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1 [The R.M.C. 803 session was called to order at 0946,
2 18 October 2016.]

3 MJ [Col SPATH]: These commissions are called to order.
4 All of the parties are again present.

5 Defense Counsel, call your next witness.

6 DDC [LCDR POLLIO]: Defense calls Mr. Michael Quinn.

7 MJ [Col SPATH]: Thank you.

8 Trial Counsel, if you would swear in the witness,
9 who's testifying by VTC.

10 ATC [LT MORRIS]: Mr. Quinn, good morning.

11 WIT: Good morning. Can you hear me on that down in
12 Guantanamo?

13 ATC [LT MORRIS]: Yes, we can. Would you please stand and
14 raise your right hand.

15 MICHAEL I. QUINN, civilian, was called as a witness for the
16 defense, was sworn, and testified as follows:

17 **DIRECT EXAMINATION**

18 Questions by the Assistant Trial Counsel [LT MORRIS]:

19 Q. You may have a seat.

20 Would you please state, spelling your full name for
21 the record.

22 A. My name is Michael Quinn, M-I-C-H-A-E-L, Q-U-I-N-N.

23 Q. And, Mr. Quinn, where are you testifying from?

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1 A. I'm testifying from the Mark Center VTC site in
2 Arlington, Virginia.

3 ATC [LT MORRIS]: Thank you. Your witness.

4 **Questions by the Detailed Defense Counsel [LCDR POLLIO]:**

5 Q. Good morning, Mr. Quinn. My name is Lieutenant
6 Commander Pollio. Can you hear me okay?

7 A. I can hear you fine, Commander.

8 Q. Okay, great. I'd like to start briefly with just
9 your background. I understand you're an attorney. Can you
10 state how long you have been an attorney and some of the
11 various assignments you've had both in OJC and brief military
12 experience.

13 A. Yeah. I was barred in the State of North Carolina in
14 1985. I immediately came on active duty with the Navy Judge
15 Advocate General's Corps, where I served in a variety of
16 assignments for 28 years. In 2013 I began work. My first
17 civilian job after retirement was with the Office of Military
18 Commissions as a legal advisor and chief of staff. I worked
19 in that position for approximately 14 months. I then took a
20 position with the Navy Office of General Counsel in Corpus
21 Christi, Texas, working for the Chief of Naval Air Training
22 and that's where I am currently practicing.

23 Q. Sir, when you were in the military, did you have

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1 experience with congressionals before, responding to
2 congressionals on behalf of a command?

3 A. Yes, both as a Staff Judge Advocate and I did a tour
4 of duty in the Navy's Office of Legislative Affairs.

5 Q. Sir, to be clear, that's -- the acronym for that
6 office is OLA; is that correct?

7 A. That's correct.

8 MJ [Col SPATH]: Commander Pollio, just slow down a little
9 bit, okay?

10 DDC [LCDR POLLIO]: Sure.

11 MJ [Col SPATH]: Thanks.

12 Q. Sir, you stated that you started at the commissions
13 in 2013. At that time, who was the convening authority?

14 A. It was the Honorable Paul Oostburg Sanz.

15 Q. And did you work with him the entire time you were
16 the legal advisor?

17 A. For the first -- my first 13 months was with --
18 excuse me, was with Mr. Oostburg Sanz. And then the last
19 month or the last -- yes, the last four weeks was when General
20 Ary came on board as the convening authority.

21 Q. Okay. Sir, when you were in the convening
22 authority's office, in addition to the role of the legal
23 advisor, did you have any other responsibilities in that

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1 office?

2 A. I was the chief of staff as well.

3 Q. And can you explain briefly what your
4 responsibilities as chief of staff were?

5 A. Well, that was being the convening authority's
6 principal deputy for the execution of the logistics and the
7 administrative mission for the Office of the Convening
8 Authority. And that covered a range of things, as the Office
9 of the Convening Authority has many different subsections
10 handling the travel and transportation for all of OMC, the
11 translators, the contract administration, the civilian
12 personnel system, and support that comes working with the
13 military services for the judge advocate and paralegal support
14 that comes from the various services. So -- the web policies.
15 There were a number of different logistic issues that the
16 chief of staff oversaw and on a daily basis was responsible
17 for carrying out the direction of the convening authority.

18 Q. Sir, would those logistic responsibilities have also
19 included some of the logistic oversight for the trial
20 judiciary?

21 A. It would have only to the extent of the support that
22 they required from either a logistics support, arranging their
23 travel, making sure that the transport between D.C. and

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1 Guantanamo was working; attending to any resources that they
2 needed. We would facilitate their resourcing. But as far as
3 their mission execution, that was all the trial judiciary's.

4 Q. So as the chief of staff, though, any decision that
5 the convening authority made that might impact the trial
6 judiciary, you would have input or oversight on that?

7 A. I would effectuate what the convening authority --
8 what his intent and decisions were.

9 Q. Okay. And as the legal advisor, what would your role
10 and responsibility have been to the convening authority?

11 A. That was specific to the legal proceedings within the
12 cases themselves. So I would oversee the efforts of the
13 various assistant legal advisors, the preparations of the
14 legal memorandum, and the various advice that needed to be
15 given to the convening authority in his role in making
16 decisions about individual cases.

17 Q. Sir, understanding that you were both the legal
18 advisor and the chief of staff, was there a particular reason
19 why you held both of those positions?

20 A. That was how the office was organized when I got
21 there.

22 Q. Okay.

23 A. The position was vacant at the time. My predecessor

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1 had retired several months before that and, like me, he had
2 held both the legal advisor and the chief of staff position
3 concurrently.

4 Q. And my understanding, sir, is that the convening
5 authority office is subdivided. So issues that impact
6 logistics go to the logistics department, issues that impact
7 operations go to operations, issues that need a legal
8 oversight go to the legal advisors; is that correct?

9 A. Generally, yes, but many of the issues cut across the
10 entire organization. You may have legal issues arise that we
11 need to provide legal advice in respect to a particular case
12 that actually involve decisions about translators or travel or
13 resourcing. So there are issues that cut across all the
14 sections. That was one of the advantages of having the
15 organization that we did, was I could see the entire issue
16 from my vantage point and know if there were different things
17 that needed to be considered.

18 Q. I understand that. And so it's fair to say that a
19 legal advisor attorney might look at an issue that might seem
20 purely logistical in nature and understand that it has a legal
21 implication; is that fair?

22 A. That's fair.

23 Q. Let's see. In this particular manner, when you

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1 arrived in the office at 2013, who were the other legal
2 advisors?

3 A. Michael Breslin was the acting legal advisor slash
4 deputy. Alyssa Adams was one of the GS civilian attorneys.
5 Let's see, trying to remember. Kevin Powers was an activated
6 Navy Reservist at the time. And we had, I believe, another
7 Army attorney, and I can't recall her name at the moment.

8 Q. Sir, this was at the start of 2013 when you first
9 began?

10 A. This was in August of 2013.

11 Q. And let's fast-forward to, let's say, August of 2014.
12 Was it still the same set of legal advisors in the shop or had
13 it changed?

14 A. We had had a changeover. I believe by that time -- I
15 think Mr. Breslin had retired by that time and Mr. Toole was
16 just coming on about that time, Mr. Mark Toole. Alyssa Adams
17 was still there. We had Lieutenant Colonel Patricia Lewis
18 from the Army and we had Lieutenant Commander Raghav Kotval,
19 although I think he may have been a commander at that point,
20 from the Navy Reserves, and Captain Matt Rich, I believe had
21 just reported shortly before then.

22 Q. And as the senior legal advisor, did you -- were you
23 the supervisor to all of these other legal advisors; did you

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1 rate them, have input on their evaluations?

2 A. I believe I was their rating official or, for the
3 civilians, their supervisor for all those purposes.

4 Q. Sir, who was your supervisor as the legal -- as the
5 senior legal advisor and chief of staff, who was your rating
6 official?

7 A. My rating official was the deputy general counsel,
8 legal counsel, Darrin Hostetler at that particular time.

9 Q. And going back to August 2014 time frame, October
10 2014 time frame when you're the senior legal advisor, do you
11 have weekly meetings with your legal advisors?

12 A. Formal meetings, yes. We have a weekly meeting -- or
13 we did at the time, and we would set aside a particular time.
14 And when it was with Mr. Oostburg Sanz, it kind of depended on
15 his schedule. He would come over to the Mark Center at least
16 once a week for a dedicated period of time here in the Mark
17 Center with the Office of Military Commissions.

18 So we would have a weekly meeting at that time, and
19 it was bifurcated. There would be an operations meeting where
20 we would talk about the various logistics issues that were
21 going on and resource requests and various things about the
22 running of the commissions. Then we'd have a separate meeting
23 with the legal advisors where we'd go over the case tracker

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1 and bring the convening authority up to speed on what the
2 status of various legal issues were.

3 Q. Sir, it's fair to say -- this case tracker, what sort
4 of information was it tracking for each case?

5 A. Each actionable item. If we had a defense request or
6 a prosecution request for, you know, an expert witness or
7 might be translation support, whatever the case may be that
8 was individual to a particular case, it would have the case,
9 the request from the -- you know, where the request came from,
10 the date of the request, the nature of the request, and what
11 the status was. This was to make sure that we didn't have
12 anything drop through the cracks, that we knew what was on our
13 plate, and that we were actively working and updating the
14 convening authority on what was pending.

15 Q. Would you use that case tracker to brief the
16 convening authority, so you might show him that case tracker
17 as well?

18 A. Absolutely.

19 Q. On the portion that would say status, might you
20 include any issues or past precedent that had been, you know,
21 on previous cases with similar issues? You know, what sort of
22 information might you put in the status block of that case
23 tracker?

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1 A. It wouldn't necessarily be so detailed as to go into
2 comparing it to past cases. What it would basically say was
3 this is what needed to be done, and here's what we were
4 perhaps awaiting. And so, that was -- it was just as a way of
5 giving a fast orientation of what was going on and what we
6 were waiting on and when we expected to be completed.

7 Q. Would it say, you know, pending approval, pending
8 disapproval?

9 A. It might indicate that, you know, this particular
10 package is with the convening authority, or we were awaiting
11 additional information from the prosecution or the defense.
12 It would be something pretty short so that we could use that
13 as a way of discussing, if the convening authority wanted to
14 dive deeper into it, what was the status and what was going
15 on. And we would cover that orally with all of the legal
16 advisors present.

17 Q. Sir, you said we would cover it. Were certain legal
18 advisors on certain cases, or was that workload divided evenly
19 among the legal advisors with everybody on every team, or can
20 you explain how that worked?

21 A. Right. And we're talking October of 2014 ----

22 Q. Yes.

23 A. ---- or that period up to then?

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1 Yeah, we -- no one was assigned necessarily
2 particular cases. As work would come in, we would -- we would
3 take the work, analyze who had the most bandwidth at the time
4 to take it or who had dealt with an issue like this in the
5 past, and we would make individual assignments as requests
6 came in. So for the meeting, that meant that all of the --
7 that myself and all of the assistant legal advisors would be
8 at the table with the convening authority.

9 Q. Beyond this tracker, how else was information between
10 the legal advisors shared? Was there a common share drive, a
11 common file space?

12 A. Yes, to both of those. There was a share drive that
13 the legal advisors and only the legal advisors had access to
14 that contained the attorney work product and the various
15 associated documents. There was also hard copy physical files
16 that the paralegals maintained in filing cabinets down in the
17 section of our office that -- where the legal advisors were
18 sitting.

19 Q. You mentioned that that shared drive only had
20 access -- the only people who could access it were the legal
21 advisors. How was that implemented? How were people who were
22 not supposed to access it ensured that they could not get on
23 to that share drive?

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1 A. It was the IT controls. There was -- our IT team had
2 set in place restrictions and restricted access so that only
3 certain individuals could actually open them from their
4 desktop.

5 Q. And so anytime you needed to change that, all it took
6 was an e-mail to IT; is that correct?

7 A. That was generally how that was accomplished. If
8 someone was transferring or coming in or coming out, they'd be
9 either given access or taken off the access, depending on the
10 timing of administratively carrying that out.

11 Q. All right. Was there a shared inbox or was there an
12 e-mail distribution list that the legal advisors all had
13 access to?

14 A. We had established one so that when requests came in
15 from either prosecution or defense with filings -- and it was
16 mostly used by the defense -- that we would -- the e-mail
17 notice would come in to a group e-mail that the legal advisors
18 and the supporting paralegals had access to. And that was to
19 assure that, when we got a request, we would be assured that
20 it was actually received so that it could be logged in and
21 worked.

22 Q. Sir, you discussed a little bit that the meetings
23 that you had with Mr. Oostburg Sanz, you had meetings with him

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1 as a legal advisor. Did you also meet frequently with him as
2 the chief of staff?

3 A. It was -- I met with him -- I talked to him daily.
4 And I would go to the Pentagon frequently to discuss OMC
5 issues, so I don't want you to think that it was only a once a
6 week type of thing.

7 Q. Sure.

8 A. And we were talking about whatever issues needed to
9 be dealt with in the Office of the Convening Authority, and it
10 might be on some occasion -- if we were talking about spaces
11 for the defense, it might be completely that logistics/
12 operational discussion. Other times it might just be, you
13 know, we've got to make a decision about whether to refer a
14 particular case, that would be strictly legal advisor. And
15 many times it would be we talked about whatever issues were on
16 the plate, whether operational or from the legal advisor
17 section.

18 Q. So it's fair to say, as the chief of staff and the
19 senior legal advisor to the convening authority, you're having
20 daily -- perhaps daily interactions with him discussing all
21 matters that are impacting the commission?

22 A. That's true.

23 Q. Okay. Now, when did Mr. Ary first report onboard?

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1 A. I believe it was the first week of October of 2014.

2 Q. Did you have any meetings with him or conversations
3 with him prior to his official checking onboard?

4 A. I did. And they were all an administrative-type
5 thing. It was -- it was told to me who the new convening
6 authority was going to be, but there was a lot of paperwork
7 that had to be -- and a lot of approvals that had to be worked
8 through to appoint somebody into the senior executive service
9 and do all of those kind of things to bring Mr. Ary onboard.
10 So I was talking to him, say, two to three weeks in advance of
11 him coming onboard just to facilitate that administrative
12 process.

13 Q. And, sir, did you know Mr. Ary before he checked
14 onboard? Had you had any previous interaction with him,
15 perhaps as prior JAG officers?

16 A. Yes. He was the Staff Judge Advocate to the
17 Commandant of the Marine Corps at the time that I was the
18 Assistant Judge Advocate General in civil law, so we saw each
19 other in meetings or working particular issues. So for a
20 period of two to three years prior to the commissions, I knew
21 who General Ary was and he knew who I was.

22 Q. Did you have a decent working relationship over those
23 two years prior to him checking onboard as the convening

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1 authority?

2 A. Yes. It was professional and personal.

3 Q. And when -- after these administrative type of
4 conversations dealing with the check-in and some of the
5 administrative matters, were there meetings between
6 Mr. Oostburg Sanz and Mr. Ary about turning over the role of
7 the convening authority?

8 A. I think that -- that they -- the two of them did have
9 a one on one as kind of their official turnover; but I was not
10 a part of that, so I can't give you any details about that.

11 Q. And as part of Mr. Ary checking onboard as the chief
12 of staff, did you have any responsibility creating a turnover
13 binder for him, assessing what was going on in the office?

14 A. We created several binders designed to help him get
15 up to speed: An authorities binder of all of the rules and
16 regulations, the statutes that applied to commissions, to the
17 pending operational issues, and some of the history behind how
18 we got to where we were; and then a binder with certain legal
19 authorities, both the significant cases as well as these were
20 kind of the hot, pending issues on deck when he reported
21 aboard.

22 So there was quite an amount of read-ahead materials
23 that we prepared as an entire staff to try and get him up to

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1 speed and make him feel comfortable. I knew General Ary from
2 before this, and he could take and handle volumes of
3 information and had a great attention to detail, so I wanted
4 to make sure that he could hit the ground running day one.

5 Q. And did the legal advisor section, did that section
6 also create a read-ahead binder for Mr. Ary?

7 A. Yes.

8 Q. Do you recall, sir, what some of the hot pending
9 issues that the legal advisors identified were?

10 A. I mean, I -- if I remember correctly, we gave him the
11 status of all of the completed military commissions and their
12 various appellate histories.

13 As far as what the pending cases were and what the
14 hot issues were, I don't have any specific recollection about
15 what those info papers would have been. I think by then we
16 had already referred Al Darbi and there was a pretrial
17 agreement. That was under Mr. Oostburg Sanz. Hadi al-Iraqi
18 had been referred. I think many of those things were done, so
19 it was just the regular -- I'm sure that we provided an info
20 paper about the ex parte process because that -- someone
21 coming in to commissions from the military justice setting,
22 that would have been completely new and we needed to provide
23 the background for that.

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1 So -- but that's about the only issue I can recall
2 with any specifics was in the legal advisors' binder.

3 Q. After giving Mr. Ary the read-ahead binders, did you
4 personally meet with Mr. Ary?

5 A. Oh, yes, on a daily basis.

6 Q. And this is from day one when he checked in that you
7 would have these daily meetings.

8 A. Yes.

9 Q. And did he discuss with you the issues that he
10 thought was of importance, both legally and operationally?

11 A. You know, the first week or two, he was kind of on --
12 as good leaders do, on a listening tour. He was trying to
13 meet the people, he was trying to listen to what, you know,
14 they were working on, and he wanted to learn about the
15 organization before he started giving directions.

16 So that was all an orientation period. And really,
17 that was one of the reasons that I stayed all the way through
18 October, was to provide him a period of time and to provide
19 some continuity during the turnover between Mr. Oostburg Sanz
20 and Mr. Ary before I reported to my new job in Corpus Christi.
21 I had actually been selected for the job earlier in the
22 summer, but Mr. Oostburg Sanz asked me to stay on to provide
23 General Ary that support during his initial four-week period.

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1 Q. And you said you were there for four weeks, and the
2 first week or two Mr. Ary's listening, seeing, identifying
3 issues. Did he then start to discuss with you after that week
4 or two some of his ideas and visions for the future?

5 A. Not with specifics. We did do -- as a part of the
6 listening tour, we did courtesy calls on all of the sections,
7 and we went to their spaces. We went to the defense spaces in
8 Rosslyn to meet with Colonel Mayberry and her deputy at the
9 time. And we went to MacLean to meet with General Martins.
10 We went to the Hoffman Building, not only to meet with the
11 convening authority section there, the court reporters and
12 court administration, but also to meet with the trial
13 judiciary. So that was part of the listening tour.

14 And again, General Ary was taking it in and
15 assessing, you know, what he heard from these individuals
16 about what were the issues, what did he need to focus on as
17 convening authority. And as the director of the Office of
18 Military Commissions convening authority's office responsible
19 for all of the resourcing, he was taking that all in.

20 I would say in the latter part of my time -- of my
21 time that was remaining there -- and again, we kind of --
22 there were gaps in the time that we were able to be together
23 because I took some leave during the third week of October and

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1 General Ary made a visit to Guantanamo the fourth week of
2 October that I did not accompany him on. He went down there
3 with General Kelly at SOUTHCOM.

4 But towards the third or fourth week when we were
5 discussing things, I knew General Ary was concerned about
6 resourcing and whether or not particularly the trial judiciary
7 was properly -- had the proper resources that they needed in
8 carrying out the vast responsibilities, particularly with
9 respect to the handling of classified information.

10 I think after our visit there and talking with the
11 lead clerks -- none of the judges were there at the time. But
12 in talking to the lead clerks, General Ary did come away with
13 a concern that, for the significant security responsibilities
14 and handling classified information and the review
15 responsibilities, that they were understaffed and
16 underresourced.

17 Q. Did General Ary discuss with you concerns about the
18 general pace of litigation and the use of the courtroom?

19 A. No. He never -- never articulated, you know, a
20 specific action item that he wanted to take on regarding the
21 pace of litigation. I mean, I certainly think that he came on
22 board saying what do I need to do to position everyone for
23 success and get the process moving so that it can do what it's

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1 supposed to do. That was certainly, I think, what he was
2 doing during the listening tour. But he and I never talked
3 about the pace of litigation with any specificity.

4 Q. Well, understanding, sir, that it might not have been
5 an action item, the pace of litigation did come up during
6 these conversations?

7 A. Well, I think to the extent it came up, it was only,
8 This is -- you know, this is where we are, you know, and this
9 is how much time has gone by and this is where we are in the
10 cases. And we may have talked about that in a general sense,
11 but there was -- there weren't any -- there weren't any ideas
12 or action items put on the table specifically with regard to
13 pace of litigation.

14 Q. And understanding that there was discussion on where
15 things are, did you as the legal advisor advise Mr. Ary that
16 the judges control and set their docketing and control how
17 that case proceeds?

18 A. I don't think I had to advise him on that. I don't
19 ever remember advising him like that. And he came from the
20 Marine Corps judge advocate community, he knew that. I don't
21 ever remember having a conversation like that with General
22 Ary.

23 Q. Sir, did you review any of the prior case history in

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1 this particular matter with regards to the unlawful influence
2 prior to your testimony today?

3 A. Well, in March of 2015 when I was -- I can't remember
4 if it was before or after I was asked to come back on the
5 temporary detail, I did go and read the entire hearing, I
6 think it was in early March, that had General Ary's testimony
7 and the judge's ruling. So I did review that in March of '15.
8 And I have glanced at those documents in preparation for this
9 testimony.

10 Q. Okay. And, sir, in reference to that hearing
11 testimony, Mr. Ary said that as soon as he checked onboard,
12 the pace of litigation was a concern for him. I just want to
13 be clear. It's your testimony that, as the chief of staff and
14 as the senior legal advisor, he did not discuss that issue
15 with you personally?

16 A. I don't ever remember discussing pace of litigation
17 specifically.

18 Q. Now, when you left, prior to you leaving the
19 office -- and you said you left on, what was that date,
20 October 30, sir?

21 A. The 30th of October was a Friday, that was my last
22 day in the office. I think the pay period extended through
23 the 31st of October.

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1 Q. When you left on the 30th, who took -- well, let's
2 start first, who were the legal advisors that were working
3 with you at that time?

4 A. I believe it was the same list that I provided to you
5 earlier: Mr. Toole, Ms. Adams, Colonel Lewis, Captain Rich,
6 and Commander Kotval.

7 Q. Do you know -- or who did you turn over your duties
8 as the legal advisor with?

9 A. I believe that Mr. Toole was made the acting legal
10 advisor at that time and Colonel Ed Sheeran, who was then on
11 active duty, became the acting chief of staff.

12 Q. Do you have any explanation as to why those roles
13 that you had been previously doing both together were split
14 up?

15 A. I believe it was -- the thought was to give General
16 Ary the flexibility to hire somebody in to replace me.
17 Mr. Oostburg Sanz knew I was leaving but certainly didn't want
18 to make a decision on such a position and such a personnel
19 matter, that that was rightfully something that General Ary
20 should have the responsibility, and the -- you know, it should
21 be up to him who he wanted as his legal advisor and chief of
22 staff. So that -- I think General Ary was still considering
23 that and what to do about the positions and the rehire for my

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1 position as I left.

2 Q. Sir, it was the March 2-3 time frame that the order
3 came out that disqualified the legal advisors. Do you recall
4 when you first learned of this?

5 A. I don't specifically. I have a Google alert set up
6 to let me know when there are stories in the media about
7 commissions, so that's probably how I found out, but I don't
8 have any specific recollection.

9 Q. And who was it that approached you to come back to
10 the convening authority to serve as the interim legal advisor?

11 A. Mr. Oostburg Sanz.

12 Q. Do you know why it was that he did that?

13 A. I think he and I had a relationship. Hopefully I
14 enjoyed his trust and confidence, and he thought that I could
15 come back and be of assistance in reconstituting the office
16 and, you know, getting things set back up properly and to
17 support him as he was coming back to the Office of Military
18 Commissions.

19 Q. When you came back, what did you initially know about
20 the status of the Nashiri case?

21 A. As I said, I had read the hearing that -- the
22 unofficial transcript that was posted on the OMC website. So
23 I had an idea of what had been testified to and I had an idea

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1 of the ruling that the judge had made. So I knew that the
2 legal advisors, those named legal advisors and General Ary had
3 been disqualified. And by that time, by the time I came back,
4 General Ary had already resigned and Mr. Oostburg Sanz was
5 back in the seat of the convening authority.

6 Q. And at that time, what was your understanding as to
7 who was the legal advisor in the Nashiri case?

8 A. Well, before I got here, I wasn't sure how they were
9 handling it.

10 Q. So when Mr. Oostburg Sanz called you about the
11 position, he didn't inform you who was acting as a legal
12 advisor? He said it was vacant?

13 A. Well, the -- we didn't talk specifically about what
14 was going on in the Nashiri case. He called me to say, look,
15 I'd like you to consider coming back on a temporary detail
16 because I need assistance and I need someone to come in who
17 understands the office and basically put it back on a right
18 footing so that we can move forward.

19 Q. Sir, do you recall about when it was -- what the time
20 frame of when you got that phone call roughly in March was,
21 what date?

22 A. It was later in March. It was after Mr. Oostburg
23 Sanz had already been announced as the convening authority

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1 coming back.

2 Q. So if he was announced as the new convening authority
3 on 23 March, you would assume that the phone call was sometime
4 after that?

5 A. Yes.

6 Q. So when was the first time, sir, that you learned
7 that Lieutenant Commander Gill was the acting legal advisor in
8 the Nashiri case?

9 A. Well, I came back on the 6th of April. And at that
10 time, the staff had prepared binders for my coming back in to
11 let me know what was going on both operationally and in legal
12 advisors. And at that time, I saw that Lieutenant Commander
13 Gill was in the office and he had been responsible for
14 preparing that binder.

15 I don't know that he ever was the acting legal
16 advisor in the Nashiri case. He never was formally appointed
17 that. I think that once I got there, I understood as well
18 that Mr. Oostburg Sanz was not interested in taking any
19 actions or receiving any legal advice with respect to the
20 Nashiri case until I got back, was in place, and was properly
21 appointed as the legal advisor.

22 So my impression on coming back was things had come
23 in, they had been organized, and only Lieutenant Commander

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1 Gill was responsible for that administrative function. But
2 there was no legal advice going on with respect to the Nashiri
3 case.

4 Q. When you came back, sir, did you have a meeting with
5 Mr. Toole, who at that time had been the acting legal advisor?

6 A. On a daily basis, we would have meetings.

7 Q. Sir, what was the discussion in these daily meetings?

8 A. Well, at the start, I came in -- back into the office
9 to try and determine -- again, I was on my mini listening tour
10 to try and find out what was going on in the office at that
11 time. And I had a special objective of trying to assess the
12 morale and the climate of what the office was like and trying
13 to assess what it -- what we needed to do.

14 And then as time went on, I was there for almost a
15 full 90 days, we would talk about any number of things that
16 were pending in the cases, Mr. Toole and I; with the exception
17 of we didn't talk about Nashiri because he was disqualified
18 from any actions or making any recommendations in that case.
19 So he offered nothing on Nashiri and I asked for nothing on
20 Nashiri.

21 Q. So you would not have wanted to discuss any matters
22 of Nashiri with Mr. Toole, correct?

23 A. The judge's order was clear on that.

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1 Q. Sir, when you checked onboard, did you also have an
2 in-brief or a meeting with Mr. Sheeran -- or, excuse me,
3 Colonel Sheeran as the chief of staff to assess what issues
4 were going on on that side of the house?

5 A. Yeah. Same thing. I mean, I -- I came back in after
6 being away for five or six months, so I needed to get back up
7 to speed on where we were on any number of different issues
8 and programs. And again, I was trying to get an assessment of
9 how the office was doing in light of the fact that we had had
10 this turnover and Mr. Ary had left and Mr. Oostburg Sanz was
11 back and how the office was handling that and dealing with
12 that.

13 Q. So with Colonel Sheeran, were you also discussing
14 personnel issues?

15 A. Well, that would -- that was part of his portfolio as
16 the deputy chief of staff, acting chief of staff, you know,
17 the civilian personnel and the military personnel system he
18 would have had oversight of. So we would have been talking
19 about that on a near daily basis.

20 Q. When you first checked in, did Colonel Sheeran alert
21 you that there was any issue between Lieutenant Commander Gill
22 and Mr. Toole involving involvement in the Nashiri case or
23 issues between the two of them?

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1 A. No.

2 Q. I would like to come back to your understanding of
3 Lieutenant Commander Gill's role when you came on board. You
4 said you returned on April 6; is that correct?

5 A. That's correct.

6 Q. So it's your understanding that, until your return,
7 there was no legal advice whatsoever made on the Nashiri case
8 to the convening authority?

9 A. That's correct. Because General Ary was there for a
10 couple of weeks and I don't think anything happened during his
11 tenure. And then when Mr. Oostburg Sanz got back, he was
12 again not interested in even coming close to the line and
13 didn't want to take any legal advice or make any legal
14 decisions at the convening authority until such time as I had
15 returned and actually been appointed as the acting legal
16 advisor.

17 I do know that Lieutenant Commander Gill prepared
18 some memos and did some things, but they were in no way acted
19 on. I'm not even sure they were presented to the convening
20 authority.

21 Q. Sir, you are aware that, prior to your return, there
22 were pending matters from the defense in this case that were
23 requesting action?

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1 A. There were several.

2 Q. Okay. And are you aware that it was never
3 communicated to the defense that no action would be taken
4 whatsoever?

5 A. I wasn't aware of anything until I got back on the
6 6th of April.

7 Q. Okay. When you came back as a -- was it a TD
8 assignment? Did you have supervisory authority? What was
9 your supervisory power in that time that you were back in the
10 office?

11 A. Well, I came back on a detail. It took some
12 administration between the Office of the Secretary of Defense,
13 between DoD and the Navy to work out my orders and the
14 funding. But once that was solved, I came back and I received
15 my appointment as the acting legal advisor on or about, I
16 think it was, the 12th or 14th of April, I'm not sure. It was
17 about a week or so after I actually came back.

18 But when I came back, I immediately assumed, at the
19 direction of the convening authority, the role of acting chief
20 of staff. So I set about in that particular role to try and
21 reconstitute the office.

22 Q. To be clear, sir, I just want to get a handle on who
23 the supervisors are within the legal advisor shop. Before you

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1 returned on 6 April, was Mr. Toole the supervisor for all of
2 the legal advisors?

3 A. He was. He was the acting legal advisor with the
4 exception of Nashiri, given the judge's order. And then
5 Colonel Sheeran had the operational logistics part. But I
6 don't know -- I don't believe there were any -- there weren't
7 any performance evaluations or fitness reports or anything
8 like that done during that time frame so I'm not sure that I'm
9 really following your question.

10 Q. Well, sir, day to day, who would have been the
11 supervisor accountable for the legal advisors? Let's say a
12 legal advisor doesn't show up today, who is the supervisor
13 that is in charge of that?

14 A. That would have been at the time Mr. Toole.

15 Q. And would that ----

16 A. Before I got there, yeah.

17 Q. And he would have been the supervisor for Lieutenant
18 Commander Gill as well, correct?

19 A. In that sense, yes.

20 Q. And are you aware as to what level of supervision
21 Mr. Toole was exercising over Lieutenant Commander Gill's work
22 product?

23 A. During the period ----

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1 Q. Before you returned.

2 A. ---- in March, or -- no.

3 Q. Sir, when you returned on 6 April, did you become the
4 supervisor for these legal advisors?

5 A. In essence, I -- I came back in to figure out how we
6 needed to structure ourselves to be in compliance with the
7 judge's order and -- but I did not take any advisory functions
8 or attempt to do anything in my role as legal advisor until I
9 was actually appointed by the DoD general counsel. And at
10 that time, I had the clear authority to actually provide
11 recommendations and legal advice to the convening authority,
12 so at that time I commenced.

13 But prior to that, I was -- I was looking to see what
14 needed to be done from a process standpoint to position the
15 office so that we could carry on in all of the cases.

16 Q. Yes, sir. And I appreciate that. I want to come
17 back to that process in a little bit, but I want to make sure
18 I understand who the day-to-day supervisor of the legal
19 advisors are.

20 So my understanding and what I'm hearing is that your
21 formal appointment, I believe, was 14 April; is that correct?

22 A. If that's -- [VTC transmission interrupted] -- the
23 letter, I don't have it in front of me.

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1 Q. You already stated that, prior to you coming back on
2 6 April, you were not the supervisor for the legal advisors,
3 that it was Mr. Toole. When you received your formal
4 designation letter on 14 April, did you then become the
5 supervisor for the legal advisors?

6 A. I did. At that point, I was the acting legal advisor
7 for all purposes.

8 Q. And, sir, to be clear, does that mean that you
9 controlled evaluation input, the day-to-day supervision of
10 every legal advisor?

11 A. I think that's accurate to say, yes.

12 Q. And that would also include Lieutenant Commander
13 Gill?

14 A. Yes.

15 Q. And at that point, 14 April, when you became the
16 supervisor, Mr. Toole would not have been the direct
17 supervisor for the legal advisors?

18 A. Well, he was -- still carried on as the deputy legal
19 advisor, and so he was still -- he had been doing this for
20 five or six months since my departure. I mean, he still
21 carried on various processes that he instituted, like getting
22 them together in advance of our meetings to get them
23 organized, to know what they were working on, to make

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1 decisions about, okay, this particular issue has come in and
2 who can handle that and who should handle it. So he was
3 making those kind of still day-to-day decisions with respect
4 to all of the cases with the exception of Nashiri.

5 Q. It's your understanding, sir, that when you took over
6 the supervisory duties on 14 April, Mr. Toole was no longer
7 exercising any supervisory duties with respect to the Nashiri
8 case; is that correct?

9 A. Oh, that is -- that is correct. But it -- again,
10 what I discovered when I got back on the 6th of April was that
11 really no legal actions had been taken with respect to any of
12 the pending issues in Nashiri since the date of the judge's
13 order.

14 Q. When you came back, you said that you needed to
15 implement a structure so that the office could be in
16 compliance with the order. What were some of the items that
17 you identified that needed to be done?

18 A. Well, we needed to make sure that there were clear
19 lines of demarcation and separation between the cases, both
20 physically, the physical files, and virtually, the electronic
21 files. So we needed to break those apart, segregate them,
22 make clear lines of authority. And so that was something that
23 we tried to immediately start carrying out.

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1 Q. And how fast and how quickly were you able to
2 implement those changes?

3 A. Well, I think most of the changes were done in the
4 first week that I was there. You know, we came up with
5 different trackers for the Nashiri case; we came up with
6 different file locations; we came up with the restrictions on
7 the share drives, that only certain individuals could get into
8 the Nashiri attorney work-product section; we reconstituted
9 different e-mail, group e-mails to receive any of the -- of
10 the motions or any of the other requests coming in from either
11 trial or defense.

12 And we set -- I set forth, I believe it was at the
13 end of that first week, an e-mail to all hands within the
14 Office of the Convening Authority that laid down the marker,
15 even, you know, separate and apart from legal advisors, if in
16 any of the operational sections they had issues specific to
17 the Nashiri team and what was going on, that there was to be a
18 clear division -- and they needed to talk to somebody in legal
19 advisors, that there was going to be a clear separation of who
20 they could talk to about Nashiri and who they couldn't.

21 Q. And, sir, you ----

22 A. So I ----

23 Q. Sir, you were able to get these changes implemented

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1 in about a week's period?

2 A. I believe that -- I believe that we had most of these
3 things in place by the end of the first week that I was back.

4 Q. And you felt the need to make it clear because prior
5 to this week of, you know, separating the tracker, getting a
6 separate e-mail, isolating the folders, creating a separate
7 share drive with restrictions, that line was not so clear in
8 the convening authority office?

9 A. I don't know that it wasn't clear. It's just until I
10 got back, nobody -- nobody had taken any actions with respect
11 to Nashiri, given the uncertainty and not wanting to get
12 cross-threaded with the judge's order.

13 When Mr. Oostburg came back and he knew I was coming
14 back, he wanted to wait until I got a chance to get on the
15 ground and be the one that could come in and make these
16 changes. So it's not that people didn't necessarily
17 understand. I wanted to -- it was waiting for me to get there
18 to do this as someone not named in the judge's order as being
19 disqualified from taking action in the Nashiri case. Even if
20 it was just logistics, and some of these things were just
21 logistical, the convening authority, out of an abundance of
22 caution, wanted to wait for me to be the one to come back and
23 get that going again.

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1 Q. And you said that the convening authority wanted to
2 wait. Did he at all express this, to your knowledge, to
3 Mr. Toole or other members that were actually in the legal
4 advisor office?

5 A. I don't know what he said, since I wasn't there. But
6 I think he made it clear that he did not -- I think he made it
7 clear to all of them that he did not want to, you know, take
8 under advisement or receive any work product with respect to
9 the Nashiri issues until such time as I was back in place.

10 Q. Did Lieutenant Commander Gill raise any concerns with
11 you that these actions hadn't been taken prior to your return?

12 A. I don't know that he was concerned about that in
13 particular, that these had been set kind of on a temporary
14 hold. I don't ever remember him expressing concerns about
15 that.

16 Q. Well, what concerns did he express to you, sir?

17 A. He did express concerns that he thought Mr. Toole, in
18 particular, was continuing to talk about Nashiri, and he was
19 concerned that -- that that was not in compliance with the
20 judge's order.

21 Q. And do you recall when he first raised this concern
22 to you?

23 A. It was on the 6th of April. It was on the very first

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1 day that I came back. I believe it was sometime in the
2 afternoon, he came to me and stated that he had these
3 concerns.

4 Q. What was your response?

5 A. I listened.

6 Q. Did you ----

7 A. Because it was my -- it was my first day back. I was
8 still trying to figure out, you know, what was going on and
9 going through all of the administrative things that are
10 associated with reporting. So he came to me, he was in an
11 agitated state, so I listened to him.

12 Q. Did you raise this issue with Mr. Toole?

13 A. I did.

14 Q. And when did you raise it with Mr. Toole?

15 A. That same day. I went down to talk to Mr. Toole
16 about that.

17 Q. And how did he respond?

18 A. How did he respond? He -- I don't recall the
19 specifics, but what I remember taking away was that -- that
20 Mr. Toole was not trying to get involved in any of the legal
21 proceedings or recommendations or providing advice about
22 Nashiri.

23 What he was trying to do was lend assistance and in a

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1 way mentor a brand new attorney to the office to assist him in
2 being successful in being, at that time before I arrived,
3 really the only attorney that could actually look at some of
4 the Nashiri filings and do anything with respect to Nashiri.

5 So there were pending issues that -- like -- if I
6 remember correctly, there was a request for additional hours
7 for learned counsel, and that was one of the issues that
8 was -- that Lieutenant Commander Gill was trying to provide or
9 get additional facts and analysis for. And Mr. Toole had
10 tried to tell Commander Gill what sections within the
11 convening authority's office did he need to engage in order to
12 be work -- in order to find out more and work that particular
13 issue. Not in any way trying to give him advice or control
14 him or make recommendations, but just to assist a brand new
15 counsel who had only been on board a matter of weeks in trying
16 to be successful and be prepared.

17 Q. So it's your understanding from Mr. Toole that he was
18 still involved in at least a mentor capacity on the Nashiri
19 case?

20 A. No. He was trying to assist a counsel and understand
21 office operations. He was not mentoring or providing advice
22 to Commander Gill with respect to the substance of the Nashiri
23 case, but only from a process standpoint, who would you need

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1 to talk to, who administers the contracts and oversees all of
2 the learned counsel agreements, and how are requests for
3 additional hours handled.

4 Q. Sir, but it's my understanding that it had been made
5 clear to the office by the convening authority that he was not
6 going to handle any Nashiri matters until your return. So why
7 would Mr. Toole have needed to mentor him on these matters?

8 A. Well, Mr. Oostburg Sanz didn't come back until late
9 March. I think you said the day before. I know that some of
10 these things had been pending for some time, and Commander
11 Gill had, as I said before, undertaken some work and was
12 trying to prepare some legal memos. And I take it, from
13 reading the record, that he had actually engaged the OSD legal
14 counsel's office about whether things would be presented to
15 SECDEF.

16 So Lieutenant Commander Gill was doing some work, but
17 when Mr. Oostburg Sanz came back as convening authority, as I
18 said, he -- my understanding was that he did not take under
19 advisement or take any work product from the legal advisors.

20 How he communicated, what his expectations were, I'm
21 not sure; but it was clear to me when I got back that
22 Mr. Oostburg Sanz was not making any decisions, or as I said,
23 taking anything under advisement or receiving recommendations

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1 until I returned.

2 Q. And, sir, I just want to be clear. Mr. Oostburg Sanz
3 came back on 23 March. And on 6 April, the day of your
4 return, Lieutenant Commander Gill raises the concern that
5 Mr. Toole, as of 6 April, is still talking about the Nashiri
6 case; is that correct?

7 A. I don't remember if he told me it was being discussed
8 that day. I do remember he came to me that afternoon, as I
9 said, and expressed his concerns.

10 Q. Sir, I'd like to talk a little bit about your return
11 and the judge's order. Was there any concern at all that you
12 had been a legal advisor when Mr. Ary checked onboard and the
13 genesis of Change 1 occurred in a two-month period and you
14 were the legal advisor for one of the two months of that
15 period? Was there any concern at all that perhaps you might
16 be disqualified?

17 A. Well, I certainly, in our -- in my discussions with
18 Mr. Oostburg Sanz, having read the record, I wanted to make
19 sure he was aware, as he asked me to come back, I said, you --
20 you do know that my name was mentioned in the testimony as
21 being with General Ary? And he knew that I was with General
22 Ary the first month. I said, so there's always the
23 possibility that the defense could seek to have me

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1 disqualified. But I told Mr. Oostburg Sanz I had nothing to
2 do with Change 1 or the discussion about the movement of trial
3 judiciary to Guantanamo. That never came up during the time
4 that I was there. So it was not something that I ever
5 discussed or advised General Ary on.

6 So I told the convening authority that is a risk, but
7 I was confident that I was -- the facts were such that I was
8 not disqualified because I wasn't involved in Change 1.

9 Q. Sir, you said on 6 April Lieutenant Commander Gill
10 raised concerns about Mr. Toole's ongoing involvement in the
11 case. Did he ever come speak to you again about this matter?

12 A. He did.

13 Q. And when was that?

14 A. I don't recall specifically, but it was several days
15 or a week later that he came and he told me that he was --
16 again, he was in an agitated state and he again was making
17 these very kind of inflaming accusations that cast Mr. Toole
18 in this light that he was some sort of manipulator or puppet
19 and trying to control him. And so he did come to me a second
20 time.

21 Q. And what were his complaints; how was Mr. Toole
22 manipulating him?

23 A. I don't recall the specifics, but again, I'm not sure

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1 that Commander Gill was giving me specifics. He was just kind
2 of saying that he's -- you know, Mr. Toole is -- he's
3 continuing to try and assert influence over the Nashiri case,
4 and he just can't let it go, and I think part of my questions
5 at that time, I didn't listen so much that time as actually
6 discuss this with him. I asked him for specifics and
7 Lieutenant Commander Gill really couldn't give me any
8 specifics.

9 And what he was telling me was contrary to all my
10 previous experience with Mr. Toole. Just the way that
11 Commander Gill was portraying him and what he was saying about
12 him was completely opposite to my experience with Mark Toole,
13 who I knew to have been a -- who had been a military judge and
14 was a very careful and deliberate individual, and it was at
15 odds with what Commander Gill was telling me.

16 And I think that it was -- it was -- again, it was an
17 agitated conversation on his part, and I couldn't find the
18 basis for really what he was so concerned about, because he
19 couldn't tell me what Mr. Toole somehow was doing that caused
20 him to be in violation of the judge's order.

21 Because at that point it was clear I was back. I was
22 the acting legal advisor. Anything dealing with Nashiri was
23 going to go to the convening authority through me. It was

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1 going to be my recommendations. It was going to be my legal
2 analysis that was going to the convening authority, and no one
3 else's. I might have Lieutenant Commander Gill and a
4 subsequent lieutenant from the Navy that came in after
5 Commander Gill left the office might help me and structure
6 things. But at the end of the day I knew that the Nashiri
7 case was mine for that period of time.

8 Q. And understanding that the Nashiri case was yours,
9 Mr. Toole should not have been receiving orders, requests,
10 anything to do with the Nashiri case, correct?

11 A. Well, it was -- any substantive thing was going to
12 come from me.

13 Q. Correct. And so my question, sir, and perhaps I
14 wasn't very clear, is that Mr. Toole would not have been
15 receiving anything from the trial judiciary related to the
16 case, he wouldn't receive any defense requests. Mr. Toole at
17 this time is cut out of the Nashiri case, correct?

18 A. The processes were in place to keep him substantively
19 out of anything that was happening, from a legal standpoint,
20 in the Nashiri case.

21 Q. And I understand that you at this point, when
22 Lieutenant Commander Gill comes back to you about a week
23 later, you have your doubts about this. Do you raise the

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1 issue at all with Mr. Toole?

2 A. I don't know if I did that time. I can't remember if
3 I talked to Mr. Toole or not about that.

4 Q. I'd like to talk about a specific incident. Do you
5 recall receiving an order from the military judge with respect
6 to Mr. Nashiri getting an MRI?

7 A. I do recall generally, yes.

8 Q. Was this a big deal?

9 A. A big deal?

10 Q. Yes.

11 A. It was a -- it was a court order in a particular case
12 so we -- it wasn't a bigger deal than anything else. I mean,
13 it was something that we took on as something to work.

14 Q. Well, this was an MRI that the defense had previously
15 requested through the convening authority that had been
16 denied, and there had been a lot of litigation surrounding
17 this, correct?

18 A. I don't recall the procedural history of the request
19 in the motions. I do know that they -- that an MRI had been
20 requested, and I do remember that there was a judge's order,
21 but I don't really remember the rest of the procedural
22 history.

23 Q. With respect to receiving the order, do you remember

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1 if you had a -- what time of day you received the order?

2 Let's start there.

3 A. No.

4 Q. Do you remember discussing the order, on the day you
5 received it, with anybody?

6 A. No.

7 Q. Did you discuss the order at all with Colonel
8 Sheeran?

9 A. At some point, absolutely, because we had a big
10 logistics issue. How were we going to -- how were we going to
11 get an MRI machine to Guantanamo to effectuate the order of
12 the judge?

13 Q. And when you're discussing this issue with Colonel
14 Sheeran and the impact of this order, do you involve
15 Lieutenant Commander Gill in this discussion?

16 A. I don't remember if I did or not. I mean, I do
17 remember Commander Gill and I did talk about the order. We
18 talked about various options. And the only reason I remember
19 that is because -- I mean, Commander Gill sometimes had some,
20 some ideas that were different. I mean, one of the ideas, he
21 said, well, why don't we fly him to an Indian reservation
22 because U.S. jurisdiction doesn't apply there and we'll do the
23 MRI there.

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1 So I do -- I mean, I remember specifically that
2 because it was -- it took me a little bit aback when he made
3 that suggestion. I think I said something, well -- well,
4 that's certainly innovative, but I told him I didn't think
5 that was going to work.

6 Q. Did you discuss the MRI order at all with Mr. Toole?

7 A. Not that -- no. There would have been no reason for
8 me to discuss the order with Mr. Toole.

9 Q. And there would have been no reason for Mr. Toole to
10 even see the order, correct?

11 A. There wouldn't necessarily have been a reason,
12 although I -- I mean, if you're getting to the point -- I
13 think there was -- he was included on an e-mail when it came
14 in. I certainly don't think that that's a violation of the
15 judge's order because he did not in any way provide any advice
16 or recommendations with respect to the processing of that
17 request.

18 Q. You said he was included on an e-mail when that order
19 came in. Why was Mr. Toole included on an e-mail?

20 A. It wasn't my e-mail. I can't tell you.

21 Q. And to be clear, it is your understanding at that
22 point, before this MRI order came in, that it had been made
23 crystal clear to everybody that Mr. Toole was not involved on

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1 the Nashiri case?

2 A. Well, I'd have to go back and look at the timing of
3 the e-mails. If I remember correctly, this happened on the
4 same day that I sent out my e-mail to all of OMC that said,
5 here, and be extremely careful in pushing information around.
6 And I'm not sure that the e-mail from court administration
7 came in prior to that e-mail. So there may have been at least
8 some gap in communications.

9 Q. So perhaps it was the fact that Toole received that
10 order that prompted your e-mail, to make it more clear?

11 A. Oh, no. No. I had been planning and writing that
12 for at least a day prior to that.

13 Q. So perhaps there were other issues that made the need
14 for the e-mail, then, not just that Toole received an order in
15 this case?

16 A. No, that was part of my plan, to try and make it
17 clear, to set clear lines of authority and process. There
18 wasn't anything that specifically drove it.

19 Q. Except for the absence of clear lines before that
20 e-mail?

21 A. I think that's fair.

22 Q. At any point did Lieutenant Commander Gill discuss
23 concerns with you that Mr. Toole had seen this MRI order?

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1 A. I don't remember if those were the specific concerns
2 that he brought up the second time. I don't remember if that
3 was part of what he was raising the second time he came to see
4 me.

5 Q. And, sir, you said he came to see you a second time.
6 Did he ever come to see you a third time to complain about
7 Mr. Toole?

8 A. Not that I recall, no.

9 Q. I'd like to talk a little bit about Lieutenant
10 Commander Gill's removal from the office. You stated earlier
11 that you had previously worked in the Office of Legislative
12 Affairs, OLA, so you were familiar with a congressional
13 complaint and that process, correct?

14 A. Yes.

15 Q. And just to be clear, the general process of a
16 congressional inquiry is that a constituent or servicemember
17 makes a complaint to a Congressman's office, and that
18 congressional office then sends it to the service OLA,
19 correct?

20 A. That's often the case. A caseworker will advise
21 whatever staff is within the congressman's office, either
22 local or in D.C., about how to process it, and it's often sent
23 to the Office of Legislative Affairs for farming out.

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1 But sometimes congressional offices will send things
2 directly to individual commands and bypass the office of the
3 legislative affairs. And that process is provided for in the
4 Navy's regulations. It requires commands that receive
5 something like that to provide notice to OLA, and also
6 whatever responses are provided at the end of the day go to
7 OLA as well.

8 So I've seen it handled in different ways.

9 Q. So even if a congressman's office reaches out
10 directly to a command, that command then has the duty to go
11 reach back up to OLA and coordinate a response, correct?

12 A. It's been a long time since I've looked at the
13 instructions, and I can only even hazard a guess with respect
14 to the Navy, but yes, I believe that there is a requirement to
15 notify OLA that you've got something in. Because there are
16 time deadlines that the Navy has for interim responses and
17 final responses, and it's just trying to make sure that, you
18 know, left hand knows what right hand is doing and close ----

19 Q. And ----

20 A. ---- and close the loop on these inquiries.

21 Q. Absolutely, sir.

22 And part of that making sure the left hand knows what
23 the right hand is doing is ensuring that OLA has an

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1 opportunity to see what the command's response will be to the
2 congressman's office, correct?

3 A. Not before the response. OLA does not chop command
4 responses. They just want to make sure that responses are
5 generated and forwarded to OLA, I think for archiving. But
6 OLA does not chop the substance of the responses, at least not
7 to these types of cases, these constituent cases.

8 Q. Okay. In this case, did the command get this
9 congressional inquiry from Navy OLA?

10 A. No. In this particular case, I can't remember. I
11 remember Colonel Sheeran coming in and telling me that he had
12 contact from a congressman's office up, in, I believe it was
13 Connecticut or Massachusetts, I'm not -- I can't quite
14 remember, but it did not come to us via either Navy or DoD
15 legislative affairs.

16 Q. Did Colonel ----

17 A. I believe ----

18 Q. Sir, did Colonel Sheeran tell you that he had been in
19 contact with Lieutenant Commander Gill's wife prior to
20 receiving contact from the congressional office?

21 A. I don't remember if she called and talked to him
22 directly or not. I do believe he talked to her at some point,
23 but I don't know if it was before or after the congressional

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1 came in.

2 Q. Sir, would you expect Colonel Sheeran to notify you
3 if his -- Lieutenant Commander Gill's wife had called and
4 complained about misconduct?

5 A. Oh, I -- yes. I would have expected him to tell me,
6 and he did tell me.

7 Q. Sir, if Colonel Sheeran was contacted on 16 April by
8 Lieutenant Commander Gill's wife, is it fair to say that you
9 were notified on 16 April that she had called the command to
10 complain?

11 A. I mean, I think that's fair to assume.

12 Q. Okay.

13 A. I don't think Ed would have not told me, and our
14 offices were almost side by side.

15 Q. And after his wife called to complain, what steps did
16 the command take?

17 A. Well, I told Colonel Sheeran that we were going to
18 need some form of administrative investigation because it
19 wasn't just the contact from the congressman's office about
20 the nonsupport.

21 Q. Well, sir, to be clear, I'm talking about on 16 April
22 when Mrs. Gill called your office. Your office didn't receive
23 a congressional notice until 24 April. So what steps did you

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1 take on 16 April?

2 A. Well ----

3 MJ [Col SPATH]: Well, let me -- I'm sorry. It's Judge
4 Spath, Mr. Quinn. The witness has said he doesn't recall the
5 timing, so if you're going to refresh his recollection, you
6 can do it, but those are facts that you are stating that he
7 doesn't know yet. If you want to do that, you can. You said
8 assuming the 16th and he accepted that and said he just
9 expected Colonel Sheeran would tell him on the same day.

10 Q. Let me go back then to clarify the timeline.

11 Sir, do you recall there being a delay in the first
12 phone call from Mrs. Gill to then receiving a congressional
13 inquiry?

14 A. I really don't recall because Colonel Sheeran
15 basically dealt with this issue. He kept me informed and we
16 talked about the way ahead, and -- but Colonel Sheeran is the
17 one that handled the processing of this complaint and the
18 congressional itself and the investigation that was
19 subsequently taken.

20 Q. Are you aware of what actions Colonel Sheeran took in
21 that subsequent investigation?

22 A. Well, as I was about to say, that -- it wasn't just
23 the claim of nonsupport that had risen its head. At almost

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1 exactly the same time, we had received Lieutenant Commander
2 Gill's -- he had finally filled out his security questionnaire
3 and it had come to light that there were numerous things in
4 his security form that raised concerns. And there were
5 concerns, too, that he was -- had not been completely
6 forthcoming in his filings with respect to his security
7 clearance.

8 In other words, we knew about some other things from
9 other filings that didn't seem to jibe with what was in his
10 security clearance. So we had a bigger issue. There was a
11 nonsupport issue in the congressional, but we also had these
12 issues with respect to his security clearance that needed to
13 be looked into as well. And there was some overlap. And
14 that's why at some point we got to the point where we said
15 we're going to need an administrative record here, and Colonel
16 Sheeran is the one that put that record together.

17 Q. I'd like to come back to the SF-86 in a minute. You
18 stated that once Colonel Sheeran told you that an
19 investigation -- or, excuse me, that Lieutenant Commander
20 Gill's wife had called and made a number of allegations, that
21 you were going to need an admin investigation into the matter;
22 is that correct?

23 A. Some sort of -- yeah, putting all of the facts

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1 together to know what we have.

2 Q. So then ----

3 A. We didn't convene a formal, what the Navy would call
4 JAGMAN investigation -- I can't remember the term in the Army,
5 but we didn't convene a formal one. But Colonel Sheeran took
6 it on to personally handle, you know, putting everything
7 together, gathering all of the facts, and putting that all
8 together so that we knew what we were dealing with.

9 Q. Understanding you wanted to put all of the facts
10 together, are you aware that Lieutenant Commander Gill was
11 never formally approached about this topic until the last day
12 while at OMC?

13 A. I'm -- I don't know if Colonel Sheeran talked to him
14 or not.

15 Q. Would that be unusual to not approach the
16 servicemember or subject of an investigation when trying to
17 put all of the facts together?

18 A. Well, I think it came to the point where we looked at
19 it and said, there's too much here for us to handle, we can't
20 adjudicate or solve this issue. We have to focus on the
21 mission of the OMC. We made the decision that, because of the
22 problems with him ever getting a security clearance and this
23 nonsupport allegation, that it was going to take up too much

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1 time and effort and bandwidth for what we needed to do in OMC,
2 and so we returned him to the Navy for the processing of that
3 particular complaint.

4 Q. Sir, were you aware that Colonel Sheeran had already
5 been informed that the nonsupport issue had been resolved, was
6 resolved?

7 A. I think Commander Gill told him that at some point,
8 but I don't remember. I don't remember the specifics.

9 Q. But that particular issue for you was one of the
10 reasons you returned him to service?

11 A. That was one of the reasons that ----

12 Q. But you didn't know the final answer on whether or
13 not that was even an issue?

14 A. I was going to let the Navy figure that out.

15 Q. With respect to the SF-86, I'd like to speak
16 generally. When a servicemember at OMC fills out their SF-86,
17 the command then sends that to another department for
18 approval, review, and adjudication, correct?

19 A. Correct.

20 Q. Who do you send that to?

21 A. I believe that the OSS, the WHS entity that provides
22 security support for all of military commissions, handles the
23 processing of the paperwork and ultimately it gets sent to the

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1 various investigative agencies and/or DoD CAF. for processing
2 of the clearance. But all of that is and handled by entities
3 outside of OMC.

4 Q. So understanding that that's all held by entities
5 outside of OMC, the command does not review SF-86s on a normal
6 basis, correct?

7 A. Oh, no, I think we look at them on a regular basis.

8 Q. Do you look at every servicemember's SF-86 before you
9 send it to WHS?

10 A. I didn't personally do that, no.

11 Q. Are you aware of any other instance where this
12 happened in the convening authority's office, that an SF-86
13 had been reviewed?

14 A. I believe that there were issues that had come up and
15 been raised by OSS in reviewing the paperwork, and this cut
16 across the different sections of OMC, not just convening
17 authority's office, where OSS would bring something to us and
18 say we've got a potential issue with respect to this
19 individual and the processing of his security clearance.

20 Q. And it ----

21 A. And it ----

22 Q. Excuse me, sir. It was OSS that would raise that
23 issue, correct?

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1 A. There were times, yes.

2 Q. And in this instance, did the command submit
3 Lieutenant Commander Gill's SF-86 directly to the OSS office?

4 A. I believe Commander Gill hit the send button through
5 the electronic program.

6 Q. So -- okay. So he sent it to OSS. Did OSS come back
7 to the convening authority raising any concerns with his
8 SF-86?

9 A. I know that I talked with the security manager at the
10 time specifically about Lieutenant Commander Gill's SF-86,
11 Ms. Stephanie Flannery. We held several conversations about
12 Commander Gill and his application.

13 Q. And I want to be clear, sir, were those conversations
14 before or after Lieutenant Commander Gill hit send and sent
15 his SF-86 to OSS?

16 A. I think that was after because I wouldn't have known
17 what was in it until after he had submitted it.

18 Q. And you said those conversations were with Stephanie
19 Flannery?

20 A. Uh-huh.

21 Q. Did Stephanie Flannery reach out to you or did you
22 reach out to her?

23 A. I don't recall. I don't recall who initiated the

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1 conversation.

2 Q. Do you recall the date of the return-to-service
3 letter that you signed for Lieutenant Commander Gill?

4 A. No, I don't recall the date.

5 Q. If I told you it was 29 April, would that sound
6 correct?

7 A. That sounds correct.

8 Q. Do you recall your reasons for sending Commander Gill
9 back to the Navy?

10 A. He had security -- I had issues with his ability to
11 receive and hold a security clearance. And so given that, we
12 were returning him to service.

13 Q. So it's your testimony that it was his issues with
14 respect to a security clearance, that is the reason he was
15 returned to service?

16 A. It was all of those issues. The nonsupport as well.
17 I mean, that all factored into that he should not be
18 sponsored, the security clearance, to work in the Office of
19 Military Commissions. I couldn't in good faith submit him for
20 a security clearance. And that being the case, I needed to
21 return him to service. I didn't need him working in the OMC
22 convening authority office without a security clearance.

23 Q. Understanding that you had a good faith duty to

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1 submit him, did you ever talk to Lieutenant Commander Gill
2 about these issues?

3 A. No.

4 Q. Did you ever read or review the congressional
5 response that was generated with respect to the nonsupport and
6 TRICARE issues?

7 A. I don't remember ever reading them.

8 Q. So what did you review to come to the conclusion that
9 you could not in good faith support a security clearance for
10 Lieutenant Commander Gill?

11 A. Well, it was basically the things that were in the
12 SF-86. If I recall, there was arrests and temporary
13 restraining orders, the congressional involved allegations of
14 not only nonsupport but potential violence. I had seen his
15 issues with agitation and questioned whether he had anger
16 management issues. He appeared to have perhaps significant
17 debts. I seem to recall there was a bankruptcy in his
18 declaration. I seem to remember that his civilian practice
19 had basically failed, and it seemed like he was stringing
20 together reserve duties as a way of trying to maintain some
21 sort of income.

22 So I had all of these indicia that -- the very basic
23 training on that we received from security clearance about be

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1 alert to these particular signs, and it should be red flags on
2 whether or not someone should have a security clearance, they
3 were -- many of those red flags were present with respect to
4 Commander Gill.

5 Q. But, sir, you're aware that many of those issues that
6 you just identified were from years past; that he had a duty
7 to disclose and did so freely, correct?

8 A. Well, again, there were -- if I remember correctly,
9 there was a filing for the SF-86 and then there was a filing
10 for the SCI portion of it. And again, I don't remember the
11 specifics, but with talking with Colonel Sheeran that there
12 were different declarations of different types of issues of
13 concern on the two forms that didn't match up with each other.
14 So there were even questions about whether or not he had been
15 forthright in declaring everything that he was supposed to in
16 this process.

17 Q. To be clear, though, those were questions that you
18 had. You had not received any questions on that from OSS or
19 any adjudicative body, correct?

20 A. I asked Ms. Flannery straight up. I said, all things
21 considered, you know, what's your recommendation as the
22 security manager as to whether or not this individual should
23 be processed and should receive a clearance, and she said that

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1 her opinion was that he should not be ----

2 Q. Did she provide this opinion to you ----

3 A. ---- and I agreed.

4 Q. ---- in writing, via e-mail?

5 A. Not that I recall. We discussed it and I agreed with
6 her.

7 Q. Was a formal report ever made to the DoD adjudication
8 facility regarding this -- these issues that you identified?

9 A. I'm not sure.

10 Q. Did OMC formally withdraw its request that Lieutenant
11 Commander Gill receive a security clearance?

12 A. I'm not sure of the process. We returned him to
13 service, and I don't know if that effectively canceled out the
14 request or if there was something else required, but I don't
15 believe he was processed for this particular clearance.

16 Q. So then would it surprise you to learn that he is
17 still pending through the adjudication process for this
18 clearance?

19 A. That doesn't surprise me.

20 Q. In your return to service letter, sir, you stated
21 that a report had been made to the DoD central adjudication
22 facility, a letter that you signed. Who made this report?

23 A. Oh, that would have been through OSS.

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1 Q. Are you aware of when that charge report would have
2 been made?

3 A. Well, if I said that in the letter, then it would
4 have occurred prior to my signature of the letter.

5 Q. When you contacted Code 67, which is the command that
6 Lieutenant Commander Gill was sent to on a temporary basis
7 before the return to service was finalized, did you share with
8 them all of the paperwork that your office had received on
9 this matter?

10 A. I didn't personally. I don't know what Colonel
11 Sheeran shared with them when he accompanied Lieutenant
12 Commander Gill over to the Navy Yard. I'm not sure what was
13 provided to Navy authorities at that time.

14 Q. Again, sir, prior to the date that Lieutenant
15 Commander Gill was taken to the Navy Yard, did you ever
16 personally discuss any of these matters with him.

17 A. Only on the day that we returned him. I brought him
18 into my office to tell him what was happening, and that was
19 the only time I talked directly with him about these matters.

20 Q. So after everything is finalized, he's being removed
21 from the office, that is when you discussed the matter with
22 him?

23 A. That's when I informed him.

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1 Q. Sir, just to be clear, you left the convening
2 authority's office on what day?

3 A. I believe that it was around the 1st or 2nd of July
4 of 2015.

5 Q. So you have no personal knowledge of how the
6 convening authority office is set up to this day?

7 A. No. I'm not involved in OMC matters at this point,
8 except for coming back for this particular session.

9 DDC [LCDR POLLI0]: That's all I have at this time, but
10 I'm sure the prosecution will have some follow-up. Thanks.

11 MJ [Col SPATH]: Lieutenant Morris, before you go, we'll
12 take a short break. How long do you anticipate your
13 cross-examination?

14 ATC [LT MORRIS]: Sir, I feel comfortable with projecting
15 an hour estimate.

16 MJ [Col SPATH]: All right. Well, we'll at least get
17 started. I'm trying to use Mr. Quinn's time as well as we
18 can, too. But we might have you hold over through the lunch
19 hour, Mr. Quinn. We'll just see how it goes when we come
20 back. For now, let's take ten minutes and we'll come back and
21 start your cross-examination. Commission is in recess.

22 [The R.M.C. 803 session recessed at 1120, 18 October 2016.]

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