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1 [The R.M.C. 803 session was called to order at 1529,  
2 8 December 2015.]

3 MJ [COL POHL]: The commission is called to order. It  
4 appears all parties are again present that were present when  
5 the commission recessed. The witness is still on the stand.

6 Mr. Ryan.

7 TC [MR. RYAN]: Could we bring up the picture in the  
8 courtroom, please?

9 Picture's on the big screen. Your Honor, if I can  
10 proceed, sir?

11 MJ [COL POHL]: Go ahead.

12 **CROSS-EXAMINATION CONTINUED**

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

14 Q. Colonel, can you hear me?

15 A. Yes, sir.

16 Q. All right. We dropped off there a few moments ago,  
17 so we're just going to continue on. If it happens again,  
18 we'll just make do.

19 Ma'am, I'm directing your attention now to the times  
20 in the course of your career in the military when you said you  
21 were on deployments during Desert Shield and Desert Storm.  
22 During those occasions, were you involved in law enforcement  
23 that might put -- that would involve detainees of the Islamic

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1 faith?

2 A. Yes, sir. We actually -- one of the missions my unit  
3 had was to collect up the stragglers that were -- from the  
4 Iraqi Army that were escaping, running away, basically  
5 disjointed from the -- because of the battle, and we would  
6 collect them up and then arrange for transport back to the  
7 detention facilities in the rear.

8 Q. In the course of those occasions in your career, did  
9 you have situations where there were female servicemembers who  
10 were put in positions of physical contact with such detainees?

11 A. Yes, sir.

12 Q. Did you have these problems before?

13 A. I'm not -- which problems, sir?

14 Q. I'm sorry. I should be more clear.

15 A. The complaints?

16 Q. Did you have problems of people objecting to such  
17 contact because of their Islamic faith?

18 LDC [MR. NEVIN]: Objection, relevance.

19 DDC [Maj SCHWARTZ]: Objection.

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

21 A. Sir, we had received -- as prior to this deployment,  
22 we had received cultural awareness training, and we did  
23 everything we could within operational limitations to make

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1 accommodations, even in a field environment. And no, we did  
2 not have any complaints; and yes, we had females, to include  
3 myself, who had to put our hands on the detainees at that  
4 time.

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

6 Q. So even you, yourself, personally had to do it on  
7 occasions in the course of your career?

8 A. Yes, sir. And we explained what we were doing. The  
9 majority of the Iraqis that we dealt with actually understood  
10 English.

11 Q. Now, directing your attention, ma'am, back in this  
12 deployment that is here in Guantanamo in Camp VII. It was  
13 later in the course of the deployment, I believe you  
14 testified, that the issue of having to have females under your  
15 command be in physical contact with these detainees; am I  
16 correct?

17 A. Yes, sir.

18 Q. And once that happened, you testified some objected,  
19 some did not; am I correct?

20 A. That is correct, sir.

21 Q. Is it even correct to say that some seemed to prefer  
22 having females contact them?

23 A. Based on their actions, yes, sir.

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1 Q. All right. I'll bet.

2 Now, ma'am, in the course of your command of --  
3 essentially any military organization, give us your  
4 understanding of what your obligations are as a commander in  
5 terms of assigning duties to female servicemembers.

6 A. Sir, quite frankly, I don't look at a group of female  
7 servicemembers or male servicemembers. It's soldiers and NCOs  
8 that I have trained for an operation, and my role as a  
9 commander is to use them to maximize our ability to complete  
10 our mission.

11 Q. Do you believe you have an obligation -- or do you  
12 have an obligation to avoid discriminating against any single  
13 person based on their gender?

14 A. Absolutely, sir.

15 Q. Did you always try to follow that in the course of  
16 your career?

17 A. Yes, sir. That's no discrimination based on any sort  
18 of characteristics.

19 Q. As a commander -- forget about the rules for a  
20 moment, but as a commander, is it your experience over the  
21 course of your career that it works out simply better that  
22 way, that the right person for the right job does not depend  
23 on gender?

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1       A.   Yes, sir.

2       Q.   Now, in the course of your command here at Camp VII,  
3 there were some questions asked to you as to certain  
4 limitations that did exist.

5           First example, I believe there was a rule against  
6 female servicemembers observing males while they took showers;  
7 is that correct?

8       A.   Yes, sir.

9       Q.   And another one would be a rule against females  
10 conducting body searches of male detainees; is that correct?

11      A.   Yes, sir.

12      Q.   I'll take you out of this specific environment and  
13 ask you: In the course of your military career and your  
14 civilian law enforcement career, are those two examples  
15 prevalent throughout other areas, not just religious based?

16      A.   Yes, sir.

17      Q.   And what is that based on? If it's not religious  
18 based, what is it based on?

19      A.   It's based on protecting their basic privacy, and  
20 males don't generally -- males don't search females and  
21 females don't search males, because it requires an intrusive  
22 search of areas that are considered private. It's not  
23 religious based.

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1 Q. Now, ma'am, you were asked some questions about  
2 something called female engagement teams. Do you recall that?

3 A. Yes, sir.

4 Q. I think one of your answers was that they exist for,  
5 among other reasons, safety of male soldiers. Did you give  
6 that answer?

7 A. I did, sir.

8 Q. Could you explain that for me? Because I didn't get  
9 it.

10 A. The male units, whether infantry or whatever type of  
11 unit they were, would go out into the populace, and because of  
12 the norms and the cultures in the community, in the host  
13 nation, they could not approach females, search them, make  
14 sure they weren't hiding weapons because that would then cause  
15 an out -- it would outrage people, not only the people that  
16 they're dealing with, but the leadership in that community.  
17 So the female engagement teams could do that without violating  
18 those norms.

19 Q. So the attempt to use these female engagement teams  
20 in such circumstances, was that primarily for the purpose of  
21 observing a religious preference, or was it primarily for the  
22 purpose of protecting the male U.S. soldiers or servicemembers  
23 involved in the area?

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1       A.   Sir, my understanding is that it was primarily for  
2 the protection of the soldiers, and then the females could  
3 also talk to the females in the host nation and potentially  
4 get additional intelligence that the males would not be able  
5 to get, so for mission accomplishment. That is my  
6 understanding of those practices.

7       Q.   So protection of the male servicemembers and also the  
8 further obtaining of information from females by females, are  
9 those both legitimate military goals for the U.S.?

10      A.   Yes, sir.

11      Q.   There was a question asked about you -- asked of you  
12 regarding shower situations, as I just referred to, where a  
13 female would not be allowed to stand and watch a male take a  
14 shower. Do you recall that?

15      A.   Yes, sir.

16      Q.   And the question was -- or the statement was a switch  
17 could be made, where a male would come down and watch and the  
18 female would go and do something else. Do you recall that?

19      A.   Yes, sir, but just to clarify ----

20      Q.   Please.

21      A.   ---- we didn't have to -- we wouldn't have to make an  
22 actual switch. We had redundant monitoring. So it would just  
23 be a matter of the female would let the male know she wasn't

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1 watching -- she didn't have visibility of the camera, based on  
2 the detainee's activities.

3 Q. Now, the implication was made as to if it can be done  
4 for a shower situation, it can be done for an escort  
5 situation; is that correct?

6 A. That was insinuated, sir, but it's not -- it's not  
7 correct.

8 Q. Why not? Why doesn't that work?

9 A. Because having two people who are watching a camera  
10 anyway coordinate where one is not watching the camera doesn't  
11 take anyone away from their duty, nor does it require them to  
12 perform any sort of functions that they don't normally do.

13 If you were to swap out, in my case they were the  
14 team leaders for the detainee escort teams, and suddenly have  
15 that team leader do something different and other people step  
16 in and do her role, then you miss steps. It's a very boring  
17 process of doing the same thing over and over again, and that  
18 first-line leader is essential to make sure that complacency  
19 doesn't set in, that people don't just get into a routine and  
20 skip steps.

21 So when you start changing it up based on gender or  
22 any other characteristic, you're making it more likely that  
23 there will be -- mistakes will be made.

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1 Q. And a person in a position of performing those boring  
2 duties, as you called it, is that -- are there requirements of  
3 rank and other -- say, clearance, as an example?

4 A. Yeah. Probably a better word would have been  
5 "routine," but it does get boring. But, yes, there are --  
6 there's very specific ranks, and that's where you have  
7 noncommissioned officers who have supervisory experience and  
8 the authority to direct the soldiers that are subordinate to  
9 them.

10 Q. Ma'am, in recent past years, have you seen,  
11 throughout the military, the opening of more positions and  
12 opportunities for female servicemembers?

13 A. Yes, sir, right up until a couple of days ago.

14 Q. In fact -- before I get to that, you remember a few  
15 years ago something that came from then Secretary of Defense  
16 Panetta in that regard?

17 A. Yes, sir.

18 Q. It may not be exact, but was it in somewhere  
19 generally the rough time period leading up to the point at  
20 which your unit would be deploying to Guantanamo?

21 A. Yes, sir.

22 Q. And you made reference a few moments ago, what  
23 happened in recent days?

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1 Did you hear my question, ma'am?

2 MJ [COL POHL]: Go ahead and repeat it, Mr. Ryan.

3 A. I thought there was more coming, sir.

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

5 Q. What did happen in recent days?

6 A. Sir, yes, that the combat units, combat roles were  
7 opened up. All combat roles were opened up to women, to  
8 female servicemembers.

9 Q. Ma'am, in your position, is it correct to say that  
10 the Department of Defense is moving in a direction that is  
11 inconsistent or opposite that of the detainees' demands in  
12 this case and the order that's currently in place?

13 A. Yes, sir.

14 Q. At some point, ma'am, you became aware that you were  
15 deploying to Guantanamo, and it took, am I correct,  
16 approximately 10 to 12 months ----

17 A. Yes.

18 Q. ---- prior to the deployment to actually begin the  
19 workup for it?

20 A. The unit was sourced 10 to 12 months prior and  
21 started the staffing and training process for the mission,  
22 yes, sir.

23 Q. And you told me you were having a difficulty

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1 fulfilling the manning requirements. Let me ask you this  
2 first, ma'am: Do you always try and take volunteers first?

3 A. Not always, sir. But in this case, our military  
4 police units had multiple deployments, and there are what we  
5 call dwell times, where you try not to have people redeploy  
6 based on the impact on their family and their civilian jobs  
7 when you're in the Reserve and the Guard. So if you can fill  
8 it with willing volunteers, it is better. And as we were  
9 continuing with these deployments, that was the preference.

10 Q. Now, ma'am, you're in a National Guard unit; am I  
11 correct?

12 A. Yes, sir.

13 Q. And in the course of the staffing requirements of  
14 Camp VII, is it correct to say that that could be a rotation  
15 of a National Guard, it could be a rotation of Reserves, it  
16 could be a rotation of active duty?

17 A. Sir, all missions are considered a total force  
18 mission, so they can be sourced from any component, yes.

19 Q. And, in fact, they are at times taken from Guard,  
20 Reserves, and active duty?

21 A. Yes, sir.

22 Q. And is it correct to say, ma'am, that they come from  
23 all over the country?

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1       A.    Yes, sir.

2       Q.    The unit that followed yours was a Reserve unit from  
3 Colorado?

4       A.    National Guard unit.

5       Q.    And each unit that is next in line for this process  
6 may have different chains of command, different ways of doing  
7 things; and also, am I correct their number breakdowns might  
8 be different in terms of gender?

9       A.    Yes, sir. They have to meet the same standards, but  
10 how they go about filling the unit depends on the units in  
11 their state and their force structure.

12       Q.    Ma'am, this morning, you gave a number of 18 to  
13 20 percent female in regard to your unit; is that correct?

14       A.    Yes, sir. That's the estimate, but that was across  
15 the entire battalion that we pulled from to fill this mission.

16       Q.    And the entire battalion did not go to Camp VII?

17       A.    No, sir.

18       Q.    Is 18 to 20 percent roughly in line with other  
19 units -- other comparable units across the country, if you  
20 know?

21       A.    I don't know, sir. That would have to be researched.

22       Q.    Have you determined or observed that there could be  
23 divergences within percentages on -- between units from

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1 different parts of the country?

2 A. Yes, sir. I have observed divergences throughout the  
3 course of my career, so it just depends on the enlistments and  
4 who's coming in and who stays in the unit.

5 Q. And I think you gave a number of ten percent in terms  
6 of females in the Camp VII force, is that right, or roughly  
7 so.

8 A. Approximately ten percent when I was down there, yes,  
9 sir.

10 Q. And is it possible or -- is it possible to say that,  
11 depending on which unit comes next, that number could possibly  
12 be lower, but it could also be substantially higher?

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

15 MJ [COL POHL]: Rephrase your question, Mr. Ryan.

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

17 Q. Colonel, I'll put it to you this way: If your -- if  
18 the unit you brought down to Camp VII with you was a  
19 representative sample of your unit back in Massachusetts, is  
20 it correct to say that it would be 18 to 20 percent female?

21 A. If we hadn't been working initially with the  
22 restriction that I noted that was in our deployment manning  
23 document, we probably would have had more females on the

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1 deployment.

2 Q. Now, ma'am, did this deployment also have other  
3 restrictions in terms of personnel that were -- that struck  
4 you as unusual, or were unusual to you in your experience?

5 A. The deployment manning document required an extensive  
6 number of top secret clearances that the traditional military  
7 police company does not have, and it also required a higher  
8 number of noncommissioned officers and really limited numbers  
9 of officers, myself and two captains and a lieutenant.

10 Q. Was this different than any other deployment you've  
11 been involved in? I'm sorry. Strike that.

12 Was this -- were these restrictions in terms of rank  
13 and clearance unusual to you in your experience?

14 A. They were unique to this mission, sir.

15 Q. You had never seen it before?

16 A. No, sir.

17 Q. So what was the effect of that? As you were staffing  
18 this operation, what was the effect of that limitation as  
19 well?

20 A. As I noted before, it required us to pull soldiers  
21 from multiple units, and that unfortunately negatively impacts  
22 their readiness level because we were pulling soldiers and  
23 NCOs from their units, so it reduced their numbers and the

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1 rank structure that they had. So it's -- and when -- so their  
2 readiness levels go down, I guess is the short version of  
3 that.

4 Q. Your deployment went from March 2014 through December  
5 of 2014. Is it correct to say that for purposes of other  
6 deployments, that was actually -- it actually involved a fair  
7 amount of slow time?

8 A. Sir, I'm not sure I'm following your question.

9 Q. Because it was a bad question, so I'll ask it again,  
10 ma'am.

11 The deployment in which -- period of yours, so March  
12 of 2014 to December of 2014, was a time period during which  
13 this case, the 9/11 case, actually had very few hearings going  
14 on; is that correct?

15 A. I don't recall too many sessions of the commissions,  
16 sir. I know there were a number scheduled that were not held  
17 for a variety of reasons. So the op tempo wasn't extremely  
18 high in the end because of the scheduling changes.

19 Q. And in terms of commissions cases, this one has five  
20 accused, whereas the other cases that are currently pending  
21 have only one accused each, correct?

22 A. Yes, sir.

23 Q. And also during the course of your deployment, the

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1 period of Ramadan occurred; is that right?

2 A. Yes, sir.

3 Q. And during Ramadan, there was very little activity at  
4 all; is that right?

5 A. As far as moving the detainees, sir, it was extremely  
6 slow.

7 Q. And it's the movement of detainees that ultimately  
8 led us to the issue that's before the commission today; is  
9 that right?

10 A. That's correct, sir.

11 Q. Ma'am, I believe you stated that it was -- I'll ask  
12 you: When was it approximately that you first determined  
13 there were objections to female servicemembers' activities  
14 going on in Camp VII?

15 A. Sir, as I recall, that would be in August of 2014.

16 Q. The first order went into effect in October of 2014,  
17 is that right, in the Hadi al-Iraqi case?

18 A. Yes, sir.

19 Q. For those accused in any case that had objections,  
20 did the complaints or objections make their way up the chain  
21 of command to you?

22 A. Yes, sir.

23 Q. And I believe you said that starts with tier

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1 commander to watch commander and then ultimately to you; is  
2 that correct?

3 A. Generally, sir, we try to handle their concerns at  
4 the lowest level, but something like this would have gone --  
5 it would have been a direct request to speak with me.

6 Q. And did you, in fact, speak with people?

7 A. Yes, sir, I did.

8 Q. And did that include Mr. al-Iraqi, the accused in the  
9 other case?

10 A. Yes, sir.

11 Q. Did it include Khalid Shaikh Mohammad, the accused in  
12 this case?

13 A. Yes, sir.

14 Q. Did it include Walid Bin'Attash, the accused in this  
15 case?

16 A. Yes, sir.

17 Q. You went and spoke with him one on one?

18 A. That is correct, sir.

19 Q. Did you try and defuse the situation?

20 A. Yes, sir. I explained the -- in general terms the  
21 nature of the soldiers' duties, and that ----

22 DDC [Maj SCHWARTZ]: Objection, foundation.

23 MJ [COL POHL]: I'm sorry, what?

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1 DDC [Maj SCHWARTZ]: Objection, foundation.

2 MJ [COL POHL]: Go ahead with the answer.

3 A. Sir, I explained that the soldiers had that  
4 operation, that they were all trained the same way, that it  
5 was -- that while I appreciated their concerns, that  
6 operationally, I needed to use all of my soldiers.

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

8 Q. Why did you do that, ma'am? Why did you go and speak  
9 to them directly?

10 DDC [Maj SCHWARTZ]: Your Honor, again, foundation. Maybe  
11 I missed the question.

12 MJ [COL POHL]: I'm sorry?

13 DDC [Maj SCHWARTZ]: I don't know who the conversation is  
14 between.

15 TC [MR. RYAN]: I think I have established it's between  
16 the commander and the accused, Shaikh Mohammad and Bin'Attash.

17 MJ [COL POHL]: Same conversation with both of them, or  
18 we're doing it one at a time?

19 TC [MR. RYAN]: I'll break it up, Judge.

20 MJ [COL POHL]: Just break it up.

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

22 Q. First of all, with the conversation with the accused,  
23 Commander, Shaikh Mohammad, did you speak to him in English?

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1 A. Yes, sir.

2 Q. Did he speak to you in English?

3 A. Yes, sir.

4 Q. Tell us what you told him.

5 A. As I started saying, I actually -- I told the  
6 detainees pretty much the same thing, sir, that based on  
7 operational reasons, the fact that the -- all of the soldiers  
8 were trained the same way, and that my noncommissioned  
9 officers needed to be used in their proper capacity, that I  
10 was -- that they would in fact see females operating in the  
11 escort team, because that's where the issue was raised.

12 I told them I appreciated their perspective on it,  
13 but the operational requirements made this necessary; that I  
14 could not accommodate their request for -- to do something  
15 different.

16 Q. Ma'am, around the time that the order -- emergency  
17 order in the Hadi al-Iraqi case went into effect, did you  
18 receive further direction from the accused Binalshibh as to  
19 even more restrictions he wanted placed on these actions?

20 A. Yes, sir.

21 Q. And have you identified those rules that he presented  
22 to you, and were they, in fact, attached as part of the  
23 government's response?

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1 A. Yes, sir.

2 Q. And, ma'am, I'll ask you now -- first of all, did you  
3 review them?

4 A. I did, sir.

5 Q. I'll ask you about a few of them. Number one ----

6 DDC [Maj SCHWARTZ]: Your Honor, I'm going to object to  
7 this ----

8 MJ [COL POHL]: I'm sorry.

9 Q. ---- a female guard must be 40 and over ----

10 MJ [COL POHL]: Just a second, Mr. Ryan.

11 Basis?

12 DDC [Maj SCHWARTZ]: Your Honor, this is irrelevant to  
13 Mr. Bin'Attash's case. It's also the subject of AE 254FF,  
14 which is a motion to strike this exhibit in particular. It's  
15 fully briefed, but oral argument has been requested, and the  
16 commission has not yet ruled.

17 TC [MR. RYAN]: It's a statement by the accused, Your  
18 Honor.

19 MJ [COL POHL]: Excuse me.

20 TC [MR. RYAN]: I'm sorry, sir.

21 MJ [COL POHL]: Hold on. You're talking about the -- what  
22 I think is Attachment C? Which statement are you exactly  
23 talking about? Let me make sure that I understand.

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1 DDC [Maj SCHWARTZ]: Attachment C to 254EE.

2 MJ [COL POHL]: That appears to be a handwritten statement  
3 from your client?

4 TC [MR. RYAN]: No, sir.

5 MJ [COL POHL]: A handwritten statement from whom?

6 TC [MR. RYAN]: The accused Binalshibh.

7 MJ [COL POHL]: What is your objection?

8 DDC [Maj SCHWARTZ]: This document is subject to a motion  
9 to strike that's pending before the commission. It hasn't  
10 been ruled on yet. 254FF lays out the objection to the use of  
11 this document.

12 MJ [COL POHL]: Hold on a second.

13 LDC [MR. RUIZ]: Judge, I'm sorry. Could you restate the  
14 exhibit number again, please?

15 MJ [COL POHL]: 254EE, Attachment C; is that correct?

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

17 DDC [Maj SCHWARTZ]: Yes, Your Honor.

18 [Pause.]

19 MJ [COL POHL]: And let me -- I've looked at your motion.  
20 I'm not going to litigate the whole thing now, but one of your  
21 points is that somehow it's not tied to Mr. Bin'Attash, and  
22 therefore it should be suppressed?

23 DDC [Maj SCHWARTZ]: Stricken from the case against

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1 Mr. Bin'Attash, yes, Your Honor. There are three  
2 exhibits ----

3 MJ [COL POHL]: Are we going to -- so I only can consider  
4 evidence on this issue that directly relates to Mr. Bin'Attash  
5 and all of the stuff I've heard from the other four I  
6 shouldn't consider? Or do you get to pick and choose?

7 DDC [Maj SCHWARTZ]: Your Honor, under Rule for Military  
8 Commission 812, we get to pick and choose.

9 MJ [COL POHL]: Okay. That's what I'm asking. I'm not  
10 saying you don't. Okay.

11 And you're choosing that you don't want this  
12 considered against Mr. Bin'Attash because the statement comes  
13 from Mr. Binalshibh?

14 DDC [Maj SCHWARTZ]: That's correct, with respect to just  
15 that question. I think your previous question was whether  
16 we're picking and choosing on all ----

17 MJ [COL POHL]: Well, yeah, I am. I am. Just -- because  
18 it's going to get very confusing if you're saying as a matter  
19 of principle it only would apply to one, and then it strikes  
20 to me, if we're going to do it in a way, then -- that way,  
21 then I'm not sure how that fits with the common defense; and  
22 more importantly, we have had five attorneys ask questions of  
23 this witness, I'm only to consider for Mr. Bin'Attash's

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1 purpose the question you asked this witness and not the other  
2 ones?

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

4 MJ [COL POHL]: So you want to pick and choose?

5 DDC [Maj SCHWARTZ]: Your Honor, under that logic, we'd  
6 have to go through a full inquiry, a full examination of each  
7 witness by each table, and so we don't do that for, you know,  
8 expeditious ----

9 MJ [COL POHL]: Okay. I just want to know the lay of the  
10 land. That's all.

11 DDC [Maj SCHWARTZ]: Right. So when we ----

12 MJ [COL POHL]: On an individual basis, you want to say I  
13 don't want to consider this for Mister -- okay.

14 DDC [Maj SCHWARTZ]: For something that's not probative,  
15 not relevant, that's inflammatory, it would be unfair to  
16 permit that evidence in Mr. Bin'Attash's case.

17 MJ [COL POHL]: Okay. I got it.

18 DDC [Maj SCHWARTZ]: I agree it's confusing.

19 MJ [COL POHL]: I got it. It came -- and what was the  
20 date on this, Mr. Ryan?

21 TC [MR. RYAN]: I'm not sure there was a date, Judge. It  
22 was received, I believe -- Court's indulgence.

23 Judge, it's part of -- it's made reference to within

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1 the declaration of this witness, and the date upon which she  
2 indicates she received it was 26 October 2014, paragraph 16 of  
3 her declaration.

4 DDC [Maj SCHWARTZ]: And then, Your Honor, 254EE was filed  
5 on 4 December 2014 and then the motion here, the motion to  
6 strike, was filed on 8 December 2014.

7 MJ [COL POHL]: But the motion to strike -- let me make  
8 sure that this is clear, because generally when motions are  
9 filed there's automatic joinder unless there is affirmative  
10 opting-out, correct?

11 DDC [Maj SCHWARTZ]: Yes, sir.

12 MJ [COL POHL]: Am I to assume everybody is -- okay. Have  
13 all of the other four parties opted out? Specifically, did  
14 Mr. Harrington opt out?

15 DDC [Maj SCHWARTZ]: I don't know, sir.

16 MJ [COL POHL]: Do you understand my dilemma here? You  
17 file a motion with automatic joinder, and then you argue that  
18 it only applies to your client, and the other people who  
19 have ----

20 DDC [Maj SCHWARTZ]: Maybe this gets back to your comment  
21 about the joint defense. I only -- I don't -- I only  
22 represent one person, obviously.

23 MJ [COL POHL]: I got that. I got that. But I'm just

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1 trying to -- we set up a procedure of motions, okay, and I may  
2 be just confusing myself here. You file a motion. Because we  
3 got tired of all of these motions to join, we switched the  
4 rule to say joinder unless opting out. Okay.

5 And again, I don't want to get too much in the weeds  
6 on procedure at this point, but you filed this motion, and I  
7 don't have all of the ones in front of me, but it's a joint  
8 motion by all five defense teams unless other people opt out,  
9 correct?

10 DDC [Maj SCHWARTZ]: That's my understanding, sir, yes.

11 MJ [COL POHL]: Okay. But your relief -- and again, this  
12 could be parsed, I've got it, but your basic relief only  
13 applies to your client as the motion is tailored.

14 DDC [Maj SCHWARTZ]: As it's drafted, that's correct.

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

16 LDC [MR. NEVIN]: Your Honor, can I speak to this?

17 MJ [COL POHL]: Sure.

18 LDC [MR. NEVIN]: Because I consider, on behalf of  
19 Mr. Mohammad, to be joined to the motion. The basis for the  
20 objection -- or rather the motion to strike was not only that  
21 it was made by a different detainee, although there could  
22 be -- definitely could be a Bruton problem, and I expect there  
23 will be significant Bruton problems before we're done, I mean,

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1 not necessarily with this issue.

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

3 LDC [MR. NEVIN]: ---- just in this case, but there were  
4 other grounds for the objection, such as relevance and so on,  
5 that were articulated in that motion. And I believe we're  
6 getting ready to hear about a letter -- another letter as well  
7 that's also the subject of this -- of this motion.

8 So we are joined to those motions, but not only for  
9 the reasons that the military commission just articulated, if  
10 you understand what I'm saying.

11 MJ [COL POHL]: I understand what you're saying, and I'm  
12 not going to -- I'm not going to go down too far on this road,  
13 because -- but we need to make it clear.

14 I hear one defense team say this motion is tailored  
15 to my individual client, the proponent of the motion. Then  
16 you stand up and say, oh, wait a minute, I should -- because  
17 the motion itself talks about Mr. Bin'Attash only, and for the  
18 future going, if we -- we have motions that cover everybody, I  
19 got it. This one, for example, 254, covers everybody, I got  
20 it.

21 But when I hear an argument from one defense team  
22 that says I want this stricken for my client, and the motion  
23 clearly is -- seems to be directed only to his client, I am to

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1 assume to apply the same logic and just substitute different  
2 names on my own?

3 LDC [MR. NEVIN]: Well, that was my assumption about the  
4 rule change that occurred ----

5 MJ [COL POHL]: Okay. Okay.

6 LDC [MR. NEVIN]: ---- with respect to joinder, and I ----

7 MJ [COL POHL]: But you understand on this particular  
8 motion, because the statement by a fellow accused, your legal  
9 argument and everybody's legal argument, except for  
10 Mr. Harrington's, would probably be different.

11 LDC [MR. NEVIN]: Well ----

12 MJ [COL POHL]: I mean, Mr. Harrington's argument, it's  
13 not my client's statement, is kind of -- at least that part of  
14 it wouldn't be very good, assuming a foundation is laid, I got  
15 it.

16 LDC [MR. NEVIN]: Right. And I wouldn't be able to make  
17 that argument. But rather than an issue like this generating  
18 five motions or five notices of joinder or five notices of  
19 partial joinder or joinder to this but not that, and so on, I  
20 took it that the general rule was that a motion was stating a  
21 principle, a motion that an individual team -- or, sorry,  
22 defendant files, is stating a principle; and the others by --  
23 unless they opt out are saying, I adopt the same principle.

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1 MJ [COL POHL]: And, Mr. Nevin, that was my understanding  
2 up until five minutes ago, where I heard Major Schwartz seem  
3 to say this only applies to his client. Perhaps I  
4 misunderstood.

5 LDC [MR. NEVIN]: I think he -- well, I won't speak for  
6 him. I think he just pushed the button before I did ----

7 MJ [COL POHL]: Okay.

8 LDC [MR. NEVIN]: ---- to his credit, but ----

9 DDC [Maj SCHWARTZ]: What I mean, Your Honor, I just don't  
10 object on behalf of anybody else because it's not my place. I  
11 object on behalf of Mr. Bin'Attash. We filed the motion on  
12 behalf of Mr. Bin'Attash.

13 MJ [COL POHL]: Okay. But just so it's clear, that  
14 everybody -- this motion is not limited to Mr. Bin'Attash.  
15 It's for all five accused. You can't speak for them, but  
16 that's Mr. Nevin's position, that appears to be the court  
17 practice position, and I hear nothing to the contrary from the  
18 other three, so we'll treat it as a normal motion joined by  
19 everybody unless opted out, and therefore I can't restrict any  
20 ruling to just Mr. Bin'Attash. Because that appears to be the  
21 way we do business.

22 LDC [MR. NEVIN]: I think that's correct, Your Honor.

23 Thank you.

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1 MJ [COL POHL]: Okay. That being said, now, what was your  
2 question to the witness?

3 TC [MR. RYAN]: Your Honor, I directed her attention to  
4 the attachment and I began to read it to her when the  
5 objection was raised.

6 MJ [COL POHL]: Okay. Let me -- and the relevance of this  
7 is what?

8 TC [MR. RYAN]: The relevance of it is this, Judge: It's  
9 a statement by one of the accused inconsistent with their  
10 motion, in which we can argue and we will argue that it tends  
11 to cast doubt on their own motion and the legal stance that  
12 became the basis for the Court's emergency order.

13 On top of that, it's an argument -- the relevance of  
14 it is that this is an example of if the accused begin to  
15 insert their own preferences, it leads to a very dangerous  
16 slippery slope that will go very quickly to the point of not  
17 being able to operate a detention facility.

18 MJ [COL POHL]: Okay. Here's what we're going to do, is  
19 that since this is an interlocutory matter, and I don't want  
20 to stop this witness who has been on the stand since 9:30  
21 anyway, I'm going to permit the questioning on it.  
22 Understand, we will then resolve the admissibility of it later  
23 on. If it's going to be stricken later on, so be it.

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1           This is not unusual with a judge making the decision  
2 since I've already seen the statement anyway. If you want me  
3 to disregard, I'll go that way, but I'm not going to stop now  
4 and litigate it.

5           Major Schwartz.

6           DDC [Maj SCHWARTZ]: I understand, Your Honor. I just  
7 want to bring your attention to that very issue that we  
8 address in the motion.

9           Certainly, no panel in the room, and yes, you've  
10 already seen this exhibit and the two other exhibits that are  
11 the subject of the motion to strike.

12          MJ [COL POHL]: Okay. Okay.

13          DDC [Maj SCHWARTZ]: It's the inflammatory nature of some  
14 of these exhibits and the extreme low -- in fact, zero  
15 probative value with respect to Mr. Bin'Attash.

16          MJ [COL POHL]: Okay. But it sounds like you're  
17 litigating the motion.

18          DDC [Maj SCHWARTZ]: It might be, but I'm making sure that  
19 the objection is preserved, that this information ----

20          MJ [COL POHL]: I consider the objection as preserved.

21          DDC [Maj SCHWARTZ]: ---- as it comes out in open court  
22 really is in violation of Rule 812, which is the rule that  
23 says in common trials and joint trials, each accused shall be

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1 accorded rights and privileges as if tried separately.  
2 There's no question that this document -- none of these three  
3 documents would come into evidence under a motion  
4 interlocutory issue against Mr. Bin'Attash were this a single  
5 defendant in trial.

6 MJ [COL POHL]: Okay. Just so it's clear, what I thought  
7 was clear, I'm going to permit the questioning. We will  
8 address whether or not this is admissible in the due course of  
9 business because we're not going to stop now in the middle of  
10 this testimony -- like I said, she has been on since 9:30 --  
11 to do this.

12 If it was in front of a fact-finder, different --  
13 excuse me, the members, different issue altogether. But,  
14 again, I got it, your objection is preserved, and we'll try to  
15 address the substance of the motion in the course of this  
16 week.

17 DDC [Maj SCHWARTZ]: Thank you, Your Honor. What I just  
18 mean to say is the harm here isn't necessarily that you won't  
19 be able to suppress the evidence later and bring it out of  
20 your own judge's brain. The harm is the exposure of this  
21 material in open court to the world.

22 MJ [COL POHL]: Well, let me ask you this: Has this part  
23 of the motion been sealed? I mean, is it ----

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1 TC [MR. RYAN]: It's been filed, Judge. It's not sealed.

2 MJ [COL POHL]: I'm just asking. I'm just asking.

3 DDC [Maj SCHWARTZ]: I don't believe any of these three  
4 have been marked yet releasable to the public. That was part  
5 of our analysis in the motion to strike, we didn't request  
6 sealing because there was no harm yet.

7 MJ [COL POHL]: Okay. Let me go back to you, Mr. Ryan.  
8 This is filed 8 December 2014.

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

10 MJ [COL POHL]: And I don't own the OMC website ----

11 TC [MR. RYAN]: I'm sorry, sir?

12 MJ [COL POHL]: I said, I don't own the OMC website. I  
13 don't know how things are on there. Is this on the OMC  
14 website?

15 TC [MR. RYAN]: Judge, I don't know. I do not know.

16 DDC [Maj SCHWARTZ]: Your Honor, I'm looking at the  
17 exhibit, and it's marked "Not Releasable to Detainee or  
18 Public."

19 TC [MR. RYAN]: It's been filed as part of the motion,  
20 Judge. It went out in the normal course to all of the parties  
21 and to the commission as well.

22 MJ [COL POHL]: I didn't ask you that. Has it gone out to  
23 the general public?

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1 TC [MR. RYAN]: That, I do not know, sir. I don't -- as  
2 you said, I don't know what made it to the website at this  
3 time.

4 I submit, Your Honor, that if we're talking about  
5 inflammatory language, Your Honor can see the plain language.  
6 This is hardly something that needs to be shielded from the  
7 world, especially since we spent a good portion of the morning  
8 hearing words like "sexual sodomy." This one, I think, pales  
9 in comparison. It's intensely relevant to these issues ----

10 MJ [COL POHL]: Okay.

11 TC [MR. RYAN]: Yes, sir, I'm sorry.

12 MJ [COL POHL]: Mr. Ryan, you and Major Schwartz want me  
13 to stop and litigate this right now, but I'm not going to do  
14 that.

15 TC [MR. RYAN]: No, Judge, I don't.

16 MJ [COL POHL]: Okay. Major Schwartz, just on this issue  
17 is there's always concerns, and I hear it from both sides,  
18 mostly from the defense, about the lack of transparency, okay?  
19 Which is separate altogether with the value of the motion,  
20 okay? The motion's filed in open court. Unless it's PII,  
21 classified, LES or something like that, don't you need a  
22 separate legal basis to keep it from the public, and not --  
23 isn't that what you're asking me to do here is ----

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1 DDC [Maj SCHWARTZ]: No.

2 MJ [COL POHL]: ---- saying I don't like what it says, and  
3 therefore, don't let people know what it says? Do you have a  
4 legal basis for that?

5 DDC [Maj SCHWARTZ]: Your Honor, I'm not asking you to do  
6 it. I guess I'm asking for consistency. But if I may  
7 approach, I'll provide you a copy of the exhibit. I didn't  
8 make this decision. It's marked by the government not  
9 releasable to the public. So when we considered our motion to  
10 strike, there was never any concern that this would become  
11 public until further action of the commission.

12 MJ [COL POHL]: So the narrow issue before me is whether I  
13 don't -- did I issue an order saying not releasable to the  
14 public?

15 DDC [Maj SCHWARTZ]: No, the United States did. Not an  
16 order, but it's marked that way.

17 MJ [COL POHL]: Okay. They're a powerful group, but  
18 that's okay. Okay.

19 So just to make it clear, then, they can do what  
20 they're going to do, okay? If they stand up now and they say  
21 we want it releasable to the public, does that -- if they made  
22 the decision, can't they make the decision the other way?

23 DDC [Maj SCHWARTZ]: We see that all the time with

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1 classified information in this case, sir.

2 MJ [COL POHL]: Got it, Major Schwartz. But my point  
3 being is they're telling me, by the nature of this, that  
4 whatever that said, "Not Releasable to the Public," is they're  
5 unstamping it, for want of a better term, okay? Then that  
6 turns the burden back to you because nobody's asked me on  
7 this -- to you to give me a legal basis of why a publicly  
8 filed motion should not go to the public; and embarrassing,  
9 inflammatory, or whatever, if that's your basis, I need some  
10 legal authority for that position.

11 DDC [Maj SCHWARTZ]: May I approach, Your Honor, so I  
12 don't have to bend over here?

13 MJ [COL POHL]: Sure. Mr. Ryan, let him share your  
14 microphone. Actually, it's not your microphone, but let him  
15 share it anyway. Go ahead.

16 DDC [Maj SCHWARTZ]: Your Honor, I don't take issue with  
17 the government's change of course on the releasability of the  
18 document. I'm not challenging that. My legal basis for  
19 striking this -- which, again, we're not going to litigate it,  
20 it's in the motion -- is that it's not relevant to  
21 Mr. Bin'Attash's case, and that if there is any probative  
22 value, a balancing test would find that it's outweighed  
23 significantly by the inflammatory nature of whatever the issue

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1 was.

2 MJ [COL POHL]: That's the not issue before me. The issue  
3 before me right now is this, let's assume we're litigating the  
4 motion, okay, is it's a publicly filed motion and what you're  
5 asking me to do is keep it from the public. That's before me  
6 now. I'm not ruling on whether it's inflammatory or not, I'm  
7 not ruling on anything.

8 DDC [Maj SCHWARTZ]: Right.

9 MJ [COL POHL]: What you're asking me is to take a  
10 publicly filed document and say keep it from the public, is  
11 what I understood you to say. And my question is: Don't you  
12 need a legal basis for me to do that, other than you want to?

13 DDC [Maj SCHWARTZ]: Yes, sir. I would agree with that.  
14 And we would have filed that had this been filed as a public  
15 document. It wasn't filed as a public document, only in the  
16 last 30 seconds does it appear that it's going to become a  
17 public document.

18 If the United States wants to publish this document,  
19 I think that's an issue between Mr. Harrington, Mr. Binalshibh  
20 and the United States. I'm simply asking for it to be  
21 stricken from the record in Mr. Bin'Attash's case.

22 MJ [COL POHL]: Okay. You're going back to the merits  
23 there. I'm simply saying at this point in time, Mr. Ryan

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1 wants to cross-examine -- or examine this witness on this  
2 document, okay. Your objection to the document itself being  
3 considered, that's the motion.

4 What you're also saying is you don't even want to let  
5 him ask the question because it will then go out to the  
6 public.

7 DDC [Maj SCHWARTZ]: And ----

8 MJ [COL POHL]: And again, I understand how the rules  
9 work, but before we say we don't send something out to the  
10 public, there's got to be a legal basis for it, and I do that  
11 all the time.

12 DDC [Maj SCHWARTZ]: The legal basis for it is Rule 812.  
13 The prejudice that Mr. Bin'Attash suffers as a result of the  
14 United States' decision to make this a joint trial and then  
15 present evidence in a public hearing against -- I'm not  
16 suggesting that it is relevant. I have no comment on the  
17 bearing of the document in Mr. Binalshibh's case.

18 MJ [COL POHL]: I understand that, but I'm going back  
19 to -- we seem to be going circular here.

20 If we have a -- and Mr. Nevin alluded to this earlier  
21 about statements from other witnesses, and I got how that  
22 works.

23 But if evidence comes out that's relevant to one

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1 person and not the other four, which is what you're saying, is  
2 the other four then can prevent the public from hearing this,  
3 is that what you're saying?

4 DDC [Maj SCHWARTZ]: I think that's what Rule 812 says.

5 MJ [COL POHL]: Okay. It says "the rights and privileges  
6 if tried separately." What right does your client have to  
7 keep this information from the public?

8 DDC [Maj SCHWARTZ]: That's the subject of 254FF. I agree  
9 we're going in circles, but ----

10 MJ [COL POHL]: No, no, that's why -- let's assume --  
11 let's say we're going to litigate your motion, okay, and the  
12 government puts it up on the screen, and you say, "I object."  
13 What's the basis of your objection for public publication of  
14 the document?

15 DDC [Maj SCHWARTZ]: Right. Well, at the moment that the  
16 government proposed to publish the exhibit, the objection  
17 would be relevance.

18 MJ [COL POHL]: Okay. That's a separate basis altogether.  
19 I got that.

20 DDC [Maj SCHWARTZ]: And if the commission found that the  
21 exhibit was not relevant, it wouldn't be published. And if  
22 this were a single-defendant case, I think that's exactly what  
23 the course of business would be with respect to this document.

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1 MJ [COL POHL]: So you believe that there's a per se rule  
2 that if a motion is filed, and the government -- and the  
3 defense wins, then all of that information, then, is  
4 automatically sealed from the public? That's kind of what  
5 you're telling me, isn't it?

6 I've got a real problem with this, with a public  
7 trial, and as we litigate things, we see how they go, and then  
8 we determine whether or not something is sealed?

9 I mean, this may be a bigger issue down the road, as  
10 Mr. Nevin alluded to, but you're going to have to give me  
11 something that -- you know, I seal things all the time. I get  
12 ex parte things all the time, and I seal those, okay?

13 I'm going to make it clear: When I say seal things  
14 all the time, I don't seal a lot all the time. I seal a  
15 little bit all the time. But each one has got a separate  
16 basis. It may be privileged material, it may be classified  
17 material, it may be PII, it may be law enforcement sensitive,  
18 it may be covered by Protective Order Number 1 or Number 2,  
19 but there is a basis that shows me why this should not go to  
20 the general public.

21 DDC [Maj SCHWARTZ]: Yes, sir.

22 MJ [COL POHL]: At the same time, I'm hit continually --  
23 not continually but frequently, about claims of lack of

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1 transparency, and I got it, it doesn't bother me. That's the  
2 nature of the job. People don't understand it, that's up  
3 to -- that's their problem, not my problem, but -- but there  
4 is a right to public access to court documents unless there's  
5 an exception. The default is it's public, not it's private  
6 unless shown to be public.

7           So what I'm saying to you is that what is the legal  
8 basis for me to stop -- to start saying documents don't go out  
9 to the public that have been filed in this case?

10          DDC [Maj SCHWARTZ]: Because some evidence -- some  
11 information is so inflammatory that allowing the government --  
12 allowing the process to present such completely irrelevant  
13 evidence ----

14          MJ [COL POHL]: Inflammatory to whom?

15          DDC [Maj SCHWARTZ]: To Mr. Bin'Attash.

16          MJ [COL POHL]: To whom?

17          DDC [Maj SCHWARTZ]: The prejudicial value of this.

18          MJ [COL POHL]: You say so inflammatory. Inflammatory to  
19 whom?

20          DDC [Maj SCHWARTZ]: To my client, sir.

21          MJ [COL POHL]: Okay.

22          DDC [Maj SCHWARTZ]: That is, we have people watching in  
23 the back of the room, up and down the east coast ----

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1 MJ [COL POHL]: Your client has seen this, hasn't he? He  
2 could have seen it, you could have shown it to him.

3 DDC [Maj SCHWARTZ]: It's inflammatory to the public.  
4 First of all, he couldn't have seen it because it's not  
5 published to him.

6 MJ [COL POHL]: I got it. I misspoke.

7 DDC [Maj SCHWARTZ]: The point is this should not be  
8 allowed to be aired to the world in a manner that affects and  
9 harms him.

10 MJ [COL POHL]: And where is that? Is that the line then?  
11 If we're litigating a suppression of a statement from Mr. Ali,  
12 let's say, for example, nothing can be discussed, the  
13 substance of this statement, until after the suppression  
14 motion is done and then it's sealed?

15 DDC [Maj SCHWARTZ]: I think that's possible. It probably  
16 depends on the statement.

17 MJ [COL POHL]: That's the statement.

18 DDC [Maj SCHWARTZ]: This has come up and there have been  
19 many cases where we have chosen not to file a motion simply  
20 because a balancing test wouldn't dictate the commission's  
21 intervention here. But on these three documents -- I'm being  
22 told to slow down. On these documents, the nature of this  
23 information is such that it causes undue prejudice to

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1 Mr. Bin'Attash's case while adding zero probative value to the  
2 issue before the commission.

3 MJ [COL POHL]: Okay. I got it. Mr. Ryan, you want to be  
4 heard on this publication issue?

5 Have you got something more, Major Schwartz?

6 DDC [Maj SCHWARTZ]: Yes, sir. Just to answer the  
7 commission's question that what has been published on the  
8 website. I didn't have a public copy before. Now I do.

9 MJ [COL POHL]: Okay.

10 DDC [Maj SCHWARTZ]: It looks nothing like the filed  
11 version.

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

13 DDC [Maj SCHWARTZ]: Thank you.

14 MJ [COL POHL]: Narrow issue, Mr. Ryan. Not the substance  
15 of the motion, the narrow issue of at what point do we not  
16 discuss evidence until ----

17 TC [MR. RYAN]: The decision as to whether something  
18 that's going on in this courtroom gets published on a website  
19 that's not controlled by anybody in this room ----

20 MJ [COL POHL]: I got it. That's -- I just asked that.  
21 That's a side issue.

22 TC [MR. RYAN]: I believe his argument was, Judge, it's so  
23 inflammatory as to be a prejudice to his client, that being

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1 Mr. Bin'Attash -- we're talking about a statement from one of  
2 the accused, not government generated, their statement,  
3 specifically another accused co-conspirator. On top of it, it  
4 doesn't mention Bin'Attash even once.

5 MJ [COL POHL]: Back up, though.

6 TC [MR. RYAN]: As far as the so inflammatory aspect, Your  
7 Honor, we're really going to get to the point that we say,  
8 this document is so inflammatory in a case in which they're  
9 all charged with the murder of 3,000 ----

10 MJ [COL POHL]: Stop, Mr. Ryan.

11 TC [MR. RYAN]: Okay.

12 MJ [COL POHL]: I know both sides get their chance --  
13 okay. The narrow issue I want you to address ----

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

15 MJ [COL POHL]: ---- is that how transparent are the  
16 proceedings here if we're going to -- what is the standard I'm  
17 supposed to apply on publication of documents?

18 TC [MR. RYAN]: If it's being published in this courtroom,  
19 Your Honor, without other objections, protections in place,  
20 then it's within your purview and your discretion as to  
21 whether it gets published back -- outside this courtroom.

22 MJ [COL POHL]: What standard do I apply?

23 TC [MR. RYAN]: The presumption is that it normally would

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1 unless something would happen that would convince you  
2 otherwise. I would submit that there is no such standard in  
3 place right now, and there's certainly no facts to support  
4 that this is such an extreme example.

5 MJ [COL POHL]: One moment.

6 [Pause.]

7 TC [MR. RYAN]: Your honor, to your comment, I am looking  
8 at Military Commission Rules of Court Release of Records,  
9 Number 3, "All motions responses, replies and judicial orders  
10 shall be released to the public subject to any security  
11 restrictions published by the DoD or unless such motions or  
12 documents are filed under seal or ex parte or classified,"  
13 et cetera.

14 MJ [COL POHL]: Of course, you're quoting my rule back to  
15 me.

16 TC [MR. RYAN]: Say again, sir? I'm sorry.

17 MJ [COL POHL]: I said you're quoting my rule back to me,  
18 so I'm sure it will be persuasive, but that's okay. Let's do  
19 this ----

20 TC [MR. RYAN]: Otherwise, Judge, 806 under military  
21 commissions.

22 MJ [COL POHL]: Let's do this.

23 I want to finish with this witness tonight. I want

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1 you -- I'm not ruling on whether the evidence is relevant or  
2 irrelevant, okay? But I think the evidence stands on its own,  
3 so, Mr. Ryan, don't reference it. But understand this:  
4 Depending on how the motion comes out, you certainly are free  
5 to argue it, okay? Normally, what I would do is stop and  
6 litigate the motion, but I just don't think that's  
7 logistically -- so I'm not ruling on anything, but I  
8 understand your issue of relevance, but I think you can get  
9 there without necessarily asking the witness about it, okay?

10 TC [MR. RYAN]: I understand the commission's ruling, Your  
11 Honor.

12 MJ [COL POHL]: Okay. Now, if -- after the ruling is  
13 done, if you wish to recall the witness and examine her, you  
14 can.

15 TC [MR. RYAN]: Understood, sir.

16 MJ [COL POHL]: Okay.

17 TC [MR. RYAN]: Colonel, can you hear me?

18 WIT: Yes, sir. I'm on.

19 TC [MR. RYAN]: Your Honor, may I proceed?

20 MJ [COL POHL]: Sure. Go ahead. And may the accused be  
21 instructed to please quiet down.

22 TC [MR. RYAN]: Thank you.

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

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1 Q. Ma'am, in regard to what we were speaking about, and  
2 I'm not going to refer to them specifically, but in regard to  
3 rules for Camp VII that you received from the accused  
4 Bin'Attash, were they the same as ----

5 LDC [MS. BORMANN]: Judge, I think there was a misspeaking  
6 there. Rules from Mr. Bin'Attash?

7 MJ [COL POHL]: I don't know what the -- is that the label  
8 of the exhibit?

9 TC [MR. RYAN]: I'm sorry?

10 MJ [COL POHL]: Was that the label from the exhibit?

11 TC [MR. RYAN]: That's the title of it, sir.

12 MJ [COL POHL]: That's what I thought.

13 TC [MR. RYAN]: Oh, I'm sorry. I spoke wrong, Judge, I  
14 meant to say received from Binalshibh.

15 MJ [COL POHL]: Okay. Okay. I think I got -- I was  
16 focused on the title, but you're talking about the author. Go  
17 ahead.

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

19 Q. Colonel, starting with this, your understanding of  
20 why there were objections from the various accused as to being  
21 in physical contact with females, the rules that you received  
22 from the accused Binalshibh, were they consistent with that,  
23 or did they go much further in terms of demands on you and

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1 your command?

2 LDC [MR. HARRINGTON]: Objection, Judge.

3 MJ [COL POHL]: Basis?

4 LDC [MR. HARRINGTON]: The opinion of this particular  
5 witness. The document speaks for itself. The Court can make  
6 the decision if the document, in fact, comes in.

7 TC [MR. RYAN]: If the document speaks for itself ----

8 LDC [MR. HARRINGTON]: It doesn't talk about the issue  
9 before the court, which is the touching during the escorting.  
10 It talks about a whole host of other things ----

11 MJ [COL POHL]: Okay.

12 LDC [MR. HARRINGTON]: ---- that really don't have  
13 anything to do with that particular issue.

14 MJ [COL POHL]: Objection overruled. You may ask the  
15 question.

16 TC [MR. RYAN]: Did you hear my question, ma'am?

17 WIT: Yes, sir.

18 A. The rules dealt with issues well beyond religious  
19 beliefs that the detainee held.

20 LDC [MR. HARRINGTON]: Objection, Judge.

21 MJ [COL POHL]: I'm sorry?

22 LDC [MR. HARRINGTON]: I object to that characterization.  
23 How does she know what his religious beliefs are, other than

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1 what he may have said to her?

2 MJ [COL POHL]: As you stated before, the document speaks  
3 for itself. Objection is overruled. Go ahead.

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

5 Q. Ma'am, in your observation in the course of your  
6 command, although it actually turned out to be a very short  
7 time period, what effect did the court's emergency order in  
8 the Hadi case have on your ability to do your job and on the  
9 females under your command, their abilities to do their jobs?  
10 Can you give us that?

11 A. Sir, while I -- as I recall, we did not have to  
12 make -- we planned for adjustments, but based on  
13 cancellations, we did not have to -- based on cancellations  
14 and the rotation of assignments, as I described before and are  
15 in my declaration, we did not have to make those adjustments  
16 based on the order for the other detainee.

17 However, that said, the female soldiers, I did have  
18 to speak with them. I explained the nature of the order, that  
19 it was an interim order, so the court could work through its  
20 proceedings. It was still a negative -- had a negative effect  
21 on their morale.

22 Q. In a normal command situation, how would this  
23 affect -- would this have an effect on morale within the unit?

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1       A.   Yes, sir, because it lays out the potential that now  
2 we have to add more burden to the male soldiers, take it off  
3 of the female soldiers, and have the female NCOs that I had  
4 work in roles that were really below their appropriate level  
5 of function ----

6       Q.   And could that have a negative effect ----

7       A.   ---- meaning they were doing the work of enlisted  
8 soldiers.

9       Q.   And could that have a negative effect on the career  
10 progression of female servicemembers?

11      A.   It would, sir, because it wouldn't give their  
12 supervisors the appropriate basis on which to evaluate their  
13 leadership skills as compared to their peers, their male  
14 peers.

15      Q.   Ma'am, in the course of your career in the military,  
16 as enlisted, as an officer for 32 years, did you ever face,  
17 you, yourself, personally, such an overt restriction on you  
18 being able to perform your duties and on your career  
19 progression, as this order?

20      A.   No, sir.

21      TC [MR. RYAN]: Court's indulgence, Your Honor?

22      A.   No, sir.

23 [Pause.]

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1 TC [MR. RYAN]: Colonel, thank you for your time.

2 Judge, that's all I have.

3 MJ [COL POHL]: Mr. Nevin, any questions based on  
4 Mr. Ryan's?

5 **REDIRECT EXAMINATION**

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

7 Q. Did I hear you say just now that you have never faced  
8 a challenge to your career development like the order in the  
9 al-Iraqi case? Never? That never came up, anything like  
10 that?

11 A. No significant restrictions, sir, as this.

12 Q. Well, didn't you -- didn't you just testify that  
13 you -- that you made colonel?

14 A. I testified that I was selected through a Department  
15 of the Army board, sir.

16 Q. You're just waiting for a billet to open up, right?

17 A. That is correct, sir ----

18 Q. Yeah, you got promoted as a result ----

19 A. ---- by the AGR system.

20 Q. You got promoted as a result of your service at  
21 Camp VII, didn't you?

22 A. Sir, the board occurred prior to my assignment to  
23 Guantanamo Bay. The decision came out in April of '14.

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1 Q. Yes, ma'am, but are you saying you would have had a  
2 greater appointment? Would you have been -- would you have  
3 made O-7 if you had not had this restriction in the al-Iraqi  
4 case?

5 A. No, sir. I may misunderstand your question. I'm  
6 saying I have not faced a restriction, the restriction being  
7 the restriction on the use of female soldiers. Maybe I heard  
8 the question differently than you.

9 Q. Well, I heard you say that you had never faced a ----

10 A. It wasn't a personal restriction on me.

11 Q. I heard you say that you had never faced a  
12 restriction on career development like that order, when that  
13 order came down. Is that incorrect?

14 A. That was my answer as a follow-up to the question on  
15 whether or not this negatively -- could negatively impact the  
16 career of the soldiers who were working for me, sir.

17 Q. Okay. So this did not have any negative effect on  
18 you?

19 A. No, sir.

20 Q. But you're saying it could have had an effect on your  
21 soldiers?

22 A. I'm -- I'm saying limiting their ability to do their  
23 jobs, completely do their jobs, based on their gender could

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1 have a negative effect on their careers based on how they're  
2 evaluated in comparison to their peers, sir.

3 Q. And you never had to confront the problem -- during  
4 the time you were the commander at Camp VII, you never had to  
5 confront the problem of how to rate those soldiers, those  
6 female soldiers who were not allowed to have hands-on contact  
7 with the male detainees because you avoided that by -- because  
8 of the way the schedule worked out, correct?

9 A. I did not have to deal with it because of the way the  
10 schedule worked out. I wouldn't characterize it as I avoided  
11 it.

12 Q. Oh, sorry. Right.

13 But it just never became an issue, that you had to  
14 develop a way to rate those soldiers, even though they weren't  
15 allowed to participate in those duties, correct?

16 A. The order impacted -- yeah, the order impacted a very  
17 small period -- a short period of time in our deployment, so  
18 it was not a significant factor for the soldiers under my  
19 command.

20 Q. Right. And soldiers under subsequent commands  
21 have -- or do you know whether soldiers under subsequent  
22 commands have worked out a way to accommodate that issue?

23 A. I do not, sir.

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1 Q. Now, you testified that you had been deployed to --  
2 during Desert Storm, I believe you said, correct?

3 A. Yes, sir. Desert Shield and Desert Storm.

4 Q. And you said also Desert Shield, right.

5 So were you trained in cultural awareness before you  
6 went to -- before you went to the region on those deployments?

7 A. Yes, sir.

8 Q. And during the course of that training, were you  
9 provided a document or shown a document entitled "Arab  
10 Cultural Awareness: 58 Factsheets"?

11 A. I know we were provided materials, sir. I couldn't  
12 testify accurately to exactly what it was called at this point  
13 in time.

14 Q. And were you -- do you recall being trained or  
15 advised ----

16 TC [MR. RYAN]: Objection, Judge. She just said she was  
17 not.

18 MJ [COL POHL]: Let him complete the question.

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

20 Q. Do you recall being trained on the proposition that  
21 men should not shake hands with an Arab woman unless she  
22 offers her hand first?

23 TC [MR. RYAN]: Objection.

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1 MJ [COL POHL]: Overruled. Answer the question.

2 A. Sir, I don't recall the specifics of that training  
3 that would have been conducted in 1990.

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

5 Q. For both Desert Storm and Desert Shield?

6 A. Yes, sir. That would have been conducted in 1990,  
7 before we deployed.

8 Q. Okay. And you don't remember your training; is that  
9 your testimony?

10 A. I remember that training in general, sir, but if  
11 you're asking me a very specific thing like that, I can't  
12 answer accurately and say that specifically was covered.

13 General cultural awareness, yes. The very specifics  
14 of it at that time as it was presented, I do not recall in  
15 specific details as you're asking.

16 Q. Do you recall being told that men should not make eye  
17 contact with women in Arab countries?

18 A. I recall that in general from training. We had  
19 cultural awareness training prior to deploying to Guantanamo,  
20 so I do recall that from that training, sir.

21 Q. I asked this because you had a fair amount of recall  
22 about the purpose for female engagement teams, and so I'm  
23 asking you to recall the training that you had before the

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1 deployment that led you to have that experience. You  
2 understand that's the question that I'm asking, correct?

3 A. Oh, well, sir, then I need to clarify something. I  
4 never said I was on a female engagement team. The question  
5 was was I aware of female engagement teams.

6 Q. Yes, and you answered in the affirmative and you also  
7 recalled the purpose in some detail, as I remember. You  
8 recalled the purpose for the female engagement team, correct?

9 A. Yes, sir. Because -- one, because I'm an Army  
10 officer, and it was a fairly new policy. Two, we had to  
11 deploy -- we had females from our commands that were deployed  
12 in support of female engagement teams, so I was familiar with  
13 the mission.

14 Q. Right. And I'm asking you about -- I'm asking you  
15 about other training that you had at that time, and you had  
16 good recollection about the female engagement team. I'm  
17 asking you about the other training. And if you don't recall  
18 it, that's fine. Just say so.

19 Do you recall being told that only female soldiers  
20 should search the women's quarters in a Middle Eastern home?

21 A. Sir, the female engagement team question is something  
22 far more recent than training I underwent in 19 -- [VTC  
23 transmission interrupted] -- you're asking about the

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1 female ----

2 [VTC transmission disconnected.]

3 Q. Yes, ma'am, and that ----

4 LDC [MR. NEVIN]: I'm afraid she's gone away again.

5 TC [MR. RYAN]: We'll get it pulled back up, Judge.

6 MJ [COL POHL]: You have more faith than I do, Mr. Ryan.

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

8 [Pause.]

9 [VTC transmission reconnected.]

10 WIT: Sir, we appear to be reconnected. I don't know if  
11 you can hear me.

12 LDC [MR. NEVIN]: Great. I was just waiting for you to  
13 come up on the screen. Thank you.

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

15 Q. When you disappeared, I was asking or about to ask  
16 you whether you recall being trained on the proposition that  
17 contact between the opposite sex in public is considered close  
18 to obscene. Do you remember being trained to that effect?

19 A. I don't recall any wording of that type, sir.

20 Q. But returning to your testimony regarding female  
21 engagement teams, I believe your testimony addressed the idea  
22 that that was primarily -- or partially for the protection of  
23 the male soldiers and to increase the possibility of obtaining

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1 intelligence. Do you remember that testimony?

2 A. Yes, sir.

3 Q. And why is it that it would endanger male soldiers to  
4 go out and have contact with females in the population?

5 A. Because as they try to work with the civilian  
6 population in the type of threat environment that we work in  
7 now, they try and interact with the community and find out  
8 what is going on; and if they do that in a way that violates  
9 their social norms, they're unable to accomplish that mission.  
10 So the female engagement teams allow them to do that, as well  
11 as search females for potentially hidden weapons.

12 Q. Why are those -- why would it violate cultural norms  
13 for a man to -- a male soldier to interrogate or search a  
14 female civilian?

15 A. It's not -- we're not talking interrogation, we're  
16 talking a -- what is -- what they attempt to do is a friendly  
17 interaction in order to have the community in the host nation  
18 work with them to counter the terrorist or guerrilla threat  
19 that's in the area, as opposed to the old-fashioned linear  
20 battle between armies.

21 Q. Irrespective of the purpose for the female engagement  
22 team, the ultimate purpose for the female engagement team, the  
23 reason the female engagement team is necessary is because

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1 there is a very strong cultural objection to men and women who  
2 are not -- who are adults but not married to each other having  
3 any kind of physical contact in those cultures. That's true,  
4 isn't it?

5 A. It is, and if they're engaging them in what they try  
6 to make as a more social environment, they don't want to  
7 violate those norms.

8 Q. And that fact is the basis of SOP 39-5, subsection  
9 11, that says, "Close contact with unrelated females is  
10 culturally inappropriate," correct? It's the same idea.

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

12 MJ [COL POHL]: Just answer one more time, but we don't  
13 need to hear this again and again, Mr. Nevin.

14 Objection is overruled. Answer the question, please.

15 WIT: Okay, sir. Can you just finish the question, sir?

16 LDC [MR. NEVIN]: Sure.

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

18 Q. The restriction on contact between men and women in  
19 Middle Eastern cultures, within Islam, that you have just been  
20 talking about with respect to female engagement teams, those  
21 are the exact same considerations that are behind this SOP  
22 from Camp VII that says, "Close contact with unrelated females  
23 is culturally inappropriate," right?

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1       A.   It's based on that cultural respect, and we try and  
2 respect that within operational constraints, yes, sir.

3       Q.   Okay.  Now, the SOP that we've been referring to does  
4 indeed apply at JTF-GTMO, correct?

5       A.   Yes, sir.  It's an SOP.

6       Q.   Right.  And you were familiar with this SOP during  
7 the time you were the commander of Camp VII, correct?

8       A.   Yes, sir.

9       MJ [COL POHL]:  Mr. Nevin, we've gone over this.

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

11      MJ [COL POHL]:  But, I mean, you don't have to ask eight  
12 questions.  If you have a new question, ask it.

13      LDC [MR. NEVIN]:  Counsel inquired, Your Honor, as to ----

14      MJ [COL POHL]:  I know.  But you're saying the SOP applies  
15 here.  We know the SOP applies here.

16      LDC [MR. NEVIN]:  Counsel raised an argument to suggest  
17 that the force of this SOP was not applicable.  And I ----

18      MJ [COL POHL]:  Well, that's ----

19      LDC [MR. NEVIN]:  I'm simply addressing that.

20      MJ [COL POHL]:  I'm not sure that's what he said.  Go  
21 ahead.

22      LDC [MR. NEVIN]:  Okay.

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

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1 Q. Do you consider yourself an expert in Islam?

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

3 MJ [COL POHL]: Sustained.

4 A. No, sir.

5 MJ [COL POHL]: Disregard. Strike the answer. Next  
6 question.

7 LDC [MR. NEVIN]: Then may we strike the questions that  
8 she responded to without objection in which she was asked  
9 whether other people had complained about being touched by  
10 women, or whether this occurred during her ----

11 MJ [COL POHL]: Mr. Nevin, I can only -- I will only  
12 respond to objections that are made.

13 LDC [MR. NEVIN]: Yes, sir. I know, but ----

14 MJ [COL POHL]: So if you're making the objection now,  
15 that objection is overruled.

16 LDC [MR. NEVIN]: Well, all right, Your Honor. I  
17 understand. I just wanted to address that line of testimony  
18 with my cross-examination. That was the reason for the  
19 questioning.

20 MJ [COL POHL]: I got it. Go ahead.

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

22 Q. And you -- would it be within your area of expertise  
23 to say whether or not there are different ways of -- different

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1 means of practice within the religion of Islam?

2 TC [MR. RYAN]: Same objection.

3 MJ [COL POHL]: Sustained.

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

5 Q. Do you know whether there are different ways of  
6 practicing Christianity?

7 A. Sir, people practice their religions in different  
8 ways. I would assume that's across different religions.

9 Q. All right. All right. You don't have any reason to  
10 think that that's not true with respect to Islam, correct?

11 A. Correct, sir.

12 Q. I understood you to testify that your mission to  
13 operate the facility at Camp VII was one that could be sourced  
14 from all components within the military, active duty,  
15 Reserves, National Guard, or anywhere else?

16 A. That's correct, sir.

17 Q. And that that could occur from anywhere, all over the  
18 country, correct?

19 A. Yes, sir.

20 Q. And, in fact, that probably could occur with soldiers  
21 from anywhere around the world, correct?

22 A. Sir, sourcing decisions are made at Forces Command.

23 I mean, it's an Army mission. Yes, as far as I know, the

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1 sourcing can come from anywhere within the Army.

2 Q. And just to return to your testimony, counsel  
3 inquired about the issue of escort teams being -- escort teams  
4 being assigned to individual escort missions, and there were  
5 several questions regarding substitution of personnel, and I  
6 believe you said that it wasn't your practice to substitute  
7 personnel. Do you recall that testimony?

8 A. Yes, sir. We did institute some cross-training, but  
9 you have resource limitations, vehicles, venues for the  
10 different -- where the detainees go on different moves, so  
11 there are a number of factors. You can't just throw a bunch  
12 of people at it and make it better.

13 Q. Right. And you described previously the process of  
14 assignment of escort teams in which you have teams assigned to  
15 particular moves, and if one of those moves goes down, that  
16 that team moves to the next -- to the next move that you have  
17 to deal with. Do you remember that testimony as well?

18 A. Yes, sir.

19 Q. And so isn't it true that apart from substituting  
20 individual members of a team, you can simply rotate an entire  
21 team? You could simply go to the next team if there were a  
22 reason to do that, correct?

23 TC [MR. RYAN]: Objection, asked and answered.

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

2 A. Sir, I would not describe any of this as simply doing  
3 something. The changing -- the description that I gave of an  
4 example of a detainee refusing his move, for whatever reason,  
5 and then they move to the next scheduled move, that's because  
6 they were already onsite, and another team would be  
7 dispatched, but they would -- it would be more efficient for  
8 them to move to the next detainee.

9 It's not the same. That does not equate to just  
10 being able to swap teams out based on what a detainee wants,  
11 because individual detainees all want different things.

12 Q. Right. How many -- how many of the detainees at  
13 Camp VII objected to being touched against their will by  
14 female guards?

15 A. At this point, I can think of five off the top of my  
16 head, sir, out of the total.

17 Q. Five out of the total of 14?

18 A. Correct, sir.

19 Q. Right. And the teams that you have that are assigned  
20 to escort, are those teams available at all times on every  
21 workday?

22 A. They are available with -- we make arrangements for  
23 an on-call team for any emergency moves, but it's -- it's a

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1 small group, a smaller percentage of the total force, as I  
2 mentioned earlier.

3 Q. And the movements we're talking about are only  
4 occurring during work hours; in other words, during the normal  
5 business hours when there would be moves to the commission or  
6 moves to legal visits, correct?

7 A. No, that's not correct, sir. There are extended days  
8 for other moves as well that happen in off hours.

9 Q. Yes. But just with respect to moves to the  
10 commission or moves for legal visits, those would all be  
11 occurring during the, let's say, normal workday, correct?

12 A. Most, but not all, sir.

13 Q. And just to return to your -- the testimony that you  
14 provided on cross-examination, I believe I heard you say that  
15 gender is not a basis for making a job assignment. You  
16 don't -- you're gender-neutral in your job assignments,  
17 correct?

18 A. Yes, sir.

19 Q. But you're not gender-neutral when it comes to  
20 observing a male detainee unclothed or conducting a pat-down  
21 search. In those cases, gender is important, correct?

22 TC [MR. RYAN]: Objection, asked and answered.

23 MJ [COL POHL]: Sustained.

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1 A. Those are ----

2 MJ [COL POHL]: Don't answer. You already have.

3 LDC [MR. NEVIN]: Right. Thank you, Your Honor. That's  
4 all my questions.

5 MJ [COL POHL]: Thank you.

6 Major Schwartz, any further questions?

7 DDC [Maj SCHWARTZ]: No, sir, as long as the witness is  
8 subject to recall pursuant to our discussion yesterday.

9 MJ [COL POHL]: Got it.

10 Mr. Harrington?

11 Just to make it clear, the subject to recall is  
12 assuming there's been a showing that she needs to be recalled,  
13 because there's still a showing you have to make. Do you  
14 understand what I'm saying?

15 DDC [Maj SCHWARTZ]: Yes, sir. And I think we can  
16 probably discuss it later. I just -- the reason I pause is  
17 there are a number of areas that we have been discussing that  
18 I would discuss today if I were prepared with the discovery I  
19 had. So it's not ----

20 MJ [COL POHL]: I'm with you. I got you. Okay.

21 Go ahead, Mr. Harrington.

22 **REDIRECT EXAMINATION**

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

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1           Q.   Lieutenant Colonel, Mr. Ryan asked you about the  
2 impact of this order -- or this restriction on you. You  
3 talked somewhat about the ability to evaluate somebody, their  
4 performance, one of the female escort guards. Do you recall  
5 that?

6           A.   Yes, sir.

7           Q.   And during the times like last year, when you said  
8 that there were hearings that were canceled and things weren't  
9 going on, I take it that the people that are on the escort  
10 teams have other duties that they do, do they not?

11          A.   Sir, they were extremely busy moving detainees.  
12 There are many different moves that occur despite commissions,  
13 cancellation of commissions.

14          Q.   Do they have other duties besides escorting people,  
15 or is that the sole thing that they do?

16          A.   They would have -- there would be periodic tasks for  
17 details that some would be pulled off for, but the majority of  
18 their time is spent working the escort mission, sir.

19          Q.   All right. I take it you have done some evaluations  
20 and made some recommendations or reports about the people that  
21 work for you, is that correct, at Camp VII?

22          A.   For those I directly supervise. For those I directly  
23 supervise, yes, I made their evaluations out.

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1 Q. And if there was a restriction on what some  
2 particular soldier that was working under your command had  
3 because of an outside thing like a court order that said they  
4 couldn't perform a certain function, you would take that into  
5 consideration, would you not, in doing your evaluation of the  
6 person?

7 A. You would, sir. You'd note any mitigating  
8 circumstances, but it's still the level of experience that the  
9 soldiers who could perform the mission obtain through the  
10 mission can't be replicated.

11 Q. You would or you would not penalize the person who  
12 was under that restriction in the evaluation that you did?

13 A. I would not, but someone looking at their evaluation  
14 down the road when they're being considered for a promotion  
15 may not fully understand that.

16 Q. I take it you would put something in their report  
17 that indicated what the restriction was, would you not, to be  
18 fair to them?

19 A. Yes, sir.

20 LDC [MR. HARRINGTON]: Thank you. That's all.

21 MJ [COL POHL]: Colonel Thomas?

22 DDC [Lt Col THOMAS]: Your Honor, no, we have no further  
23 questions for the Lieutenant Colonel.

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1 MJ [COL POHL]: Mr. Ruiz?

2 LDC [MR. RUIZ]: I need a moment, Judge.

3 MJ [COL POHL]: Sure.

4 [Pause.]

5 LDC [MR. RUIZ]: Judge, we have nothing further.

6 MJ [COL POHL]: Mr. Ryan?

7 TC [MR. RYAN]: No, sir, thank you.

8 MJ [COL POHL]: Lieutenant Colonel, I'm going to thank you  
9 for your testimony. I know it's been a long day for you. You  
10 may be subject to recall. In case you don't know this, the  
11 judge is talking. If you are recalled, arrangements will be  
12 made; but between now and that date, if it does occur, don't  
13 discuss your testimony or knowledge of this case with anybody  
14 except for the attorneys for either side. Do you understand  
15 that?

16 WIT: Yes, I do, sir.

17 MJ [COL POHL]: Okay. Thank you for your testimony. You  
18 are excused.

19 [The witness was excused and the VTC was terminated.]

20 MJ [COL POHL]: Mr. Ryan, as we go forward with witnesses  
21 on 254, why do you believe we need to address 254FF, or that  
22 deals with those -- the statements? I mean, I can do it in  
23 any order, because we're not going to probably finish.

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1           But I'm just saying if you want to do that, my intent  
2 would be that we address that first and then take up the rest  
3 of the witnesses, but if you'd rather do the witnesses,  
4 then ----

5           TC [MR. RYAN]: I do not believe we need to take that up,  
6 sir. I prefer that we go on with the other witnesses. We  
7 have no intention of raising that issue with any of the other  
8 witnesses at this time.

9           MJ [COL POHL]: Okay. Good. Then tomorrow at 9:00, we --  
10 what's the lay of the land there, Mr. Swann?

11          TC [MR. SWANN]: Tomorrow morning at 9:00, we'll take  
12 back -- go back to testimony of the current camp commander  
13 where we left off, I think, with the Bin'Attash team.

14          MJ [COL POHL]: Okay.

15          TC [MR. SWANN]: Then at 1315 our time tomorrow ----

16          MJ [COL POHL]: Okay.

17          TC [MR. SWANN]: ---- I have the former camp commander,  
18 who will be testifying by VTC.

19          MJ [COL POHL]: Okay. Which means if we don't get done  
20 with the current camp commander, he's going to end about  
21 noonish, we'll pick up the next guy at 1315, and then when we  
22 finish him, we'll return ----

23          TC [MR. SWANN]: We'll go to the next witness the defense

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1 calls, who will be available on a 30-minute notice.

2 MJ [COL POHL]: Okay. Everybody clear of the way forward?

3 LDC [MR. RUIZ]: Judge, can I just ask one question?

4 MJ [COL POHL]: Sure.

5 LDC [MR. RUIZ]: Can I rely on 031 not being heard any  
6 earlier than Thursday? I say that because I want to be able  
7 to allocate and focus my time and energy on different matters  
8 as they come up.

9 MJ [COL POHL]: Mr. Ruiz, you can see how long this is  
10 taking. If we get to Thursday, the answer to your question  
11 is ----

12 LDC [MR. RUIZ]: So I wouldn't have to do it tomorrow,  
13 that's all I'm asking. Can we commit to that?

14 MJ [COL POHL]: I'll tell you what, I'll commit that to  
15 you.

16 LDC [MR. RUIZ]: Thank you.

17 MJ [COL POHL]: Commission is in recess.

18 [The R.M.C. 803 session recessed at 1708, 8 December 2015.]

19 [The R.M.C. 803 session was called to order at 1708,  
20 8 December 2015.]

21 MJ [COL POHL]: Commission is called to order. All  
22 parties are again present that were present when the  
23 commission recessed a minute ago. Go ahead.

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1 LDC [MR. CONNELL]: Thank you. I have a housekeeping  
2 issue from yesterday. It is unclassified and I've discussed  
3 it with the prosecution. Yesterday I referred to a transcript  
4 using temporary page numbers that had been assigned to that  
5 transcript. I referred to page 152 of the transcript. The  
6 court reporters were kind enough to provide the official  
7 version of the transcript, and the substituted page number is  
8 8,831.

9 MJ [COL POHL]: At the risk of going longer, is what you  
10 just told me going to be clear in the order of what we're  
11 talking about?

12 LDC [MR. CONNELL]: Well, I don't envy whoever has to read  
13 this record, but the ----

14 MJ [COL POHL]: If that's all you want to do, that's fine.

15 LDC [MR. CONNELL]: Yes.

16 MJ [COL POHL]: If you want to make it more of a formal  
17 written thing, that's fine, too. That's clear. You have gone  
18 from page 152 to page 8,000-something, you may know what you  
19 are talking about, and the court reporter may know what you  
20 are talking about, but if you want to make it clear on the  
21 record, you may have to memorialize it in writing so whoever  
22 reads it knows what you are talking about.

23 LDC [MR. CONNELL]: Yes, sir.

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1 MJ [COL POHL]: That being said, the commission is now in  
2 recess.

3 LDC [MR. CONNELL]: Thank you, sir.

4 [The R.M.C. 803 session recessed at 1710, 8 December 2015.]

5 [END OF PAGE]

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