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1 [The R.M.C. 803 session was called to order at 0907,
2 8 December 2015.]

3 MJ [COL POHL]: Commission is called to order. Trial
4 Counsel, please account for everybody here for the government.

5 CP [BG MARTINS]: Good morning, Your Honor. Present for
6 the government are myself, Brigadier General Martins;
7 Mr. Robert Swann; Mr. Ed Ryan; Mr. Clay Trivett; Ms. Danielle
8 Tarin; Ms. Nicole Tate; United States Air Force Captain Chris
9 Dykstra is a judge advocate, who needs to put his
10 qualifications on the record.

11 MJ [COL POHL]: Okay.

12 CP [BG MARTINS]: I'll finish accounting for who's at
13 table. Also at counsel table, Mr. Dale Cox and Mr. Rudy Gibbs
14 are paralegals, and also in the courtroom are Detective
15 Patrick Lantry of the NYPD, Alicia Dorman and Mary Needham and
16 Patrick O'Malley of the FBI, and Ms. Heather Fulmines of DoD.

17 MJ [COL POHL]: And these proceedings are being televised?

18 CP [BG MARTINS]: Your Honor, pursuant to your order,
19 these proceedings are being transmitted by closed-circuit
20 television to places in the continental United States.

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

22 ATC [Capt DYSKTRA]: Good morning, Your Honor.

23 MJ [COL POHL]: Good morning.

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1 ATC [Capt DYSKTRA]: I have been detailed to this
2 commission by the chief prosecutor, Brigadier General Mark
3 Martins. I'm qualified under Rule for Military Commissions
4 502 (d) and I have been previously sworn in accordance with
5 Rule for Military Commission 807. I have not acted in any
6 manner that my tend to disqualify me in this proceeding.

7 MJ [COL POHL]: Thank you. Mr. Nevin.

8 LDC [MR. NEVIN]: Your Honor ----

9 MJ [COL POHL]: I will note for the record that all five
10 accused are here also.

11 LDC [MR. NEVIN]: Thank you.

12 MJ [COL POHL]: And Mr. Nevin -- yeah, okay. Go ahead.

13 LDC [MR. NEVIN]: I'm present, Major Poteet, Mr. Sowards,
14 Mr. Smith is at counsel table right now. I will say, Your
15 Honor, this is my defense information -- our team's defense
16 information security officer.

17 MJ [COL POHL]: Okay.

18 LDC [MR. NEVIN]: I will say that our translator is not
19 present, and our translator was read off of the program for
20 reasons we don't understand. We have been told repeatedly
21 over the last several weeks that he would be read on soon,
22 maybe tomorrow, maybe tomorrow, maybe tomorrow, and so on.
23 And as we stand here, we're without a translator. We're told

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1 that that might happen later today, but we have been told that
2 on other days.

3 I want to make a record of that, bring that to the
4 military commission's attention. I haven't asked the military
5 commission to take action with respect to that issue, but it
6 is something that will be relevant with respect to several
7 motions that are yet pending; I'm thinking of 118 in
8 particular. And I expect to make a further record on that
9 later, but I wanted the military commission to know that.
10 Thank you.

11 MJ [COL POHL]: Thank you. Ms. Bormann.

12 LDC [MS. BORMANN]: Judge, present in court are Major
13 Schwartz and myself, and I just want to put on, for the
14 record, that Mr. Bin'Attash still objects to my presence as
15 his learned counsel. During the intervening five weeks since
16 the last hearing, I have scheduled meetings with
17 Mr. Bin'Attash, and he's refused to meet with me. We are
18 otherwise prepared today.

19 MJ [COL POHL]: Thank you.

20 Mr. Harrington.

21 LDC [MR. HARRINGTON]: Judge, Major Wichner and I are
22 here.

23 MJ [COL POHL]: Colonel Thomas.

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1 DDC [Lt Col THOMAS]: Good morning, Your Honor. Present
2 are myself and Mr. James Connell.

3 MJ [COL POHL]: Mr. Ruiz.

4 LDC [MR. RUIZ]: Good morning, Judge. Ms. Lachelier,
5 Lieutenant Colonel Williams, and Sean Gleason are present with
6 me at counsel table.

7 MJ [COL POHL]: Thank you.

8 As is the practice of the first session of court I'm
9 going to go over the accuseds' rights to be present with each
10 of them.

11 And after I explain the rights to you, which you have
12 heard on a number of occasions, I'm simply going to ask you
13 whether you understand.

14 All of you have the right to be present during all
15 sessions of the commission. If you request to absent yourself
16 from any session, such absence must be voluntary and of your
17 own free will. Your voluntary absence from any session of the
18 commission is an unequivocal waiver of your right to be
19 present at that session.

20 Your absence from any session may negatively affect
21 the presentation of the defense in your case. Your failure to
22 meet with and cooperate with your defense counsel may also
23 negatively affect the presentation of your case.

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1 Under certain circumstances, your attendance at a
2 session can be compelled, regardless of your personal desire
3 not to be present. Regardless of your voluntary waiver to
4 attend a particular session of the commission, you have the
5 right at any time to decide to attend any subsequent session.

6 If you decide not to attend the morning session but
7 wish to attend the afternoon session, you must notify the
8 guard force of your desires. Assuming there's enough time to
9 arrange transportation, you will then be allowed to attend the
10 afternoon session.

11 You will be informed of the time and date of each
12 commission session prior to that session to afford you the
13 opportunity to decide whether or not you wish to attend that
14 session.

15 Mr. Mohammad, do you understand what I just said?

16 ACC [MR. MOHAMMAD]: Yes.

17 MJ [COL POHL]: Mr. Bin'Attash, do you understand what I
18 just said?

19 ACC [MR. BIN'ATTASH]: Yes, but I would like to put on the
20 record my objection to what the attorney has just said
21 regarding the team.

22 MJ [COL POHL]: Okay. Mr. Bin'Attash, let me go over this
23 with the other three, and then I'll come back to you, okay?

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1 ACC [MR. BIN'ATTASH]: Okay.

2 MJ [COL POHL]: Mr. Binalshibh, do you understand what I
3 just explained to you?

4 ACC [MR. BINALSHIBH]: Yes.

5 MJ [COL POHL]: Mr. Ali, do you understand what I just
6 explained to you?

7 ACC [MR. AZIZ ALI]: Yes.

8 MJ [COL POHL]: And, Mr. Hawsawi, do you understand what I
9 just explained to you?

10 ACC [MR. AL HAWSAWI]: Yes.

11 MJ [COL POHL]: Okay. Mr. Bin'Attash, you wanted to put
12 on the record, something?

13 ACC [MR. BIN'ATTASH]: Yes. I would like to put on the
14 record my objection to the existence of the female lawyer,
15 Cheryl Bormann, on my team. I do not consider her to be
16 representing me. She is only representing her own interests.

17 The second point is that during the last session, you
18 informed me that you were going to issue a closed order that
19 would be reaching me, and this order has not been delivered,
20 or I have not received this order up until now.

21 MJ [COL POHL]: Mr. Bin'Attash, the order was issued this
22 week. So it's done, completed, and it's been served on your
23 defense counsel, although I think there may be a slight time

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1 lag. So the order is complete, and as soon as they get it,
2 they will get it to you.

3 LDC [MS. BORMANN]: Judge, we received the short order.
4 We have not yet received the longer order.

5 MJ [COL POHL]: Okay. I will double-check to be sure that
6 was done.

7 LDC [MS. BORMANN]: There was some confusion. The
8 original cc was served on counsel for Mr. Al Baluchi, so I'm
9 not sure what happened here.

10 MJ [COL POHL]: Okay. I will double-check with my staff
11 to make sure.

12 Mr. Bin'Attash, the order is complete, and I make
13 sure that it gets to you as soon as we can. Anything else?

14 ACC [MR. BIN'ATTASH]: Not now.

15 MJ [COL POHL]: Thank you. Yesterday, I conducted a
16 closed session in accordance with Military Commission Rule of
17 Evidence 505(h) to discuss use and relevancy of classified
18 information. This closed session mirrors practices in both
19 military and federal courts in dealing with classified
20 evidence and evidence under the Classified Procedures Act.
21 The purpose of that is to ensure what the use and relevance of
22 classified information is and how it can be presented in
23 court.

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1 At the conclusion of the hearing, for now, I've
2 concluded that there will be no need for any further closed
3 sessions this week, with the caveat that things can always
4 change, and, if necessary to protect classified information,
5 if there is a need for a closed session, one will be
6 conducted.

7 Today, we are going to begin with AE 254, which is
8 the female guard issue. We are going to take evidence on
9 that. Now, this particular issue involves both classified and
10 unclassified evidence. The only thing discussed in open
11 hearings will be the unclassified portion of it. Both sides
12 know what the left and right lanes are; however, sometimes an
13 inadvertent or inartfully worded question or nonresponsive
14 answer may drift into classified areas. If that happens, then
15 the audio feed will be cut off to ensure the classified
16 information is not disseminated outside the courtroom.

17 That being said, is the first witness prepared to
18 testify?

19 CP [BG MARTINS]: Yes, Your Honor. Your Honor, just to
20 note on the -- were you going to put on the record that we did
21 an R.M.C. 802 conference yesterday, or did you do that?

22 MJ [COL POHL]: I generally don't bother with that, but I
23 can. I said we had an 802 conference on Saturday to discuss

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1 scheduling issues only.

2 CP [BG MARTINS]: Okay. Thank you.

3 MJ [COL POHL]: Okay.

4 CP [BG MARTINS]: We are ready for the first witness, if
5 you'd please bring him in -- or on VTC.

6 If you could bring up the projection in the
7 courtroom?

8 Lieutenant Colonel, are you able to hear me?

9 WIT: Yes, sir.

10 CP [BG MARTINS]: Could you please stand and raise your
11 right hand for the oath?

12 **FORMER CAMP COMMANDER, U.S. Army**, was called as a witness for
13 the defense, was sworn, and testified as follows:

14 **DIRECT EXAMINATION**

15 **Questions by the Chief Prosecutor [BG MARTINS]:**

16 Q. And, Lieutenant Colonel, you are a former camp
17 commander?

18 A. Yes, sir.

19 Q. And what were your dates of service as the camp
20 commander, please?

21 We cannot hear you.

22 A. Sir, I served as the camp commander from March to
23 December of 2014.

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1 Q. Thank you. And you will be known as Lieutenant
2 Colonel in these proceedings.

3 CP [BG MARTINS]: Your witness.

4 MJ [COL POHL]: General Martins, are we going to have this
5 time lag for this whole witness?

6 CP [BG MARTINS]: Sir, I'm not sure how much of that last
7 lag had to do with the button needing to go on over there, but
8 we'll monitor that, and I'll find out what the technical issue
9 may be.

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

11 Mr. Nevin.

12 **DIRECT EXAMINATION**

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

14 Q. Thanks, Your Honor.

15 Lieutenant Colonel, my name is David Nevin. I'm one
16 of the lawyers who represents Mr. Mohammad, and I'm going to
17 ask you some questions now for a while.

18 I might just suggest -- I noticed you touching that
19 button from time to time to turn it on and off. I might just
20 suggest that you leave it on all the time. It might
21 streamline things a little bit.

22 The -- you've previously stated that you were camp
23 commander between March and December of 2014. That's Camp VII

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1 here at Guantanamo Bay, correct?

2 A. Yes, sir.

3 Q. And during that time as camp commander, you were
4 responsible for the care and treatment and custody of the
5 high-value detainees that are detained at Camp VII, right?

6 A. Sir, I was responsible for the security of, the care
7 and the custody of the detainees assigned to Camp VII, yes.

8 Q. Okay. And it's correct, isn't it, Lieutenant
9 Colonel, that you have prepared -- previously prepared a
10 declaration that was offered into evidence or that was
11 attached as an exhibit to pleadings in this case?

12 A. Yes, sir.

13 Q. And do you have a copy of your declaration with you?

14 A. I do not, sir.

15 Q. And is one readily available to you?

16 A. No, sir.

17 Q. And have you reviewed your declaration recently?

18 A. Yes, sir.

19 Q. When was the last time you looked at it?

20 A. About three days ago.

21 Q. And the declaration was signed by you in November of
22 2014, correct?

23 A. Yes, sir.

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1 Q. And did you draft it?

2 A. Yes, sir.

3 Q. How did you do that? Did you draft it on a computer
4 or by hand, or how did you go about drafting it?

5 A. Computer, sir.

6 Q. Did other persons review the declaration before it
7 became final?

8 A. Yes, sir. The JTF Staff Judge Advocate.

9 Q. Anyone else?

10 A. No, sir. I worked with that legal team.

11 Q. Before you drafted the declaration, you were given
12 some idea of what the declaration needed to cover, weren't
13 you?

14 A. Yes, sir. It was based on, as I recall, motions that
15 were prepared for the commissions.

16 Q. And that was the motions that you're referring to are
17 the ones having to do with the complaints of the detainees in
18 Camp VII about being touched by female guards, right?

19 A. That is correct, sir.

20 Q. Now, you -- as the commander of Camp VII, you are
21 essentially running a prison camp, correct?

22 A. Sir, it's a detention facility. But, yes, I ran the
23 facility.

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1 Q. And have you run detention facilities before, ma'am?

2 A. No, sir. I have been trained to do that, but this
3 was the first time that I actually was tasked to run one.

4 Q. Have you worked in detention facilities before?

5 A. No, sir.

6 Q. So this was your -- the first time you had been in
7 the position of working in a prison or running one, correct?

8 A. Yes, sir.

9 Q. And you received training of some kind in order to do
10 this, correct?

11 A. Yes, sir.

12 Q. Could you describe that, please?

13 A. Sir, there's some training included in the course of
14 your professional development as a military police officer,
15 both enlisted and as a commissioned officer, as well as the
16 pre-mobilization training at Fort Bliss.

17 Q. So before you came to ----

18 A. And then additionally ----

19 Q. Yeah. My ----

20 A. Additionally, sir, the training ----

21 Q. Excuse me, Lieutenant Colonel. That was my bad.
22 Because of the delays here, I thought you had finished
23 talking, so I started again. My apologies. Why don't you

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1 continue with the answer you were giving when I interrupted
2 you.

3 A. Sir, the final part of the training was when we
4 arrived at the Joint Task Force, and then the training
5 included the very specific SOPs, standard operating
6 procedures, for that facility.

7 Q. Great. That wave is good.

8 The standard operating procedures would have included
9 SOP Number 39, I suppose, correct, the cultural considerations
10 for dealing with Muslim detainees?

11 A. Sir, the training included all of the SOPs. As far
12 as the specific numbers for which one covers what area, at
13 this time I would have to defer to the knowledge that you have
14 on hand. I don't recall all of the numbers at this point.

15 Q. The review that you did of the SOPs before you
16 started working, is that the last time you reviewed
17 comprehensively all of the SOPs, or did you do that
18 periodically throughout the time that you served as camp
19 commander?

20 A. Sir, it was done regularly over the course of the
21 entire mission, depending on questions that came up or review
22 that we would do to update SOPs and work that through the
23 chain of command. It was continual.

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1 Q. And you departed about a year ago, I think, and have
2 you had a chance to -- or had occasion, rather, to review the
3 SOPs since you left about a year ago?

4 A. No, sir.

5 Q. Now, there were soldiers under your command at
6 Camp VII because you're the camp commander, right?

7 A. Correct.

8 Q. And you are, or were at the time, a lieutenant
9 colonel in the Massachusetts National Guard with 32 years of
10 service as a military police officer, and I suppose that would
11 be something on the order of 33 years as we speak today,
12 correct?

13 A. Correct, sir.

14 Q. And is it correct also that you spent 21 years as a
15 police officer with the Lynnfield, Massachusetts, Police
16 Department before retiring?

17 A. Yes, sir.

18 Q. And have you -- since you left here, referring to
19 Guantanamo Bay, about a year ago, have you been employed in
20 detention or in police work?

21 A. No, sir. I'm in a different assignment now.

22 Q. Ma'am, did you decide which soldiers would come with
23 you to Guantanamo Bay to operate Camp VII?

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1 A. Sir, the staffing process is not that simple.
2 There's a deployment manning document based on -- with very
3 specific positions and rank. We fill that with qualified
4 soldiers. If you're asking about individually selected
5 people, no, I did not.

6 Q. Was someone else responsible for that?

7 A. Sir, I was responsible to assure that the soldiers
8 assigned to the deployment manning document were qualified for
9 the positions that they were assigned to.

10 Q. And where did you select those soldiers from,
11 Lieutenant Colonel?

12 A. In order to fill this document, sir, we -- the
13 deployment manning document, we actually had to pull soldiers
14 from across four different units because of the uniqueness of
15 this particular manning document.

16 Q. And when you say four different units, are you
17 referring to units within the Massachusetts National Guard?

18 A. That is correct, sir. The Massachusetts National
19 Guard was tasked to fill this mission.

20 Q. Who did that? Who tasked the Massachusetts National
21 Guard?

22 A. The process works through the Department of Defense
23 to the Department of the Army, sir, through forces, the

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1 U.S. Forces Command, through the National Guard Bureau, to the
2 specific states.

3 Q. To sort of say that in shorthand, that would be above
4 your level of action. Somebody else was making those
5 decisions along the way, correct?

6 A. Yes, sir.

7 Q. And what happens then is that someone tells you we're
8 going to put this together, the Massachusetts National Guard's
9 going to do this, fill out this deployment manning document,
10 and let's get ready to go and fulfill this task. And that's
11 when you -- that's when you step into the picture, correct?

12 A. Yes, sir.

13 Q. Now, Lieutenant Colonel, your declaration states in
14 paragraph 2 -- and I'd just ask you if you recall writing
15 this. It says that as the commander of Camp VII, quote, "I am
16 responsible for the safe, humane, legal, and transparent
17 execution of law of war detention operations for detainees at
18 Camp VII."

19 Do you remember writing that?

20 A. Yes, sir.

21 Q. And is that a correct statement of your
22 responsibility at Camp VII of your overall responsibility at
23 Camp VII?

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1 A. Yes, sir.

2 Q. And when you used the term "humane" in that sentence,
3 you mean that you have an obligation to take care of the
4 prisoners that are under your control in a way that is
5 considered to be humane, correct?

6 A. Following safe and humane standards, yes, sir.

7 Q. But that refers to the prisoners that are under your
8 control, correct?

9 A. It refers to the detainees, yes, sir.

10 Q. So -- and that would include medical care provided to
11 the detainees, correct?

12 A. Yes, sir.

13 Q. And it would include their day-to-day well-being,
14 such as providing them with appropriate meals?

15 A. Yes, sir.

16 Q. And it would include things like providing them with
17 the opportunity to have exercise from time to time, or to go
18 to the media cell, or to go to the library, matters of that
19 sort, correct?

20 A. Provided the detainees are compliant and following
21 the rules of the facility.

22 Q. The measure of what's humane treatment requires you
23 to understand something about the detainees themselves,

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1 correct?

2 A. Sir, it requires me to follow the SOPs that have been
3 established for the facility.

4 Q. Well, for example ----

5 A. If there were individual issues, those would be
6 addressed.

7 Q. Okay. So, for example, all of the men -- thank you.
8 All of the men who were under your control at Camp VII are
9 adherents of the Muslim religion, correct?

10 A. Yes, sir.

11 LDC [MR. NEVIN]: Your Honor, may I have just a minute,
12 please?

13 MJ [COL POHL]: Sure.

14 [Pause.]

15 LDC [MR. NEVIN]: Thank you.

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

17 Q. And, Lieutenant Colonel, I referred earlier to the
18 JDG SOP Number 39, which is entitled "Religious Support of the
19 Detainees." Do you have a recollection of that as you sit
20 here right now?

21 A. Generally, sir.

22 Q. While, generally speaking, you make a number of
23 cultural accommodations for the detainees based on their

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1 faith, correct?

2 A. Yes, there are some accommodations. I know off the
3 top of my head, the meals you had already mentioned, the
4 recognition of breaking operations, and taking action to allow
5 for prayer time, considering that in our operations, certain
6 scheduled prayer, that sort of thing, yes, sir.

7 Q. Right. And, for example, there is the issue of diet.
8 There's a requirement for -- in your SOP for providing halal
9 foods, foods that are handled in -- according to the
10 requirements of Islam?

11 A. That is correct, sir. The food service contract
12 requires that, that the food we received was halal, yes, sir.

13 Q. Right, and that imposes some degree of inconvenience
14 or expense on the -- on the detention operation; isn't that
15 true?

16 In other words, if pork happens to be cheaper than
17 beef this week, you still don't get pork because pork is not
18 halal. You provide halal meals, even though it's expensive,
19 may be more expensive or inconvenient, correct?

20 A. Sir, thankfully, I did not have to manage that budget
21 or that contract. That was done at the JTF level. My
22 responsibilities were to ensure the staff picked up the food
23 at the proper times ----

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1 Q. But that's your ----

2 A. ---- and delivered it to the detainees.

3 Q. Sorry. I apologize.

4 But that's your understanding of how the process
5 works. In other words, you're going to provide them with
6 halal foods, even if it's inconvenient and expensive, correct?

7 A. Sir, I will provide them with halal foods, as the
8 requirements were tasked in the SOP.

9 Q. Okay. And you mentioned that part of the religion of
10 Islam is praying, and prayer typically is occurring five times
11 a day, according to your SOP, and you do respect that. In
12 fact, I think your SOP refers to sometimes placing cones out
13 on the tier to indicate that it's prayer time, correct?

14 A. Sir, yes, we indicate a prayer time, and the guards
15 would minimize any sort of walking on tier or disruption at
16 that time, in order to respect that time for the detainees.

17 Q. Yes. And, ma'am, as the camp commander of Camp VII,
18 you went on the tier from time to time yourself, correct?

19 A. That is correct.

20 Q. And actually, there's more than one tier, so I should
21 have used the plural there. You went on the tiers from time
22 to time as the commander of Camp VII, correct?

23 A. That is correct.

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1 Q. And when you did that, you sometimes had
2 conversations with detainees or conversations with members of
3 your guard force; isn't that correct?

4 A. Sir, when I went on tier, it was to respond to a
5 request from a detainee to talk to me specifically. I do not
6 recall having conversations, other than possibly giving
7 direction, immediately following a discussion with a detainee,
8 to the guard force.

9 Q. Yeah, but you would speak to -- you would have verbal
10 interaction, let's just say, with a detainee, correct, from
11 time to time?

12 A. That is correct.

13 Q. And you would do that audibly -- you know, you would
14 speak normally with the person, correct? You wouldn't -- you
15 didn't do that in writing with the detainee or with your guard
16 force. You just spoke to them in the normal way that people
17 speak to each other, correct?

18 A. Yes, sir. I would have a conversation with them
19 either directly or through a linguist, depending on the
20 detainee's ability to speak and understand English.

21 Q. And I take it it's correct that you are not fluent in
22 Arabic or the other native languages that may -- that the
23 detainees may have on Camp VII, correct?

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1 A. No, I am not.

2 Q. And you're aware, aren't you, that SOP 39, the --
3 entitled "Religious Support of Detainees" provides that you
4 are not supposed to ask male detainees about female members of
5 their family, correct?

6 A. I recall from the cultural awareness training that,
7 in casual conversations, you would not ask that question, yes,
8 sir.

9 Q. But -- and the SOP in fact says that that's
10 culturally unsuitable, correct?

11 A. Sir, I don't have the SOP in front of me. If you do,
12 and that's what it says, then I guess that's the case. I'd
13 like to reiterate, though, any conversations I had with the
14 detainees were not casual conversations. They were dealing
15 with very specific issues.

16 Q. Right.

17 And the SOP also provides that you're not supposed to
18 use your left hand when you give food to a detainee, correct?

19 A. Sir, you cut out slightly. I heard that I'm not
20 supposed to -- that the SOP states that the left hand is not
21 supposed to be used for -- and I missed what you were saying
22 it was for.

23 Q. Sure. I'll repeat it, then.

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1 The SOP -- and I'm asking you if it's your
2 understanding, and if this is something that your guard force
3 followed, really, and if you followed that. The SOP says, "Do
4 not use the left hand to give a detainee food."

5 Do you recall that, and is that the way that you and
6 your guard force proceeded?

7 A. Sir, I do not recall that very specific guidance. I
8 know there was guidance on food service, but I don't recall
9 that specifically. But I know generally, when dealing with
10 the detainees, you would use your right hand.

11 Q. And it's correct, isn't it, that the -- that Camp VII
12 or that the Joint Detention Group would provide Qurans to
13 detainees if they didn't have one, correct?

14 A. Sir, the detainees all had at least one Quran when I
15 was there, yes.

16 Q. And it's correct, isn't it, that the -- that the SOP
17 provides that the guard force will not touch the detainee's
18 Quran except in cases of life-threatening emergency?

19 A. Yes, sir. The guard force did not handle the Quran.
20 If it needed to be handled, the linguist would be called.

21 Q. And you are aware and accommodated the holy month of
22 Ramadan celebration that Muslims around the world observe,
23 correct?

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1 A. Yes, sir. That was handled the same way across all
2 of the facilities per the Joint Detention Group guidance.

3 Q. So it was not done separately at Camp VII, referring
4 to observation of the Ramadan -- the month of Ramadan.

5 A. It would -- no, it was standardized, sir. It was not
6 done differently at the camp.

7 Q. And there was a -- the month of Ramadan for the
8 year -- for 2014 did occur during a time when you were the
9 camp commander of Camp VII, correct?

10 A. Yes, sir. I believe it was close to the entire month
11 of July of 2014, sir.

12 Q. And among other things, that involves providing a
13 meal to the detainees before dawn, and then observing the fact
14 that they fast during the day between sunrise and sunset,
15 roughly, and then providing a fast-breaking meal at the end of
16 the day, after the evening prayers, correct?

17 A. Sir, there was very specific guidance for the meals.
18 The schedule was adjusted for Ramadan. Some detainees
19 followed it, some did not.

20 Q. And there also is a special prayer that occasionally
21 is prayed that may last for as much as an hour or two after
22 the evening prayers, correct, during Ramadan?

23 A. Yes, sir. There was an additional prayer.

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1 Q. And this is -- all of these cultural observances that
2 I'm describing are not -- were not part of your normal
3 cultural environment before you came to Camp VII; is that
4 correct?

5 A. Correct, sir.

6 Q. And in fact, these are very -- this is a very
7 different culture, both -- in both secular and religious
8 terms, correct?

9 A. Different from what, sir?

10 Q. Well, different from the United States, let's say.
11 Many of these -- many of these cultural practices that you and
12 I have just been talking about are ones that are not followed
13 regularly in the United States, correct?

14 A. I can't speak to the entire United States, sir. I
15 assume people of Muslim faith follow it in the United States.
16 But not being Muslim, it is not something that I dealt with
17 day to day prior to going to Guantanamo.

18 Q. Right. Thank you.

19 And nonetheless, you, as the commander of Camp VII,
20 worked to accommodate these cultural differences, correct?

21 A. Sir, I did not make individual accommodations. I
22 followed the SOP. If there was a request that differed from
23 what was in the SOP, then I would work that through the chain

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1 of command. I did not independently change SOPs.

2 Q. So in other words, as part of the delivery of humane
3 treatment to the detainees, you are accommodating, not on an
4 individual basis all the time anyway, but you are
5 accommodating these cultural and religious differences that
6 we've been talking about and that are contained in your SOPs,
7 correct?

8 A. Correct, sir.

9 Q. And this extends also to a number of the practices
10 that you follow in terms of dealing directly with individual
11 detainees. For example, there is a prohibition on women,
12 female members of your guard force, doing frisk searching,
13 correct?

14 A. Correct, sir.

15 Q. And you wrote in your declaration in paragraph 9, and
16 I'll quote, that "Required searches of the detainee's clothing
17 and person are conducted by the male guards in the facility
18 and assigned to the DET," referring to the detainee escort
19 team, correct?

20 A. If there was a requirement -- well, yes. When the
21 guards frisk the detainee, which meant quite a bit, obviously,
22 more hands on and potentially an invasion of their -- well, as
23 part of a full frisk, an invasion of their personal, more

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1 private areas, that was conducted by a male detainee, correct.
2 Strike that, male guard.

3 Q. Right. I understand.

4 Well, and, you know -- the SOP 39, and I'll just read
5 to you from 39-5 subsection 11, it says, "Female guards and
6 interpreters should not insist that detainees make eye contact
7 with them during interactions." And it says, "Close contact
8 with unrelated females is culturally inappropriate."

9 That's in your actual SOP, and I guess I would just
10 ask: Do you recall that it is in your SOP?

11 A. Sir, what is the date of that SOP?

12 Q. 24 June of 2014. And just -- we're ----

13 A. If it's in there, sir, I ----

14 Q. Sorry. Go ahead.

15 A. I was just saying, if you're reading right from the
16 SOP, it's definitely in there. I don't recall every detail of
17 the SOP, sir.

18 Q. Sure. But just to go back to the beginning of your
19 testimony, you came to the facility in March of 2014, correct?

20 A. That is correct, sir.

21 Q. Yeah. And so this SOP is dated about three months
22 later. Did you have a role in drafting this?

23 A. I had a role in reviewing it, yes, sir.

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1 Q. And reviewing it, in other words, prior to it being
2 published?

3 A. Yes, sir. We would review it, and then it would be
4 sent to the Joint Detention Group for final approval.

5 Q. And I will -- excuse me -- represent to you that it
6 is signed by "David E. Heath, Colonel, MP, Commanding." And
7 that's a quote.

8 Do you know Colonel David Heath to be the joint
9 defense -- sorry, the Joint Detention Group commander?

10 A. Yes, sir, he was, and I would have reviewed that with
11 the date that you gave. But I do not recall every aspect of
12 it, but it was the SOP in place when we were there.

13 Q. Yes, ma'am, I understand.

14 But my question then is, you know Colonel Heath.
15 Colonel Heath is essentially your immediate supervisor or boss
16 in your chain of command, correct?

17 A. That is correct, sir.

18 Q. And the preparation and dissemination or publication
19 of SOPs, that is -- that's within the discretion of the
20 commander of the joint defense group -- sorry, the Joint
21 Detention Group, right?

22 A. Joint Detention Group commander approved, signed off
23 on the SOPs, yes, sir.

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1 Q. And was it your experience that SOPs changed when
2 Joint Detention Group commanders changed?

3 A. Sir, the -- one of the requirements we had that was,
4 at the time, standing for every deployment, was that over the
5 course of your mission there, you would review the SOPs and
6 recommend updates.

7 So I don't -- I don't know if it's with every Joint
8 Detention Group commander, but every camp commander that goes
9 through and their staff reviews SOPs and recommends updates.

10 Q. Thanks. And did you do that as well? Was that your
11 practice?

12 A. Yes, sir.

13 Q. And did you recommend changes in SOPs during the time
14 you were camp commander?

15 A. Yes, sir.

16 Q. And you, in fact, changed a number of procedures
17 within Camp VII while you were camp commander; isn't that
18 true?

19 A. We had a number of SOP revisions approved, and then
20 we implemented them, yes, sir.

21 Q. And did you make a notation or a record of the SOPs
22 that you, in particular, recommended changing?

23 A. The SOP revisions were documented at the Joint

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1 Detention Group level, sir. We had a tracker at our level.

2 Q. What do you mean by "tracker"?

3 A. We had a tracker that would -- that listed all of the
4 SOPs and the status of our review, so we would know -- because
5 the SOPs had to be staffed, so we would know which ones we had
6 reviewed, which ones had been updated; and those that were in
7 the process of being updated, where they were, as far as if
8 they were at the Joint Detention Group, if they were with the
9 staff in the SJA office, that sort of a thing.

10 Q. Can you speak to how many of the SOPs you recommended
11 changes to? And when I say "speak to," I mean do you recall
12 how many of the SOPs you recommended changes to?

13 A. I don't recall the exact number, sir. I would say it
14 was somewhere -- for the camp SOPs, it was somewhere around
15 30. There were also Joint Detention Group SOPs that we had to
16 follow, too.

17 Q. And referring to those 30 SOPs within Camp VII that
18 were changed, what percentage of the total SOPs does that
19 represent? Is that all of the SOPs or half of them, or how
20 would you characterize that?

21 A. I don't remember the exact number, sir. There were
22 quite a few Joint Detention Group SOPs as well that applied to
23 our guard force or to the facility or other operations, so

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1 maybe a little more than half.

2 Q. Lieutenant Colonel, these SOPs that we have been
3 referring to -- or these practices that we have been referring
4 to within SOP Number 39, the religious support of detainees,
5 these are in place because these men have a right to practice
6 their religion; and that's part of your humane detention of
7 them, isn't it, that they're allowed to practice their
8 religion?

9 A. Yes, sir. We accommodated the religious practices
10 within the -- within our ability to do so while also
11 sustaining the operations of the detention facility.

12 Q. Right. And you don't make them choose between
13 practicing their religion on the one hand and being treated
14 humanely on the other, correct? That wouldn't be right.

15 A. I can't think of a situation that we would do that,
16 no, sir.

17 Q. And similarly, they have a right to have a lawyer,
18 and they have a right to defend themselves here in these
19 proceedings we're in, and you don't make them choose between
20 exercising their religion and defending themselves, right?

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

22 MJ [COL POHL]: Overruled. Answer the question, please.

23 WIT: Sir, yes, sir. We do not make them choose between

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1 the right to defend themselves or exercising their religion
2 within the accommodations that are covered in the SOP, sir.

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

4 Q. Are you familiar -- have you deployed, at any time
5 during your career in the National Guard, to a combat
6 environment of any kind?

7 A. Yes, sir.

8 Q. And during the course of that, did you have occasion
9 to hear of something called a female engagement team?

10 A. Yes, sir.

11 Q. And is it your understanding that a female engagement
12 team would be a group of soldiers comprised entirely of women,
13 or females who -- whose mission would be to interact with
14 women in the countries where the combat operations are
15 occurring?

16 A. Yes, sir. Generally, they would be assigned to units
17 that were all male, who would be engaging females in the
18 civilian population of the host nation, yes.

19 Q. And that was done for reasons that are similar to the
20 reasons you and I have been discussing about your religious
21 support of detainees in Camp VII, because these are very
22 different cultures, and the relationships between men and
23 women work differently in these cultures than they may in the

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1 United States, correct?

2 A. Sir, I'm not privy to the policy decisions that were
3 made to do that, but the safety of the male soldiers is
4 actually a factor because they would not be able to search the
5 females in the civilian environment -- the civilian females
6 there, or really be able to talk to them, so ----

7 Q. Why not?

8 A. ---- that's how I see it, is it was their safety,
9 because of the cultural differences.

10 Q. Right. But it's the cultural differences that's at
11 the bottom of that, correct?

12 A. Yes, sir. And we would certainly respect that as
13 well, especially in a foreign country when we're dealing with
14 a civilian populace.

15 Q. So in other words, a male soldier could simply
16 encounter a female civilian on the street and simply walk up
17 to her and start talking to her, couldn't he? Nothing would
18 stop him from doing that, right?

19 A. I suppose he could try, sir.

20 Q. Yeah. And if he wanted to, he could search the
21 female civilian that he encountered, couldn't he?

22 MJ [COL POHL]: Mr. Nevin, you have made your point,
23 there's cultural differences; but what happens in a civilian

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1 environment or deployed environment has little relevance to
2 the issue before me, the treatment of detainees in a detention
3 environment.

4 LDC [MR. NEVIN]: I understand, sir.

5 MJ [COL POHL]: So move on to something else, please.

6 LDC [MR. NEVIN]: I got it.

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

8 Q. So it's correct, isn't it, as well, that the -- you
9 and the soldiers and the female soldiers you commanded at
10 Camp VII did not observe the detainees when they were
11 unclothed, when they were naked, in other words, correct?

12 A. Correct. Females -- according to the SOPs that were
13 in place at the time, female soldiers would not observe the
14 males taking a shower or any time that they were disrobed.

15 Q. Right. And you -- if you were -- if you had a female
16 member of your guard force who was in the position of having
17 to observe a male detainee being unclothed, you just simply --
18 you just had to have -- you had to take them off that
19 assignment, correct?

20 A. Sir, such a condition would be in their individual
21 cells, and there would be no need to have a female posted
22 there to observe them. They'd be monitored remotely.

23 Q. Yes. And monitored by ----

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1 A. By a male.

2 Q. By a male. Right.

3 And so if you had a female in the monitoring
4 position, you would just simply have to move her out of that
5 and have a male do it, correct?

6 A. She would not be the only one with that ability to
7 monitor them, but yeah, she would not monitor, so a male
8 would, correct.

9 Q. So you would have a male -- in other words, what you
10 are saying is when you say she would not be the only one, I
11 mean, you're saying that there would be a male soldier there
12 who would come in and handle that observation task, if it had
13 to be done, correct?

14 A. We had redundancy in our ability to monitor the
15 detainees, so it didn't really require -- there was no gap.

16 Q. Got it.

17 A. It would be just the female did not monitor at that
18 time while they took their shower, the male would.

19 Q. Yes, ma'am. You had redundancy, meaning you had more
20 than one person present who could do that job?

21 A. Correct.

22 Q. And so you would just simply say, well, we're not
23 going to have the female do that job, we're going to have the

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1 male do that job?

2 A. We could monitor the detainees from more than one
3 location, so if a male was in one and the female was in
4 another, the male who was in the other location could monitor
5 the detainee, sir.

6 Q. Right. And that's because close contact with
7 unrelated females is culturally inappropriate, right?

8 A. Sir, we were following an established SOP.

9 Q. Right. And the SOP says close contact with unrelated
10 females is culturally inappropriate, right?

11 A. If that's what's in the SOP in front of you, yes,
12 sir.

13 Q. Yes, ma'am, it is.

14 Do you remember the SOPs differently?

15 A. No, sir. I just don't want to adopt something
16 directly that I don't have in front of me.

17 Q. No. I understand, and I'm sorry you don't have it in
18 front of you, it would make things smoother. But I appreciate
19 your working with me on it.

20 As a female soldier in the -- which branch of the
21 service are you in? Is it an Army National Guard unit?

22 A. Yes, sir. I'm an Army officer.

23 Q. Okay. So as a female who is an Army officer, there

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1 are accommodations made for you as well, correct?

2 A. Yes, sir.

3 Q. Yes. So as an example, you have separate -- you have
4 a separate bathroom or shower that your -- that's made
5 available to you that is only used or occupied by women; is
6 that correct?

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

8 MJ [COL POHL]: Sustained. Move on to something else,
9 Mr. Nevin.

10 LDC [MR. NEVIN]: Well, Your Honor, I ----

11 MJ [COL POHL]: I mean, the issue before me, as it began a
12 long time ago, was not only -- was essentially a change in
13 policy about how the people were being moved. If you look at
14 her affidavit, her declaration ----

15 LDC [MR. NEVIN]: Yeah.

16 MJ [COL POHL]: ---- she talks about that.

17 LDC [MR. NEVIN]: Yeah.

18 MJ [COL POHL]: That's the issue before me. The fact that
19 women use a women's bathroom and men use the men's bathroom, I
20 think I can take judicial notice if you want me to. Let's get
21 back to -- I'll give you some leeway here, but let's get back
22 to the issue before me, whether there was a change in policy
23 and then from there.

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1 LDC [MR. NEVIN]: Okay.

2 MJ [COL POHL]: Because that's where this whole thing
3 started, correct? I mean, the very first pleading I got from
4 Ms. Bormann was not just this is culturally inappropriate, but
5 this is a change in policy.

6 LDC [MR. NEVIN]: It's -- it is -- it is both of those.

7 MJ [COL POHL]: I've got that, but let's move on.

8 LDC [MR. NEVIN]: The primary.

9 MJ [COL POHL]: Move to that issue, that's all I'm just
10 saying.

11 LDC [MR. NEVIN]: I will just say -- Your Honor, I
12 understand. I'll move on. My only point was that we go
13 around making accommodations that are expensive and
14 uncomfortable and that require effort and so on, all the time.

15 MJ [COL POHL]: And that's in the case law applying Turner
16 and other things clearly say that. I've got that.

17 LDC [MR. NEVIN]: And the Eighth Amendment as well.

18 MJ [COL POHL]: Okay. Got that, too.

19 LDC [MR. NEVIN]: Thank you.

20 MJ [COL POHL]: But let's try to focus on the detention
21 facility itself.

22 LDC [MR. NEVIN]: All right. Thanks, Your Honor.

23 MJ [COL POHL]: Go ahead.

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

2 Q. So, Lieutenant Colonel, there is a part of your
3 declaration in which you say that you're aware that -- and I'm
4 talking about paragraph 13 on page 5, you say, "I cannot say
5 with certainty why, but there were periods of time when female
6 guard force members were present and then not present at
7 Camp VII."

8 Do you remember writing -- excuse me, writing that,
9 or something to that effect?

10 A. Yes, sir, I do.

11 Q. And how did you determine that?

12 MJ [COL POHL]: Lieutenant Colonel, I just want to put
13 the -- since you don't have it in front of you ----

14 A. I went back to ----

15 MJ [COL POHL]: Can you hold for a second, please? I just
16 think it's important that the whole statement is in context.

17 That statement says, "Prior to my unit's arrival at
18 JTF-GTMO in March 2014, there were no females assigned to the
19 escort platoon aside from DoD and U.S. Army specific
20 general -- gender-neutral assignment policies. I cannot say
21 with certainty why there were periods of time when female
22 guard force members were present and then not present at
23 Camp VII." Okay?

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1 So I just wanted to read the first sentence because I
2 think it puts in context the second sentence. Do you recall
3 that in your declaration?

4 WIT: I do, Your Honor.

5 MJ [COL POHL]: Okay. Mr. Nevin, please ask your
6 question.

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

8 Q. How did you determine that there were periods where
9 there were no female guards present?

10 A. Well, I knew from talking to the lieutenant colonel
11 who I replaced that he did not have any females in the guard
12 force, in his guard force. Why that was, I did not know, but
13 there were no specific policies that governed how I assigned
14 my personnel.

15 Q. Other than the lieutenant colonel from whom you took
16 over, did you have that information from anyone else?

17 A. I'm sorry, which information?

18 Q. I'm sorry. The information about the number of --
19 whether there were women in the guard force at Camp VII, and
20 you said you learned that from speaking to the lieutenant
21 colonel who was the camp commander before you, and my question
22 is: Did you hear that or learn that from other places?

23 A. I knew that from speaking with that lieutenant

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1 colonel, and then as this issue was raised and I wrote my
2 declaration, I looked back at previous assignments within the
3 facility and there had been females there at times, and at
4 other times there were not.

5 Q. And what were those periods of time, do you remember?

6 A. Not specifically, sir, but for a rotation or two, I
7 think two, possibly, before I got there, there had not been
8 any females; but prior to that, there had been some.

9 Q. And did you find in the records a reference to
10 Mr. Mohammad making a complaint about being sexually accosted
11 by a female guard?

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

13 A. No, sir.

14 MJ [COL POHL]: Overruled. Next question.

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

16 Q. Did you have any information to suggest that the
17 change in policies within the camp had something to do with
18 that, with a complaint of that type?

19 A. Sir, I know of no policy changes in the camp. It was
20 simply an observation of staffing that I made through the
21 research of who was staffed to the -- at the facility.

22 Q. All right. And you've already said that staffing
23 decisions were made above your level, or are you talking about

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1 staffing decisions made within the Camp VII environment?

2 A. Sir, I know of no JTF policy or camp policy that
3 required all-male staffing. My comments in my declaration
4 were based on reviewing past assignment rosters.

5 Q. And you made a decision to change that policy, to
6 have women in contact positions with male detainees in ways
7 that they had not before, right?

8 TC [MR. RYAN]: Objection to the characterization, Judge.
9 She testified that there was no policy change.

10 MJ [COL POHL]: Objection sustained. Rephrase your
11 question, Mr. Nevin.

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

13 Q. Did you make a decision related to female guards
14 having physical contact with male detainees at any time during
15 your tenure as Camp VII commander?

16 A. Sir, I made a decision to rebalance my staff as I was
17 dealing with shortfalls, and that did involve moving female
18 noncommissioned officers into roles where they had more direct
19 contact with detainees, yes.

20 Q. When did you make that ----

21 A. But it was not a policy change.

22 Q. When did you make that decision?

23 A. The rebalancing of my staff occurred toward the end

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1 of the summer, sir. As far as -- well, let me rephrase. I
2 moved female NCOs around based on operational reasons early on
3 when we first got to Guantanamo, which assigned two female
4 NCOs to the escort platoon. They went through training and
5 onsite training, because they hadn't been planned for that
6 role, and so the rebalancing with my shortfalls occurred
7 toward the end of the summer of 2014, sir.

8 Q. But that did not involve a change of policy, it just
9 involved a change in the way you assigned people within
10 Camp VII; is that your testimony?

11 A. It changed the assignments of the soldiers under my
12 command, yes, sir.

13 Q. Now, I will represent to you that Colonel Heath has
14 prepared an affidavit in this case, and it refers to soldiers
15 being trained to the same standards, and I believe this has
16 been referred to as cross training, matters of this type, was
17 that your policy that soldiers were all trained to the same
18 standards within Camp VII?

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

20 MJ [COL POHL]: Overruled.

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

22 A. Sir, there was this -- all effective soldiers who
23 were military police, military police officers, received a

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1 baseline training that was to the same standard. However,
2 when we went through the pre-mobilization training at Fort
3 Bliss, they were trained for their specific roles that we had
4 planned for them based on the deployment manning document.

5 When we arrived at Guantanamo, we had to move some
6 people around based on security clearances that they held. So
7 in the course of that, I moved two female NCOs at that time
8 and they had to then go through training they hadn't gone
9 through before, before I had them in contact -- before I could
10 put them in contact with detainees. I was not about to put
11 untrained individuals in contact with the detainees.

12 Later, as we ran into staffing shortfalls, things
13 that happen, people get injured, some had to go home, I had to
14 rebalance my force and we had to cross-train, partly because
15 of the personnel losses and partly because of the increased
16 operational tempo. There was a significant increase in moves
17 that we had to support for legal meetings and other events
18 with the detainees.

19 Q. And that was -- that increase in tempo occurred at
20 the end of Ramadan, where during the month of Ramadan there
21 was less activity, correct?

22 A. Yes, sir, it was after Ramadan.

23 Q. And when you speak of cross-training -- sorry, let's

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1 back up. First I want to ask you about this occasion where,
2 because of security clearances, you had to move people around
3 in some way. Did that involve taking people from being tier
4 guards and making them -- moving them to escort teams?

5 A. No, sir. It involved taking two soldiers out of the
6 camp headquarters element and moving them to the escort
7 platoon, and then taking two male soldiers from the convening
8 authority platoon and putting them in the camp headquarters.

9 Q. And that was because of -- that was done, made
10 necessary because of a security clearance requirement,
11 correct?

12 A. Correct.

13 Q. Were the soldiers that came out of the headquarters
14 unit females?

15 A. Yes, sir.

16 Q. And were they the only soldiers in the headquarters
17 unit with the proper security clearances, the females?

18 A. Actually it was the other way around, I needed two
19 males with a higher security clearance.

20 Q. Would you explain that answer, please?

21 A. Sir, I needed -- I had two positions in the camp
22 headquarters that required the higher security clearance. So
23 the two females NCOs did not have that because prior to our

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1 arrival we had prioritized the escort platoon for security
2 clearances, so I made the move based on that requirement that
3 I learned when we arrived at Guantanamo.

4 Q. Okay. The -- you describe in your declaration, and
5 it's at pages 1 and 2, recognizing that you don't have it in
6 front of you, but you describe the process by which detainee
7 escort teams are assigned to particular movements for moving
8 detainees from Camp VII. And basically what you said there is
9 that you create a set of teams, of detainee escort teams, and
10 you then cross-walk, was the term you used, I think, those
11 teams with the legal appointment schedules that you have
12 coming up correct?

13 A. Yes, sir.

14 Q. So in other words, you're assigning -- you know that
15 detainee number one has a legal meeting in two weeks on a
16 Monday morning and you're assigning detainee escort team
17 number ten to be responsible for that move and so on. You're
18 going right down that line -- list, rather, of detainee moves
19 and you're assigning teams to those individual moves, correct?

20 A. Sir, in a perfect world it was that neat. But there
21 were last minute requests for meetings, there were other types
22 of moves that would come up at the last minute. So yes, we
23 had a list, and yes, we had a plan and we would have to adjust

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1 that plan based on external factors and whether or not
2 individual detainees chose to accept their appointment on the
3 day of the appointment.

4 Q. Yes. And I'll represent to you that you made that --
5 you made that explanation in your declaration. You said
6 sometimes a detainee will, on the -- when the day comes
7 around, a detainee will refuse his attorney meeting, let's
8 say, and so that movement with that escort team is no longer
9 required, and in that situation you would simply move that
10 escort team to the next one down and all the rest would just
11 kind of rotate downward or shift downward on the schedule; is
12 that correct?

13 A. Yes, sir.

14 Q. And you can do that because of the -- because of the
15 training to the same standards that we referred to previously;
16 you can just put a different team in there if that movement is
17 no longer necessary, correct?

18 A. Each team was staffed with the same roles and they
19 were trained, so it didn't matter which detainee they were
20 moving.

21 Q. Yes, ma'am.

22 A. So yes.

23 Q. That was my -- that was my question. And the -- the

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1 detainee escort teams were all made up of soldiers who were
2 assigned to the escort side of the operation, correct?

3 A. Yes, sir.

4 Q. And could you say approximately how many soldiers are
5 assigned to the escort side?

6 MJ [COL POHL]: Lieutenant Colonel ----

7 LDC [MR. NEVIN]: Is -- that one I can ask.

8 MJ [COL POHL]: Keep this a very general number, do you
9 understand what I'm saying? Do it in a range, an approximate
10 range. Go ahead.

11 A. Approximately 30 percent of the force.

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

13 Q. Okay. And could I say -- and his honor will tell me
14 if I'm asking a question I'm not allowed to ask, Lieutenant
15 Colonel, but I'd like to get at the number of people, a rough
16 idea of the number of people that we're talking about here who
17 are assigned to escort duty. And maybe the thing for you to
18 do is to say, you know, somewhere between 20 and 50 or, I
19 mean, whatever you can -- whatever you feel you can say about
20 that, please.

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

22 MJ [COL POHL]: Objection is overruled. Just give a
23 range.

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1 A. Approximately 30-40 soldiers.

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

3 Q. Okay. Thanks. And how many people on an individual
4 escort team?

5 A. Sir, based on the guidance that I received on force
6 protection, I'm not comfortable providing that exact number.

7 Q. Okay. Let me represent to you that we've had
8 previous testimony ----

9 MJ [COL POHL]: Wait a minute, Mr. Nevin, don't represent
10 previous testimony if it ----

11 LDC [MR. NEVIN]: Right.

12 MJ [COL POHL]: If we found out later it was classified.
13 Just hold it a second, please.

14 LDC [MR. NEVIN]: Okay.

15 MJ [COL POHL]: Trial Counsel, in her declaration on
16 page 4 that's marked unclassified, it appears that there is a
17 response to this exact question that's already been disclosed.

18 TC [MR. RYAN]: Yes, Your Honor. And because it's in the
19 declaration, the information can be testified to.

20 MJ [COL POHL]: Okay. Lieutenant Colonel, this is the
21 judge again. You said earlier that you're not sure you can
22 give out that number.

23 WIT: Yes, sir.

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1 MJ [COL POHL]: In your declaration, it states, and this
2 has been cleared, that a DET, Mr. Mohammad ----

3 LDC [MR. NEVIN]: Your Honor, could you state for the
4 record what you're reading from.

5 MJ [COL POHL]: I'm referring to her declaration which is
6 Attachment B to AE 254EE, it's the one we referred to earlier.

7 LDC [MR. NEVIN]: Yes, sir, I meant where in the
8 declaration.

9 MJ [COL POHL]: Look at paragraph 4. Okay, Lieutenant
10 Colonel, I appreciate your reluctance to make sure you're
11 saying what you should be saying, but in your declaration you
12 indicated that a DET consists of four to six positions, would
13 that being accurate?

14 WIT: Yes, sir.

15 MJ [COL POHL]: And just to let you know, if it is in your
16 declaration, which has been -- which has been reviewed for
17 classified information, you can discuss it. But if you're not
18 sure if it's there or not, give the same kind of answer you
19 did before, "I'm not sure I can say this," then we can clarify
20 it, okay?

21 WIT: Understood, Your Honor.

22 MJ [COL POHL]: Okay. Mr. Nevin.

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

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1 Q. So, ma'am, there are four to six persons on a
2 detainee escort team, according to your declaration, and if
3 you're talking about somewhere in the neighborhood of 30 to 40
4 people overall, you're talking about six or seven teams, six
5 or seven individual detainee escort teams, something like
6 that?

7 TC [MR. RYAN]: Objection, Judge, relevance.

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

9 A. Subtracting the small operations staff, sir, it would
10 probably be closer to six.

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

12 Q. Six. Okay. And now I need to ask you to tell us
13 what percentage of the people in the escort platoon are
14 female.

15 MJ [COL POHL]: Approximate.

16 A. Approximately 10 percent.

17 Q. Ten percent. So that means that a number of the
18 detainee escort teams were comprised entirely of males,
19 correct?

20 A. Correct.

21 Q. Now, do you recall there being a practice of -- let
22 me back up and ask the question this way. It came to your
23 attention at some point during the time you were camp

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1 commander that some persons objected -- some of the detainees
2 objected to being touched by female members of the female
3 guard force, correct?

4 A. Correct.

5 Q. And did that arise -- did that issue arise
6 immediately upon your arrival, or did that occur later?

7 A. It occurred later, sir.

8 Q. And isn't it correct that there was a practice of
9 when a detainee objected to being touched by a woman, such as
10 by shackling or -- such as during shackling, that if there
11 were a male nearby who could perform the same task, that
12 person would be asked to do that?

13 A. Absolutely not, sir.

14 Q. So isn't it true that from time to time if there
15 were, for example, a DIMS operator on the tier who was
16 involved with detainee contact, that if that person were a
17 male, that that person could simply stand in for the -- a
18 female who was about to have physical contact with a detainee,
19 if the detainee objected?

20 A. No, sir. The roles are assigned very specifically
21 and they're performed in a very specific manner for both the
22 safety of the detainee and the soldiers. We don't swap people
23 out because then things are missed and you run into problems.

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1 Q. And wasn't that a process that was followed with tier
2 supervisors?

3 A. No, sir.

4 Q. Well, tier supervisors would be -- by virtue of the
5 fact that they are supervisors, would be trained on all of the
6 tasks that the people on their -- that they are supervising
7 follow, wouldn't they?

8 A. Sir, I had no need to make such moves. I had no
9 female tier supervisors or guards within the facility.

10 Q. No. I'm asking about a situation where a female
11 guard is about to be involved with, let's say, shackling a
12 detainee inside his cell for a movement, and the detainee
13 says, "I would rather not be touched by a female." Wasn't
14 there a practice of saying, well, all right, let's have the
15 tier supervisor do that, if the tier supervisor were a male?
16 Wasn't there a practice -- such a practice in effect?

17 A. No, sir.

18 Q. What -- was there a practice like that in effect
19 before you arrived?

20 A. I can't speak to that, sir.

21 Q. That's not something you spoke to ----

22 A. It was not part of the SOP.

23 Q. Is that something -- that's not a conversation that

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1 you had -- just so I'm clear, that's not a conversation that
2 you had with the lieutenant colonel whom you took over from?

3 A. No, sir. He had no female guards, either. There
4 would be no occasion for such a conversation.

5 Q. He had no female guards at all? I'm sorry. That
6 was -- I apologize again for the delay, but ----

7 [VTC feed disconnected.]

8 MJ [COL POHL]: On that note, we'll take our 15-minute
9 recess. The commission is in recess for 15 minutes.

10 [The R.M.C. 803 session recessed at 1036, 8 December 2015.]

11 [END OF PAGE]

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