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1 [The R.M.C. 803 session was called to order at 1101,
2 8 December 2015.]

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

6 Mr. Bin'Attash, you asked about that order, and
7 again, I'm not quite sure why it didn't get to you as quickly
8 as it did, but, Ms. Bormann, here's a copy of it. It is in
9 English. I indicated that it would be your responsibility to
10 translate it for him.

11 LDC [MS. BORMANN]: Pursuant to your ruling in AE 013 --
12 018, sorry ----

13 MJ [COL POHL]: Okay.

14 LDC [MS. BORMANN]: ---- all pleadings ----

15 MJ [COL POHL]: Yeah.

16 LDC [MS. BORMANN]: ---- must be marked "Releasable to
17 Detainee" before I'm permitted to provide it to him.

18 MJ [COL POHL]: Correct. You're correct. I thought we
19 had written that on it. This is now releasable to the
20 detainee.

21 LDC [MS. BORMANN]: Okay.

22 MJ [COL POHL]: As it says in the order itself, he will be
23 given an Arabic copy of it, so the order says yes. You will

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1 get the electronic version, of course, also.

2 LDC [MS. BORMANN]: Okay.

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

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

5 **DIRECT EXAMINATION CONTINUED**

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

7 Q. Lieutenant Colonel, I hope you can hear me now. When
8 the screen froze up at the end of -- before our break, I had
9 asked you for clarification whether it was your understanding
10 that the previous camp commander before you took over Camp VII
11 had no female guards in the guard force at Camp VII.

12 A. Yes, sir.

13 Q. And what about the -- or do you know whether there
14 were females in the guard force with the -- immediately
15 previous before that commander, during that time?

16 A. I don't recall, sir. I did -- when I was down there,
17 I did review the staffing prior to submitting the declaration,
18 but I don't recall exactly what time frames there were female
19 personnel assigned to that facility, but there were, and --
20 but exactly when, I don't know at this time.

21 Q. And can you give us a rough idea going back how far
22 there were no female guards? Excuse me.

23 A. As I recall, the records were from the time that the

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1 facility -- that the Department of Defense was responsible for
2 the facility, sir.

3 Q. And so just as a point of reference, Lieutenant
4 Colonel, I've been coming here since 2008. Would it have
5 extended back that far?

6 A. Yes, sir.

7 Q. So when you -- and you've spoken of being controlled
8 by SOPs in your operation of the camp, but just a point of
9 clarification here: The SOPs are not actually provided to the
10 detainees, are they?

11 A. No, sir.

12 Q. And have you -- well, you haven't served in other
13 detention facilities, but have you, based on training,
14 perhaps, learned whether that is a standard practice in other
15 detention facilities?

16 A. Sir, the SOPs govern guard force operations. The
17 detainees are advised of rules of the facility, and they are
18 provided with those rules. Those rules pertain to their
19 behavior. But the SOPs govern the guard force procedures and
20 how the facility is run. The detainees have no required
21 action in them. They follow the rules.

22 Q. So I'm clear, the detainees are not allowed to know
23 what rules govern the guard force, they are only allowed to

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1 know what rules govern them; is that what you're saying?

2 A. I'm saying the detainees are not privy to the
3 procedures that the guards use for the safety and security of
4 the guard staff. That would not be a viable course of action.

5 Q. So are the detainees privy to the requirements of the
6 SOP Number 39 that I referred you to before, the requirements
7 for not touching the Quran, matters of that sort?

8 A. The detainees were aware of that, sir, well before I
9 got there. They know that the guard force will do certain
10 things and won't do certain things.

11 Q. And do -- it's true, isn't it, that the detainees
12 have -- that the detainees we're talking about, the ones at
13 Camp VII, have been there since at least September of 2006, so
14 coming up on -- coming up on ten years now, correct?

15 A. The detainees arrived at different times, but they --
16 I'll definitely agree that they have been there for a while,
17 yes, sir.

18 Q. And they had dealt with many guard forces before your
19 guard force arrived, correct?

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

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

22 A. Sir, there are rotations. The detainees track them
23 very well, and that is the reason that you have SOPs, to

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1 provide some standardization across rotations.

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

3 Q. All right. These are -- you're referring to the SOPs
4 that you change, that each guard force or commander changes,
5 correct? Those are the SOPs?

6 A. Sir, while there are modifications made based on
7 changes that occur, they're not -- they're not wholesale
8 changes, if that's what you mean.

9 Q. No, I just meant that you change the SOPs. You said
10 that was part of your duty as the -- as the Camp VII commander
11 was to review those and make changes to them?

12 A. Roger, sir, to make sure that they actually reflect
13 what the operation requires. And some of the changes are
14 beneficial to the detainees, and other times they may or may
15 not agree with them, sir.

16 Q. Yes, but the changes occur constantly and frequently;
17 isn't that true?

18 A. Sir, they're not arbitrary, and if there was a
19 significant change to an SOP, that would -- that would trigger
20 a camp commander to speak to the detainees and let them know
21 that there was a change.

22 Q. And was that your practice?

23 A. Yes, sir.

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1 Q. We've spoken a bit -- we've spoken a bit about the
2 detainee escort teams. I want to ask you just a couple of
3 questions about the tier guards or the component of your force
4 that is -- that works on the tier, as opposed to on the escort
5 side.

6 Is it correct that tier guards are composed or
7 arranged in teams also?

8 A. They are assigned to shifts, sir.

9 Q. Right. And it's correct, isn't it, that some of the
10 shifts are comprised entirely of males?

11 A. They were, yes, sir, when I was there.

12 Q. Yes. And all of the questions that I'm asking you,
13 even if I haven't said otherwise, they're all intended to be
14 addressed to the time when you were the camp commander, unless
15 I specify otherwise.

16 So let me just ask, then: There is a process within
17 Camp VII where each detainee's cell is searched every day;
18 isn't that true?

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

20 MJ [COL POHL]: What's the relevance of this? We're
21 talking about touching the detainees during movements.

22 LDC [MR. NEVIN]: Well, there is an issue of touching
23 detainees within -- may I speak to this outside the presence

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1 of the witness? If it makes any difference in terms of
2 logistics, I don't ----

3 MJ [COL POHL]: I'm just trying to figure out ----

4 LDC [MR. NEVIN]: ---- intend to do this for hours. I
5 just have a few questions on this subject.

6 MJ [COL POHL]: Okay. I'll give you a little bit of
7 leeway. Objection overruled.

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

9 Q. So I believe my question was: Isn't it correct that
10 detainee cells are searched every day?

11 A. There was -- yes.

12 Q. Okay. And there is a movement, there is a -- the
13 detainee is required to be removed from his cell when the
14 search occurs, correct?

15 A. Yes.

16 Q. And that requires shackling and being moved from the
17 cell to another location, correct?

18 A. The exact procedures depend on where in the facility
19 they're moving, sir.

20 Q. Right. But the point I'm getting at is this: The
21 people who move the detainee at that time are going to be part
22 of a team that has that job, and sometimes that team is
23 comprised only of males, correct?

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1 A. Yes.

2 Q. And isn't it true that detainees have some ability to
3 control the time when those searches occur, so the detainees
4 can say, you know, I'd rather have that done tonight or in the
5 morning, or something to that effect, correct?

6 A. Sir, the staff decides when the cell will be
7 searched.

8 Q. And is it your testimony that the detainee has no say
9 in that, in the timing of that?

10 A. What I'm struggling with, sir, is there is a way that
11 the detainee can manipulate that, but I don't know that it's
12 proper to get into that exact procedure, sir.

13 Q. Let me ask the question this way, and see if this
14 will avoid the concern you have.

15 There are times when the guard force that would
16 interact with the detainee is comprised entirely of males for
17 a move to support a cell search; that's correct, isn't it?

18 A. Yes, sir.

19 Q. And the -- and that's done -- that arrangement, let's
20 say, is done purposely, so that in order to support a move of
21 that sort, there's not a requirement for a forced cell
22 extraction, correct?

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

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1 MJ [COL POHL]: Sustained.

2 Q. Well, your guard force -- when you were the camp
3 commander, your guard force -- your guard force could, at
4 times, accommodate a cell search without requiring a female
5 guard to be in contact with a male detainee; that's true,
6 isn't it?

7 A. Sir, as I've stated, I had no female guards. We did
8 not -- we did not change guards to accommodate a detainee,
9 whether or not a detainee liked a particular guard or didn't
10 like a particular guard. Whoever was assigned to the tier did
11 the moves and did the cell searches.

12 Q. Maybe I've misunderstood. You said you had no female
13 guards?

14 A. I had no female guards within the facility.

15 Q. Did you have any females of any type within the
16 facility?

17 A. Yes.

18 Q. But not guards?

19 A. Correct.

20 Q. And what positions were held by females within the
21 facility?

22 A. Well, they were in the camp operations section,
23 myself, and I had a couple of females who were the camp

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1 librarians, mail clerks.

2 Q. But no females who were actually serving as guards on
3 the tier, then?

4 A. That's correct.

5 Q. And was that by design, or was that by chance?

6 A. That was because the majority of my force was male,
7 based on the initial guidance that we had for the deployment
8 manning document.

9 Q. You mean the majority of the force was male because
10 of the manning document?

11 A. Yes, sir. When we were given our mission, we were
12 given a deployment manning document we later found -- were
13 told was out of date, but it had a male-only stipulation that
14 we had to have clarified before any females could go down
15 there.

16 Q. Oh. So the deployment manning document, meaning the
17 document that you worked from when you put the force together
18 that would come to Guantanamo, had a restriction in it that
19 said males only in some or all positions?

20 A. The document we had had all of the positions, sir,
21 and then we received guidance as we were filling ----

22 MJ [COL POHL]: Just a second. Go ahead. Go ahead,
23 ma'am.

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1 Q. Sorry, we had some noise in the courtroom and we
2 stopped for that. If you could continue your answer, please.

3 A. Understood. The deployment manning document we
4 received had a male-only stipulation that was later -- that,
5 as we were filling the roster, was clarified that that was not
6 a current stipulation. So then we were able to assign
7 females, to include myself, to the mission.

8 Q. And who made the decision that the male-only
9 stipulation would be removed, if you know?

10 A. That was outreach that our headquarters had that the
11 guidance that came back through the mobilization station from
12 the SOUTHCOM and the JTF was the way it was explained to us.
13 I do not personally know who was spoken to, sir.

14 Q. Okay. But if I understand your last answer
15 correctly, you or someone -- I'm sorry, it was outreach from
16 your unit. Was that outreach that was conducted by you or by
17 someone else in the unit?

18 A. I reached up to our state headquarters at that point.
19 I was assigned to our brigade -- the brigade headquarters, the
20 higher headquarters for the battalion at the time, and we
21 reached out for clarification because we were having
22 difficulty filling the deployment manning document with the
23 restrictions.

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1 Q. And did that -- was that because your Massachusetts
2 National Guard unit was comprised of a certain number of men
3 and women such that it was -- is that what led to the
4 difficulty, just because of the number of men and women you
5 had in your group?

6 A. Sir, the difficulty was that the restriction put --
7 basically didn't allow us to tap into approximately 18 to
8 20 percent of our force, meaning all of the females assigned
9 to the MPs.

10 Q. All of the females within the Massachusetts National
11 Guard unit, being 18 to 20 percent of the total force, you
12 weren't allowed to use them because of that restriction,
13 correct?

14 A. That would be across the battalion, sir, the four
15 units that we had to pull from to fill this, yes.

16 Q. Okay. And was -- that request for a change, was that
17 something you initiated?

18 A. Yes. I made an inquiry because it didn't make sense
19 with how we normally operate. So yes, I pushed it up to our
20 state headquarters. The battalion questioned it, I questioned
21 it, pushed it up to our state headquarters. Then there's
22 mobilization teams that reach out through the change of
23 command, and they reached out to get us the answer.

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1 Q. Okay. And do you know where the answer came from, as
2 you sit there today?

3 A. My understanding was that it routed through SOUTHCOM
4 to the JTF, came back to us, and was clarified that that was
5 not our current policy.

6 Q. Even though we know from your testimony that the
7 prior guard force had been entirely comprised of males?

8 A. Correct.

9 Q. Okay. So when you were told that that was no longer
10 a requirement, someone obviously made a decision between the
11 time of the prior guard force and the time you made your
12 inquiry, correct?

13 A. I don't know that to be the case, sir. I -- we were
14 operating off of an outdated deployment manning document. The
15 unit before us may have been doing that as well, and they may
16 not have questioned it. I don't know when the change was made
17 from when that manning document was established to when it was
18 determined that it did not have a male-only stipulation.

19 Q. I see. But the information, if I'm understanding you
20 correctly, came as a result of you inquiring. It did not --
21 this change was not relayed to you spontaneously from the
22 chain of command?

23 A. No, sir. It's a very bureaucratic process for

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1 deployment manning documents to be changed. There was an
2 assumption by the chain of command in the Joint Detention
3 Group prior to my arrival that the deployment manning document
4 had been changed to include the rank of the camp commander,
5 that it -- they had requested that it be reduced to a major.
6 That hadn't been codified in the deployment manning document
7 that we received.

8 So changes were in the pipeline. I don't know
9 exactly where.

10 Q. You were a lieutenant colonel at the time?

11 A. Correct.

12 Q. Okay. Now, you said you reviewed the records going
13 back for as long as the Department of Defense had control or
14 was responsible for the facility, I think you said.

15 At what point -- how far back did you go? When did
16 the Department of Defense have responsibility for this
17 facility?

18 A. Sir, I recall reviewing records that went back to
19 about 2007, 2008, in that time frame. I'm not exactly sure.
20 It was 2007, 2008.

21 Q. And your testimony is that those were all Department
22 of Defense records?

23 A. Yes, sir. The Navy was there before the Army.

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1 Q. Well, I won't represent to you that a prior witness
2 testified to this, but there are -- detainees are moved for
3 cell searches -- you and I have already discussed that -- for
4 legal meetings, and to come to commission hearings. They also
5 are moved for DSMP and for recreation, to the rec area, and
6 they are moved for medical appointments, and they are moved to
7 the media cell.

8 Is that the sum total of all of the places that
9 the -- and reasons that the detainees are moved?

10 A. Those are the standard reasons for a move, sir.

11 Q. Okay. That's what I -- thank you. I meant under
12 ordinary circumstances.

13 So could you say what percentage of the moves, of all
14 of those moves, movements, involve moving for legal meetings
15 and for commissions hearings?

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

17 MJ [COL POHL]: What's the relevance?

18 LDC [MR. NEVIN]: I believe one of the Turner factors is
19 the impact that it has on the institution, and I think this
20 would give us an idea to what extent accommodating the
21 Court's -- at least the Court's interim order, it would give
22 us an idea of the impact that this imposes on the
23 organization.

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1 MJ [COL POHL]: Okay. Just to make it clear, the interim
2 order only addresses legal meetings, correct?

3 LDC [MR. NEVIN]: Yes.

4 MJ [COL POHL]: And that's all you want to be resolved?

5 LDC [MR. NEVIN]: Well, no, no, no. Commissions hearings
6 and legal meetings. And that was my -- that's what I asked
7 her, I said essentially what percentage of all of the moves is
8 that.

9 MJ [COL POHL]: I know what the order said. I'm just
10 saying it doesn't discuss any of this other stuff and you're
11 not asking for relief on the other stuff.

12 LDC [MR. NEVIN]: Well, no. I don't know that I'm not
13 asking for relief on the other stuff, but ----

14 MJ [COL POHL]: Yeah.

15 LDC [MR. NEVIN]: ---- I guess what I'm getting at is, is
16 a meeting -- a movement to the commissions or to a legal
17 meeting, is that something -- is that one in a hundred moves;
18 if so, then you're not in a position to say it's much of a
19 problem. If it's nine out of ten ----

20 MJ [COL POHL]: You still ----

21 LDC [MR. NEVIN]: ---- it's a bigger problem.

22 MJ [COL POHL]: I understand that, Mr. Nevin. If the
23 issue is movement to legal meetings and commission hearings

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1 and you're not asking for relief in other meetings ----

2 LDC [MR. NEVIN]: No, I think 254Y goes to all of it.

3 MJ [COL POHL]: So then the percentage doesn't make a
4 difference then if you want relief for medical meetings and
5 all of this other stuff, too.

6 LDC [MR. NEVIN]: Well, right. I want relief for all of
7 them, but I think it's -- inasmuch as the military commission
8 took the course of -- I understand the military
9 commission ----

10 MJ [COL POHL]: I understand what I carved out. Okay.
11 You can go ahead. I understand -- I just wanted to make it
12 clear what ----

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

14 MJ [COL POHL]: ---- the issue in dispute is.

15 The objection is overruled. You may answer the
16 question.

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

18 Q. So let me just say it again so maybe it's a little
19 clearer. You moved detainees out of their cells for a variety
20 of different reasons, including moving them to military
21 commissions or to legal meetings. And what I would like, if
22 you could, is a very rough estimate of what percentage of all
23 of the movements is the legal and commissions.

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1 A. Sir, I'm unable to give you an estimate on that. The
2 reason being is the operational tempo for the legal meetings
3 changes, and the commissions schedules change and are canceled
4 at times. What I would recommend is that's something that's
5 well documented in the records for the camp operations, and
6 they could give you the exactly the information that you're
7 looking for.

8 Q. Lieutenant Colonel, you described an obligation to
9 treat these detainees humanely, and I want to ask you if that,
10 in your mind, includes understanding their circumstances, the
11 circumstances of their detention before they came to Camp VII.

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

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

14 A. Sir, I dealt with the detainees as I knew them, while
15 I was there at the facility. If they raised concerns,
16 requested special accommodations based on some individual
17 issues, that is something that I would listen to and work with
18 the chain of command to see if it would be accommodated.

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

20 Q. Well, Lieutenant Colonel, have you had occasion to
21 read the report that the Senate Select Committee on
22 Intelligence released about the CIA's torture program that
23 these men were all in?

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

2 MJ [COL POHL]: Sustained.

3 A. I know of the report ----

4 MJ [COL POHL]: No, don't answer the question. Next
5 question.

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

7 Q. Okay. Well, do you -- on deciding what's humane,
8 wouldn't you agree that it's important to know what people's
9 sensitivities are, what particular problems or issues they may
10 have based on prior events before they can -- they come to
11 you?

12 TC [MR. RYAN]: Objection, relevance to the issue before
13 this commission at this time.

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

15 A. Sir, I had general knowledge of their background. I
16 had -- if the detainees chose to tell me something about any
17 additional issues, then -- and requested accommodation, I
18 would accommodate it. That would be treating them humanely.

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

20 Q. Well, you made a decision that the detainees would be
21 placed into contact with female guards in a way that they had
22 not been previously. When you made that -- when you made that
23 decision, and taking into account your goal of providing

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1 humane treatment, did you consider the fact that these
2 detainees had been tortured in part by having women be
3 involved in the torture in a way that was offensive and
4 frightening and compelling to them?

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

6 MJ [COL POHL]: Overruled. You can answer the question.

7 A. Sir, first of all, the report that you reference came
8 out after we had started this process. And as far as why
9 decisions were made to use the female guards, they were based
10 on the operational factors of these qualified soldiers that I
11 had available to me at the time.

12 So no, I did not dig into the background of every
13 individual detainee. That would be an unmanageable process
14 every time we had to make an operational decision.

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

16 Q. Well, I'm not talking about every individual
17 detainee. I'm talking about -- I'm talking about people who
18 raised a complaint to you that they didn't want to be touched
19 by women, that they would prefer not to be touched by women.
20 Did you ask them why?

21 A. Sir, the individuals who raised the question said
22 that it was based on their cultural and religious beliefs.

23 Q. Right.

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1 A. The -- not all of the detainees had the same -- had
2 the same concerns, so there were individual interpretations of
3 what they felt was inappropriate, and that is not a reason to
4 adjust an operational decision.

5 Now, that was made not just by me. That was made in
6 consultation with the cultural advisor after the issues had
7 been raised.

8 Q. When you say -- and when you say "cultural advisor,"
9 who are you referring to?

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

11 A. I ----

12 MJ [COL POHL]: Just a second. Basis, Mr. Ryan?

13 TC [MR. RYAN]: The person's identity is irrelevant to
14 these proceedings and this matter, Judge.

15 MJ [COL POHL]: Identify by position, not name. Okay.

16 TC [MR. RYAN]: Yes, sir. She stated cultural advisor,
17 and I think Mr. Nevin's question was to go to the next step of
18 who is that person.

19 MJ [COL POHL]: Don't give us that name. Next question,
20 Mr. Nevin.

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

22 Q. This is a cultural advisor that's part of Camp VII,
23 part of the Joint Detention Group. Tell -- say more that

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1 would allow us to determine who it is you're talking about
2 without using the person's name.

3 A. He's a staff -- he's in support of the Joint Task
4 Force, Joint Task Force-Guantanamo.

5 Q. And did this person tell you that close contact with
6 unrelated females is culturally inappropriate?

7 A. Sir, I don't recall the details of the exact
8 conversation, but the gist of it was that we were performing
9 professional duties in a professional manner, these were
10 not -- it was not casual, social contact, and that it was
11 reasonable to use my trained soldiers in that fashion.

12 Q. And did you -- did you discuss the JDG SOP Number 39
13 with the cultural advisor, the one that says close contact
14 with unrelated females is culturally inappropriate; the one
15 that doesn't refer to casual contact, but is talking about
16 guards and detainees interacting in the course of their
17 professional duties?

18 A. Sir, he was -- he was aware of all of that. I was
19 aware of that. But we also -- I also was dealing with the
20 operational challenge of a reduced guard force, laid out the
21 reasons there. There was no policy saying that the female
22 soldiers assigned to those duties could not perform those
23 duties.

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1 Q. Well, what about this -- what about this SOP right
2 here that says "close contact"? You're talking about
3 touching; that's pretty close contact, isn't it? It says,
4 "Close contact with unrelated females is culturally
5 inappropriate," but you did it anyway?

6 A. Because there was an operational need, sir.

7 Q. Well, isn't it an operational need to provide food at
8 the least possible cost? You accommodated other operational
9 needs. Why not this one?

10 TC [MR. RYAN]: Objection, Your Honor, relevance and
11 argumentative.

12 MJ [COL POHL]: Sustained.

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

14 Q. Well, why not accommodate this one?

15 TC [MR. RYAN]: Objection, Your Honor, asked and answered.

16 MJ [COL POHL]: Sustained. She's already told you her
17 reasoning for it. You disagree with it.

18 LDC [MR. NEVIN]: No, she ----

19 MJ [COL POHL]: She said, "I didn't accommodate this for
20 operational needs." She said it I don't know how many times.
21 That's her answer.

22 LDC [MR. NEVIN]: Because she needed to.

23 MJ [COL POHL]: That's her answer. You can ask it again

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1 and again. It's the same answer.

2 LDC [MR. NEVIN]: I don't mean to ask her to say that
3 again and again, but I do -- I guess I want to get at whether
4 there was some other analysis.

5 I mean, there are other -- she describes these other
6 occasions of accommodating these ----

7 MJ [COL POHL]: She made a ----

8 LDC [MR. NEVIN]: ---- following the SOPs and ----

9 MJ [COL POHL]: And she has ----

10 LDC [MR. NEVIN]: ---- why not this one?

11 MJ [COL POHL]: But, Mr. Nevin, I got it. But she has
12 answered the question a number of times.

13 LDC [MR. NEVIN]: Okay.

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

15 Q. So you've told us already that the -- some of the
16 detainees -- excuse me, detainee escort teams were all male,
17 right?

18 A. Yes, sir.

19 Q. And you've told us that if a detainee refuses to be
20 moved on a particular occasion or, you know, refuses a visit
21 or something like that, you just rotate them down the list,
22 and put the next -- put that team on the next movement,
23 correct?

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1 MJ [COL POHL]: Mr. Nevin, you're repeating yourself.

2 We've got all of this. We've heard this before.

3 LDC [MR. NEVIN]: Well, why not ----

4 MJ [COL POHL]: How many times are we going to hear the
5 same thing?

6 LDC [MR. NEVIN]: Well, why not -- let me ----

7 MJ [COL POHL]: I understand.

8 LDC [MR. NEVIN]: Let me just pose this question.

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

10 Q. Why not have -- why not just, when a detainee escort
11 team with a woman on it comes up and a detainee objects, why
12 not just use the next one? I didn't ask that.

13 MJ [COL POHL]: I'll let you ask that question. I think
14 it's already been answered. Ask that question and she will
15 give the answer and we'll move on to something else. That's
16 new. Go ahead. Ask that question.

17 LDC [MR. NEVIN]: Okay.

18 MJ [COL POHL]: Did you hear the question, ma'am?

19 WIT: I did, sir.

20 A. The reason that we don't -- well, for no -- there is
21 no reason that the detainee can ask for different guards or
22 different escort teams. They can -- they can't do that.
23 That's an issue that, one, operationally, that's not

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1 manageable because we can't accommodate individual detainees.
2 We're trying to support the entire camp operation.

3 Secondly, that if the detainees were able to do that,
4 then they could start managing that they would have more
5 frequent contact with certain guards, and then that is a
6 concern I would have as the camp commander, because then I
7 have to watch for guards that they might try to compromise and
8 then try and work to get them to do things for them.

9 The -- and I believe it's in my declaration,
10 specifically that sense of randomness that could happen based
11 on variables that occurred during the day of a move helped
12 guard against that, sir. So no, we wouldn't -- just because a
13 detainee says I don't want this guard force for this
14 detention -- detainee escort team for whatever reason, we
15 wouldn't just give them another team. That other team might
16 be engaged for a different move to a different location.

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

18 Q. Well, yes. Although, the next team in line, you
19 would assign that next team in line if the person didn't need
20 to be moved, so there clearly is another team waiting and
21 available for you, if this person ----

22 MJ [COL POHL]: She's answered the question, Mr. Nevin.
23 Move on to something else.

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1 LDC [MR. NEVIN]: Yeah.

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

3 Q. You understand, I'm not asking about an attempt to
4 always be with Mr. Smith or Mr. Jones when I get moved. I'm
5 talking about a request not to be touched by a woman. You
6 understood that was my question, right?

7 A. I understood that's your question, sir, but that
8 opens the door for other accommodations based on individual
9 feelings.

10 Q. And just so we're clear, you were not given training
11 on what these men experienced in the CIA's torture program,
12 correct?

13 A. No, sir.

14 Q. And did I understand you correctly to say that the
15 fact that they were sodomized by government agents, the fact
16 that they were humiliated ----

17 MJ [COL POHL]: Mr. Nevin, are you asking a question or
18 making a statement?

19 LDC [MR. NEVIN]: Both.

20 MJ [COL POHL]: Okay. Take the statement part out and ask
21 a question.

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

23 Q. Do I understand you to be saying that the details of

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1 the treatment they received, which include -- included being
2 sodomized and included ----

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

4 MJ [COL POHL]: Sustained.

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

6 Q. And included being -- that none of that was ----

7 MJ [COL POHL]: No. When I sustain an objection, that
8 means you have to ask another question.

9 LDC [MR. NEVIN]: Okay. Do I understand you to be saying
10 that the treatment -- so I'm not allowed to say what the SSCI
11 report -- the SSCI report is a ----

12 MJ [COL POHL]: Okay. I didn't say that. This witness
13 just said, I didn't read the report.

14 LDC [MR. NEVIN]: What's the objection that was sustained,
15 then? I'm sorry.

16 MJ [COL POHL]: Because what's the relevance of your
17 question? You say because -- you're telling me, you've turned
18 it into a statement of how they were treated.

19 LDC [MR. NEVIN]: Yes.

20 MJ [COL POHL]: And I don't have any objection to that at
21 the appropriate time. This witnesses stated, "When I made
22 this change, I hadn't read the SSCI report." Okay? You asked
23 the same question again.

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1 LDC [MR. NEVIN]: Yes, but the SSCI report is not the only
2 way for her to acquire information. I want to make the
3 point ----

4 MJ [COL POHL]: She's already ----

5 LDC [MR. NEVIN]: I want the record to be clear with her,
6 that she did not -- that she was not advised of the ----

7 MJ [COL POHL]: Okay.

8 LDC [MR. NEVIN]: ---- prior treatment that they received.

9 MJ [COL POHL]: And you don't think she has answered that
10 question before? Okay. I'll do it.

11 Colonel, were you advised of their prior treatment in
12 U.S. custody?

13 WIT: No, sir.

14 MJ [COL POHL]: Thank you.

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

16 Q. And did you make any effort to learn it?

17 A. Sir, I made the effort to run the facility, the
18 detention operation facility, safely, securely and humanely as
19 I could during the time that I was there with the information
20 that I knew about the detainees based on my training and based
21 on what the detainees disclosed to me.

22 Q. And your sense is that the idea of humane treatment
23 didn't require you to go try to determine what had happened to

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1 them previously, and why that might be affecting their
2 reaction to being touched?

3 TC [MR. RYAN]: Objection, relevance, Your Honor, asked
4 and answered.

5 MJ [COL POHL]: Sustained on both grounds.

6 LDC [MR. NEVIN]: Thank you. I don't have further
7 questions. Thank you, Lieutenant Colonel.

8 MJ [COL POHL]: Thank you.

9 I tell you what we're going to do is because we're
10 getting close to lunch anyway, rather than start an
11 examination, end it. We'll break for lunch now. It's now
12 1142. We'll reconvene at 1315. And during that period of
13 time, if the accused wish to pray, they are to pray; but I
14 want to start promptly at 1315, and please have the witness
15 available at that time.

16 LDC [MR. NEVIN]: You said one-five, not five-zero?

17 MJ [COL POHL]: 1315.

18 LDC [MR. NEVIN]: Thank you.

19 MJ [COL POHL]: 1315. Commission is in recess.

20 [The R.M.C. 803 session recessed at 1144, 8 December 2015.]

21 [END OF PAGE]

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