?

20       A.    That's what I understand.

21       Q.    And do you know why that is?

22       A.    I do not.

23       Q.    Did you make an effort to determine why?

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1           A.    No.

2           Q.    Okay.  Could you turn your attention to paragraph 13  
3 of the declaration, please?

4           A.    Okay.

5           Q.    There's a statement at the beginning, the very first  
6 sentence of paragraph 13, "All guards are trained to the same  
7 standards."

8                   Is that one you wrote, or that was in the declaration  
9 before it came to you?

10          A.    One I wrote.

11          Q.    And is that still true as you sit here today?

12          A.    Yes.

13          Q.    Now, a little farther down in that paragraph, about  
14 halfway down, there's a sentence in the middle of the  
15 paragraph that begins, "Demanding that female personnel."  Do  
16 you see that?

17          A.    Yes.

18          Q.    So it says, "Demanding that female personnel not  
19 touch male detainees would effectively prevent female  
20 servicemembers from serving as guards."

21          A.    Yes.

22          Q.    Right.  Were you referring to Judge Pohl's interim  
23 order when you wrote this?

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1 A. Yes.

2 Q. And, actually, female personnel have served as guards  
3 since this was written, correct?

4 A. Yes. And I think we've already had this discussion  
5 with the previous counsel.

6 Q. Yes, but not with me.

7 A. Okay. Yes. But I assumed that if this order stood,  
8 it would grow to prevent females from serving as guards. I  
9 have already stated that, that I made that assumption.

10 Q. Why did you assume that?

11 A. It's a logical assumption.

12 Q. I see. Why? Why is that?

13 A. Because ----

14 TC [MR. RYAN]: Judge, relevance.

15 MJ [COL POHL]: Overruled. You may answer the question.

16 A. If this order stands, what's -- there's nothing to  
17 prevent another order or another motion for all contact to  
18 cease. Because the detainees now, when -- if it's not to  
19 legal or commissions hearings, they move with females  
20 willingly all the time.

21 Questions by the Learned Defense Counsel [MR. NEVIN]:

22 Q. So if I understand you correctly, your objection is  
23 not so much to the order itself, it's to the possibility that

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1 there might be more orders?

2 A. My objection to the order is the discrimination  
3 against my female servicemembers. That's my objection to the  
4 order.

5 Q. Oh. But so it's not that it would -- it prevents  
6 them from ----

7 A. Yes, that's discriminatory, that it would prevent  
8 them from serving in the duty position to which they were  
9 trained.

10 Q. Right. Colonel, I'm sorry to -- but I want to be  
11 clear what you're saying. You just said it would prevent  
12 them. It does not, in fact, prevent them from serving as  
13 guards.

14 A. Not currently, no.

15 Q. No.

16 And it hasn't throughout the period of Judge Pohl's  
17 interim order.

18 A. Okay.

19 Q. Now, Judge Pohl could enter other orders. He could  
20 order anything, right?

21 A. You're right.

22 Q. And if he did that, then we'd -- you and all of us  
23 would have to deal with that, right?

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1 A. Yes.

2 Q. But we're just dealing with his interim order right  
3 now, right?

4 A. Yes.

5 Q. Could you look at paragraph 15, please.

6 A. Okay.

7 Q. There is a sentence in the third line that begins,  
8 "Limiting female guards' "?

9 A. Yes.

10 Q. Do you see that? It says, "Limiting female guards'  
11 ability to gain on-the-job experience while at JTF-GTMO will  
12 likely directly and negatively impact female guards' mission  
13 readiness, professional development and ability to progress to  
14 supervisory or more challenging positions, as well as the  
15 military's overall mission readiness to support detention  
16 operations."

17 So you're saying if the -- if the female guards are  
18 not allowed to touch male detainees here at Camp VII, it's  
19 going to affect mission readiness everywhere?

20 A. I'm saying that it could have a direct impact on the  
21 soldiers' ability to serve in positions of greater  
22 responsibility in other -- at other places and other  
23 facilities, yes.

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1 Q. But you do use the term "military's overall mission  
2 readiness." I mean, this is -- there are many military ----

3 A. Yes. Perhaps I overstated it.

4 Q. Okay. Thank you. I appreciate that. That's what I  
5 was getting at.

6 Then in the same -- to the same point, sir, in  
7 paragraph 16, you make a remark that -- and I'm looking at the  
8 third line from the bottom, it says, "JTF-GTMO" -- there's a  
9 remark there that says, "JTF-GTMO cannot conduct safe, humane,  
10 legal, and transparent detention operations without utilizing  
11 assigned females as guards and detainee escorts within Camp  
12 VII."

13 I know counsel raised with you before the fact that  
14 this was a prediction or it was a concern that you had at the  
15 time that you filed this -- or signed this. You have, in  
16 fact, been succeeding in this mission, or the people at  
17 Camp VII have been doing that; isn't that true?

18 A. We are succeeding in our mission while obeying the  
19 judge's order, yes.

20 Q. Right. All right. So you weren't -- it's not a  
21 matter of your having been unable. You were able?

22 A. Yes.

23 Q. Okay. Sir, we had some testimony from the current

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1 NCOIC on the escort team at Camp VII who identified herself as  
2 Sergeant Jinx, and she testified about meeting with a  
3 congressional delegation. I think actually it was a group of  
4 senators who were here at one point shortly before our hearing  
5 in October.

6 Were you part of that meeting with the senators at  
7 all?

8 A. No, I was not.

9 Q. And my recollection is that there may have been  
10 testimony that you were off island at that point and so were  
11 not involved in the chain of command on that issue; is that  
12 correct?

13 A. Yes, I was not involved.

14 Q. Okay. And then do you remember there being a time in  
15 early 2015 when a group of us lawyers wrote a letter to you  
16 about this female guard issue and asked for the opportunity to  
17 sit down and discuss it with you?

18 A. I've had many such letters.

19 Q. Do you remember the letter I'm talking about that was  
20 signed by me and by other lawyers saying could we -- this  
21 female guard question, could we at least sit down and talk  
22 about it?

23 A. No, sir, I don't remember it specifically.

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1 Q. Well, do you remember writing a letter in response  
2 declining to have that meeting?

3 A. I'm sure I did.

4 Q. And you have not had any meetings like that with  
5 counsel in an attempt to kind of try to resolve this  
6 informally?

7 A. No.

8 Q. And is it correct that you instructed your SJA not to  
9 meet with us as well?

10 A. No. I don't have an SJA, so no.

11 Q. Okay. So if the SJA had decided -- or refused to  
12 meet with us to have those kinds of conversations, that would  
13 not have been at your direction?

14 A. I have never instructed anyone that they couldn't  
15 meet with an attorney.

16 Q. Okay. Great. Thank you, sir.

17 LDC [MR. NEVIN]: That's all the questions I have,  
18 Your Honor.

19 MJ [COL POHL]: Mr. Harrington?

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

21 Q. Colonel Heath, my name is Jim Harrington. I  
22 represent Ramzi Binalshibh.

23 You indicated, with respect to SOP Number 39, that

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1 when you signed it in June, that was something that you did  
2 right when you arrived; is that right?

3 A. Yes.

4 Q. And did you know how long that SOP had been in effect  
5 before that?

6 A. No.

7 Q. Now, I think you told Mr. Connell that there's a  
8 process that's gone through with respect to SOPs, updating  
9 them, correct?

10 A. Yes.

11 Q. And that various -- I think you said that various  
12 stakeholders participate in that, correct?

13 A. Yes.

14 Q. And you are the one, though, that makes the final  
15 decision; is that right?

16 A. I am.

17 Q. When the change came that Mr. Nevin pointed out to  
18 you, do you recall who it is that presented you with the --  
19 with the SOP? The change, the modified one.

20 A. Well, no. The process is, I have a noncommissioned  
21 officer who's responsible for the SOP program, and it would  
22 have come into my office in a folder for me to review and  
23 sign.

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1 Q. And when you receive an SOP that has a change in it,  
2 does it come to you in a format so that it's highlighted with  
3 what the changes are ---

4 A. Yes.

5 Q. ---- or there's lines through things?

6 A. Yes.

7 Q. So that when SOP 39-5 came with the change to  
8 subparagraph 11, there would have been a line through the  
9 sentence that Mr. Nevin referred to as "Close contact with  
10 unrelated females is culturally inappropriate"; is that right?

11 A. Yes.

12 Q. So that would have highlighted it to you?

13 A. Yes.

14 Q. And so ----

15 MJ [COL POHL]: Excuse me, Mr. Harrington.

16 Just so I'm clear, you indicated at one point that  
17 SOPs are reviewed, updated every nine months?

18 WIT: At a minimum, yes, sir.

19 MJ [COL POHL]: At a minimum. Okay. So one SOP came out  
20 in June of '14, and then the one sitting on your desk is  
21 September '15. Would there be likely another one in between?

22 WIT: There would have been another one somewhere in  
23 between, yes.

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1 MJ [COL POHL]: So when they say "the change," the change  
2 could have been on that one ----

3 WIT: It could have.

4 MJ [COL POHL]: ---- or on this one?

5 WIT: Yes.

6 MJ [COL POHL]: Go ahead, Mr. Harrington.

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

8 Q. If there was one in between June of 2014 and the one  
9 in '15, that -- you would have also signed that one, correct?

10 A. Yes.

11 Q. And the process would have been the same?

12 A. Yes.

13 Q. All right. And can you tell me, do you have a  
14 cultural advisor available to you here at Guantanamo?

15 A. There is one, yes, at the JTF.

16 Q. Did you consult with the cultural advisor before this  
17 SOP was changed?

18 A. I didn't personally consult with him, but he would  
19 have had an opportunity to have reviewed the SOP.

20 Q. You don't recall getting a memo from him ----

21 A. No.

22 Q. ---- anything about it. Or her?

23 Can you tell me, are you aware of something that's

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1 happened in -- as it's described here, "basic Islamic  
2 considerations," between June of '14 and now with respect to  
3 close proximity of women to men?

4 A. Can you restate your question, please?

5 Q. Yes.

6 Are you aware of some change in "basic Islamic  
7 conditions" -- which is the words that are used in 39-5,  
8 subparagraph (a), right? Are you aware of some change in  
9 "basic Islamic conditions" regarding close contact of  
10 unrelated males and females from June of 2014?

11 A. No.

12 Q. And this SOP was signed, was it not, after  
13 Judge Pohl's order?

14 A. The one in September of 2015, yes, it was.

15 Q. And do you recall any -- Judge Pohl just asked you if  
16 there may have been one in between, correct?

17 A. Likely, given our system, yes.

18 Q. All right. So that may have been in the spring of  
19 2015, correct?

20 A. Could have been, yes.

21 Q. That still would have been after Judge Pohl's order,  
22 right?

23 A. Yes.

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1 Q. And certainly after the Hadi order, correct?

2 A. Yes.

3 Q. Was there any discussion that you had that this  
4 particular modification of the SOP should be done because of  
5 the litigation that was pending regarding the females  
6 escorting males?

7 A. No.

8 Q. Now, you testified that with respect to the  
9 females -- female soldiers that you have here, that there's  
10 every effort made not to discriminate against them, correct?

11 A. Yes.

12 Q. So you try to be gender neutral and apply everything  
13 to both men and women, correct?

14 A. Yes.

15 Q. That's part of the opposition that you have, and  
16 others here have, toward the judge's order, correct?

17 A. Yes.

18 Q. Now -- and you know, do you not, that the claim here  
19 is based upon religion, correct?

20 A. So you say.

21 Q. Well, what do you think it's based on? Something  
22 else?

23 A. I think it's based on an attempt to stall these

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1 proceedings. That's what I think it's based on.

2 Q. Okay. So you give no validity at all to the basic  
3 Islamic considerations that are put here or to religious  
4 principles, with respect to this issue?

5 A. With respect to this issue, I have 107 detainees here  
6 at Guantanamo Bay, and I have had no -- no instances of this  
7 issue arising the entire time I've been here until Hadi  
8 al-Iraqi.

9 Q. Okay. I see. And if someone is of a particular  
10 religion and they choose not to exercise some tenet or some  
11 principle of their religion, does that mean that that tenet or  
12 principle goes away for others?

13 A. No.

14 Q. Now, you indicated that there are occasions when  
15 women are prohibited from doing certain things as part of the  
16 guard force; isn't that correct?

17 A. Yes.

18 Q. And that includes frisking males, right?

19 A. Yes.

20 Q. And that includes watching them when they're naked?

21 A. Yes.

22 Q. Okay. And those are based upon what you said, just  
23 common decency; is that right?

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1 A. Yes, and they are provisions out of AR 190-47.

2 LDC [MR. HARRINGTON]: Judge, I don't have anything  
3 further on this.

4 I would like to inquire of him with respect to the  
5 order in 152HH -- Mr. Swann brought that up, that he would be  
6 here with respect to his notice of that -- either now or when  
7 the rest of the cross-examination is finished.

8 MJ [COL POHL]: Go ahead. Well, you're standing there. I  
9 don't think it will take too long. You just want to ask  
10 whether he has seen it?

11 LDC [MR. HARRINGTON]: Yes.

12 MJ [COL POHL]: We're talking about the logistics. Go  
13 ahead.

14 LDC [MR. HARRINGTON]: Thank you.

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

16 Q. Colonel Heath, I'm going to ask you about a different  
17 subject.

18 A. Okay.

19 Q. Are you familiar with an order that Judge Pohl signed  
20 on November 2 of 2015 with respect to disruptive and  
21 harrassive -- harassing noises and vibrations?

22 A. Yes, I am.

23 Q. Okay. And can you tell us, how did you become aware

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1 of that?

2 A. I believe the Staff Judge Advocate informed me of  
3 that.

4 Q. Okay. Were you given a copy of the order?

5 A. I'm sure I was.

6 Q. Do you remember when that was?

7 A. No.

8 Q. Did you make any directions after that order was  
9 received with respect to the compliance of the order?

10 A. Yes.

11 Q. What -- whom did you direct and what did you say?

12 A. I told the camp OIC that we need to follow the  
13 judge's order.

14 LDC [MR. HARRINGTON]: Thank you.

15 MJ [COL POHL]: Any further questions from the defense?

16 Mr. Ruiz.

17 LDC [MR. RUIZ]: Judge, I do have some questions. I'm  
18 curious as to the timing. I prefer not to have it broken up,  
19 if possible.

20 MJ [COL POHL]: If you think I'm going to break for lunch  
21 at 1124, no.

22 LDC [MR. RUIZ]: I don't know when you are going to break,  
23 Judge.

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1 MJ [COL POHL]: We're going to break for lunch probably  
2 around noon.

3 LDC [MR. RUIZ]: Okay. Great.

4 Judge, would it be possible to -- I'd like to move to  
5 have SOP -- the 24 September '15 SOP 39 provided to us, a  
6 copy. It's been referenced a number of times. I do not have  
7 a copy. I think it would be appropriate not only for us to  
8 see it but also to enter one into the record.

9 MJ [COL POHL]: I got it. Does anyone but Colonel Heath  
10 have a copy of this?

11 TC [MR. RYAN]: Your Honor, the copy I have is marked up,  
12 so I can't provide that one.

13 MJ [COL POHL]: Colonel Heath, is your copy a clean copy?

14 WIT: I believe so.

15 TC [MR. RYAN]: Judge, we can get one.

16 MJ [COL POHL]: We'll just make a copy of his if that's  
17 the most expedient way to do it.

18 WIT: Yes.

19 TC [MR. RYAN]: Can your staff take care of that, sir, or  
20 do you want us to do it?

21 MJ [COL POHL]: I want your staff to take care of it.

22 TC [MR. RYAN]: I'm not surprised, sir. Thank you.

23 LDC [MR. NEVIN]: Your Honor, can I ask ----

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1 MJ [COL POHL]: There will be copies for everybody, if  
2 that's the question.

3 LDC [MR. NEVIN]: I just meant -- I was going to say,  
4 could it include any previous iterations?

5 MJ [COL POHL]: Well, not right now, but that's a  
6 different question altogether.

7 What we're going to do right now is Colonel Heath is  
8 going to give a copy to the Trial Counsel, who is going to  
9 make ----

10 TC [MR. RYAN]: Well, we have it independently, Judge, and  
11 he's going to get it right now.

12 MJ [COL POHL]: Just make enough copies for everybody.

13 LDC [MR. RUIZ]: Before he leaves, Judge, Mr. Harrington  
14 was refreshing my memory on something. I'm not sure if  
15 Mr. Nevin addressed it, Mr. Harrington was refreshing my  
16 memory that there was reference to an interim SOP.

17 MJ [COL POHL]: That's what Mr. Nevin just said. I told  
18 him as I tell you, we don't have that in front of us. If we  
19 need to get it, we'll get it. We're not going to stop right  
20 now.

21 LDC [MR. RUIZ]: That's fine. I wanted to make the  
22 request so we could get the wheels moving on that and have an  
23 opportunity to get copies of that.

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1 MJ [COL POHL]: Let me ask Colonel Heath a question first  
2 and we'll go. Are the copies of the SOP maintained at your  
3 office?

4 WIT: Yes.

5 MJ [COL POHL]: So it would not be difficult -- if there's  
6 an in-between one, it would not be difficult to do that?

7 WIT: (Shakes head.)

8 MJ [COL POHL]: Okay. During the lunch break, Trial  
9 Counsel, see if we can retrieve the interim copy if there is  
10 one.

11 TC [MR. RYAN]: Yes, sir.

12 MJ [COL POHL]: Go ahead, Mr. Ruiz.

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

14 Q. Good morning, Colonel.

15 A. Good morning.

16 Q. Colonel, based on your declaration, I know that you  
17 have been in the United States Army for 24 years of service?

18 A. At that time, yes.

19 Q. Obviously, you've had additional time?

20 A. Twenty-five and some months.

21 Q. And you are an active duty member?

22 A. I am.

23 Q. Colonel, has your -- and I note there's none of this

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1 in your declaration, but does your experience include prior  
2 experience running detention operations?

3 A. Yes.

4 Q. And can you briefly tell me where that has been?

5 A. Yes. I was the executive officer of a facility in  
6 Fort Lewis, Washington, a military correction facility, and I  
7 deployed to Iraq and did detention operations in Iraq.

8 Q. And in the Fort Lewis, Washington facility, how long  
9 were you in that position?

10 A. I was assigned there at that -- in that position for  
11 two years.

12 Q. All right. And just really quickly, what were your  
13 duties and responsibilities?

14 A. I was responsible for the admin and logistics for the  
15 battalion that ran the facility, personnel, and I was also  
16 responsible for sitting on disciplinary review boards for  
17 inmates.

18 Q. And what was the average detainee -- or the prison  
19 population in that facility?

20 A. Between 200 and 300.

21 Q. And I take it that those would have been military  
22 members?

23 A. Yes.

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1 Q. And based on military offenses?

2 A. Yes.

3 Q. Very well.

4 In terms of your experience in Iraq, I believe you  
5 said?

6 A. Yes.

7 Q. Can you tell us where that was?

8 A. It was in Kurdistan.

9 Q. And how large of a detention facility did you work  
10 in?

11 A. I believe we had between 3- and 400 detainees.

12 Q. All right. What was your primary role, your duties  
13 and responsibilities?

14 A. Essentially the same as I had in Fort Lewis.

15 Q. Okay. So in either of those facilities, were you in  
16 a command position?

17 A. No.

18 Q. Would this be the first time that you've had command  
19 of a Joint Detention Group?

20 A. Yes.

21 Q. Very well.

22 In Kurdistan, in terms of the composition of the  
23 detainee population, could you tell me a little bit about

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1 whether that was -- did you know about their characteristics  
2 culturally, such as were they -- what was the predominant  
3 cultural characteristics there?

4 A. The predominant population were Sunni Muslims from  
5 Iraq.

6 Q. Okay. And how long did you say you were there?

7 A. Six months.

8 Q. Very well.

9 During that time, did you have the opportunity to  
10 interact with that population?

11 A. Well, indirectly, yes. I didn't have conversations  
12 with them, but ----

13 Q. Understood. All right.

14 Now, moving to a little bit different line of  
15 examination, I thought I was clear on this, but I'm not, so  
16 I'm going to ask you again.

17 In terms -- to see if I can at least clarify it for  
18 myself, the composition of the guard force in terms of when  
19 women were present, I heard you say initially that in 2006,  
20 '7, '8, '9, '10, '11, and '12 there were female guards, and  
21 then there was a gap in 2014. Is that accurate?

22 A. 2013.

23 Q. 2013.

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1 A. Yes.

2 Q. Okay. At that point, from 2013 -- I'm sorry. You're  
3 saying, sir, there was female guard force throughout?

4 A. I'm saying that I believe that the rotation prior to  
5 the Massachusetts Army National Guard rotation did not have  
6 female soldiers.

7 MJ [COL POHL]: So it was your understanding just one  
8 rotation was all males?

9 WIT: That's my understanding.

10 LDC [MR. RUIZ]: One rotation was all male.

11 MJ [COL POHL]: Got it.

12 LDC [MR. RUIZ]: Okay.

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

14 Q. The camp commander who was the commander for the  
15 Massachusetts National Guard, did she ever indicate to you  
16 that, based on her research and her knowledge of the manning  
17 requirements, there was a document that had a no-female  
18 requirement for manning and staffing this mission? Were you  
19 aware that that was in existence?

20 A. Yeah, I believe it was -- when she was getting ready  
21 to deploy, that was her understanding; but then subsequent  
22 guidance came before they got here that it could be gender  
23 neutral.

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1 Q. And obviously, you, I think, testified you don't  
2 really have hands-on involvement in those types of operations.

3 A. I do not.

4 Q. Very good. Now, in your time in the facility, in  
5 command, I believe that part of the requirements from your  
6 camp commanders are to provide you with an array of different  
7 reports or updates or assessments, such as an assessment of  
8 the facility's threat level or vulnerabilities; that's  
9 correct?

10 A. Yes.

11 Q. And in terms of Camp VII, focusing on that facility,  
12 since you arrived in Guantanamo Bay to present date, did any  
13 of your camp commanders provide you with a report, either  
14 verbally or in writing, that indicated that they were alarmed  
15 about an existing vulnerability to the facility?

16 A. I don't recall anything, no.

17 Q. And that would be a significant fact, would it not,  
18 if you had received a report from one of your commanders  
19 highlighting or alerting you to what they believed to be a  
20 vulnerability of the facility's security?

21 A. Yes.

22 Q. It's something that you would likely remember?

23 A. I would hope so, yes.

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1 Q. Okay. Sure.

2 Were there any reports that were provided to you that  
3 indicated to you that because of the military judge's order,  
4 the facility was compromised in terms of its security?

5 A. No.

6 Q. Did you receive any such reports in terms of the  
7 transportation to and from legal meetings, to and from  
8 commissions, that because of the judge's order, the security  
9 of that mission was compromised?

10 A. No.

11 Q. Have you received any reports that indicate that  
12 there have been security violations because of the judge's  
13 standing order?

14 A. No.

15 Q. Colonel, can you provide me from -- and of course I'm  
16 referencing your time in command. Can you provide me or the  
17 military judge with an example where in Camp VII, either in  
18 the detention facility or in the transport of the detainees  
19 from Camp VII, you failed or your guard force failed to treat  
20 them humanely?

21 A. No.

22 Q. Certainly, in your opinion, that has not happened?

23 A. No.

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1 Q. Can you provide the military judge or us any examples  
2 during your tenure of where your guard force has failed to  
3 safely carry on detainee operations?

4 A. No.

5 Q. I believe you also indicated that your mission  
6 included transparency, and, in fact, you talked about  
7 providing documents such as SOPs, testifying in court, and  
8 being accountable to this commission, correct?

9 A. Yes.

10 Q. So wouldn't it be fair to say that in regards to the  
11 transparency of your mission and your operations, after the  
12 military judge's order, your transparency has actually been  
13 increased?

14 A. I'll agree with your characterization.

15 Q. Okay. So, in essence, your mission has been enhanced  
16 in providing a transparent operation?

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

18 MJ [COL POHL]: Basis?

19 TC [MR. RYAN]: Calls for a conclusion.

20 MJ [COL POHL]: Overruled. You may answer the question.

21 **Questions by the Learned Defense Counsel [MR. RUIZ]:**

22 Q. So in essence, the military judge has enhanced the  
23 transparency of your detention operations, which is consistent

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1 with your mission statement?

2 TC [MR. RYAN]: Same objection.

3 MJ [COL POHL]: Overruled. You may answer the question.

4 A. From an operational standpoint, no, I don't believe  
5 that the judge's order has enhanced my mission effectiveness.

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

7 Q. That was not the question, sir.

8 A. Then restate the question.

9 Q. The question was: Based on the military judge's  
10 order, is it fair to say that the transparency of your  
11 detention operations has actually been enhanced? And if you  
12 care me to provide additional clarification, I can do so.  
13 Isn't that correct?

14 A. I don't agree with your statement.

15 Q. Okay. So the fact that your detention operations had  
16 to provide standard operating procedures for the scrutiny of  
17 this court has not enhanced the transparency of your  
18 operations?

19 A. Yes.

20 Q. Okay. The fact that you are here, sir, testifying  
21 about your detention operations and are subject to live  
22 monitoring by nongovernmental organizations, by members of the  
23 media, by civilians and citizens of the United States, does

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1 not enhance the transparency of your mission?

2 TC [MR. RYAN]: Objection, Judge, compound and relevance.

3 MJ [COL POHL]: Overruled. You may answer the question.

4 A. Yes.

5 Questions by the Learned Defense Counsel [MR. RUIZ]:

6 Q. And can you provide this commission, this military  
7 judge, or any of us one instance where your operation has  
8 failed to operate legally?

9 A. No.

10 Q. All right. Now, Colonel, have you ever been in  
11 combat?

12 A. Yes.

13 Q. Okay. Have you ever been in a leadership position in  
14 combat?

15 A. Yes.

16 Q. And do you feel that that has enhanced your career  
17 progression?

18 A. Yes.

19 Q. You are aware that until very recently, women were  
20 prohibited from being engaged in combat positions?

21 A. I'm aware that they were prevented from being in  
22 certain branches of the military.

23 Q. Women were not allowed to be in combat, correct, in

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1 the Army?

2 A. Well, I'll tell you, there's many MPs who have been  
3 in combat who are females.

4 Q. Okay. My question to you, sir, is: As a policy, up  
5 until recently, isn't it true that the Army prohibited women  
6 being in combat?

7 MJ [COL POHL]: Mr. Ruiz, I think we're conflating two  
8 policies here. There's a combat exclusion policy, and there  
9 was the branch exclusion policy, for want of a better term.  
10 Which one are you referring to?

11 LDC [MR. RUIZ]: The combat exclusion policy, Judge.

12 MJ [COL POHL]: Okay. Are you with me now, Colonel Heath?

13 WIT: Sir?

14 MJ [COL POHL]: You know the two different policies we're  
15 talking about?

16 WIT: Yes.

17 MJ [COL POHL]: So he's talking about the combat exclusion  
18 policy, which changed not all that recently, but -- okay.

19 LDC [MR. RUIZ]: Relative.

20 MJ [COL POHL]: Yeah. But I just don't want it -- the  
21 other one changed very recently.

22 LDC [MR. RUIZ]: I understand. I understand.

23 MJ [COL POHL]: Okay. So restate your question again,

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1 understanding that we're talking about that one.

2 Questions by the Learned Defense Counsel [MR. RUIZ]:

3 Q. It is true, is it not, that in the course of your  
4 career, you have seen disparity in the roles that women can  
5 play in combat operations; is that not true?

6 A. That's true.

7 Q. And in that sense, women were discriminated against  
8 and were unable to compete on equal footing against members  
9 such as yourself.

10 A. Not -- not myself, but other branches of the  
11 military, yes.

12 Q. Very well. Did you voice an objection to that  
13 discrimination under equal opportunity policies?

14 A. I never had any issue with it because my units have  
15 always been gender neutral since I have been in the service.

16 Q. Now, you indicated that you have facilities that  
17 detain 107 detainees in Guantanamo Bay, and that you have  
18 received no complaints from the other detainees until the ones  
19 that were raised by Mr. al-Iraqi's case, correct?

20 A. True.

21 MJ [COL POHL]: Again, to be precise, we are talking about  
22 complaints about females touching. Mr. Swann asked the same  
23 question the other day. I suspect he has received all sorts

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1 of complaints on other issues.

2 LDC [MR. RUIZ]: Yes, sir.

3 MJ [COL POHL]: Okay. But you understood the question?

4 WIT: Yes, sir.

5 A. That's true. I have not received any other  
6 complaints about female touching.

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

8 Q. Okay. Only 14 of the detainees that you detain have  
9 gone through the CIA's rendition, detention and interrogation  
10 program, correct?

11 A. I don't know.

12 Q. High-value detainees are housed in Camp VII, correct?

13 A. Yes.

14 Q. Non-high-value detainees are housed in other camps,  
15 correct?

16 A. Yes.

17 Q. And you would agree with me that the men who have  
18 been housed in Camp VII have been through a different -- well,  
19 perhaps, but a significantly different detention experience?

20 A. I ----

21 TC [MR. RYAN]: Objection, Judge, vague.

22 LDC [MR. RUIZ]: I can get more specific, Judge.

23 MJ [COL POHL]: No. I'll overrule it. The question is

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1 what does he know. Go ahead. You may answer the question,  
2 Colonel.

3 A. Yes, they are housed in different facilities.

4 MJ [COL POHL]: I'm not sure that ----

5 A. Their experience, other than from -- when I have been  
6 here, I treat these detainees consistently across the board.  
7 What happened to them before I got here, I can't speak to.

8 **Questions by the Learned Defense Counsel [MR. RUIZ]:**

9 Q. I guess what I'm asking is, do you recognize or  
10 understand that the men in Camp VII were tortured, whereas the  
11 men in Camps V or VI may have gone through a very different  
12 detention experience?

13 TC [MR. RYAN]: Objection.

14 MJ [COL POHL]: Overruled. You may answer the question.

15 A. I know that the men in Camp VII listed in the  
16 rendition report by the senate committee were tortured. I  
17 don't know if any of the detainees in Camps V or VI were  
18 tortured or not.

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

20 Q. Do you recognize that forms of interrogation that  
21 were considered to be degrading and coercive by the Army's own  
22 investigative services in the Schmidt-Furlow report, a report  
23 by two Army generals, determined that gender coercion was used

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1 in many instances?

2 A. I'm not familiar with that report.

3 LDC [MR. RUIZ]: Very well. That's all I have, Judge.

4 MJ [COL POHL]: Thank you.

5 Major Schwartz, do you have any questions?

6 DDC [Maj SCHWARTZ]: No, Your Honor.

7 MJ [COL POHL]: Trial Counsel?

8 **CROSS-EXAMINATION**

9 **Questions by the Trial Counsel [MR. RYAN]:**

10 Q. Good morning, Colonel.

11 A. Good morning.

12 Q. Colonel, I'd like to take you first to an issue  
13 concerning this SOP and change in language on 5,  
14 subparagraph 11.

15 Now, starting with the point at which you took  
16 command -- and you stated on that date you signed the SOP  
17 which included language about close contact by females; am I  
18 correct? It was culturally prohibited?

19 A. Yes.

20 Q. Whatever the language was?

21 A. Yes.

22 Q. Now, on the day you take command and you signed that  
23 SOP, you've just arrived; am I correct? This is literally

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1 your first day of command?

2 A. Yes. I got on the island on the 20th of June, and I  
3 took command on the 24th.

4 Q. All right. So you had very little time at this point  
5 under your belt?

6 A. True.

7 Q. And you don't know the personnel. You don't know the  
8 stories of the detainees. You don't probably even know the  
9 physical facilities that well yet; am I correct?

10 A. Correct.

11 Q. You said before that there was a standard practice in  
12 the military that a commander, upon taking command, will sign  
13 SOPs as they exist at that time; is that correct?

14 A. Yes.

15 Q. And what's the purpose in that?

16 A. For continuity.

17 Q. Part of it also is that there are no gaps at any  
18 point and everyone understands what their job is and what  
19 their responsibilities are?

20 A. Yes.

21 Q. Now, that -- as for this concept of close contact, at  
22 some point later, that language was removed. Is that what you  
23 testified, based on what you have read in the SOPs that were

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1 in front of you?

2 A. Yes.

3 Q. To your knowledge, at any point was the removal of  
4 that language somehow related to the court's order in either  
5 Hadi or this case?

6 A. No.

7 Q. And I think your testimony was you don't know exactly  
8 how it is that it came to be removed; am I correct?

9 A. No, I don't remember.

10 Q. Is there anything in that language where it says  
11 close -- first of all, strike that.

12 When it comes to the movement of these detainees by  
13 female guards, there's been testimony about it, but I'll ask  
14 you, sir, are we talking about an arm, shoulder, hand, foot  
15 type thing?

16 A. We are talking about hand on an arm or shoulder, yes.

17 Q. Is there anything more, I guess, for want of a better  
18 term, intimate, beyond that?

19 A. No.

20 Q. And that contact is for a specific penological  
21 interest; am I correct?

22 A. Yes.

23 Q. And at least in this situation, it's to get them, the

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1 detainees, to either visits with their attorneys or to this  
2 courtroom; am I correct?

3 A. Yes.

4 Q. All right. Colonel, there's a paragraph 13 in your  
5 declaration. There was a sentence that you were asked about  
6 where it says, "All guards are trained to the same  
7 standards" ----

8 A. Yes.

9 Q. ---- am I right?

10 Now, do me a favor and break that down a little bit  
11 further. Does that mean every single person in Camp VII is  
12 equipped and ready to perform every other duty within?

13 A. No.

14 Q. Tell me about that, sir.

15 A. In the Army, we have skill manuals, soldier skill  
16 manuals of different levels, depending on their grade. And  
17 soldiers are trained to do those specific tasks that are  
18 appropriate to the grade that they are -- of their rank.

19 Q. And in relation to the jobs at Camp VII, is this --  
20 are there aspects of it that are unusual, in your experience,  
21 in terms of the persons that are able to work in that camp?

22 A. Yes.

23 Q. Tell me about that.

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1       A.   There are qualifications required of the MPs that  
2 work at Camp VII that are unusual in that they need top secret  
3 security clearances, or many of them do.

4       Q.   And in terms of rank, is there a certain rank as  
5 well?

6       A.   No lower than E-4.

7       Q.   And tell me, is this unusual in your experience?

8       MJ [COL POHL]: Colonel -- excuse me, Mr. Ryan.

9           Colonel, where does the TS clearance requirement come  
10 from?

11       WIT: Sir, I don't know. That's on the deployment manning  
12 document as a requirement. It's been that way since I got  
13 here.

14       MJ [COL POHL]: Okay. And that covers which subset of  
15 your guard force that is responsible ----

16       WIT: It covers -- well, it covers all of these young men  
17 in here. It covers many of the escorts and some of the guards  
18 on the tier.

19       MJ [COL POHL]: Does it cover everybody in Camp VII?

20       WIT: No.

21       MJ [COL POHL]: And it's -- does it cover everybody in  
22 Camp VII whose duties would have them come in contact with the  
23 detainees?

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1       WIT: That would have any kind of physical conversations  
2 or the ability to overhear conversations.

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

4       Mr. Ryan.

5       TC [MR. RYAN]: Yes, sir. Thank you.

6       **Questions by the Trial Counsel [MR. RYAN]:**

7       Q. And I think my question, Colonel, was, is that  
8 unusual in your experience?

9       A. Yes.

10      Q. Is it more stringent?

11      A. Yes.

12      Q. And that's in terms of both rank and clearance?

13      A. Correct.

14      Q. And in terms of clearance, in your experience, is  
15 that an easy thing to obtain on a quick basis?

16      A. It is not.

17      Q. For enlisted soldiers coming into your command, would  
18 you expect them to already have that kind of clearance?

19      A. No.

20      Q. Would you expect it would be easy for a large number  
21 of them to obtain that kind of clearance?

22      A. No.

23      Q. And is that based on your experience as well?

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1           A.    Yes.

2           Q.    And so as the pool of soldiers is coming in under  
3 your command, is it correct to say that the pool of those  
4 persons within the unit is already shrunk in terms of who can  
5 be in close contact with these detainees?

6           A.    Yes.

7           Q.    Colonel, you were asked a question about a specific  
8 sentence in paragraph 13, and I think it was this one:  
9 "Demanding that female personnel not touch male detainees  
10 would effectively prevent female servicemembers from serving  
11 as guards." Do you recall that?

12          A.    Yes.

13          Q.    And I think your answer at one point was that may be  
14 untrue to the point that if they were doing it at the very  
15 lowest possible level. Did you give that answer?

16          A.    Yes.

17          Q.    Tell me what you mean by that, sir.

18          A.    I mean that if they're in a nonsupervisory role,  
19 there's many more options to keep them from having to have  
20 contact with detainees than there is when they're of a higher  
21 rank or if they're in a supervisory position.

22          Q.    So your statement about, well, females would be able  
23 to work as guards in those situations, if it's at the lowest

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1 possible level, are you then talking about the possibility  
2 they would have to act below their own rank?

3 A. Yes.

4 Q. Is that good for a person's career?

5 A. Absolutely not.

6 Q. Is that good for your command?

7 A. No.

8 Q. Do you want people working below their level at which  
9 they're qualified, at which they have obtained a rank?

10 A. No, I do not.

11 Q. Is that a legitimate penological interest?

12 A. Yes.

13 Q. Is that a legitimate command interest?

14 A. Yes.

15 Q. Colonel, you were asked about experience with other  
16 detention situations involving males of the Islamic faith and  
17 female guards who would be in a position to physically touch  
18 them ----

19 A. Yes.

20 Q. ---- correct? That includes -- you told us about  
21 Iraq?

22 A. Correct.

23 Q. And I believe you said the number was somewhere

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1 around 3- to 400; am I correct?

2 A. That's what I recall, yes.

3 Q. And how long were you there?

4 A. Six months.

5 Q. All right. And here, you've been here over a year  
6 now, year and a half?

7 A. Eighteen months, yes.

8 Q. And you're responsible not just for Camp VII but, as  
9 you've told us, the other camps as well?

10 A. Yes.

11 Q. And this specific detention facility was -- that is,  
12 JTF and Guantanamo as a whole as a detention facility, was  
13 only created as a result -- or after the beginnings of  
14 hostilities in the Middle East emanating from the attacks of  
15 September 11; am I correct?

16 A. Yes, September 11.

17 Q. Sometimes known or used to be known as the Global War  
18 on Terror?

19 A. Yes.

20 Q. And the people that -- strike that.

21 In the course of those actions, is it correct to say  
22 that many people were captured over a long period of time,  
23 literally 15 years?

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1 A. Yes.

2 Q. Were they held in other places around the globe?

3 A. Yes.

4 Q. And were you part of that?

5 A. Yes.

6 Q. Did that include your duty in Iraq?

7 A. Yes.

8 Q. All right. Now, of people held all over the globe,  
9 only a small subset was sent to this part -- to  
10 Guantanamo Bay; is that correct?

11 A. That's true.

12 Q. Is it correct to say that those were persons that  
13 were considered the greatest threat of all?

14 LDC [MR. RUIZ]: Objection, calls for speculation,  
15 relevance, foundation.

16 MJ [COL POHL]: It would seem like that is a consideration  
17 made by others, not by Colonel Heath.

18 TC [MR. RYAN]: He was asked many questions about  
19 considerations of others, sir, I would suggest it's something  
20 he can answer.

21 MJ [COL POHL]: Okay.

22 TC [MR. RYAN]: Especially as active duty military.

23 MJ [COL POHL]: The objection is overruled. As far as you

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1 know, Colonel Heath. Just limit it to as far as you know.

2 A. As far as I know, people who were sent here to  
3 Guantanamo Bay had significantly more interest to the  
4 U.S. Government than any others.

5 Questions by the Trial Counsel [MR. RYAN]:

6 Q. Is it correct to say that your understanding is that  
7 those persons would necessarily be of a very extremist view of  
8 their religion?

9 A. Yes.

10 Q. All right. So within the Guantanamo Bay population,  
11 is it your testimony that, of all of the ones you have dealt  
12 with, which the number now is 107 -- I'm sorry, starting the  
13 question over.

14 The number right now is 107; is that your testimony?

15 A. Yes.

16 Q. During the course of your 18 months here, was the  
17 number larger at some point, too?

18 A. It was 149 when I got here.

19 Q. So of your time in Guantanamo, which started at 149,  
20 down to 107, is it your testimony that the first time you  
21 heard of this objection came from Hadi al-Iraqi?

22 A. Yes, that's true.

23 Q. Followed closely by some of the accused in this case?

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1 A. Yes.

2 Q. In your treatment of the issue and in your  
3 consideration of the issue ----

4 MJ [COL POHL]: Mr. Ryan, stay near the mic.

5 LDC [MR. RUIZ]: I can't hear that.

6 MJ [COL POHL]: Stay near the mic, please.

7 TC [MR. RYAN]: Yes, sir.

8 Q. In the course of your consideration of this issue, or  
9 this -- these objections that were raised to you, did you take  
10 steps to investigate how others within the general population  
11 all of the camps viewed the -- viewed being touched by  
12 females?

13 LDC [MR. HARRINGTON]: Objection, relevance.

14 MJ [COL POHL]: Overruled.

15 A. I did not take steps to -- I did not go ask detainees  
16 how they felt about being touched by females, no. Given the  
17 lack of complaint, it was not an issue in any of the other  
18 camps.

19 Questions by the Trial Counsel [MR. RYAN]:

20 Q. You did look into it, though, to that extent ----

21 A. Yes.

22 Q. ---- to see if there were other complaints?

23 A. Yes.

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1 Q. And there were none; is that correct?

2 A. That's correct.

3 Q. Colonel, the units that have arrived since you've  
4 been here -- I'm sorry, the units that have served since  
5 you've been here, when you arrived, it was Massachusetts,  
6 later it was Colorado, and now is it -- it's another unit as  
7 well; am I right?

8 A. Yes.

9 Q. And am I correct that Massachusetts and Colorado were  
10 both National Guard units?

11 A. That's correct.

12 Q. And am I correct that this unit is an active duty  
13 unit?

14 A. Correct.

15 Q. And was that unusual or was that different?

16 A. No. We get rotations of active duty units; not as  
17 frequently as reserve component, but we do have them.

18 Q. And it could also come from reserve units? Am I  
19 saying it correctly?

20 A. Yes.

21 Q. All right. And are they all MP units?

22 A. Yes.

23 Q. And it's correct to say that they come from all over

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1 the country?

2 A. Yes.

3 Q. MP units, in your experience, would you say within  
4 the military, they often are -- do they -- are they, generally  
5 speaking, a higher proportion of females, lower proportion,  
6 same, if you know?

7 A. Across the MP corps, MP units are roughly 17 percent  
8 female. And I think the Army is in that, you know, 15 to 17  
9 percent, so ----

10 Q. So it's generally representative of the military as a  
11 whole?

12 A. Yes.

13 Q. All right. And there was some reference made to the  
14 issue of combat positions being opened to females very  
15 recently; am I right?

16 A. Yes.

17 Q. Going back to when you arrived, could you give me  
18 that event in relation to when the Panetta order went into  
19 effect?

20 A. I'd have to refer to my declaration for the date,  
21 but ----

22 Q. Well, I don't need specifics, but was Panetta in  
23 place when you arrived?

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1 A. Yes.

2 Q. It was?

3 A. Yes.

4 Q. And give us your general understanding of what  
5 Panetta says.

6 A. That we -- females are not restricted from performing  
7 duties in a combat zone.

8 Q. Did it affect your command in any way?

9 A. Here at GTMO?

10 Q. Yes, sir.

11 A. My females were already serving across the board  
12 here.

13 Q. So in your day-to-day activities, Panetta was really  
14 no change from the way you were doing things?

15 A. Correct.

16 Q. But across the military as a whole, was it considered  
17 a step -- a step forward for females?

18 A. Yes.

19 Q. Were more jobs opened to them?

20 A. Yes.

21 Q. And as a result of the order last week, are even more  
22 jobs now available?

23 A. Absolutely.

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1       Q.   Colonel, you were asked many questions concerning  
2 what you could do and what you have done to successfully  
3 complete your mission under the court's order. I'd like to  
4 ask you now, sir, what you should do.

5           In light of Panetta, and in light of your experience  
6 as a commander, what should you be doing in terms of the  
7 assigning of females within Camp VII to the various duties for  
8 which they are qualified by rank and experience?

9       A.   As a commander, I want the best-qualified individual  
10 to be a leader in my formation. I don't care what gender they  
11 are, I don't care what race they are, I don't care what  
12 religion they are.

13           I do not want to discriminate against my soldiers.

14       Q.   Is that a legitimate penological interest?

15       A.   Yes, I think so.

16       Q.   And in your experience, can you -- would you say that  
17 for any given job, it's as likely that the proper candidate  
18 would be female as it is male?

19       A.   In my experience in the military police, yes, that's  
20 true.

21       Q.   Are you aware of an order like this in effect  
22 anywhere else in the United States Military?

23       A.   I am not.

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1 Q. To this issue of showers and frisks, was that based  
2 on something in existence even before your command, even  
3 before your involvement in detention operations?

4 A. That was in place in the Army Corrections Regulation  
5 when I worked at Fort Lewis.

6 Q. And is that also connected to standards and policies  
7 in effect in the Bureau of Prisons by the United States  
8 Department of Justice?

9 A. To my knowledge, yes.

10 Q. And questions were asked about that, and I believe  
11 some of -- your answer was common decency, among other things.

12 But let me ask you this, sir: To the extent that a  
13 guard of one gender was in a position of searching the body of  
14 a person of another gender, is it likely -- or is it more  
15 likely that such situations could lead to complaints of sexual  
16 attack, sexual assault?

17 A. Yes.

18 Q. And when it comes to things like a guard of one  
19 gender watching a detainee of another gender take a shower, is  
20 that also more likely than not or more likely than another  
21 situation to lead to situations of complaints about sexual  
22 assault, sexual harassment, et cetera?

23 A. Yes, I think that's right.

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1 Q. So avoiding it in those situations, beyond common  
2 decency, is a good, legal determination; is it correct?

3 A. Yes.

4 Q. You want to avoid complaints, lawsuits, criminal  
5 charges to your guard force as much as you possibly can; am I  
6 correct?

7 A. Yes.

8 Q. Colonel, you ----

9 MJ [COL POHL]: Mr. Ryan, how much more do you have? I'm  
10 not cutting you off ----

11 TC [MR. RYAN]: No, sir, I understand.

12 MJ [COL POHL]: Well, I don't want to cut you off. Unless  
13 you tell me you have one or two more minutes, we're going to  
14 take our lunch break.

15 TC [MR. RYAN]: It's not long, Judge, but it might go five  
16 or ten.

17 MJ [COL POHL]: Well, I have a -- I have an experience  
18 with lawyers' estimates of time, and given that, we're going  
19 to recess.

20 TC [MR. RYAN]: I take no offense, sir. I understand.

21 MJ [COL POHL]: No offense was intended. Just based on  
22 experience.

23 TC [MR. RYAN]: Yes, sir.

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1 MJ [COL POHL]: We will take our lunch break now and  
2 reconvene at 1320. Commission is in recess until then.

3 [The R.M.C. 803 session recessed at 1200, 10 December 2015.]

4 [END OF PAGE]

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