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1 [The R.M.C. 803 session was called to order at 1419,
2 28 January 2015.]

3 MJ [CAPT WAITS]: The commission will come to order. Let
4 the record reflect that all parties who were present when the
5 commission recessed are once again present.

6 All right. So is the VTC ready to go?

7 ATC [MAJ LONG]: Yes, Your Honor, it is. At this time,
8 the government calls the next witness, who will be testifying
9 under pseudonym as Former Commander by VTC.

10 MJ [CAPT WAITS]: Okay. Just, once again, I remind you,
11 based on the defense's earlier objection to the testimony
12 potentially being cumulative with the declaration that's
13 attached to the government's supplemental response, we've
14 heard a whole lot from other witnesses also, so I would just
15 say make sure that you're plowing new ground with this
16 witness.

17 ATC [MAJ LONG]: Yes, Your Honor, understood. And that is
18 the government's intent. Thank you.

19 MJ [CAPT WAITS]: Very well. You may call the witness,
20 then.

21 ATC [MAJ LONG]: Thank you, Your Honor. May I approach
22 the well?

23 MJ [CAPT WAITS]: You may.

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1 Q. And at the time the prosecutor read AE 021U to you
2 verbatim, could you hear and understand the prosecutor's
3 transmission?

4 A. Yes, I was able to understand it.

5 Q. And at that time did the -- any questions that may
6 have arisen as a result of that, were they successfully
7 answered by the prosecutor?

8 A. Yes, they were.

9 Q. Now, previously, did you give a declaration dated
10 28 November 2014 that's been marked for court purposes as
11 Attachment B of government filing AE 021M, that filing dated
12 13 January 2015?

13 A. Yes, I did.

14 Q. At this time, do you formally adopt that declaration
15 and declare it to be true to the best of your ability?

16 A. Yes, I do.

17 Q. Do you adopt that declaration as your testimony
18 today?

19 A. Yes, I do.

20 Q. As a result, as we discussed, rather than go through
21 the declaration in detail, we're going to just hit some of the
22 specific points that -- of lines of questioning the
23 government's going to next introduce, but I want to start with

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1 your military background and training. Could you briefly
2 describe that for the military judge?

3 A. Yes, sir. I'm a military police officer with over
4 30 years of military service, both enlisted and commissioned.
5 Additionally, I have over 20 years experience as a civilian
6 police officer. I currently work full time for the Army
7 National Guard.

8 Q. And in your experience of over 30 years as a military
9 police officer, were there any deployments, combat deployments
10 or other overseas deployments prior to your deployment to
11 Guantanamo Bay, Cuba?

12 A. Yes, there were.

13 Q. And would you just briefly describe those for the
14 record as well.

15 A. I performed duties as a platoon leader in Operations
16 Desert Shield and Desert Storm, and I've had multiple training
17 deployments where I've operated as a military police officer,
18 both performing law enforcement duties and training for combat
19 support missions.

20 Q. In your over 30 years experience as a military police
21 officer, did you ever experience a restriction on your ability
22 to perform your duties as a result of being a female military
23 police officer?

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1 A. No overall restrictions were experienced throughout
2 my career.

3 Q. You mentioned your civilian employment prior to
4 becoming a full-time active guardsman, and that's over
5 20 years as a civilian police officer, and is that the result
6 of a retirement from that particular role or duty?

7 A. That is correct.

8 Q. I'd like to next direct your attention to the
9 predeployment of the Guantanamo Bay mobilization that you
10 recently completed. The beginning of that predeployment
11 process, could you describe any challenges that you faced in
12 resourcing or manning for that deployment?

13 A. Yes, sir. This particular deployment had a very
14 specific manning document that was not aligned with a unit
15 table of organization. Because of that, we had to pull staff
16 from across four different units in order to fill this -- fill
17 the billets in this deployment manning document. That became
18 challenging, both because of the need to go across multiple
19 units, but additionally with the heavy number of NCOs required
20 for the mission as well.

21 Q. Very good. I'm actually getting a blinking message
22 from the interpreters asking you just to slow down a little
23 bit. I know this is technology at its finest, but we're

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1 trying to make this work.

2 A. I understand.

3 Q. At some point in the -- well, first, how long did
4 that process take for filling that manning document,
5 approximately how many months?

6 A. Approximately 12 months, 10 to 12 months.

7 Q. And based on your involvement in the resources and
8 filling that manning document, would you describe that as a
9 simple or easy process?

10 A. No, it was not.

11 Q. At some point ----

12 A. It was not easy.

13 Q. And at some point, did it become apparent to you that
14 in order to resource the manning document with sufficient
15 number of NCOs and commensurate rank, that you would have to
16 expand the available or the volunteer pool or available pool
17 of soldiers who might deploy to Guantanamo Bay?

18 A. As we moved closer to the deployment date, in order
19 to fill the very specific billets that I described, plus meet
20 all of the security clearance requirements, we got to the
21 point where soldiers were going to have to be ordered to the
22 mission.

23 Q. And at some point, as far as selecting in a

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1 gender-neutral manner or expanding it to include female
2 soldiers, could you describe how that decision was made?

3 A. We had female soldiers who were willing to deploy and
4 male soldiers who were on the list to be ordered. And so
5 the -- there was communications with the staff working the
6 mission ahead of us, the unit in front of us, and with that
7 coordination, the decision was made to fill the billets with
8 the volunteers versus the soldiers we would have to order.

9 Q. I want to fast-forward, then, to your arrival at
10 Guantanamo Bay. At that time, could you describe for the
11 military judge the process for selecting female guards to go
12 to the escort platoon?

13 A. Well, the decision to move the initial two female MPs
14 to the escort platoon was based on a need for security
15 clearance -- a higher level of security clearance in the camp
16 operations positions, which I found out -- once I arrived in
17 Guantanamo, I found out about that requirement.

18 So at that point we had two male NCOs working in the
19 escort platoon and the two female NCOs in our camp operation
20 section that required the TS clearance, and so the decision
21 that I made was to send those two females to the escort
22 platoon and bring the two males to the camp operations. To
23 me, it was a one-for-one swap, with the -- as far as the NCOs.

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1 Q. There was a period of time after that decision was
2 made and those female NCOs went to the escort platoon before
3 they became actively engaged in escort guard movement duties.
4 Could you describe that interim period?

5 A. There was. When I first sent the female NCOs over to
6 the escort platoon, they had not undergone all of the required
7 training at Fort Bliss. So in order to avoid having untrained
8 people dealing directly with detainees, untrained NCOs, I had
9 them start off in duties that would not require a hands-on
10 role.

11 Q. And then how did that progress?

12 A. That went on for admittedly longer than I had
13 anticipated, and that's my fault. The -- when I gave the
14 instructions to the platoon leader, I told him to put them
15 into duty -- put the female NCOs into duties where they would
16 not have a hands-on role with the detainees while they learned
17 the escort platoon mission. I did not give him a time frame,
18 nor did I track that deliberately, the use of those two NCOs.

19 It came to my attention that I had made that
20 oversight when the platoon leader came to me at some point in
21 mid to late August, and as we were working to increase the
22 number of legal visits that we could support and basically
23 increase the op tempo of the escort platoon, along with the

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1 fact that the escort platoon had lost a number of NCOs to
2 release from active duty, they were REFRADed and sent home,
3 the escort platoon leader came to me and said he needed the
4 female NCOs to work in the NCO positions.

5 At that point, I realized that I had not given him
6 that direct guidance to integrate them fully into the mission,
7 and I told him to do so.

8 Q. Now, you mentioned REFRAD, or released from active
9 duty, and obviously without getting into any kind of personal
10 information or specifics, could you describe a little bit more
11 the impact during the deployment of a soldier movement of that
12 nature and what that meant for the unit?

13 A. It had a significant impact. Without getting into
14 the details of numbers, we didn't have a lot of wiggle room.
15 So as we lost NCOs due to their need to go home for personal
16 reasons or family issues, that reduced the level of
17 oversight -- or potentially reduced the level of oversight
18 that we would have over the operation. And in a detention
19 operations, those multiple layers are critical to the success
20 of the mission.

21 Q. I want to shift focus to an issue that has been
22 addressed generally in prior testimony, but I'd like you to
23 address specific to the escort platoon or the escort

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1 scheduling or rotation and how that system worked and the
2 significance of that for the guard force, so the escort teams
3 and how they were scheduled. Thank you.

4 A. The process was on the surface very simple. We
5 listed team leaders, the escort team leaders in alphabetical
6 order. And we would run down the assignments, each team would
7 be given an assignment based on where they were on that list,
8 so we would start with A and work our way through Z.

9 Where I said it seems simple on the surface, there
10 are other variables involved. Such as if we had three
11 movements, and team leaders whose name -- last names began
12 with A, B and C made their scheduled moves, then the next
13 person up for the next day would start the day, so let's say
14 D. However, if a team leader went to move a particular
15 detainee and if for whatever reason the detainee may have
16 refused the move, that team leader would move on to the next
17 detainee, who on the -- at first, they would not have been
18 scheduled to move. And that way, they were at the camp, they
19 would pick up a detainee, if one refused to move.

20 The significance of that is it provides a level of
21 randomness to the assignment process, and for me, that was
22 important for the process because that way, neither the escort
23 personnel nor the detainees would be able to clearly

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1 anticipate who would be moving them on any day at any time.
2 And that was a control measure that I felt comfortable with as
3 far as a way to mitigate any chance of compromise of my staff.

4 Q. And if that staff were reduced or limited in some
5 form or fashion, then that would have a corresponding risk
6 impact on that rotation; is that true?

7 A. It would. If there's a smaller number, a smaller
8 pool, then it is more likely that the detainees could
9 anticipate which team leader and which team would be moving
10 him at any -- on any day.

11 Q. Before I get into the impact of the restriction
12 that's the subject of the motions hearing today under 021, I
13 just wanted to ask you: In the course of your deployment, did
14 you become aware as camp -- as the former commander, of
15 females being assigned other duties within the camps, other
16 than as guards, for instance, medical personnel ----

17 A. Although I never operated in the other camps --
18 medical personnel, there were -- there were female medical
19 personnel working in my camp, and then there were -- in the
20 other camps, my understanding is there were female guards and
21 female medical personnel treating detainees as well. That I
22 cannot speak to firsthand, though. But in the camp that I
23 ran, there were female medical personnel.

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1 Q. Were there females operating in other capacities
2 within your camp, doing other duties as well?

3 A. Yes. Obviously, I was the camp commander. My
4 librarians were both female MPs, and they had regular
5 interaction with the detainees as well.

6 Q. And in the course of -- for instance, if we were to
7 take a look at external or medical moves, would the detainees
8 of the camp where you were commander come into contact with
9 females in the course of their duties?

10 A. Yes.

11 Q. And could you provide some examples of what that
12 might -- of what those duties being performed by those
13 female -- whether it's medical personnel or other professions,
14 what they're providing to the detainees?

15 A. Outside of the assigned camp medical staff, which did
16 include -- of which there was a female corpsman, who would
17 administer basic response if detainees had a medical issue or
18 medical complaint and to check on them if they -- if there was
19 some sort of an incident with them. There were also
20 specialists that were brought in, physical therapists,
21 ophthalmologists are the two that come to mind in the course
22 of my time there.

23 Q. Is it possible there might be others, such as dental

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1 staff, optometrists?

2 A. Optometrists, yes. The dental staff, there could be.
3 I don't recall female dental staff in my time, but there may
4 have been an assistant or something that I didn't see outside
5 the dentist.

6 Q. Commander, in the course of your duties and
7 responsibilities during your deployment, at any time did you
8 learn of an objection by a detainee for any -- objecting to
9 contact with females from any of those occupational
10 specialties?

11 A. No, sir, I did not.

12 Q. At some point did you learn of a limitation or
13 restriction on your female guards within the escort platoon?

14 A. The restriction -- the only restriction was based on
15 the initial guidance that I provided my platoon leader when
16 the females first went to the platoon and were being trained.
17 So based on my guidance, there was a restriction for a period
18 of time with the intent that they learn the overall job and
19 then move into their appropriate roles.

20 Q. Once those female guards were properly trained and
21 assigned into NCO positions as team leaders, did you
22 subsequently learn of another external restriction or
23 limitation on their performance of their duties?

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1 A. Only when we received the court order.

2 Q. Would you describe for the military judge the impact
3 of that restriction and limitation on your female escort
4 guards within the escort unit?

5 A. Given the timing of the restriction and our
6 redeployment time frame, it was a -- it impacted a relatively
7 short window for my unit. The impact during that time was a
8 very careful oversight of the scheduling process to ensure
9 that we did not violate the order, which did not allow the
10 movement of the detainee to legal or commissions hearings with
11 female guards.

12 ATC [MAJ LONG]: I have no further questions of the
13 witness at this time.

14 MJ [CAPT WAITS]: Very well.

15 Cross-examination?

16 DDC [LtCol JASPER]: Thank you, Your Honor. May I
17 approach?

18 MJ [CAPT WAITS]: You may.

19 **CROSS-EXAMINATION**

20 **Questions by the Detailed Defense Counsel [LtCol JASPER]:**

21 Q. Good afternoon, Former Camp Commander.

22 A. Good afternoon, sir.

23 Q. You know Mr. Hadi al-Iraqi?

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1 A. Yes, I know the detainee.

2 Q. And you were able to successfully accommodate his
3 visits for over six months period from -- from the period of
4 back in March 20th through October 8th without using any
5 female guards; is that correct?

6 A. That's correct.

7 Q. And you are personally not aware of him ever being
8 touched by any female doctors or nurses or any other female
9 that works here at GTMO?

10 A. I am not, sir.

11 Q. So on October 8th of 2014, that was the very first
12 occasion that a female guard attempted to physically have
13 contact with Mr. Hadi al-Iraqi?

14 A. That was the first time that the female team leader
15 had contact with Mr. al-Iraqi, when she moved him that
16 morning.

17 Q. And you were aware that Mr. Hadi al-Iraqi does not
18 object to a female's presence, just being touched by a female?

19 A. Yes, he has stated that.

20 Q. To your knowledge, Mr. al-Iraqi was the very first
21 detainee to assert his religious belief that he cannot be
22 touched by a female?

23 A. That is correct.

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1 Q. Okay. And your job as the OIC is to screen requests
2 and determine their legitimacy, correct?

3 A. Yes, that is one of my duties.

4 Q. And you were in fact summoned to meet with Mr. Hadi
5 al-Iraqi to discuss why he was refusing to be escorted by the
6 female on the afternoon of October 8th?

7 A. I responded in the afternoon of 8 October, due to the
8 fact that he was refusing to comply with the guard force
9 orders.

10 Q. And you in fact spoke to him in detail about why he
11 was refusing, right?

12 A. That is correct.

13 Q. And you were accompanied by a linguist as well?

14 A. That is correct.

15 Q. And you explained to Mr. Hadi al-Iraqi that the
16 female team leader had transported him from the camp in the
17 morning, and you basically explained to him and asked him why
18 he was objecting on -- from the return from the same exact
19 team?

20 A. That is correct.

21 Q. And Mr. al-Iraqi immediately responded with he did
22 not see the female guard in the morning?

23 A. Yes, he made that claim.

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1 Q. He in fact told you he was not refusing to be moved,
2 but rather could not be moved by a female because it was
3 against his religious beliefs?

4 A. The detainee invoked his religious beliefs throughout
5 the conversation, but he also made it clear that he would not
6 comply if I did not change the composition of the team.

7 Q. He was adamant about not complying, unless you
8 changed the composition of the team?

9 A. Correct.

10 Q. You spoke to him for approximately ten minutes about
11 this issue?

12 A. Yes.

13 Q. He repeatedly invoked his right to exercise his
14 religion, not to be touched by a female?

15 A. Yes.

16 Q. He never acted in a threatening or offensive manner
17 to you?

18 A. No.

19 Q. You've had previous dealings with Mr. Hadi al-Iraqi,
20 and he has always been civil and respectful?

21 A. Yes.

22 Q. But on this occasion, he disagreed with the order
23 that was given to him?

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1 A. Yes.

2 Q. So subsequently you notified your superior, who is
3 the JDG commander, to speak with Mr. al-Iraqi?

4 A. I notified the commander that he refused -- that he
5 was refusing to move and the reasons for it, yes.

6 Q. And subsequently he went to the location where
7 Mr. al-Iraqi was still in a cell, and he spoke with him about
8 the same exact issue that you had on this occasion?

9 A. Yes.

10 Q. And you were present during this conversation as
11 well?

12 A. I was outside the cell during this time.

13 Q. To your understanding, Mr. al-Iraqi was extremely
14 persistent with professing his specific reason with the
15 commander as well?

16 A. Yes.

17 Q. He only gave one reason for not cooperating with this
18 escort move?

19 A. Yes.

20 Q. Ultimately, the decision was made to forcibly extract
21 Mr. al-Iraqi to accomplish the transport mission?

22 A. That is correct.

23 Q. You stated in an interview with me about six weeks

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1 ago that one of your concerns with accommodating
2 Mr. al-Iraqi's religious request is a possible spillover to
3 other detainees. Do you remember that?

4 A. Yes.

5 Q. In other words, if you accommodate Mr. al-Iraqi's
6 request, you will have to accommodate everyone else's request
7 in the same manner?

8 A. Yes. That's true with any detainee's special
9 request.

10 Q. Would you agree, if this religious request affects
11 many, all Muslim detainees, that maybe this is a widely
12 recognizable religious belief that's closely held to many
13 Muslims?

14 A. I don't agree or disagree with that statement.

15 Q. But if it's a widely recognized Muslim belief, it
16 should be honored and respected by the U.S. guard force?

17 A. Any detainee's special request has to be balanced
18 with operational requirements and policy, DoD and military --
19 other military policy. So I would not agree that it must be
20 respected.

21 Q. If the Geneva Conventions requires it to be
22 respected, you would surely accommodate the orders?

23 A. If there's a requirement under law or directive

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1 through the chain of command, yes.

2 Q. And you were able to accomplish that for six months
3 before October 8, 2014?

4 A. I was able to accommodate that before I lost staff,
5 and before I -- before our operational tempo of the escort
6 platoon increased, sir.

7 Q. And even after the interim order was issued
8 November -- mid November of 2014 until the time you departed
9 in late December, you were able to accommodate that order and
10 religious conviction?

11 A. The assignment rotation to move the detainee to his
12 legal meetings or the commissions did not rotate around and
13 put us in the position of having to change our assignment
14 rotation based on the order.

15 Q. Because it is difficult to perform a certain task --
16 if the law requires it, you would be able to accomplish the
17 mission. Do you have any doubt about that?

18 A. If there's a legal requirement, my assumption would
19 be I would be staffed to meet that legal requirement.

20 Q. And the staffing of -- or the manning requirements
21 issued to you as the commander are beyond your personal
22 control, right?

23 A. The composition of the deployment manning document is

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1 out of my control, yes, sir.

2 Q. In fact, the vast majority of your guard force is
3 male?

4 A. Yes, it was.

5 Q. And that's why you were able to accomplish the
6 mission, because you could swap people, if necessary, to
7 transport Mr. Hadi al-Iraqi?

8 A. I was not put in the position of having to swap
9 people to move him after the order was issued, sir.

10 DDC [LtCol JASPER]: May I have a moment, Your Honor ----

11 MJ [CAPT WAITS]: You may.

12 DDC [LtCol JASPER]: ---- with the prosecutor?

13 Thank you, Your Honor. Thank you.

14 **Questions by the Detailed Defense Counsel [LtCol JASPER]:**

15 Q. 90 percent of your guard force during this period,
16 the escort platoon, was in fact male?

17 A. Correct.

18 Q. So one out of ten of your guard force was a female?

19 A. A smaller percentage of that were NCOs, sir, and
20 these females were NCOs.

21 Q. If necessary, while transporting Mr. Hadi al-Iraqi
22 with a guard force of four, you could easily adjust, if
23 necessary and required to do so, to swap a male guard for a

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1 female guard for the 30 seconds required to transport him
2 about 20 feet into a van?

3 A. No, sir, because the detainee escort team personnel
4 have very specific duties, and those duties are outlined in
5 order to make sure that they are -- all the duties are
6 completed efficiently and appropriately in order to ensure the
7 safety and security of the staff and the detainees. Swapping
8 people around between duties undermines that goal.

9 Q. And how is it not undermined when you have to search
10 detainees with exclusive male units here at Guantanamo Bay?

11 A. I'm not sure I understand the question, sir ----

12 Q. You're aware ----

13 A. ---- as it pertains to exclusive male units.

14 Q. You are aware that there are gender distinctions made
15 here at Guantanamo Bay with the guard force?

16 A. Yes, sir.

17 Q. And what are those duties that require gender
18 distinction?

19 A. Female guards do not perform the physical pat-down
20 search of the detainees, nor do they watch them shower, or
21 they're not involved in a strip search of a detainee.

22 Q. So to uphold a sincere religious belief by a small
23 amount of detainees should not make you operationally

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1 ineffective?

2 A. I disagree with the -- I disagree with that
3 statement, sir. Those accommodations do not disrupt the
4 effectiveness of the teams because the teams have male and
5 female guards. These are not all-female escort teams.

6 Q. And those escort teams for six months were able to
7 interact without any reaction with Mr. Hadi al-Iraqi?

8 A. For six months, we did not have an issue with
9 Mr. Hadi al-Iraqi. I agree with that.

10 Q. The interim order did not impact the morale of your
11 guard force, correct?

12 A. The -- I explained the order to the female guards and
13 explained that it was an interim order, and the purpose of it
14 was to allow for this review of the matter in the court. So
15 for a short period of time, we were ordered -- we were ordered
16 to make the adjustment.

17 They were -- they understood what I was saying, but
18 they understood that it limited their role, so it would be an
19 impact on their morale.

20 Q. And good units are flexible and can make adjustments
21 to follow orders?

22 A. You have no choice but to make adjustments to follow
23 orders.

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1 Q. And it makes sense to respect a foreign detainee's
2 religious accommodations if they're sincere, if it's possible
3 to execute that request?

4 A. If it's possible to sustain the adjustment that
5 you're agreeing to make. There's a difference.

6 Q. If the U.S. military provided more male guards for
7 specific detainees, it would make it a lot easier to
8 accomplish this request; would you agree?

9 A. I would agree that it would make it easier to
10 accommodate their requests, but it would be more difficult to
11 fill the requirements of the mission.

12 Q. Female guards are not without a job just because they
13 cannot touch Mr. al-Iraqi, correct?

14 A. The female NCOs' duties would be limited beyond other
15 NCOs if that limitation were sustained.

16 Q. This is a challenge that you personally as the OIC
17 were able to overcome?

18 A. I was not put in a position of having to make a
19 change, sir. As I've stated, it was a short period of time,
20 and due to our assignment rotation, we were not put in the
21 position of having to move people around, so I did not have to
22 adjust based on the order, sir.

23 Q. And that's because you were here for a short period

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1 of time before you had to leave?

2 A. Between the time that the order was issued and the
3 time that we had to leave, it was a short period of time with
4 limited legal meetings and commissions for Mr. Hadi al-Iraqi.

5 Q. And there have always been limited legal meetings and
6 court sessions with Mr. al-Iraqi?

7 A. But over the period of time, as those numbers
8 increase, in addition to the other detainees having their
9 legal meetings and various meetings, the assignment process
10 rotates around. So the likelihood increases over time, sir,
11 that we would have an issue.

12 Q. Now, your contention is with 90 percent of your
13 escort force being male, and only Mr. al-Iraqi and a handful
14 of others -- that you would not be able to accommodate a
15 sincere religious accommodation that is widely recognized in
16 the Muslim world?

17 A. Yes.

18 DDC [LtCol JASPER]: I have no further questions. Thank
19 you, Your Honor.

20 MJ [CAPT WAITS]: Thank you, Colonel Jasper.

21 Redirect?

22 ATC [MAJ LONG]: Yes, Your Honor.

23

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1 REDIRECT EXAMINATION

2 Questions by the Assistant Trial Counsel [MAJ LONG]:

3 Q. Commander, the defense went into spillover of this
4 accommodation to other detainees. You confirmed that. Isn't
5 it true you can't treat this detainee in isolation. You must
6 consider the impact of this accommodation across all of your
7 authority and control within the scope of your
8 responsibilities; isn't that true?

9 A. That is true, sir. We have standard operating
10 procedures. If you make an accommodation and it changes
11 something in those standard operating procedures, it requires
12 approval up the chain of command, and it also requires, then,
13 that the accommodation is provided to the other detainees as
14 well. So it would amplify the effect of it beyond one
15 detainee.

16 Q. And there was also questioning regarding whether you
17 could accommodate or whether you would follow a lawful order
18 or a court order, things like that. But just because you can
19 accommodate an order in the short term doesn't mean it's
20 sustainable in the long term; is that your testimony?

21 A. Yes, sir.

22 Q. And also, just because you can make accommodations,
23 changes, adjustments, that doesn't mean it's easy or cheap, or

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1 without cost; isn't that true?

2 A. That is correct.

3 Q. One of the -- one of the significant changes for
4 these female escort guards, moving them into the team leader
5 positions, is they were able to do duties commensurate with
6 being noncommissioned officers; isn't that correct?

7 A. That is correct.

8 Q. And by being able to perform in a deployed
9 environment here at Guantanamo Bay duties commensurate with
10 their rank and putting them on equal footing with their male
11 counterparts would have a positive impact on their career;
12 isn't that true?

13 A. Absolutely.

14 Q. And so it's not just the morale that was impacted
15 when you told them about the restriction. You had to consider
16 the potential career impact and their progression as junior
17 NCOs; is that true?

18 A. Yes, their progression and their ability to perform
19 for this mission and to have the training and experience for
20 future missions.

21 Q. The gender-based distinctions in the Guantanamo Bay
22 SOPs for males not searching females, females not searching
23 males or observing in the shower are distinctions based on

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1 privacy concerns and not religion; isn't that true?

2 A. Yes, that's correct.

3 Q. The defense raised that there are a small amount of
4 detainees with the religious beliefs of the accused, and
5 that's because even in your camp, not all detainees shared the
6 accused's particular religious convictions, did they?

7 A. That would be my assumption, sir, based on the fact
8 that they did not all raise this issue.

9 Q. And lastly, just because you could add more male
10 guards, as you testified to, that accommodation would come at
11 significant cost; isn't that true?

12 A. It would. Those male soldiers would have to be
13 pulled from other units, thereby affecting the other units'
14 readiness for whatever other missions they might be assigned,
15 as well as what we already mentioned about the female NCOs not
16 attaining the appropriate level of experience that they should
17 have for their future requirements in the Army.

18 ATC [MAJ LONG]: I have no further questions, Your Honor.

19 MJ [CAPT WAITS]: Any recross?

20 DDC [LtCol JASPER]: No, Your Honor. Thank you.

21 MJ [CAPT WAITS]: Very well. Former Commander, thank you
22 for your testimony in this commissions proceeding today. You
23 are free to go about your normal business at this time.

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1 WIT: Thank you, sir.

2 [The witness was excused and the video teleconference was
3 terminated.]

4 MJ [CAPT WAITS]: Thank you. All right. Do we need to
5 take a recess at this point? Are you ready to call your next
6 witness? Does the defense need a recess?

7 I think -- when's the next call to prayer?

8 DDC [LtCol JASPER]: The next call to prayer is 1530, Your
9 Honor.

10 MJ [CAPT WAITS]: Okay. I don't know how -- there's no
11 declaration associated with this witness, so I assume this is
12 going to be all new ground?

13 ATC [MAJ LONG]: That is correct, Your Honor. And the
14 government will be seeking for the latter portion of the
15 direct to close the courtroom for the remainder of the
16 testimony, and I will speak for the -- I won't speak for the
17 defense on this, but the parties had discussed this before,
18 and I'd ask Lieutenant Colonel Jasper to perhaps mention his
19 intentions for cross-examination just to give the court an
20 idea of what's going to happen after the government request to
21 close the courtroom.

22 DDC [LtCol JASPER]: Closed session, Your Honor, as we
23 agreed at the 505(h).

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1 MJ [CAPT WAITS]: Okay. At this -- I mean, before you --
2 okay. Right now, I'm going to assume that we are going to
3 need a closed session. I guess I don't really see any reason
4 to begin the direct examination of the witness, unless you
5 tell me now you think you can conduct the open portion of the
6 testimony before -- probably in the next 20 minutes?

7 ATC [MAJ LONG]: Your Honor, it's unlikely I will complete
8 it; however, I'm happy to start, subject to what the court
9 chooses to do.

10 MJ [CAPT WAITS]: Does the defense have a preference?

11 DDC [LtCol JASPER]: If the prosecutor's ready to go now,
12 Your Honor, I'd say we press.

13 MJ [CAPT WAITS]: Okay. All right. Call your next
14 witness.

15 ATC [MAJ LONG]: Your Honor, the government calls the next
16 witness who will be testifying under the pseudonym as Tier
17 Guard. And that's for the record spelled T-I-E-R.
18 TIER GUARD, U.S. Army, was called as a witness for the
19 prosecution, was sworn, and testified as follows:

20 **DIRECT EXAMINATION**

21 **Questions by the Assistant Trial Counsel [MAJ LONG]:**

22 Q. I remind you that pursuant to the agreement of the
23 parties and approval by the military judge, you will be

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1 testifying under the pseudonym as Tier Guard. At no time do
2 you need to divulge any personal identifying information or
3 answer any questions that would do so.

4 In addition, in preparation for the hearing today,
5 you met with the prosecutor. At that time, the prosecutor
6 provided you with a document the court has marked as Appellate
7 Exhibit 021U. Those are the court security officer's written
8 guidelines pertaining to classified information.

9 At the time that I provided you that document, did
10 you have a chance to read that?

11 A. I did.

12 Q. And at that time that you read it, did you fully
13 understand the terms and conditions of that document?

14 A. I did.

15 Q. Did the prosecutor adequately answer any questions
16 that you may have had as a result of reading that document?

17 A. He did.

18 Q. Thank you.

19 I would like to beginning by going back to the
20 beginning of your Army and military experience, and if you
21 would describe for the military judge your Army training and
22 the course of your training and deployments and things like
23 that. Thank you.

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1 A. Sure. I enlisted in the military 15 years ago as a
2 military police officer. I went to Basic Training and AIT in
3 2000. Since then I was with my former unit until 2003 when I
4 deployed to Iraq in support of Operation Iraqi Freedom.
5 During that time, we did convoy security and patrols.

6 After that, we came back. I was with the same unit
7 until 2008, when we got activated to go to Camp Cropper in
8 Iraq to do detainee ops. During that time, I was a tier
9 guard, so I worked with the population. I was responsible
10 for like a general population, like six different gen pop
11 cells of over 100 detainees, just taking care of like their
12 basic daily responsibilities, duties, functions, escorting,
13 things of that nature.

14 After 2008, I came back and I switched to the current
15 unit that I'm in now, and I deployed to Bagram Air Base in
16 Afghanistan in 2010 and was at the detention facility in
17 Parwan. I worked at the Detainee Services Branch there. We
18 were responsible for the in-processing and out-processing of
19 detainees. That duties that we did, we did like the BATS
20 system, where we did fingerprints with them, iris scan. We
21 also did major case prints with them for the FBI. During that
22 time we processed well over -- well, I would say hundreds of
23 detainees in and out of that facility.

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1 Right after that, we came back, and I was activated
2 for this mission, and I'm here now.

3 Q. I'd like to take you back to your deployment in 2008
4 to Camp Cropper in Iraq. You described yourself as a tier
5 guard responsible for about six pods; is that correct?

6 A. Correct, sir.

7 Q. And approximately 100 detainees or so?

8 A. Correct, sir.

9 MJ [CAPT WAITS]: Can you hold on a second. Is that 100
10 detainees total or --

11 WIT: It's an estimate.

12 MJ [CAPT WAITS]: Is that per cell, or is that total?

13 WIT: Total, between all six.

14 **Questions by the Assistant Trial Counsel [MAJ LONG]:**

15 Q. In the course of your duties as a tier guard, you
16 testified to escort -- could you describe some of the physical
17 contact as a tier guard at Camp Cropper you had to engage in
18 as a military police officer, soldier.

19 A. Sure. When we would escort them, we would pull them
20 out of their cells. If we needed to, depending on their level
21 of security, we would either do the hand restraints or not do
22 the hand restraints.

23 Q. May I ask you, I'm just getting the blinking yellow

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1 light of caution ----

2 A. Okay.

3 Q. ---- to slow down. The interpreters are having
4 trouble keeping up. It's no problem.

5 A. Sure.

6 Q. Other than that, please continue.

7 A. When we would actually physically escort them, it was
8 a hand on the arm and a hand on the shoulder, and we would
9 walk them down basically the compound to where the escorts
10 would take over from there.

11 Q. And during the course of your duties as a tier guard,
12 did you have occasion to learn of the religion of the
13 detainees?

14 A. We did. It was on -- it was annotated on their
15 wristbands that they wore.

16 Q. And what was that religion?

17 A. They were Islamic, Islam.

18 Q. Of the total 100 detainees, if you can recall, what
19 percentage was Muslim?

20 A. 99 percent. We didn't really ----

21 Q. What percentage was male?

22 A. 100 percent were male.

23 Q. Did you have occasion during your tier guard duties

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1 at cropper to learn the nationality of the detainees?

2 A. We had multinational. It wasn't just -- it wasn't
3 just one. They came from all over the place.

4 Q. So it's not just Iraqis. It might have been foreign
5 fighters as well?

6 A. Correct.

7 Q. How long was that particular deployment? I apologize
8 if you had said this before.

9 A. 12 months.

10 Q. During the 12 months of your tier guard duties coming
11 into regular physical contact, about 100 Muslim men of
12 multiple nationalities on a regular basis, was there ever an
13 objection to you being a female military police soldier?

14 A. Never.

15 Q. I want to move to Afghanistan, to Bagram.

16 A. Okay.

17 Q. You mentioned BATS, iris scan, and fingerprints. Can
18 you also describe the touching that was involved in really
19 processing detainees at that point; is that correct?

20 A. That is. It was during the in processing opinion for
21 the BATS, you would have to not only just press their
22 fingerprints on the BATS machine, but you would also have to
23 roll them. And you would grab their fingers and roll or press

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1 down to get the good fingerprints. For the major case prints,
2 that was with actual ink, and you would roll ink on their
3 hands and then roll their fingerprints on sheets of paper.

4 Q. During the period of time -- and that deployment was
5 also 12 months?

6 A. It was.

7 Q. During that 12 months at Bagram engaged in those
8 duties, did you have occasion to learn of the religion of the
9 hundreds of detainees you processed?

10 A. I did.

11 Q. What was that religion?

12 A. They were Muslim.

13 Q. What percent were Muslim.

14 A. I don't know the exact number, but it was in the
15 nineties.

16 Q. What percent were male?

17 A. 100 percent.

18 Q. Did you have occasion to learn of the nationality of
19 those detainees?

20 A. I did. They were multinational as well.

21 Q. During the 12 months you were engaged as -- did you
22 mention your particular job title? You were a tier guard in
23 Iraq, but your job title in Afghanistan was ----

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1 A. I just worked in the DSB. We didn't really have a
2 job title. It was just the Detainee Services Branch.

3 Q. Okay. So 12 months in the Detainee Services Branch
4 processing hundreds of detainees, Muslim men of multiple
5 nationalities, did you ever have an objection to touching
6 because you were a female military police soldier?

7 A. I did not.

8 Q. I'm sorry?

9 A. I did not.

10 Q. Thank you. Just for the record.

11 A. Yep.

12 Q. I'd like to -- I'd like to fast-forward to the
13 deployment to Guantanamo Bay. How did you learn of the
14 deployment, the pending deployment to Guantanamo Bay?

15 A. I was in that current unit, and the mission came up,
16 and they said, hey, you're going. That's the way they told
17 me.

18 MJ [CAPT WAITS]: Okay. You're tailing off on the ends of
19 your sentences. Go ahead and speak slowly, but finish your --
20 finish articulating your complete thoughts, okay?

21 WIT: Okay.

22 MJ [CAPT WAITS]: Thank you.

23 Questions by the Assistant Trial Counsel [MAJ LONG]:

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1 Q. And as far as your selection for the Guantanamo Bay
2 mission, could you speak to whether that was gender neutral,
3 gender specific?

4 A. It was gender neutral. There were -- for my
5 position, there were a couple of people that were selected
6 based on our experience in the past, and it wasn't because of
7 being male or female.

8 Q. So your past experience you've just testified to in
9 detention operations, the 24 months of experience?

10 A. Correct, sir.

11 Q. And without giving specifics as to rank, what
12 position were you -- as a result of that experience, what
13 position were you slotted?

14 A. Platoon sergeant.

15 Q. Platoon sergeant.

16 Was there another title or additional title given to
17 you once you arrived in Guantanamo Bay in addition to
18 platoon sergeant?

19 A. There was.

20 Q. What was that title?

21 A. Watch commander.

22 Q. Watch commander.

23 And without giving numbers, as a platoon sergeant or

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1 at that level of noncommissioned officer, would you describe
2 that as a common rank structure or a smaller rank structure,
3 as far as the number? I'm sorry.

4 A. Oh.

5 Q. Without giving away the numbers, are there a lot of
6 other senior noncommissioned officers your rank, or is there a
7 smaller number?

8 A. A smaller number.

9 Q. So you are among the senior leadership of the
10 deployed tier guard staff at Guantanamo Bay; is that correct?

11 A. Yes, sir.

12 Q. And, again, that's based in large part on your
13 experience, not only over 15 years as a military police
14 soldier, but specifically your detention operations experience
15 in Afghanistan and Iraq; is that true?

16 A. Yes, sir.

17 Q. I also want to ask you one more question based on
18 that 24 months: How did that help prepare you for your
19 current duties working with the detainee population at
20 Guantanamo Bay?

21 A. I believe the knowledge base and lessons learned,
22 stuff like that, that you naturally grow from, doing the same
23 thing that we've done for so long, helps here, because I can

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1 apply the things that I've learned and have grown from in the
2 past and apply them currently to what I'm doing.

3 And I think it also gives a good medium for the
4 junior enlisted soldiers that maybe if they haven't done this
5 before, that if they have questions or concerns or anything
6 like that, they could come and ask us those questions and feel
7 confident that we'll steer them the right way and know the
8 correct answer.

9 Q. So that experience is then part of your leadership
10 and mentorship of other soldiers in your unit; is that true?

11 A. It is.

12 Q. And that experience then helps develop and guide
13 their career progression; is that true?

14 A. It does.

15 Q. And by giving them the experience you obtained in
16 Iraq and Afghanistan, they can then develop into the leader
17 you have become; isn't that true?

18 A. Correct, sir.

19 Q. And without that experience and that opportunity,
20 would you say that would help or hurt their chances of filling
21 a role that you are filling right now?

22 A. I would say hurt, sir.

23 Q. When you arrived at Guantanamo Bay in your duty

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1 capacity as platoon sergeant and watch commander, did you at
2 some point learn of a restriction or limitation on the female
3 guards in your charge?

4 A. We learned about it during our training, our train-up
5 for this mission.

6 Q. Could you describe just generally -- because we'll
7 get into the specifics for Camp 7 later, but just generally,
8 the impact of that limitation and restriction operationally in
9 your platoon?

10 A. It forces us to move people around and not be as
11 flexible as we were able to be. It gets hard when we do so
12 many movements and stuff like that to be able to facilitate
13 them moving around with just the male guard force. And then
14 also it limits me as a supervisor being able to properly
15 evaluate my soldiers because I can't put them in specific job
16 duties to see how they do in those positions.

17 Q. You mentioned limitations on you as the platoon
18 sergeant. As a senior NCO, noncommissioned officer, in your
19 platoon charged with the care, safety and welfare of your
20 soldiers, further describe -- again, careful not to get into
21 the internal specifics, but describe the impact on your
22 ability to perform that integral function as part of your job?

23 A. It puts a burden on me to try to figure out where

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1 everyone goes, not just at work, but also I would say with the
2 females and also males, it's kind of -- it's kind of divided
3 them a little bit. The females aren't allowed to perform
4 their job functions, so they're a little -- they're a little
5 down in their morale about that. And then the males are a
6 little agitated because they have to pick up the slack that
7 the females can't do. So it's kind of creating that rift.

8 With me personally as a platoon sergeant, soldier
9 welfare is one of my top priorities, and when you see it in
10 your platoon, and that's a tough one to try to work out with
11 them, so ----

12 Q. At some point after arriving and adjusting to the
13 limitations, was there a meeting in which these restrictions
14 and limitations were discussed with the female guards?

15 A. It was in the -- in the other case that they limited
16 female guards that hit while we were here, and morale went
17 down even further. So myself and the camp commander pulled
18 all the females in a room and just kind of talked it out with
19 them, got their feelings, kind of whatever they wanted to say.
20 It was kind of an open censorship session with them, and
21 hopefully answered some questions for them, and got back on
22 the right path.

23 Q. But one of the -- during that meeting, did you learn

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1 of a sentiment from the soldiers regarding this particular
2 deployment, had they learned before coming that this was going
3 to be the limitation?

4 A. Right. They -- some of the soldiers said if this was
5 the way it was going to be, why did we even come? They
6 specifically addressed, well, if I get my E4 eval or whatever
7 evaluation they're going to get, how is my eval going to be
8 different than the other guard force, so when I'm rated
9 against that person, it's not going to be the same, and that
10 person is going to come out ahead because, you know, I only
11 did such-and-such, and then he gets to do all of this stuff.
12 So there were mixed sentiments.

13 Q. And your guard force, they trained and validated as a
14 unit; isn't that true?

15 A. We did.

16 Q. So as a platoon?

17 A. We trained as a platoon. The whole unit got
18 validated together, but it was -- our platoon trained every
19 day together, so ----

20 Q. So you train and validate together as a unit. Could
21 you describe the unit impact on needing to make adjustments or
22 shifting resources to accommodate the restriction?

23 A. Sure. As I said, we trained with our platoons every

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1 day that we did the training. If we had to take people from
2 their platoons, they wouldn't know exactly how that person
3 worked or -- I mean, we received the same training, but it's
4 not the same as if you train with that person every day and
5 they're by your side every day. So I think that the cohesion
6 between that team would be broken, and it's a lot harder for
7 the guard force.

8 Q. And when that cohesion or that team integrity is
9 broken, is there a corresponding risk?

10 A. Oh, there is for sure. I think that if you're doing
11 something and you know this person always does this every time
12 and you're used to that, and then you put a new person in
13 there, then you run that risk of, oh, hey, maybe that person
14 didn't do that, and you're starting to second-guess yourself,
15 which -- which is not very good.

16 MJ [CAPT WAITS]: You know what I'm thinking?

17 ATC [MAJ LONG]: Yes, Your Honor I do.

18 MJ [CAPT WAITS]: How close are you?

19 DDC [LtCol JASPER]: I'm very close.

20 MJ [CAPT WAITS]: I will give you one more minute. If you
21 do not finish, then I'm going to have to take a recess.

22 ATC [MAJ LONG]: Yes, Your Honor.

23 Questions by the Assistant Trial Counsel [MAJ LONG]:

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1 Q. And the risk would be to safety and security;
2 wouldn't that be correct?

3 A. It would be.

4 Q. And at safety and security not just of the detainee,
5 but of the guard force; isn't that true?

6 A. To both, yes.

7 Q. And that's due to the indecision or hesitation that
8 might be built into the cross-leveling or the resource -- the
9 manpower switching that you have to go through right now;
10 isn't that true?

11 A. Correct.

12 ATC [MAJ LONG]: I think this is as good a place as any
13 for the government to stop our open court direct, and we'll
14 pick it up in ----

15 MJ [CAPT WAITS]: Okay. Colonel Jasper, are you going to
16 have any direct -- or cross-examination in an open session?

17 DDC [LtCol JASPER]: No, Your Honor.

18 MJ [CAPT WAITS]: So yours will be entirely closed?

19 DDC [LtCol JASPER]: Yes, sir.

20 MJ [CAPT WAITS]: All right, then. The commission will be
21 in recess until -- I'm going to say -- is 1600 satisfactory?

22 DDC [LtCol JASPER]: 30 minutes will work, yes, sir.

23 MJ [CAPT WAITS]: Okay, then. The commission will be in

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1 recess until 1600, at which time we will go into a closed
2 session under R.M.C. 806. So the remainder of the proceedings
3 of the commission today will be closed. All right.

4 ATC [MAJ LONG]: Yes, Your Honor. Very well.

5 MJ [CAPT WAITS]: Commission is in recess until 1600.

6 Please make sure you're available at 1600 for further
7 examination, and during this recess, do not discuss your
8 testimony with anyone, including counsel for both prosecution
9 or the defense.

10 WIT: Yes, sir.

11 MJ [CAPT WAITS]: All right. Commission is in recess
12 until 1600.

13 [The R.M.C. 803 session recessed at 1532, 28 January 2015.]

14 [END OF PAGE]

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