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1 [The R.M.C. 803 session was called to order at 1529,  
2 9 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. Ruiz, you had some more questions.

7 LDC [MR. RUIZ]: Thank you, Judge.

8 **REDIRECT EXAMINATION**

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

10 Q. Major, the prosecutor asked you about a particular  
11 camp and a particular detainee population. The camp was  
12 Camp Cropper and the population would have obviously been the  
13 population of detainees in Camp Cropper. Do you recall that  
14 line of questioning?

15 A. I do, sir.

16 Q. And --

17 [VTC transmission disconnected.]

18 LDC [MR. RUIZ]: I believe the feed has dropped off,  
19 Judge.

20 MJ [COL POHL]: I believe you're right.

21 TC [MR. RYAN]: We're dialing back, Judge.

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

23 TC [MR. RYAN]: I was told they're dialing back.

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1 MJ [COL POHL]: Okay.

2 [Pause.]

3 LDC [MS. BORMANN]: Judge, while we have a few moments,  
4 Mr. Trivett approached me and asked me to make a correction on  
5 the record from what we did in the 505 hearing.

6 I represented that we had new discovery that was  
7 approximately 12,000 pages. My paralegal had made a mistake  
8 in the auto-sum. She hand-counted it and it's somewhere in  
9 excess of 4500, so I just wanted to put that on the record.

10 MJ [COL POHL]: Okay.

11 LDC [MS. BORMANN]: So thousands of pages of discovery,  
12 just not quite as many thousand as we thought.

13 MJ [COL POHL]: Okay. Thank you, Ms. Bormann, I  
14 appreciate that.

15 [Pause.]

16 [VTC transmission reconnected.]

17 WIT: Hello.

18 MJ [COL POHL]: Yeah. Major, we can see you, you  
19 currently have the long view, but that will work. Rather than  
20 mess with the system, let's go.

21 WIT: Okay. I just lost you. Good to go. I can hear you  
22 loud and clear.

23 MJ [COL POHL]: Okay. Great. Mr. Ruiz.

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1 LDC [MR. RUIZ]: Thank you, Judge.

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

3 Q. Major, you remember my question, correct?

4 A. I lost you. Can you please repeat?

5 Q. Sure. Absolutely.

6 The prosecutor asked you a question concerning  
7 Camp Cropper and your experience in Camp Cropper and the  
8 detainee population in Camp Cropper. Do you recall that?

9 A. Yes, sir.

10 Q. And he asked if ----

11 MJ [COL POHL]: We're good. Keep going.

12 Q. He asked if you ever, I quote, ever had any  
13 complaints in the thousands and thousands of detainees that  
14 were detained in Camp Cropper. Do you remember that?

15 A. Yes, sir.

16 Q. And then he narrowed that to using of female guards  
17 to come in contact with those detainees. Do you remember  
18 that?

19 A. Yes, sir.

20 Q. Okay. Now, is it your testimony that all the  
21 thousands of the -- all of the thousands of detainees in Camp  
22 Cropper were Muslims?

23 A. No, sir. I would say approximately 99, 98 percent

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1 were.

2 Q. Okay.

3 A. I had some Christians.

4 Q. All right. And did you have personal knowledge about  
5 the specific sect of the Muslims that practiced Islam or are  
6 you just generalizing in terms of their overall religious  
7 preference?

8 A. We had a high percentage of Sunni and Shiite that  
9 translated to the bulk of the Muslims.

10 Q. Major, we have talked a great deal, a little bit,  
11 about your experience with respect to cultural competence with  
12 Islamic religion.

13 All of that training and experience, including your  
14 work in Camp Cropper, with all of that, Major, you do  
15 understand that the Islamic religion cannot be divorced from  
16 the conduct of Islamic and Muslim men with relation to women.  
17 In fact, the Islamic religion informs the propriety of the  
18 conduct between a person, a Muslim male, who worships Islam  
19 and informs the manner in which they can have appropriate  
20 contact with women; isn't that right?

21 A. I would agree with that statement.

22 Q. I'm sorry, you said you would agree?

23 A. Yes, sir.

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1 Q. So to the extent there is an objection based on a  
2 religious sensitivity to interaction with women, that would  
3 also to some degree encompass the propriety of those  
4 interactions with women, correct? And that would also be  
5 driven, of course, by the specific or individual experiences  
6 with women, correct?

7 TC [MR. SWANN]: Objection, Your Honor. He's actually  
8 making a speech and there's really no question there.

9 MJ [COL POHL]: The objection is overruled, but you asked  
10 a compound question there. Break it up.

11 LDC [MR. RUIZ]: Sure. Okay. I agree. I agree.

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

13 Q. Major, I'm going to focus on the detainee population  
14 in Camp Cropper and Guantanamo Bay. Based on your experience  
15 and your time in Camp Cropper, did you have knowledge that any  
16 of the detainees in Camp Cropper were ever subjected to being  
17 rubbed with fake female menstrual blood?

18 A. I have no knowledge of that.

19 Q. Right. Were any of the detainees in Camp Cropper  
20 ever straddled by a female without actually placing the  
21 female's weight on the legs of the detainee?

22 TC [MR. SWANN]: Objection, Your Honor, beyond the scope.

23 MJ [COL POHL]: Overruled. You raised the issue about how

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1 detainees were treated at Camp Cropper; he's allowed to  
2 explore it. Go ahead.

3 LDC [MR. RUIZ]: Major, did you hear the question?

4 WIT: Yes.

5 A. I'm going to say no, I'm not aware of any females  
6 that straddled detainees as you described.

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

8 Q. Were you aware of any instance where detainees in  
9 Camp Cropper were made to stand naked for five minutes or more  
10 while a female interrogator observed them?

11 A. No, I'm not aware of that.

12 Q. Were you aware of any instance where a detainee in  
13 Camp Cropper was made to wear a female thong on their head  
14 while they were being interrogated?

15 A. No. I worked specifically with the detention  
16 operations and I never saw or heard anything of such notion.

17 Q. Were you aware of any instance where a detainee in  
18 Camp Cropper was made to wear a woman's bra while they were  
19 being interrogated?

20 A. No.

21 Q. Were you aware of any instance in Camp Cropper where  
22 a detainee had perfume rubbed on their arms and back by a  
23 female military interrogator?

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1 Major, did you hear my question?

2 A. I said no.

3 Q. I did not hear your answer. Thank you.

4 Were you aware of any instance in Camp Cropper where  
5 a detainee's knees and shoulders were massaged by female  
6 interrogators?

7 A. I have no -- I can't say anything on it. I didn't  
8 deal with any sort of interrogators, so I have no -- I can't  
9 speak on behalf of that process or what was going on with  
10 that. I dealt with specifically the care, custody, and  
11 control of the detainees.

12 MJ [COL POHL]: Mr. Ruiz, how many more do you have on  
13 this list?

14 LDC [MR. RUIZ]: Two more, Judge.

15 MJ [COL POHL]: Okay.

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

17 Q. Major, were you ever aware of an instance where any  
18 detainee in Camp Cropper was subjected to a woman running  
19 their fingers through their hair and invading their private  
20 space during interrogations?

21 A. No.

22 Q. Okay. And, Major, you are, in fact, an Army major?

23 A. I'm an Army major.

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1 Q. And you were assigned to Guantanamo Bay with a  
2 mission to detain a population within Camp VII in  
3 Guantanamo Bay, Cuba, correct?

4 A. That is correct.

5 Q. Major, did you know that Army Regulation 15-6 -- 15-6  
6 report and response to the FBI's allegations of detainee abuse  
7 in Guantanamo Bay was conducted by two Army generals who  
8 substantiated each and every one of these instances of abuse  
9 against Guantanamo Bay detainees?

10 TC [MR. SWANN]: Objection, Your Honor, beyond the scope.

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

12 LDC [MR. RUIZ]: Judge, Mr. Swann made a comparison  
13 between two discrete detain populations. The inference is  
14 that there were no complaints by Guantanamo detainees -- there  
15 were no complaints by Camp Cropper detainees and, therefore,  
16 the Guantanamo detainee complaints are baseless.

17 What I'm trying to test is the basis of his opinion  
18 and knowledge and whether he knew specific differences.

19 MJ [COL POHL]: When was the 15-6.

20 LDC [MR. RUIZ]: Excuse me? The 15-86 was in ----

21 MJ [COL POHL]: 15-6.

22 LDC [MR. RUIZ]: Yes, sir. It was in 2005.

23 WIT: I wasn't there in 2005. I was there in 2008,

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1 approximately April to December.

2 LDC [MR. RUIZ]: Can you hold off? We're ----

3 MJ [COL POHL]: Just a second. You can ask him whether  
4 he's aware of it, but I think we're getting down to ----

5 LDC [MR. RUIZ]: Right. Right. I got it. That's why my  
6 question was: Were you aware that this report substantiated  
7 each and every one of these allegations?

8 MJ [COL POHL]: You can ask him that question and we'll  
9 hear what his answer is and we'll go on from there. The  
10 objection is overruled.

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

12 Q. Major, were you aware that Army report -- Army  
13 Regulation Report 15-6 that was conducted by two Army generals  
14 in relations to allegations of abuse at the behest of the FBI  
15 regarding Guantanamo Bay detainees substantiated each and  
16 every one of these instances of gender coercion and  
17 manipulation in the interrogation of Guantanamo Bay detainees?  
18 Did you know that, and did you inform yourself or did your  
19 training provide you that knowledge prior to coming to  
20 Guantanamo Bay?

21 MJ [COL POHL]: Again, you've asked ----

22 A. I was unaware of that.

23 MJ [COL POHL]: He has answered the question. Mr. Ruiz,

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1 keep the question as just as one question, because you had  
2 three follow-ups embedded in that. But he wasn't aware of it,  
3 so move on.

4 LDC [MR. RUIZ]: That's all I have.

5 MJ [COL POHL]: Thank you. Any other defense counsel have  
6 any further questions?

7 Mr. Nevin.

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

9 Q. Major Prior, your time at Camp Cropper was in 2008.  
10 That was all after the events that had been made public about  
11 what happened at the prison at Abu Ghraib, correct?

12 A. That's correct.

13 Q. And do you think it's possible that your detainee  
14 population might have thought that there was not a robust  
15 system in place in American prisons for taking complaints?

16 A. Can you say your question one more time? You broke  
17 up.

18 Q. Do you think it's possible that, given the reputation  
19 of American detention facilities in Iraq, that your population  
20 in Camp Cropper might have thought there wasn't much point in  
21 raising complaints?

22 TC [MR. SWANN]: Objection, Your Honor, calls for  
23 speculation.

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1 MJ [COL POHL]: Sustained on that basis.

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

3 Q. Were any of your detainees at Camp Cropper, any of  
4 them, involved in the CIA's RDI torture program?

5 A. I -- I'm not aware of that.

6 Q. Was your position at Camp Cropper as one of being a  
7 supervisor or commander of the entire camp?

8 A. I had battle space within the facility ----

9 Q. Would you say that again?

10 A. ---- multiple units represented -- I had multiple  
11 locations, multiple battle spaces within the facility that I'd  
12 oversee.

13 Q. Could you describe those, please?

14 A. I oversaw the visitation area, I had a -- I oversaw  
15 the combat support hospital as well as internal, like,  
16 detainee areas. And I had soldiers that were in supervisor  
17 positions within all of those locations.

18 Q. So you were not the ----

19 A. The different compounds ----

20 Q. Sorry, I am -- you're now a little farther away from  
21 us in the camera, and it's harder to see your face. Sorry for  
22 interrupting you.

23 You were not the commander of the entire Camp

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1 Cropper, then?

2 A. That is correct. That was commanded by a lieutenant  
3 colonel.

4 Q. And your -- you were managing certain places within  
5 Camp Cropper, correct?

6 A. That is correct.

7 Q. Okay. And the period of time you were there was in  
8 2008?

9 A. That is correct.

10 Q. Now, I believe you said that some of the female  
11 soldiers that had traveled with you to Guantanamo Bay were put  
12 off by not being able to have hands-on contact with the  
13 detainees; is that correct?

14 A. That's correct.

15 Q. And I believe you said this completely destroyed the  
16 morale of your unit; is that -- is that what you said?

17 A. It did destroy the morale of the unit, yes.

18 Q. I see. And I believe your testimony also was that  
19 these women had left the military service solely because of  
20 this issue; is that correct?

21 A. Not all -- I have spoken with some of the females  
22 that were assigned to Camp VII that have redeployed and are in  
23 the process or will get out of the Army because of this.

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1 Q. Uh-huh.

2 A. That they felt they were second-class citizens. This  
3 is not what they wanted -- this was not an organization they  
4 wanted to be a part of and be discriminated against.

5 Q. I see. And so that was because the -- because with  
6 respect to five of the detainees, they were not allowed to  
7 touch them; is that correct?

8 A. That is part of it, yes.

9 Q. And for -- is that the only reason that they left  
10 military service?

11 A. That is the biggest reason of why.

12 Q. Yeah. So it's not the only reason?

13 A. It is the significant reason of getting out  
14 altogether.

15 Q. What were some of the other reasons?

16 A. I would say that is the reason. They were just upset  
17 with the process of it. I understand they executed their  
18 duties and responsibilities as applicable, but they -- they  
19 were upset with that process and didn't want to be part of an  
20 organization like that.

21 Q. But there were nine of the detainees whom they were  
22 able to participate in the moves for, right?

23 A. That is correct.

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1 Q. But it was -- there was -- it was because they  
2 weren't allowed to participate in the moves off to commissions  
3 and off to legal moves ----

4 LDC [MR. RUIZ]: Your Honor -- Your Honor, may I  
5 interrupt. I apologize for doing this, but I'm being told  
6 that the witness was just handed a note by somebody.

7 WIT: I just read the note. It said not to mute yourself.  
8 It's from our VTC technician.

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

10 LDC [MR. NEVIN]: So let me start over with that question.

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

12 Q. They -- they were able to move nine of the detainees,  
13 nine of the 14 detainees, they just weren't able to  
14 participate in the moves for five of them. And as to those  
15 five, they only weren't able to participate when the moves  
16 were off-site, correct?

17 A. Generally, yes. However, with my counter-elicitation  
18 program, I moved those soldiers around to multiple positions,  
19 so sometimes they might not have been in contact with the 9/11  
20 and with others as you described; however, they lived with  
21 that order and being told you will not move them day in and  
22 day out for eight months. They dealt with that at the  
23 internal psyche. They were affected by that every day.

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1           Sure, they might not have moved that -- a specific  
2 detainee, but they dealt with that and they had to live with  
3 that order, being told you're not the same as another male  
4 trained and validated MP day in and day out.

5           Q.   And I take it you told them that it was because the  
6 judge had ordered that it proceed in that way, not because of  
7 anything other than that, correct?

8           A.   I enforced all policies and procedures and orders as  
9 appropriate, and that was an order that came down that we  
10 followed.

11          Q.   And you told them, I'm sure, that this was based on  
12 the religion and the religious preferences of these detainees,  
13 correct?

14          A.   They were advised of that.

15          Q.   Did these soldiers -- were they advised of the  
16 provisions of SOP 39, the one that describes accommodation to  
17 the -- religious accommodations for detainees?

18          A.   Yes, sir. And we talk about accommodation. This is  
19 also a detention facility, and the security and safety of  
20 those detainees and those guards are paramount.

21          LDC [MR. NEVIN]: Your Honor, could the witness just  
22 respond to the question I ask?

23          MJ [COL POHL]: Yeah. Please. Okay. Major, I'm going to

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1 remind you again, just please answer the question that's  
2 asked. If you don't understand the question, let me know, but  
3 don't give an answer that's nonresponsive. Go ahead,  
4 Mr. Nevin.

5 LDC [MR. NEVIN]: Thank you.

6 WIT: Understood, sir.

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

8 Q. And these soldiers, these female soldiers we're  
9 describing, they were advised of the contents of  
10 SOP Number 39, the one that says touching between men and  
11 women in Islam is culturally forbidden; were they aware of  
12 that?

13 A. Yes, sir.

14 Q. And ----

15 A. All soldiers that were assigned to Camp VII had to  
16 know all SOPs.

17 Q. And were they aware of that before they came to  
18 Guantanamo, that they weren't going to be able to -- that  
19 touching was not something that was permitted within Islam?

20 A. They were given the cultural briefing; however, there  
21 was an understanding that they would be able to perform their  
22 duties as a trained and validated MP.

23 Q. Uh-huh.

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1       A.   They did not know the population in certain  
2 circumstances.

3       Q.   But they were -- they were -- they knew they were  
4 coming to be a guard force in an all-male, all-Muslim prison  
5 that involved -- that had 14 detainees in it, correct? They  
6 knew that before they came, correct?

7       A.   That's -- no, sir.

8       Q.   Right? Well ----

9       A.   They did not know the population and gender. There  
10 was an assumption that was all Muslim. We had very little  
11 information ----

12 [VTC transmission disconnected.]

13 [Pause.]

14 [VTC transmission reconnected.]

15       MJ [COL POHL]: Major, we had a break there. Can you hear  
16 us now?

17       WIT: I can hear you loud and clear.

18       MJ [COL POHL]: Mr. Nevin.

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

20       Q.   And I believe I was asking you when the feed broke, I  
21 was asking you whether the women that we were talking about  
22 knew about the SOPs and these kinds of cultural restrictions  
23 before they came to Guantanamo, and what was your answer to

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1 that?

2 A. Negative, sir. They did not know the SOPs.

3 Q. Right. And they -- but they came anyway, or perhaps  
4 they were ordered to come. Did they come voluntarily or were  
5 they just ordered to come?

6 A. This was an all-volunteer force.

7 Q. I see. So they could have -- these are people who  
8 were in the position that if they thought to themselves, well,  
9 I'm going to have to be dealing with men who don't want to  
10 have any physical contact -- who may not want to have any  
11 physical contact with women, I think it would be better if I  
12 didn't go, they would have been able to have made a choice  
13 like that, correct?

14 A. I don't -- those circumstances never came up. All of  
15 the males and females that were part of the unit or said they  
16 wanted to come, came.

17 Q. Okay. So -- but are you saying that none of these  
18 people had ever been trained on cultural issues related to  
19 Islam?

20 A. During our pre-mobilization training prior to  
21 Guantanamo Bay, there was a training on Islamic cultural  
22 pieces. Additionally, those soldiers that had previous  
23 deployments to the Middle East had received those type of

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1 training packages.

2 Q. Right. So they well -- they knew perfectly well that  
3 there were limitations on contact between men and women within  
4 Islam, right, and they knew perfectly well that they were  
5 coming down here to deal with Muslim detainees, right?

6 A. I would agree with that, sir. Again, we didn't know  
7 the specifics of the SOPs and the specific TTPs, the tactics,  
8 techniques and procedures, on how certain things happened on  
9 the day-to-day operations of Camp VII.

10 Q. And these female soldiers had been -- had gone  
11 through basic training, I take it?

12 A. Yes.

13 Q. And some of them had been deployed to the Middle East  
14 previously?

15 A. Some had, yes.

16 Q. And some of them had seen combat or been in a combat  
17 environment?

18 A. Yes.

19 Q. Excuse me?

20 A. That is correct.

21 Q. All right. And your testimony is that because they  
22 weren't allowed to touch these detainees, these five out of  
23 the 14 detainees, on 20 percent of their moves, that they were

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1 so overwhelmed with dislike for the military that they quit?

2 A. That is correct.

3 Q. Are you sure it wasn't something else that led them  
4 to quit?

5 A. I wasn't -- I'm positive -- I wouldn't use the word  
6 "quit." They have a service obligation, and when that  
7 expires, they can leave the military.

8 Q. Yeah, I understand.

9 A. But that is -- that's why -- again, they were -- they  
10 felt during that eight months they were second-hand citizens.  
11 They weren't able to perform their duties and responsibilities  
12 like their male counterparts.

13 Q. I see. And these people, these female soldiers that  
14 you're referring to, when they -- when they left, were they  
15 required to fill out reports of some kind that indicate why  
16 they're leaving?

17 A. There is a -- like a process of like -- of that, yes.

18 Q. And could you tell me the names of these soldiers? I  
19 suppose you can't.

20 TC [MR. SWANN]: Objection, Your Honor.

21 LDC [MR. NEVIN]: Yeah.

22 MJ [COL POHL]: Sustained.

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

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1 Q. Well, or this material is available to you, I take  
2 it, somehow, the names of these soldiers? You'd be able to  
3 tell us that if we asked for it and through correct channels?

4 TC [MR. SWANN]: Objection, Your Honor.

5 MJ [COL POHL]: Let him -- that's an innocuous question.  
6 That objection is overruled. I'm not saying he is going to  
7 get the information, but he can ask ----

8 LDC [MR. NEVIN]: Right.

9 MJ [COL POHL]: ---- if he asks for it, how does he do it.  
10 Do you have the question there, Major?

11 A. Yes, sir. If I was required, I could provide those  
12 names.

13 MJ [COL POHL]: Thank you.

14 LDC [MR. NEVIN]: Okay.

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

16 Q. And I think you said that part of the problem for  
17 these female soldiers was that this treatment had an effect on  
18 their inner psyche, harmful effects on their inner psyche; was  
19 that your testimony?

20 A. I believe those are the words I used. Their  
21 personal -- you know, as a soldier, as a female soldier, they  
22 weren't -- like I said, time and time, they weren't able to do  
23 their job. You know, they took a year out of their life, you

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1 know, to support the Armed Forces when needed, and they  
2 weren't able to fulfill that at 100 percent.

3 Q. Right. And this -- you're attentive to the inner  
4 psyche of the people around you and I take it you were  
5 attentive to the inner psyche of the detainees. That was part  
6 of your provision of humane care and custody for them,  
7 correct?

8 A. That is correct. Again, I had an operational  
9 facility that I needed to run, and, you know, just like ----

10 MJ [COL POHL]: Major, Major, Major ----

11 A. ---- the pieces ----

12 MJ [COL POHL]: ---- just answer the question. You don't  
13 need to explain it unless you're asked to, okay? You said  
14 that is correct. That is the answer.

15 WIT: Understood, sir.

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

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

19 MJ [COL POHL]: Major Schwartz, anything further?

20 Mr. Harrington?

21 Major Thomas -- or, I'm sorry, Lieutenant Colonel  
22 Thomas?

23 DDC [Lt Col THOMAS]: Thank you for correcting that,

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1 Your Honor.

2 MJ [COL POHL]: Mr. Harrington.

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

4 Q. Major, the organization that these women left was the  
5 United States Army, or the National Guard; is that right?

6 A. Yes, sir.

7 Q. And that organization is represented by lawyers in  
8 court today opposing the decision that they complained about,  
9 correct?

10 A. Yes, sir.

11 Q. And when they left Guantanamo, were all of these  
12 people -- these women, were they finished with their service?

13 A. No, sir. We're talking just a small handful. It's  
14 not all of them.

15 Q. And did they continue to do other duties for the Army  
16 after they left?

17 A. Sir, as part of the Army National Guard, we have a  
18 unique position, so when they come back from a deployment, we  
19 go into like a -- we don't do any sort of military obligations  
20 for about 90 days, and that kind of puts us where we're at  
21 right now. We've been in our home station for about 90 days.  
22 If they're still under contract, they're still obligated to  
23 come to drill.

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1 Q. How many women are we talking about that left the  
2 military because of this being so upset?

3 A. Just a small number.

4 Q. What does that mean?

5 MJ [COL POHL]: On this one, you can give the number.

6 A. I would say less than five percent. I'm looking at  
7 maybe two to three.

8 Q. Okay. And when they left, did you do extensive exit  
9 interviews with them?

10 A. No, sir.

11 Q. While they were here in Guantanamo and not able to  
12 participate in the escorting of the five detainees here, were  
13 they given other assignments to do at the same time?

14 A. Yes, sir.

15 Q. And can you tell me, did you participate in  
16 evaluating or rating these three -- two or three female  
17 soldiers for future promotions?

18 A. No, sir. Based on their rank, I was not in their  
19 profile.

20 Q. All right. Were you asked to provide any information  
21 for their annual ratings or promotions?

22 A. They had a rater and senior rater that did that, sir.

23 Q. And can you tell me, was the rater told that they

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1 might not have been able to do certain of their anticipated  
2 duties because of a court order that prohibited them from  
3 doing it?

4 A. Yes, sir. And they were advised not to take that  
5 into consideration, that they would perform their duties and  
6 be rated as equals with their male counterparts.

7 Q. Now, can you tell me, did these -- did these women  
8 object to the fact that they were not allowed to watch the  
9 detainees take showers?

10 TC [MR. SWANN]: Objection, Your Honor, relevance.

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

12 A. Can you please repeat your question?

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

14 Q. Yes.

15 Did any of these two or three women tell you or  
16 indicate to you in any way that they objected to their  
17 treatment because they were not allowed to watch the detainees  
18 take showers?

19 A. No, sir, not that I'm aware of.

20 Q. Did any of them complain about the fact they were not  
21 allowed to do frisks or pat-downs of the detainees?

22 A. I don't believe so, sir.

23 Q. Now, before your unit came to Guantanamo, you

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1 indicated that there was no specific training provided to you  
2 or to your soldiers with you about Camp VII; is that correct?

3 A. Very minimal, sir. Very minimal. We knew it was  
4 separate from the other facilities and that we had a  
5 high-value population.

6 Q. And did you know the names of any of the people who  
7 were in Camp VII?

8 A. Unofficially, yes. Officially, no. And what I mean  
9 by that is that the government didn't say who we -- obviously,  
10 you know, you can get on Google and you can see things, but  
11 that's how we found some of that information. But again, that  
12 was through unofficial channels.

13 Q. Did you go on Google to find out about the  
14 population?

15 A. I did. I Googled Camp VII to get some of the  
16 information that was out there that was available via open  
17 source.

18 Q. And did you find out who any of the persons were who  
19 were in Camp VII?

20 TC [MR. SWANN]: Objection, Your Honor. Beyond the scope  
21 and relevance.

22 A. I did.

23 MJ [COL POHL]: Overruled.

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

2 Q. I'm sorry, I didn't hear your answer.

3 A. I did find out some of the population.

4 Q. Do you know if the women who left the military  
5 because of not being able to escort these detainees did  
6 anything to check on who was in the population at Camp VII  
7 before they came?

8 A. I'm not aware of that, sir.

9 LDC [MR. HARRINGTON]: Nothing else, sir. Thank you.

10 MJ [COL POHL]: Lieutenant Colonel Thomas?

11 DDC [Lt Col THOMAS]: Thank you, Your Honor. No questions  
12 for Major Prior.

13 MJ [COL POHL]: Trial Counsel, any recross?

14 TC [MR. SWANN]: No, Your Honor.

15 MJ [COL POHL]: Okay. Major Prior, this is Colonel Pohl,  
16 the judge. Thank you for your testimony. You are excused,  
17 but there's a chance that you may be recalled to testify on  
18 this issue. As such, between now and that time, do not  
19 discuss your testimony or knowledge of this case with anybody  
20 except for the attorneys for either side. Do you understand  
21 that?

22 WIT: I do, sir.

23 MJ [COL POHL]: Okay. Thank you for your testimony. You

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1 are excused. Okay.

2 WIT: Thank you.

3 [The witness was warned, excused, and the VTC was terminated.]

4 MJ [COL POHL]: The other two witnesses on this are live?

5 TC [MR. SWANN]: They are live, Your Honor. And when we  
6 left on October 30, I believe the current camp commander was  
7 on the stand and he is available to continue his testimony.

8 MJ [COL POHL]: Okay. Let's go. He's standing by?

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

10 MJ [COL POHL]: Okay. Just to give everybody kind of the  
11 way ahead, we will stay in session until about 1700 hours. So  
12 we'll take him until then; or if he's done before then, we'll  
13 recess until tomorrow. But either 1700 hours or the end of  
14 his testimony, and I have a real good idea which will come  
15 first. But please ask the major to rejoin us.

16 MAJOR, U.S. Army, was recalled as a witness for the defense,  
17 was reminded he was previously sworn, and testified as  
18 follows:

19 MJ [COL POHL]: Major, please have a seat.

20 What was your pseudonym for this major?

21 CP [BG MARTINS]: Your Honor, he's referred to as "Major."

22 MJ [COL POHL]: Okay. Major.

23 WIT: Yes, sir.

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1 MJ [COL POHL]: You're the same Major who testified in  
2 October?

3 WIT: Yes, sir.

4 MJ [COL POHL]: Okay. I remind you, you are still under  
5 oath.

6 WIT: Yes, sir.

7 MJ [COL POHL]: Mr. Nevin had concluded his direct  
8 examination. Any other defense counsel wish to inquire of  
9 this witness? Major Schwartz you're standing. You get to  
10 vote first. Yeah.

11 Anybody else? Mr. Harrington, do you want to ask him  
12 questions? I mean, this isn't hard. We knew he was coming.  
13 I'm not talking to you, Mr. Harrington, but I'm picking on one  
14 of the four, but you're standing.

15 LDC [MR. HARRINGTON]: That's fine, Judge. You warned us  
16 also.

17 MJ [COL POHL]: Okay.

18 DDC [Maj SCHWARTZ]: No questions, Your Honor.

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

20 Mr. Harrington.

21 **DIRECT EXAMINATION CONTINUED**

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

23 Q. Good afternoon, Major.

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1           A.    Good afternoon, sir.

2           Q.    Major, I just wanted to clarify a point.  You  
3 understood that when the five detainees refused to -- or  
4 indicated they did not want to be escorted by females, that  
5 that was based upon their religious beliefs, did you not?

6           A.    I understand that I have a court order that prohibits  
7 me from using female guards to escort the 9/11 detainees for  
8 legal and commissions appointments.

9           Q.    My question was, do you understand that the detainees  
10 objected to being escorted by female guards or escort  
11 personnel because of their religious beliefs?

12          A.    Yes, sir.

13          LDC [MR. HARRINGTON]:  That's all I have, Judge.

14          MJ [COL POHL]:  Thank you.

15                Lieutenant Colonel Thomas.

16          DDC [Lt Col THOMAS]:  No, Your Honor.  I don't have any  
17 questions for the major.

18          MJ [COL POHL]:  Mr. Ruiz?

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

20          Q.    Good afternoon, Major.

21          A.    Good afternoon, sir.

22          Q.    Major, could you just please refresh my memory in  
23 terms of your timeline when you assumed the position?  And

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1 obviously, you're currently the camp commander, correct?

2 A. Yes, sir. I assumed the position in August, around  
3 mid August.

4 Q. That's 2015?

5 A. Yes, sir.

6 Q. In terms of your turnover with the outgoing camp  
7 commander, can you briefly describe for me what that was?

8 A. I had about a three-week transition with him where we  
9 went over the policies and procedures of the facility, things  
10 of that nature, roles and responsibilities, areas of  
11 responsibilities.

12 Q. Did you also have as part of that turnover a  
13 discussion concerning the current state of the security of the  
14 facility?

15 A. What do you mean by the security of the facility,  
16 sir?

17 Q. Whether there were any specific concerns or  
18 vulnerabilities. I'm not asking you to tell me what they are,  
19 if there were any, but did you have the opportunity to discuss  
20 with the people who had been running the facility if there  
21 were existing vulnerabilities to the security of the facility?

22 A. We discussed maintenance issues and things of that  
23 nature, but I do not believe we discussed any vulnerabilities.

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1       Q.    So if I can then infer, and correct me if I'm wrong,  
2   that you did not receive any specific information to the  
3   effect that the facility security was compromised because of  
4   the military judge's existing order?

5       A.    No, I did not.

6       Q.    And you did not receive any information that the  
7   transportation of these men from the facility to  
8   attorney-client visits was in any way compromised because of  
9   the judge's standing order?

10      A.    No, I did not.

11      Q.    And you did not receive any such information  
12   regarding security being compromised in relation to the  
13   transportation of these men from your facility to the military  
14   commissions hearing and from the military commissions hearing  
15   back to the facility, correct?

16      A.    You're correct.

17      Q.    All right.  And as we sit here today, is the security  
18   of your mission in any of those three areas compromised  
19   because of the military judge's existing order?

20      A.    No.  We take our security role seriously and we make  
21   all efforts to ensure that it's taken care of.

22      Q.    All right.  So it is safe to assume that you've made  
23   the adjustments necessary to continue to carry out your

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1 mission, which is the safety and security of your detention  
2 mission, correct?

3 A. We followed the court order, that is correct.

4 Q. But you've made the adjustments necessary within your  
5 facility to make sure that you can continue to carry out your  
6 mission in accordance with the dictates of what that mission  
7 is, correct?

8 A. Yes.

9 Q. And as far as you can understand or as far as you are  
10 aware, from the time the military judge's order was issued to  
11 today, as you sit here in this courtroom testifying under  
12 oath, there's been absolutely no breach of the facility  
13 security because of the military judge's order?

14 A. To my knowledge, no.

15 Q. And that also includes the transportation of these  
16 men to and from commission hearings and to and from  
17 attorney-client visits, correct?

18 A. Correct.

19 Q. Do you have an expectation that you will continue to  
20 maintain the security of your facility and your transportation  
21 mission even if the judge's order continues to exist?

22 A. We would take the steps necessary to ensure the  
23 security and safety of both our guards and the detainees, yes.

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1       Q.   And, in fact, one of the steps that you have taken --  
2 or I should say your predecessors have testified that they  
3 have taken, is to make sure that the personnel is  
4 cross-trained so that they are able to perform multiple  
5 functions within the guard force so that if one guard is  
6 unavailable, either because the military judge's order takes  
7 it out of circulation or for personal circumstances, another  
8 military member can step in and carry out the mission,  
9 correct?

10       A.   Yes.   Cross-training and sustainment training is very  
11 important to running the facility.

12       Q.   And all the personnel that are now currently assigned  
13 to Camp VII, both within the facility and within the escort  
14 team, are cross-trained, correct?

15       A.   No.   My guards at the facility are cross-trained to  
16 perform positions inside the facility, and my guards on escort  
17 are cross-trained to perform positions of escorts.

18       Q.   Of course.

19       A.   If I had to move somebody from one to another, I  
20 would have to ensure their training.

21       Q.   I understand.   But as we sit here today, your mission  
22 continues and the security has not been compromised?

23       A.   That's correct.

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1 Q. All right. It is also correct, is it not, that with  
2 respect to the career progression of female soldiers, you have  
3 also taken remedial measures to ensure that their career  
4 progressions are not negatively affected by this military  
5 judge's order; isn't that correct?

6 A. I do not understand what you mean by "remedial"  
7 effects.

8 Q. Sure. Isn't it true that a letter exists that  
9 provides policy and guidance to people in leadership that  
10 indicates specifically that female soldiers are not to be  
11 graded differently or graded down because of their inability  
12 to carry out some of their male counterparts' functions  
13 because of this existing order; isn't that correct?

14 A. I know of no such letter or order.

15 Q. All right. Very well.

16 In terms of grading female soldiers, are you taking  
17 any steps to make sure that they are not unfairly treated in  
18 their evaluations because of a circumstance outside of their  
19 control?

20 A. All the soldiers are demonstrated based off of their  
21 performance and their potential.

22 Q. Okay. So my question is: Do you or do the raters  
23 specifically enter information in their evaluations that

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1 account for their inability, for instance, to make a contact  
2 move as opposed to a male counterpart to explain why a female  
3 may not necessarily have that opportunity in this setting?

4 A. No.

5 Q. Okay. Why not?

6 A. I would have to actually refer to the Army regulation  
7 that covers it to see if that would even be an authorized  
8 statement put in there, for one. Two, the evaluations are  
9 usually based on the soldier's performance. They're  
10 quantitative in nature. It's based off of what we see the  
11 soldier doing and, based off of that, what we believe their  
12 potential is.

13 Q. Sir, are you not aware that a previous watch  
14 commander testified before this commission under oath that  
15 such a letter exists that prohibits disparity in treatment and  
16 evaluations for females?

17 A. I am not aware of that.

18 Q. Very well. And, of course, being involved in this  
19 issue, correct me if I'm wrong, you have heard instances with  
20 respect to the morale of the guard force regarding this issue;  
21 is that correct?

22 A. I have heard, yes.

23 Q. Okay. And is your guard force's morale at this point

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1 making the mission ineffective?

2 A. No. We are still accomplishing the mission.

3 Q. All right. Are you looking, as a person in a  
4 leadership position, to find ways to provide leadership  
5 opportunities for those soldiers who may not be involved in a  
6 contact move?

7 A. That would be challenging because a 31E's role  
8 inherently usually has some type of contact with a detainee;  
9 so, therefore, it would be very hard to develop positions for  
10 that.

11 **EXAMINATION BY THE MILITARY COMMISSION**

12 **Questions by the Military Judge [COL POHL]:**

13 Q. Major, you used the term "31E." I'm assuming that's  
14 their MOS?

15 A. Yes, 31E, corrections and detention specialist.

16 Q. Just enlighten me. In the 31 series, is there  
17 variations between an escort and a regular detention guard, or  
18 is it kind of all assumed into the ----

19 A. It's all assumed into the 31E MOS, sir.

20 Q. And on the NCOs who get NCOERs, is there any -- does  
21 the job description, duty description include escort duties?

22 A. If that was the role, sir, it would. It would all  
23 depend on what type of position they were performing. There's

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1 a myriad of positions for 31Es. In the facility here, the --  
2 it would be in their NCOER duty description for the escorts  
3 that they're responsible for supervising them and conducting  
4 them.

5 Q. For these 31Es -- I'm talking about the NCOs here,  
6 primarily ----

7 A. Yes, sir.

8 Q. ---- who perform escort duties in their duty  
9 description, are they referenced on how well they perform  
10 those duties for nonlegal moves, to your knowledge?

11 A. We haven't written any evaluations yet, but it would  
12 be -- you know, it would be quantified, it would be the  
13 total -- it would be how many missions they conducted  
14 successfully, things of that nature, so it would be  
15 incorporated in both legal and nonlegal.

16 Q. But for those who can only perform the nonlegal  
17 moves, there's no -- and again, I'm not sure you're the rater  
18 of all of these people. I suspect that you're not.

19 A. No, I'm not.

20 Q. But it would be generically 91, for want of a better  
21 term, 91 successful escort missions conducted without a  
22 subcategory of nonlegal moves?

23 A. Yes, sir.

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1 Q. It would be limited.

2 A. There's limited space of what we can put in there.  
3 We're still learning. The new evaluations take effect  
4 January 1.

5 Q. Okay. But for the ones who cannot perform legal  
6 moves, they still would be evaluated on how well they do the  
7 other moves, and there's no -- you don't write them, but it  
8 would be unlikely they would -- these are nonlegal moves  
9 only -- it would simply be 91 moves, given the space  
10 limitations?

11 A. Probably.

12 MJ [COL POHL]: Got it. I understand you're not writing  
13 them, but I wanted to get a feel for how it would be done.

14 Mr. Ruiz?

15 LDC [MR. RUIZ]: Thank you, Judge.

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. Major, with respect to that portion of your mission  
19 that we talked about security, but with respect to that  
20 portion of your mission that relates to detainee transfers to  
21 and from the camp for legal visits, are you currently able to  
22 perform that mission?

23 A. Yes.

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1 Q. Okay. Have you been able to be responsive to all of  
2 the attorney-client visits that have been requested or a  
3 percentage of them or can you elaborate?

4 A. Some days are more challenging than others, but we  
5 are responsive to as much as we can be.

6 Q. And what makes those days challenging?

7 A. Commissions, for one, sir.

8 Q. Right. I understand.

9 But it's not a manning issue. I mean, if you've  
10 got -- it's a scheduling issue?

11 A. Well, it's also a manning issue, too. I only have so  
12 many soldiers assigned to me, so many other assets, and things  
13 of that nature. So there does come a point that there's only  
14 so many moves that I can do at a given time.

15 Q. That's regardless of gender, correct? That's just a  
16 manning issue?

17 A. Yes. There are so many bodies, so many moves at a  
18 given time. But when I have to move individuals off that are  
19 qualified, it can cause a problem, because now I can't use  
20 those soldiers in roles, so I have to try to fill those  
21 spaces.

22 LDC [MR. RUIZ]: Okay. One moment, Judge.

23 MJ [COL POHL]: Sure.

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1 [Pause.]

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

3 Q. Major, in your turnover with the previous camp  
4 commander, were you informed of any female personnel that left  
5 the Army because of the military judge's order?

6 A. We didn't discuss what his soldiers' future plans  
7 were, sir.

8 Q. Very well. Are you aware of any female soldiers who  
9 have left the Army ----

10 A. I've had no contact with him --

11 Q. ---- because of ----

12 A. -- or his soldiers since they left, sir, so no.

13 LDC [MR. RUIZ]: Very well. That's all I have.

14 MJ [COL POHL]: Thank you.

15 Trial Counsel, any questions for this witness?

16 Mr. Swann.

17 **CROSS-EXAMINATION**

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

19 Q. Major, it's not my intent to embarrass you, but your  
20 qualifications for being assigned here would, in my mind,  
21 include the fact that you're a double-below-the-zone promotee  
22 to the rank of major; is that correct?

23 A. Yes, sir.

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1 Q. So you apparently come pretty well qualified, at  
2 least in Army terms, for promotion and for command?

3 A. I believe I'm competitive, sir, yes.

4 Q. Now, what has been the effect of this temporary order  
5 on your ability and others within your command to do your job?

6 A. Well, obviously, we have to -- it affects the  
7 rotation for the escorts. If they have a female that's in the  
8 rotation -- or a female soldier in the rotation that would be  
9 required to perform that mission, we have to pull them out.  
10 MP soldiers, whether they're 31Bs, military police soldiers,  
11 31Es, which are correction and detention specialists, from the  
12 day they sign into the Army, they go through their one-station  
13 unit training together. From the day they come in, they train  
14 together. Then when they get assigned to their unit, they  
15 train together, they work together. And it does raise  
16 challenges when we tell one of their peers that they can't do  
17 a job based off of their gender.

18 MJ [COL POHL]: Major, just so I'm clear here, you said  
19 the 31Bs and 31Es come in together and train together. You're  
20 referring to ----

21 WIT: Basic.

22 MJ [COL POHL]: ---- gender integration? When you say  
23 "train together," it's gender integration?

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1 WIT: Actually fully integrated.

2 MJ [COL POHL]: One-stop unit training?

3 WIT: One-station unit training.

4 MJ [COL POHL]: Got it. Go ahead, sir.

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

6 Q. Do you have any idea of what percentage within the MP  
7 corps are female?

8 A. I do not, no, sir.

9 Q. Now, this temporary order, has it limited your  
10 ability to perform as a supervisor in any way?

11 A. As a supervisor, for me, not directly, sir. For some  
12 of the soldiers it could have an impact if they were in a  
13 supervisory position, they would have to be moved.

14 Q. All right. And have you had to move, say, female  
15 tier supervisors at times because of the interim order?

16 A. I do not believe we have had to move a female tier  
17 supervisor.

18 Q. All right. I guess the key question here is: What's  
19 the long-term sustainability of your being able to do your job  
20 with the current restrictions in place?

21 A. I think that depends on situations in the future.  
22 You know, if ----

23 LDC [MR. RUIZ]: Objection, calls for speculation,

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1 foundation.

2 MJ [COL POHL]: Overruled.

3 A. For example, if I have soldiers that have a condition  
4 where they can no longer perform their duties or I have to  
5 send individuals home for a type of emergency leave or things  
6 of that nature, it would require me to adjust the manning.

7 That being said, we like to put, you know, the most  
8 qualified person we can in leadership positions. And if one  
9 of the challenges I face is that they can only supervise  
10 certain aspects of it, it makes it challenging for that person  
11 to perform their duties in a supervisory role.

12 TC [MR. SWANN]: I have nothing further, Your Honor.

13 MJ [COL POHL]: Any defense counsel, any further questions  
14 based on those?

15 Mr. Nevin.

16 **REDIRECT EXAMINATION**

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

18 Q. Major, you're here until -- how long will you be here  
19 as the ----

20 A. I'm here until I'm officially relieved of my duties,  
21 sir.

22 Q. Do you have an expectation of how long that will be?

23 A. Usually we don't like to talk about rotations or

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1 dates in an open forum, sir.

2 Q. Okay. Fine.

3 Do you expect you would be here for five years?

4 A. No, sir.

5 Q. Okay. And I don't want to, like, play 20 questions  
6 with you, but can you give us -- is there a way you can give  
7 us an idea? Are we talking on the order of several months?

8 MJ [COL POHL]: Let's back up, Major. On the previous  
9 commanders, they stayed between six months and 12 months, as a  
10 general rule?

11 WIT: A general rule, sir, yes, six and 12 months.

12 MJ [COL POHL]: Let's use that as a benchmark.

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

14 Q. When you are finished, you and the unit that you are  
15 with, at least most of it will rotate out and other units will  
16 come in, correct?

17 A. I believe so, sir, yes.

18 Q. All right. And to your knowledge, are there probably  
19 already processes ongoing to select those new units and  
20 determine who they will be and how they will be composed?

21 A. Yes, sir.

22 Q. Okay. And -- but that's something that happens above  
23 your level in all of this, correct?

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1 A. That's correct, sir.

2 Q. And, of course, it wouldn't happen with respect to  
3 you for people who are coming behind you at all, because those  
4 would be different units, right?

5 A. Yes, sir.

6 Q. All right. And so your force, your unit, the  
7 soldiers you have there in Camp VII have a particular  
8 composition, gender-wise; there are so many men and so many  
9 women, correct?

10 A. That's correct, sir.

11 Q. All right. And are all of those soldiers from the  
12 unit that you were part of? In other words -- that's a bad  
13 question, but I ----

14 A. I -- I ----

15 Q. Okay.

16 A. About 90 percent of the unit was from our organic  
17 unit at Fort Leavenworth, sir.

18 Q. Okay.

19 A. There was also ten percent of soldiers that are not.

20 Q. Yeah. And I'll tell you that a person known to us as  
21 Sergeant Jinx testified here, and I believe she was from a  
22 separate unit, and she -- signed on is not the right word, but  
23 she stayed on with your unit after you guys took over,

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1 correct?

2 A. Yes, sir.

3 Q. All right. And she's -- that's one example, and  
4 you're saying her and people like her make up about  
5 ten percent of your group?

6 A. Probably a little bit less, but approximately, sir.

7 Q. Okay. And those other people get drawn from other  
8 places besides Fort Leavenworth, correct?

9 A. They actually -- I speak for -- they actually  
10 volunteered to extend here.

11 Q. Ah. Okay.

12 A. So that reduced our requirement of individuals that  
13 we had to bring.

14 Q. Okay. And of those people who volunteered to stay  
15 on, you say it was about ten percent?

16 A. Uh-huh.

17 Q. Can you say about how many of them -- we know one of  
18 them was a woman, Sergeant Jinx. Were there other women that  
19 agreed to stay on or decided to stay on?

20 A. Yes.

21 Q. Can you say roughly how many?

22 A. Twenty percent.

23 Q. Okay. So about the same percentage of the force -- I

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1 believe you said earlier that about 20 percent of your unit is  
2 female?

3 A. No, sir. I said about ten percent of my unit is  
4 female.

5 Q. Okay. I'm sorry. So more, actually, than the  
6 general percentage decided to stay over, more women decided to  
7 stay over for -- to stay on with your group? That's an awful  
8 question.

9 MJ [COL POHL]: I don't understand your question either,  
10 because it's maybe 20 percent of a different thing. Some  
11 stayed. I -- either try again, Mr. Nevin, or move on to  
12 something else. I'm not sure what the 20 percent and the  
13 10 percent refer to.

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

15 Q. Anyway, a fair number of women decided to stay on,  
16 correct?

17 A. I can say that some female soldiers decided to stay  
18 on.

19 Q. Okay. Thank you.

20 But obviously the problems that would be created by  
21 having five of the 14 detainees not be touched by women during  
22 a percentage of their -- of their movements at Camp VII, the  
23 problems with that have to do with how many women are in the

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1 force, are in the guard force, right?

2 A. I'm not really sure how to answer that.

3 Q. Well, let me ask the question this way: If you had  
4 only men in your guard force, it wouldn't be a problem, right?

5 A. I don't want to say it wouldn't be a problem.

6 It's -- I guess it wouldn't be a factor, maybe.

7 Q. Well, if the problem is women touching men and you  
8 don't have any women, then you don't have the problem, right?

9 A. Okay.

10 Q. Okay. And the composition, as you just said, of  
11 future guard forces is something that somebody controls,  
12 correct? Not you, but somebody in the hierarchy controls  
13 that, right?

14 A. I believe the composition -- the units are usually  
15 given some type of manning docket.

16 Q. Right.

17 A. And then it's up to their respective commands to fill  
18 that manning docket.

19 LDC [MR. NEVIN]: Okay. That's great. Thank you. That's  
20 all I have.

21 MJ [COL POHL]: Major Schwartz, anything?

22 Mr. Harrington, anything further?

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

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1       Q.   Major, you indicated earlier to Mr. Swann that the  
2 unit that came with you all did this coordinated training,  
3 they've all worked together, correct?

4       A.   Yes.

5       Q.   All right. And you just indicated to Mr. Nevin that  
6 Sergeant Jinx and some other people volunteered to stay on; is  
7 that correct?

8       A.   Yes.

9       Q.   So I would assume, then, that they were integrated in  
10 with this cohesive group that you have?

11      A.   Yes.

12      Q.   Okay. And you probably benefitted from their  
13 experience, correct?

14      A.   I'd like to think we have benefitted from each  
15 other's experience.

16      Q.   Right. And so that there certainly are exceptions in  
17 terms of this cohesive group that came here in certain  
18 circumstances, correct?

19      A.   Can you ----

20      Q.   Well, you took on people who were not part of this  
21 cohesive group that came here and they work with you, correct?

22      A.   Yes, they do.

23      Q.   And they perform very well with your cohesive group,

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1 correct?

2 A. Yes, they do.

3 LDC [MR. HARRINGTON]: Thank you. That's all I have,  
4 Judge.

5 MJ [COL POHL]: Lieutenant Colonel Thomas, anything?  
6 Mr. Ruiz, anything further?

7 LDC [MR. RUIZ]: No, Judge.

8 MJ [COL POHL]: Trial Counsel, any questions based on  
9 those questions?

10 TC [MR. SWANN]: No, Your Honor.

11 MJ [COL POHL]: Major, I want to thank you for your  
12 testimony. This issue -- you may be subject to recall on  
13 this, so don't discuss your testimony about this case with  
14 anybody except for the attorneys on either side. Do you  
15 understand that?

16 WIT: Yes, sir.

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

19 [The witness was warned, excused, and withdrew from the  
20 courtroom.]

21 MJ [COL POHL]: The last witness on this issue, at least  
22 for this session, is scheduled for tomorrow at 0900; is that  
23 correct?

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

2 MJ [COL POHL]: And then, Mr. Ruiz, you indicated that  
3 there was a discovery motion that you wanted to address before  
4 we get to the unlawful influence issues; is that correct.

5 LDC [MR. RUIZ]: It's 254SSS, I believe.

6 MJ [COL POHL]: And just so it's clear, I have seen that  
7 one, I know that one.

8 Are there any other discovery motions related to the  
9 unlawful influence aspect of this case?

10 LDC [MR. RUIZ]: We do not have -- we do not.

11 MJ [COL POHL]: I'm kind of looking at the other ones,  
12 because I don't recall. I just want to make sure. Okay.

13 Here's the way ahead tomorrow, just to let you know.  
14 We'll take the last witness scheduled for this session on this  
15 case first thing.

16 Then, Mr. Ruiz, you will have an opportunity to  
17 discuss your discovery motion, then obviously, I'll -- you  
18 know, we -- the issue is not going to be resolved.

19 And then we will -- then we will pick up, as Mr. Ruiz  
20 always asks me, when are we going to do the 031 argument, that  
21 would be next, okay?

22 LDC [MR. RUIZ]: Judge, I have one question, just because  
23 I can't really remember the facts off the top of my head right

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1 now.

2 MJ [COL POHL]: Sure.

3 LDC [MR. RUIZ]: You had discussed another 254 issue that  
4 you -- that we talked about yesterday, maybe?

5 MJ [COL POHL]: Well, we talked about it yesterday and the  
6 issue that Major Schwartz raised about the attachments. We  
7 certainly can address that tomorrow if you wish to. It wasn't  
8 ripe because we're not going to get into it.

9 CP [BG MARTINS]: Your Honor, I recall you breaking it  
10 down into this aspect, the interim order, and then the EO  
11 aspect, and then the unlawful influence aspect.

12 MJ [COL POHL]: Yeah.

13 CP [BG MARTINS]: That may be what he's referring to.

14 MJ [COL POHL]: Well, yeah, and I remember it, but  
15 yesterday I remember -- I recall that Major Schwartz had an  
16 issue about striking attachments. And again, just to be  
17 clear, I don't strike attachments, I don't strike testimony.  
18 That's not the practice. We seal documents, okay, we tell  
19 members to disregard testimony, but it's still all part of the  
20 record. And when I think of striking, I mean, it's no longer  
21 part of the record. So it maintains as part of the record.  
22 You get it to the same place, but it's just an imprecise term.  
23 Do you want to address that tomorrow or not?

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1           I mean, just so we're clear, Mr. Ryan, since this was  
2 kind of your issue, do you intend to bring that up as far as  
3 the last witness?

4           TC [MR. RYAN]: No, sir.

5           MJ [COL POHL]: Okay.

6           DDC [Maj SCHWARTZ]: So we'll be prepared to, Your Honor,  
7 but it's unlikely it's necessary.

8           MJ [COL POHL]: Okay. We'll see where we're at tomorrow,  
9 but plan to do that one, and Mr. Ruiz's discovery motion, and  
10 that will take the 254 series for this session and then from  
11 there on, we're going to go straight into argument on 031.

12          LDC [MR. RUIZ]: But you were considering in the  
13 classified aspects of 031 and ----

14          MJ [COL POHL]: Yes, but if we're going to -- I'm not  
15 going to -- again, I had indicated I'm deferring ruling on  
16 that. But even if we were -- you know, depending which way it  
17 goes, if I decide its use and relevance is appropriate, you  
18 will be given an opportunity to argue that; but by definition,  
19 that would have to be in a closed session anyway. Okay.

20                So understand, I'm not presupposing on that. I'm  
21 just saying I want to defer it until I hear the other  
22 arguments and then put that in the context. And if I rule  
23 that it is, you will be given an opportunity in a closed

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1 session, probably the next session rather than doing it this  
2 session, okay?

3 LDC [MR. RUIZ]: Thank you.

4 MJ [COL POHL]: Okay. And then we'll -- again, tomorrow  
5 then the next one in line would be 112, and we'll -- then  
6 we'll see where we're at at that point.

7 That being said, the commission is in recess until  
8 0900 tomorrow.

9 [The R.M.C. 803 session recessed at 1640, 9 December 2015.]

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