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1 [The R.M.C. 803 session was called to order at 1137,  
2 18 October 2016.]

3 MJ [Col SPATH]: This commission is called to order. All  
4 of the parties are present. Mr. Nashiri is not present.

5 Mr. Kammen.

6 LDC [MR. KAMMEN]: Yes, Your Honor. He has gone back to  
7 the facility immediately behind the courtroom. We expect him  
8 to return after lunch. He wasn't feeling well.

9 MJ [Col SPATH]: It's my understanding -- is there a video  
10 feed back there as well?

11 LDC [MR. KAMMEN]: There is, and ----

12 MJ [Col SPATH]: Okay.

13 LDC [MR. KAMMEN]: And he has -- I don't know if he's  
14 requested that it be turned on. He's aware of that, and if he  
15 wants it, he knows to ask.

16 MJ [Col SPATH]: And you've talked to him. He has  
17 voluntarily ----

18 LDC [MR. KAMMEN]: Absolutely. No. Absolutely.

19 MJ [Col SPATH]: Thank you, Mr. Kammen.

20 CP [BG MARTINS]: Your Honor, we believe that requires an  
21 in-court waiver. I mean, pursuant to your instructions here,  
22 I understand he's right here, shouldn't be too difficult to  
23 have him give it. He is viewing it, which is one of the

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1 mitigators, but in this jurisdiction of the D.C. Circuit, the  
2 presumption is against waiver. He had a very clear way to  
3 articulate the waiver. He could have done it right before --  
4 with counsel right before lunch, in court, and instead now we  
5 have an issue in the record.

6 MJ [Col SPATH]: Well, do you think we have an issue with  
7 his defense counsel? I realize there's an order for when he  
8 absents himself for an entire session, and we talk about that,  
9 because you call a witness to go through the thing that he  
10 signed. What I have here is an officer of the court telling  
11 me he talked to his client and his client has voluntarily  
12 absented himself from this proceeding.

13 CP [BG MARTINS]: I do, Your Honor.

14 MJ [Col SPATH]: I ----

15 CP [BG MARTINS]: The case is Cross, and it's the  
16 D.C. Circuit.

17 MJ [Col SPATH]: I understand. But factually inapposite,  
18 and again, in Cross, did they have a defense counsel who had  
19 just talked to his client, whose client is absenting himself  
20 for half an hour, 45 minutes?

21 CP [BG MARTINS]: Your Honor, I would encourage you to  
22 read those precedents. I would. There's a preference for  
23 in-court waiver.

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1 MJ [Col SPATH]: I understand the preference, General  
2 Martins. I'm asking if the facts in Cross are applicable for  
3 a waiver and an absence like this?

4 CP [BG MARTINS]: Yes.

5 MJ [Col SPATH]: All right. I disagree for right now.  
6 After lunch if he continues to absent himself, we can  
7 readdress the issue. But I am quite comfortable. Mr. Kammen  
8 is telling me he has talked to his client, his client has told  
9 him he is absenting himself from this proceeding, as I told  
10 him he could at the beginning.

11 Mr. Kammen.

12 LDC [MR. KAMMEN]: Yeah. Just to be clear, there were  
13 multiple people from the security force who overheard it. You  
14 know, we worked it out with them, the mechanics.

15 MJ [Col SPATH]: No. I understand. I appreciate --  
16 again, I can't take evidence without witnesses and proffers  
17 and such, but I can take evidence from an officer of the court  
18 regarding an exchange with his client. That's different.

19 CP [BG MARTINS]: You're taking that as evidence?

20 MJ [Col SPATH]: I absolutely am.

21 CP [BG MARTINS]: You could put a guard on to simply say,  
22 and then you can make a finding in the record of knowing,  
23 voluntary, intelligent waiver as you do every morning with a

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1 protective posture that should be instructive here. That's  
2 why we do it.

3 MJ [Col SPATH]: We do it because it's a prior order that  
4 no one's asked me to readdress in what is a unique proceeding  
5 here. I go through with Mr. al Nashiri, quite clearly, an  
6 inquiry that I don't go through with everybody else every time  
7 we sit here. You are allowed to absent yourself from the  
8 proceeding voluntarily, which is different than Cross. I can  
9 tell you in Cross they weren't sitting there every time they  
10 come down saying, okay, you can leave today if you want to,  
11 and I got a thumbs up, which I put on the record, and an  
12 understanding. And I have a defense counsel telling me, I  
13 spoke with my client and he is voluntarily absenting himself  
14 from this proceeding, which is more than a proffer. It is his  
15 defense counsel, a fellow officer of the court.

16 CP [BG MARTINS]: Your Honor, you've indicated what you're  
17 going to do despite my argument. I would request that you put  
18 on the record a finding that you find that he knowingly,  
19 voluntarily, intelligently waived it.

20 MJ [Col SPATH]: I do.

21 CP [BG MARTINS]: And then at a future time, we may seek  
22 to reacquaint the commission with apparently precedence that  
23 you're ----

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1 MJ [Col SPATH]: I've said I've read them twice now and I  
2 have made clear to you that I understand that. So I don't  
3 need to reacquaint myself with them. I have made absolutely  
4 clear that Cross is not applicable to what we have here. So  
5 as I think I said earlier, I do like the law and I do like  
6 having cases on it. This is unique. I talk to him every time  
7 about it. I am making a finding that he is voluntarily not  
8 here.

9 CP [BG MARTINS]: Thank you, Your Honor.

10 MJ [Col SPATH]: All right. Is the witness here and ready  
11 to go? I take it that's a yes?

12 TC [MR. MILLER]: I'm sorry, Your Honor. That is a  
13 question.

14 MJ [Col SPATH]: You may proceed. Lieutenant Morris.

15 INT: Your Honor, this is an interpreter. Just wondering  
16 if there is a need for Arabic interpretation at this moment?

17 MJ [Col SPATH]: Mr. Kammen, is there a need for Arabic  
18 interpretation through this process?

19 LDC [MR. KAMMEN]: I don't believe so, no. I don't  
20 believe he is going to access the screen in back. If we learn  
21 that he does, that may change, but at this time, I -- he  
22 indicated he wasn't feeling well. And under those  
23 circumstances, I -- I suspect he will just lay down.

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1 MJ [Col SPATH]: And my finding of fact is that he has  
2 voluntarily, with full knowledge, absented himself from this  
3 proceeding.

4 LDC [MR. KAMMEN]: And I will reiterate that as clearly as  
5 I can. I mean ----

6 MJ [Col SPATH]: Yes, I concur. So no need for the  
7 interpretation.

8 Mr. Quinn, I just -- I know you're the same Mr. Quinn  
9 who has been testifying already this morning, I'm just going  
10 to remind you that you are still under oath as you go through  
11 the rest of this process. Thank you very much.

12 Lieutenant Morris.

13 **CROSS-EXAMINATION**

14 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

15 Q. Mr. Quinn, good afternoon -- actually, good morning.

16 You are a retired rear admiral from the Navy Judge  
17 Advocate General; is that correct?

18 A. That's correct. Rear admiral (lower half).

19 Q. Now, I want to divide my questions really into three  
20 areas, the first being your time -- your first duty at the  
21 Office of the Convening Authority in 2014. I'd like to then  
22 move to when you came back April 6, 2015. And then the third  
23 area I'd like to discuss is your interaction with then

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1 Lieutenant Commander Gill and returning him to the Navy.

2 In the first area, when you were with Mr. Ary for the  
3 two weeks in October, you were involved in creating a  
4 memorialization of any resourcing requirements; is that  
5 correct?

6 A. That's correct.

7 ATC [LT MORRIS]: Your Honor, I'm going to ask that the  
8 witness be permitted to see a section of Appellate Exhibit  
9 3320. This has been cleared with the court security officer.  
10 I will show this to the defense and I also will show it to the  
11 CSO.

12 MJ [Col SPATH]: All right. And if it's already been  
13 cleared, you may display it to the witness and on all of the  
14 screens. Thank you. You may.

15 Q. I ask that we switch over to the ELMO. Mr. Quinn,  
16 can you see that okay?

17 A. Yes, I can.

18 Q. Do you recognize what this is? And I can show you  
19 the entirety of the memo if you indicate to me that you've  
20 read this portion.

21 A. I don't see the signature page. I see the front  
22 page. I'm assuming that this is basically the memorandum that  
23 was the last official act that I took as the chief of staff

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1 before departing the office in 2014.

2 Q. Yes. I'll show you the second page with your  
3 signature now.

4 A. Yes, that's my signature. That's my signature on  
5 page two.

6 Q. Was this the last thing that you did before leaving  
7 the Office of the Convening Authority in 2014?

8 A. It was.

9 Q. And this action of doing an assessment of resourcing,  
10 how did that action begin?

11 A. The question of the proper resourcing of the  
12 components of OMC is -- it's almost a daily issue. Do the  
13 teams, do the judges, do the Office of the Convening Authority  
14 have the resources they need to execute and carry out their  
15 missions professionally and zealously?

16 So there were always questions about resources. I  
17 remember that in -- earlier in 2014, the chief defense  
18 counsel, I believe it was in the April time frame, had come in  
19 with a request for some additional resources, and that we had  
20 been separately contacted by the then chief clerk for the  
21 trial judiciary about civilianizing some of the military  
22 billets, attorney billets as a way of bringing some additional  
23 continuity and experience to the trial judiciary.

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1           So there were things that were pending that we were  
2 trying to get our arms around because the question was, when  
3 you looked at the divisions on paper, it might seem like there  
4 was enough resources to handle the number of cases that were  
5 then referred and/or that we could anticipate potentially  
6 being referred in the short term or the medium term. However,  
7 I knew that each section was straining.

8           And there were issues with the provision of military  
9 judge advocates and paralegals, more so the judge advocates,  
10 is that we were not getting the full complement of military  
11 judge advocates from any of the services, and some were better  
12 than others. The Army was particularly good in coming close  
13 to the numbers that were supposed to be provided, but the  
14 other services were lagging, truthfully. And that was for a  
15 lot of different reasons and a lot of different competing  
16 priorities.

17           So one of the things that I wanted to try and do  
18 before I left was at least get the conversation further down  
19 the road and ask each of the sections to really take a hard  
20 look at requirements, at -- these are the anticipated number  
21 of cases. And I put out there as a straw man, you know, if  
22 you have a capital case, then perhaps this is the right  
23 resourcing, one learned counsel, this many military counsel,

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1 this many paralegals, civilian, military. You know, I tried  
2 to lay out something that would generate the discussion about  
3 honest to goodness what the teams need and have them justify  
4 those needs so that it wasn't just a -- that we would keep  
5 getting additional resources because it would seem like you  
6 could never provide enough. And yet there was a tipping point  
7 where we needed to find the right way to enable all of the  
8 sections to properly function, but also do so effectively and  
9 efficiently, because resources are not unlimited.

10 So that was the genesis of that memo. And I had been  
11 working on it for a while and it was something that I wanted  
12 to get done and sign out so that then General Ary and Colonel  
13 Sheeran, as the acting chief of staff, would get those inputs  
14 and be able to do their own assessment of where the resources  
15 really were required and what those appropriate resources  
16 should be. So that was -- and it took me a long time to come  
17 up with that framework and to try and wrestle with some of the  
18 issues, but that was the end result.

19 Q. And the origin, Mr. Quinn, and analysis and potential  
20 concern of the lack of resources, that did not begin with  
21 Mr. Ary's arrival in October of 2014, correct?

22 A. Oh, that's correct. No, no. It was -- as I said, it  
23 was a constant issue, particularly for the trial and the

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1 defense teams, the prosecution and the defense; you know, did  
2 they have enough people to do what they were required to do.

3           And it was during this time, too, that, you know,  
4 that listening tour that I described with respect to the trial  
5 judiciary that Major General Ary -- excuse me, Mr. Ary at the  
6 time really kind of laser beam focused in talking with the  
7 clerks at the trial judiciary of whether or not they were --  
8 they really needed an immediate infusion of assets to assist  
9 them in the processing of the cases.

10           Q. And again to reiterate, during those two weeks of  
11 that listening tour in which you were with General Ary, there  
12 was no discussion or initiation or conversation regarding what  
13 evolved into Change 1, correct?

14           A. There was no discussions about moving the trial  
15 judiciary to Guantanamo while I was present.

16           Q. Now on 6 April of 2015, you had described on direct  
17 examination how it was that you arrived back, having been  
18 asked by Mr. Oostburg Sanz to return, him looking for somebody  
19 that was familiar with the office to help get the office going  
20 again. I want to show you your actual appointment letter.

21           ATC [LT MORRIS]: And, Your Honor, for a point of clarity  
22 and just in terms of the technology, was the last exhibit, was  
23 that shown to the public? Because I was told that I could. I

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1 just want to make sure that the ones that can be shown ----

2 MJ [Col SPATH]: Apparently it was not.

3 ATC [LT MORRIS]: Okay. So -- and I don't know the best  
4 way to go forward other than if we could have the default  
5 position be to show it to the public, and I have, you know,  
6 fenced out where, you know, the exhibits cannot be shown to  
7 the public.

8 MJ [Col SPATH]: That certainly is my preference. I  
9 thought I had said that when you displayed it. I think you  
10 probably heard me say that. So we will try to pay more  
11 attention.

12 Again, it's in 3320 as an attachment, so it is on a  
13 website that's public at this point, or will be.

14 ATC [LT MORRIS]: I'm going to show the defense 332Y,  
15 Attachment C, and then if need be, I'll have a number of  
16 exhibits, maybe for efficiency's sake, that I could hand them  
17 all to the CS0, confirm, and then get those checked off to go.

18 MJ [Col SPATH]: You can do that.

19 ATC [LT MORRIS]: Yes, sir.

20 Being shown to defense counsel. Permission to  
21 approach, Your Honor?

22 MJ [Col SPATH]: You may.

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

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1 Q. Mr. Quinn, I apologize for that delay. I'm going to  
2 put on the ELMO for public release -- or for public viewing  
3 your appointment letter of 14 April and ask that that be shown  
4 to the witness.

5 Now, this was a formal appointment for you acting as  
6 the legal advisor to the convening authority dated 14 April,  
7 correct?

8 A. That's correct.

9 Q. And prior to this, you had been in the office, I  
10 think you had said, as of 6 April; is that correct?

11 A. That's correct.

12 Q. And before that time, had you taken or acted on any  
13 legal matters in Nashiri before this appointment letter?

14 A. Nothing in Nashiri and nothing in the other cases as  
15 well.

16 Q. Thank you.

17 A. I did not serve or provide legal advice or  
18 recommendations until after the date of this letter.

19 Q. And this appointment was for a period of 90 days,  
20 correct?

21 A. That was what I was told coming in, that they wanted  
22 me to come in and help reconstitute the office, and that the  
23 detail would not extend past 90 days.

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1 Q. And how close did they take you to those 90 days?

2 A. I think, depending on how you count travel days, I  
3 think we got up to 88 or 89.

4 Q. Coming in, you stated that you were aware of the  
5 judge's 4 March 2015 order; is that correct?

6 A. That's correct.

7 Q. And you were aware that certain legal advisors had  
8 been precluded?

9 A. Yes.

10 Q. Upon your arrival and what you called -- upon your  
11 arrival of 6 April before your formal appointment in what you  
12 called your mini listening tour, did you in your observations  
13 and conversations observe any violations of what in your  
14 opinion would have been violations of the judge's order, his 4  
15 March order?

16 A. No.

17 Q. And when you got there that week on 6 April, you had  
18 listed a number of things that you had asked to be done and  
19 you had -- and I'd like to go through each of those with you.  
20 And put up for the witness Attachment D, 332Y for public  
21 viewing.

22 Mr. Quinn, can you see that?

23 A. I can.

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1 Q. Can you see the date of that?

2 A. It appears to be the 8th of April 2015.

3 Q. This is asking you to restrict access to the Nashiri  
4 folders to only four people; is that correct?

5 A. This was sent by the paralegal in the office,  
6 paralegal/executive assistant to the convening authority, and  
7 she sent this to one of the contractors that provides IT  
8 support for our office.

9 Q. I should clarify that. Mr. Quinn, these were  
10 sent ----

11 A. Yeah.

12 Q. ---- or this e-mail was sent in response to your  
13 request; does that seem consistent?

14 A. Yes. That was -- yes, it was my specific direction  
15 that we needed to take these actions.

16 Q. To the best of your knowledge, were these specific  
17 actions taken?

18 A. Yes, they were. And I asked that they be double  
19 checked to make sure that they were done.

20 Q. Now showing the witness Attachment E of 332Y, and ask  
21 that if you -- ask if you recognize this as -- do you  
22 recognize -- what is the date of this one? It's 8 April,  
23 isn't it?

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1 A. This is also the 8th of April.

2 Q. And this is a direction to have a separate e-mail  
3 group for all Nashiri filings. Do you recognize -- and that's  
4 something that you asked to be done, correct?

5 A. That's another action that I directed, yes.

6 Q. Mr. Quinn, I'm now showing you a letter from you to  
7 the Office of the Chief Prosecutor, to the office of the  
8 Military Commission Defense Organization, Colonel Mayberry.  
9 Can you -- do you see the date as 10 April? Can you share  
10 with us what -- why you sent this e-mail?

11 A. This was specifically to engage both the prosecution  
12 and the defense and make them aware of the fact that we had  
13 established a separate e-mail group that pertained only to  
14 Nashiri and to those individuals in the Office of the  
15 Convening Authority, particularly the legal advisors, that  
16 were authorized to receive communications from the trial and  
17 defense regarding the Nashiri case, and that I asked them to  
18 put it out to their respective teams to use that e-mail and  
19 not the general OMC legal advisors e-mail group when filings  
20 related to Nashiri.

21 Q. Were you able to confirm that your request was  
22 complied with, both in ----

23 A. Ah ----

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1 Q. Go ahead, sorry.

2 A. No, I would just say, I mean, the teams started to  
3 use it. And I do remember Colonel Mayberry tested it because,  
4 as you see in the last paragraph, we had tried something  
5 similar, you know, the first time we had tried to come up with  
6 an e-mail distribution group, we had had some bounce-back  
7 issues, and so I put that last paragraph in there about, hey,  
8 if you're experiencing any issues, please let us know. And I  
9 do specifically remember Colonel Mayberry tested it and it was  
10 working.

11 Q. Thank you.

12 Showing the witness 332Y, Attachment G. This was an  
13 e-mail again sent by the executive assistant on 10 April to  
14 have three folders locked down. Do you recognize this as an  
15 action on your request?

16 A. Yes.

17 Q. Then lastly, 332, Attachment H is an e-mail on that  
18 same date, 10 April, to the Office of the Convening Authority.  
19 Can you describe what this is and why you sent it?

20 A. This was to be very clear for all of the other  
21 sections within the Office of the Convening Authority that  
22 there were certain individuals that were not to be involved in  
23 the advice or recommendations with respect to the Nashiri

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1 case. And so I wanted the people in travel and manpower and  
2 contract administration and facilities and budget, all the  
3 other different component parts of the convening authority's  
4 office, to be aware that if they were handling a case or a  
5 matter and it pertained to the Nashiri case and they needed  
6 legal advice on it or they needed to bring it to the attention  
7 of the legal advisors, that they knew exactly who they were to  
8 come to. And that was identified in the e-mail. I wanted to  
9 make sure that everybody received this.

10 Q. You testified that it was your -- that you knew that  
11 everything was on standstill until you got there. And so  
12 isn't it true that once you got there, you wanted these very  
13 clear, bright-line measures to be taken so that during your 90  
14 days there that you could do what you were called to do there,  
15 and that's get things moving again?

16 A. Absolutely. And it wasn't just for my 90 days, but  
17 also for successor legal advisors. There was going to have to  
18 be, you know, carved-out processes by which issues related to  
19 the Nashiri case, legal opinions, advice, recommendations,  
20 were handled by counsel that were allowed to be involved in  
21 the processing of those actions.

22 ATC [LT MORRIS]: Your Honor, I have two additional  
23 exhibits, one that's also attached to 332Y and the other that

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1 has previously been provided to defense in discovery. I'd ask  
2 that I show both of those to defense and then to the court  
3 security officer; one I'm asking to be displayed to the public  
4 and the other I'm not, as it has not been cleared.

5 MJ [Col SPATH]: All right. The document that is part of  
6 the filing we're going to have to mark as the next Appellate  
7 Exhibit.

8 ATC [LT MORRIS]: It should already be a part of the  
9 record, Appellate Exhibit 332I and ----

10 MJ [Col SPATH]: Understand. Okay. I didn't hear that  
11 part. So it's 332Y is the first one?

12 ATC [LT MORRIS]: 332Y, Attachment I.

13 MJ [Col SPATH]: And then the second?

14 DDC [LCDR POLLIO]: Sir, to be clear, though, I believe  
15 the portion that will be shown to the public is not the  
16 attachment from the filing. It has additional redactions that  
17 are not redactions that are already a part of the record.

18 ATC [LT MORRIS]: And if Your Honor's preference is to  
19 make the redacted portion a part of the record, then we have  
20 no objection to that.

21 MJ [Col SPATH]: I don't think we need to do that. You're  
22 just asking for this not to be shown to the public, correct?

23 DDC [LCDR POLLIO]: Sir, I believe that we need to make it

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1 part of the record, though ---

2 ATC [LT MORRIS]: That's correct, Your Honor.

3 DDC [LCDR POLLIO]: ---- I believe the redactions will be  
4 an issue for future reference because they are a constant  
5 issue in this case, and we want to make the record clear as to  
6 what redactions we are referring to. So we would ask that it  
7 be admitted to the record an additional attachment.

8 ATC [LT MORRIS]: The substantive portion, Your Honor,  
9 that we're looking to discuss briefly with Mr. Quinn does not  
10 in any way involve the redactions. If that's Your Honor's  
11 preference, the government has no objection.

12 MJ [Col SPATH]: I'm just trying to sort out, it's  
13 probably my own fault. I want to make sure that I heard what  
14 you just said. The document you're about to show the witness  
15 has been cleared for public viewing or has not?

16 ATC [LT MORRIS]: Based -- I would need to confirm that  
17 with the CSO. I believe it has.

18 MJ [Col SPATH]: Okay. Let's check. That will help me  
19 with whether we're going to display it.

20 ATC [LT MORRIS]: Yes, sir.

21 MJ [Col SPATH]: And it is 332Y, Attachment I.

22 ATC [LT MORRIS]: That is correct, Your Honor.

23 MJ [Col SPATH]: All right. If you would show the CSO and

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1 we'll be able to resolve this pretty quickly.

2 [Pause.]

3 MJ [Col SPATH]: So now, first question, is that something  
4 we can show to the public? Has it been reviewed?

5 ATC [LT MORRIS]: This was the same attachment that's  
6 included with our motion, so it's not any more or less  
7 redacted than when we filed it. But based on that, based on  
8 it not being a public release, we'll need to show this one  
9 just to the witness, Your Honor.

10 MJ [Col SPATH]: All right. Thank you. Then let's make  
11 sure for the IT folks, if we could make sure the monitors are  
12 set so we just display it to the witness and counsel.

13 You may proceed.

14 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

15 Q. Now, Mr. Quinn, defense had asked you questions about  
16 an MRI order and you had thought that it was probably sent  
17 about the same time as you had sent out all of your  
18 prophylactic -- your protective measures during the week of 6  
19 April.

20 Do you see the document in front of you?

21 A. I do.

22 Q. And you can see that the date that that was sent was  
23 on 10 April, correct?

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1 A. That's correct.

2 Q. And that was the same date that you were sending out  
3 all of the protective measures that we just talked about?

4 A. It was in that same time frame. Some of the  
5 protective measures had gone out before this.

6 Q. Yes, sir.

7 A. And I don't know if this was the MRI order or not.  
8 When I look at the subject, it says it's the order to abate  
9 all proceedings. So I -- I don't know if this is the MRI  
10 order or something separate.

11 Q. Now, you had mentioned that there was no work in  
12 Nashiri being recommended, decisions being made up until you  
13 got there, correct?

14 A. That's correct.

15 Q. And in response to the prosecution's discovery  
16 request, do you recall that on 23 June you sent then-Colonel  
17 Sheeran an e-mail memorializing all of the work that had been  
18 done and recommendations done and by whom in Nashiri from  
19 February until that date in June?

20 A. I don't have specific recall. If you tell me that  
21 there's an e-mail or a memo, I assume that that was done by  
22 me.

23 ATC [LT MORRIS]: I ask, Your Honor, that this e-mail be

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1 entered as the next Appellate Exhibit in order, and this will  
2 be just for the witness' viewing.

3 MJ [Col SPATH]: All right. If you would provide it to  
4 the court reporters so they can mark it.

5 It's going to be 332UU.

6 Lieutenant Morris, there you go. Display that to the  
7 witness.

8 ATC [LT MORRIS]: Can we switch it over to the ELMO,  
9 please. Thank you.

10 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

11 Q. Can you see that document, Mr. Quinn?

12 A. Yes, I can.

13 Q. Now, this document summarizes any defense requests  
14 and then any action that was taken on defense requests in the  
15 Nashiri case in its entirety from 18 February 2015 until the  
16 bottom of that, which says 15 May 2015; is that correct?

17 A. Yes.

18 Q. And there's nothing -- there are no precluded legal  
19 advisors, including Mr. Toole, that provided any legal advice  
20 on the Nashiri case before you arrived there or during your  
21 tenure, at least up until 15 May, correct?

22 A. That's correct.

23 Q. And as well after 15 May, correct?

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1 A. Correct.

2 Q. And the -- the memorialization also shows that  
3 Lieutenant Commander Gill, in fact, did not provide any  
4 recommendations or legal advice during this time on the  
5 Nashiri case as well, correct?

6 A. Not as an individual. He may have had input to a  
7 couple of the ones early on, but he never directly advised the  
8 convening authority or provided recommendations that the  
9 convening authority took actions on.

10 Q. This e-mail really confirms your representation that  
11 nothing was happening until you got there, and even then that  
12 you were the one that was providing legal advice to the  
13 convening authority, correct?

14 A. That's correct.

15 ATC [LT MORRIS]: Permission to approach, Your Honor.

16 MJ [Col SPATH]: You may.

17 Q. Now, I'd like to ask you some questions about your  
18 interaction with then-Lieutenant Commander Gill and his work,  
19 and then also your decision to return him to the Navy.

20 How you would describe Mr. Gill's professional work  
21 product?

22 A. I had issues with it. He -- I -- he seemed to -- we  
23 had specific ways of structuring our legal advice memos, of

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1 addressing certain issues, particularly in ex parte requests,  
2 that the convening authority over a long period of time had  
3 become comfortable with the way that we were presenting and  
4 analyzing. And he wanted it in a particular format. And  
5 Commander Gill seemed to rail at that. And he wasn't  
6 particularly good at working through the various permutations  
7 that might go into how you build a legal memo and the issues  
8 that had to be addressed.

9           So we talked on several occasions about the way that  
10 we -- how we did business in OMC, how we structured our  
11 advice, and how we did it, but I ended up personally  
12 rewriting -- I mean, when the binder came, he had done some  
13 work in some of the -- in some of the pending actions, but I  
14 ended up rewriting virtually all of that when it came time to  
15 actually present it to the convening authority.

16       Q. Besides these professional observations, did you have  
17 any concerns in regards to personal observations of Mr. Gill?

18       A. Yeah. I was concerned over his temperament and what  
19 he had displayed to me. And it was reported to me that he --  
20 you know, there were issues where he would be unaccounted for,  
21 we wouldn't know where he was. Or he would forget his uniform  
22 on a particular day. We -- there were performance issues  
23 separate and apart from everything else that was going on.

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1           And that played into the factor about returning him  
2 to the Navy. It was -- you know, all of these circumstances  
3 together, we didn't have the time, the bandwidth, to try  
4 and -- to try and get him up to measurable performance that  
5 were acceptable.

6           ATC [LT MORRIS]: Your Honor, I'm going to ask that  
7 Attachment K, Attachment N, Attachment O, all to 332Y, that I  
8 be allowed to show those to the witness. I will -- and this  
9 is not for public release, as it was previously under -- or  
10 requested to be under seal.

11           And that brings up, and maybe I should ask for that  
12 now, at least a little bit of a posture that when we had  
13 initially requested that these be under seal, to try and spare  
14 in our response, then Mr. Gill, any professional  
15 embarrassment, which was your motivation for doing so. We had  
16 not, in fact, received a sealing order, and I think that there  
17 were some procedural issues perhaps that were a box that we  
18 didn't check on our end. But we would ask, nonetheless, that  
19 those are sealed, Your Honor.

20           MJ [Col SPATH]: Those particular exhibits.

21           ATC [LT MORRIS]: Those particular exhibits which had been  
22 identified in the government's motion in 332Y and we had  
23 identified those that we had requested be sealed.

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1 MJ [Col SPATH]: All right. When we come back after the  
2 lunch break, I will discuss those more, but -- and I'll get  
3 you an answer on that. I think the answer is pretty simple,  
4 but it will take the lunch break.

5 ATC [LT MORRIS]: Thank you, Your Honor.

6 MJ [Col SPATH]: You may display these to the witness.  
7 Make sure you show the defense. I know you will.

8 Q. Showing you -- and this is just to be displayed to  
9 the witness -- what has been previously -- or is Attachment K,  
10 as the first page of Attachment K, and ask if you can see  
11 that.

12 LDC [MR. KAMMEN]: I don't know, it's not visible on our  
13 screens.

14 MJ [Col SPATH]: Oh. All right. Let's make sure it's  
15 visible on the defense screen. Hold on just for a moment.

16 ATC [LT MORRIS]: It's not visible on any of the screens,  
17 but I'm sure once they switch over, we'll all get it.

18 MJ [Col SPATH]: It was up here already, Lieutenant  
19 Morris, I don't know why.

20 ATC [LT MORRIS]: Okay, sir.

21 MJ [Col SPATH]: We're just lucky.

22 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

23 Q. Mr. Quinn, do you recognize what this is?

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1 A. I do.

2 Q. And this is a 22 April '15 summary from the  
3 investigation of Colonel Sheeran that he provided to you, at  
4 least the cover sheet of that; is that correct?

5 A. He provided a whole binder. He provided all of the  
6 tabs to me in addition to this one-page form that's used  
7 inside the convening authority's office.

8 Q. And this binder summarized, as you can see in the  
9 tabs, the various data points as well as other observations  
10 from Colonel Sheeran's investigation, correct?

11 A. That's correct.

12 Q. And this included looking into the SF-86 and concerns  
13 that were there?

14 A. In addition to the congressional piece, which I think  
15 were the references to tabs A and B.

16 Q. Which were a complaint by Mrs. Gill, as well as the  
17 supporting documentation, that she had faxed to your office,  
18 correct?

19 A. That's my -- that's my recollection.

20 Q. At the bottom of this, let's start where it says  
21 chief of staff. That is you and that's your initials signed  
22 there, correct?

23 A. At the top the form, yes. MQ 4/23.

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1 Q. And at the bottom of the form, you had mentioned that  
2 you had, in direct examination, made these concerns known to  
3 the security office of Ms. Stephanie Flannery. At the bottom,  
4 you see there that you had, in fact, written in and signed  
5 that Ms. Flannery was going to proceed and report these  
6 concerns to DoD CAF, correct?

7 A. That's correct.

8 Q. And your recommendation at the bottom was that he be  
9 returned to the service, to the Navy, so that they can handle  
10 Lieutenant Commander Gill and these concerns?

11 A. That's correct.

12 Q. And that at that point with just you and with  
13 Lieutenant Commander Gill was the only nonprecluded legal  
14 advisor, you guys did not have the bandwidth to handle a death  
15 penalty case as well as the other cases that were going in  
16 commission, correct?

17 A. That's correct. We needed fully functional counsel.  
18 I mean, everybody has issues, but Lieutenant Commander Gill  
19 presented issues far and above what we were equipped to  
20 handle.

21 Q. And in the decision of how to handle Mr. Gill and try  
22 and do what was best for him, I'm going to ask that you look  
23 at what is Attachment N to 332Y.

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1           This is your memorandum for the record, correct?

2           A.   That's correct.

3           Q.   And in that, you state that you're going to return  
4 him to the Navy so he can sort out these issues, correct?

5           A.   That's correct.

6           Q.   And ultimately you made a memorandum to the director  
7 of fleet resources and programs, U.S. Fleet Forces Command, to  
8 return Lieutenant Commander Gill to the service, correct?

9           A.   That's correct.

10          Q.   I'm going to show you an earlier version of that, and  
11 this is a draft version that the defense had brought up  
12 before, and I'm going to ask you to compare it to the one that  
13 you actually signed. I'll have some questions about that.

14          ATC [LT MORRIS]: But, Your Honor, I ask that this be just  
15 shown to the witness. This has been previously marked as  
16 Appellate Exhibit 332RR.

17          MJ [Col SPATH]: You may.

18          Q.   I'm going to ask if you have seen this earlier draft  
19 before.

20          A.   I may -- I don't know if I saw it before. I mean, it  
21 certainly looks familiar. But as it's a draft, I can't  
22 remember if I saw this version or not.

23          Q.   And the initiation of returning Commander Gill to the

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1 service occurred in late April; isn't that correct?

2 A. That's correct.

3 Q. And in the second -- in the first paragraph at the  
4 end, there is a provision there, a standard-language provision  
5 that he be returned to the Navy until such time that the  
6 member could be demobilized; do you see that?

7 A. Yes.

8 Q. I'd like to show you now Appellate Exhibit 332Y, what  
9 has been Attachment O. And this is going to be the version  
10 that you signed.

11 ATC [LT MORRIS]: Showing it to defense counsel.

12 MJ [Col SPATH]: You may.

13 ATC [LT MORRIS]: This is to be just transmitted to  
14 Mr. Quinn.

15 Q. You can see that okay?

16 A. Yes.

17 Q. And do you see that that language has been changed in  
18 the version that you signed that does not ask him to be  
19 demobilized but instead just asks that the OMC billet be  
20 unencumbered?

21 A. Yes.

22 Q. Do you have any recollection why that change was  
23 done?

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1           A. Well, again, I -- not again, but it was my thought at  
2 the time -- I'm -- how the Navy Reserves handle his status  
3 once he was returned to service was a Navy decision. It  
4 wasn't my place at that point to recommend one way or another  
5 that he be demobilized or retained on in some different  
6 capacity.

7           So I think I pushed back on -- we had a yeoman chief  
8 who was preparing military personnel things, and I think I'm  
9 the one that basically said that's not my intent. We'll  
10 return him to the Navy, and then what the Navy does with him  
11 after that is the Navy's call. And they don't need our  
12 recommendation one way or another on that aspect.

13          Q. So that Lieutenant Commander Gill could have his  
14 issues dealt with, but just not on your guy's watch or  
15 bandwidth?

16          A. Right. It was for -- it was -- I was putting the  
17 issue back into the Navy so that they could handle it as they  
18 saw fit. And if they wanted to keep him on active duty in  
19 another capacity, that was the Navy's call.

20          ATC [LT MORRIS]: Thank you, Mr. Quinn.

21                 Your Honor, if I could have just a moment.

22          MJ [Col SPATH]: You may.

23          ATC [LT MORRIS]: Nothing further.

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1 MJ [Col SPATH]: All right. Thank you. Lieutenant  
2 Morris, if I forget, remind me, hopefully I won't, we'll talk  
3 about 332Y, Attachments K, N, and O.

4 Commander Pollio, any additional questions?

5 DDC [LCDR POLLIO]: [Microphone button not pushed; no  
6 audio]. I anticipate it would only take 30 minutes, but it  
7 could take longer.

8 MJ [Col SPATH]: Then yes, it's probably a wise time to  
9 take a recess and we'll come back.

10 Mr. Quinn, I don't know your travel plans or what's  
11 in line for you later today. Do you have a flight later  
12 today?

13 WIT: I do not. I'm at your disposal, Your Honor.

14 MJ [Col SPATH]: Okay. We're going to come back in an  
15 hour and 15 minutes. So at 1345, if you could get back there  
16 a few minutes before that so we can get ready to go, and we'll  
17 begin redirect and any recross at that point. We'll see you  
18 this afternoon. Thank you very much.

19 Commission's in recess.

20 [The R.M.C. 803 session recessed at 1232, 18 October 2016.]

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