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1 [The R.M.C. 803 session was called to order at 1001,  
2 19 October 2016.]

3 MJ [Col SPATH]: These commissions are called to order.  
4 All of the parties except Lieutenant Jolly and Lieutenant  
5 Cantil are present and we're ready to proceed.

6 I had an opportunity to look first at Merryman, which  
7 is wholly inapplicable. It's been a long time since I've read  
8 it. It's from 1861. It's a good reminder of the law back  
9 then and where we are today. More importantly, some other  
10 work on rights to counsel and the like, and there's no right  
11 to counsel for a detention by the marshals to testify in  
12 court. He's not suspected of an offense, he's not being  
13 interrogated under custody. And so he is here to testify in  
14 court and it is legal to bring him here under the rules under  
15 the commission and longstanding rules under military rules of  
16 practice for which the commission is based on.

17 So we're going to proceed with Mr. Gill.

18 LDC [MR. KAMMEN]: For the record, I understand the  
19 court's ruling. We just want to make it clear that it is our  
20 belief that we are professionally obligated to advise Mr. Gill  
21 of this letter.

22 MJ [Col SPATH]: You are welcome to advise him of the  
23 letter. He's going to get a copy of it with the release --

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1 when I sign the release, I'm -- I'm going to ----

2 LDC [MR. KAMMEN]: Well ----

3 MJ [Col SPATH]: ---- I'm going to transmit a copy of that  
4 letter to him as well at the same time.

5 LDC [MR. KAMMEN]: If I may finish, because I just want to  
6 make sure we're all on the same page.

7 MJ [Col SPATH]: We can do the record later. I want  
8 Mr. Gill to testify and I want Mr. Gill to be released so he's  
9 not held longer than he needs to be because I've said that.

10 LDC [MR. KAMMEN]: So I am understanding you to say that  
11 we cannot advise him of this?

12 MJ [Col SPATH]: No, that's not what I said. I said you  
13 may advise him. I'm also transmitting him a copy as soon as  
14 we're finished. You are welcome to advise him, that's up to  
15 you.

16 LDC [MR. KAMMEN]: Now or after he's done?

17 MJ [Col SPATH]: Whenever you want to tell him.

18 LDC [MR. KAMMEN]: Okay.

19 MJ [Col SPATH]: It's your -- it is your redirect.

20 DDC [LCDR POLLIO]: Sir, if I can interrupt really quick.  
21 We're having the same issue we had yesterday with the dual  
22 feed to Mr. Nashiri's headset and we're getting a team on  
23 that.

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1 MJ [Col SPATH]: The bailiff is giving me a thumbs up that  
2 at least it's being communicated again. Let me know if it's  
3 unworkable and we'll stop.

4 DDC [LCDR POLLIO]: I think it's hard for him to  
5 understand what's going on because he's getting two-feed  
6 talkovers. So I think we need to pause and see if we can get  
7 it fixed. He can't understand what's going on.

8 MJ [Col SPATH]: Okay. Lieutenant Jolly and Lieutenant  
9 Cantil have entered the courtroom.

10 TC [MR. MILLER]: Your Honor, may I be heard for just a  
11 second?

12 MJ [Col SPATH]: We're going to discuss the issue of the  
13 witness after the witness departs if we need to.

14 TC [MR. MILLER]: I understand that. It's not -- my issue  
15 is ----

16 MJ [Col SPATH]: Is it about the transmission?

17 TC [MR. MILLER]: No, it's not.

18 MJ [Col SPATH]: Let's wait because he's having trouble  
19 understanding what we're saying, and I want to make sure that  
20 he can.

21 TC [MR. MILLER]: Yes, Your Honor.

22 DDC [LCDR POLLIO]: So we're going to do a test and  
23 they're going to do some changes. And before we get

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1 everything started and notice the problem is still ongoing, we  
2 want to do a test.

3 MJ [Col SPATH]: That makes sense. We'll just take a  
4 recess in place.

5 [The R.M.C. 803 session recessed at 1004, 19 October 2016.]

6 [The R.M.C. 803 session was called to order at 1007,  
7 19 October 2016.]

8 MJ [Col SPATH]: All right. These commissions are called  
9 back to order. If anything happens, just let me know with the  
10 interpreters or the feed. Mr. Miller.

11 TC [MR. MILLER]: Given Mr. Gill's personality and level  
12 of excitement today, I would request and the government would  
13 request that he not be informed of the letter until after he's  
14 done testifying. Inasmuch as he is not entitled to this  
15 representation, I think we're building in a situation where  
16 Mr. Gill might become, and the word petulant again comes to  
17 mind, or where he may start to disrupt the proceedings. For  
18 that reason, I think it's rather obvious why I'm making this  
19 request. The court is obviously going to make its ruling. I  
20 think the best course of action would be to give him the  
21 letter as the court was going to at the end when he gave him  
22 his release order and just proceed without informing him of  
23 the public defender's letter. That would be the government's

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1 request.

2 MJ [Col SPATH]: All right. Mr. Kammen, why do you feel  
3 that you need to inform him of the letter right now?

4 LDC [MR. KAMMEN]: Because, quite honestly, I think that's  
5 what lawyers are supposed to do when they're in this position.  
6 I have never ----

7 MJ [Col SPATH]: You've never been where a witness has  
8 been brought on any writ of attachment in any court?

9 LDC [MR. KAMMEN]: Well, I don't know whether this -- no,  
10 actually, this is really kind of a first. And it's also a  
11 first for me that I can remember, and it's the first in the  
12 five years I've been here, and ----

13 MJ [Col SPATH]: I understand it's a new writ of  
14 attachment -- it's not new, it's in, again, a statute and our  
15 rules of practice. It's -- but I'm just asking in the normal  
16 course of business.

17 LDC [MR. KAMMEN]: In the normal course of business, in my  
18 experience, of course, when a person is being held and we -- I  
19 don't know what's happened. I mean, I don't know what's  
20 happened in Virginia. I don't know whether this lawyer is  
21 at -- you know, trying to find Mr. Gill because he's not in  
22 the court, he's in some federal building. You know, we don't  
23 know what's going on.

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1 MJ [Col SPATH]: I understand that.

2 LDC [MR. KAMMEN]: I don't know whether Mr. Gill at the  
3 time he was arrested may have said, I want a lawyer. I don't  
4 know any of those things. All I know is I've got this letter  
5 and it does seem to me that we are obligated to advise him.  
6 If you tell me not to, I won't.

7 MJ [Col SPATH]: So -- but there's a few things in there  
8 that we need, again, to be particular about what we're doing.

9 You are welcome to ask him questions. I'm not  
10 stopping you from asking him questions that are relevant to  
11 the issue at hand or go to some impeachment, be it bias or  
12 motive to fabricate or anything like that, because you can  
13 impeach your own witness as well, not that you might want to.  
14 You are free to ask your questions.

15 My concern is, I certainly don't see witnesses  
16 brought involuntarily all of the time because most witnesses  
17 show up voluntarily after they have been subpoenaed with  
18 money. But this is not a first, and so I don't know where a  
19 right to counsel would attach. I recognize that you raise  
20 your eyebrow as being detained. He might be detained but he's  
21 not being interrogated. No one suspects him of a crime. No  
22 one believes he committed a crime. He was brought  
23 involuntarily to respond to questions and then he's going to

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1 A. Yes, sir, I hear you.

2 Q. I just remind you, you are still under oath.

3 Mr. Kammen is going to continue with his redirect.

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

5 Q. We were talking about your job performance, and you  
6 indicated that you were extended -- your orders were extended.  
7 Who -- what person did you communicate with within the office  
8 of the convening authority to obtain that extension? Who was  
9 the sponsor of that extension?

10 A. I don't know what the sponsor means, but I can tell  
11 you that I first went to Mr. Toole, who said yes, but you need  
12 to see Colonel Ed Sheeran, he's the operations director, to  
13 make it happen and tell him that I said that that's fine. Up  
14 until that time, I didn't even know who Ed Sheeran was,  
15 really. He was a colonel.

16 Q. We'll come back to that.

17 A. Okay.

18 Q. Let's try and stay focused.

19 A. It was Mr. Toole and Colonel Sheeran together.

20 Q. Okay. And in the discussions leading up to the -- we  
21 know from other testimony that your duties were extended, your  
22 time was extended.

23 A. Yes.

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1 Q. Did anybody suggest to you that they were glad you  
2 were being extended?

3 A. Oh, yes.

4 Q. Who specifically told you, in effect, they were glad  
5 you were being extended?

6 A. Well, Mr. Toole for one. And then -- and this is as  
7 I was coming to know Colonel Sheeran because I really didn't  
8 know who he was up until that point. But he said to me  
9 something that I felt a little bit of pride in. He said, you  
10 know, until you came along, the Navy was sending us lousy  
11 attorneys; we're glad to actually have someone who knows what  
12 they're doing come aboard. Something like that, to that  
13 effect.

14 Q. Who said that?

15 A. Colonel Ed Sheeran.

16 Q. Excuse me. I need to step away from the podium for a  
17 second.

18 Where were you when Colonel Sheeran was talking about  
19 how much better you were than other people the Navy had sent?

20 Where physically ----

21 A. I want to say it was in his office, I want to say.

22 Q. Okay.

23 A. As I'm sitting here today, I seem to think it was in

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1 his office.

2 Q. Okay. Now, again focusing between January and  
3 February -- January and February, were there any disciplinary  
4 actions taken against you in your job; any write-ups, any  
5 admonitions, any warnings, anybody suggest in any way your  
6 performance was inadequate?

7 A. Absolutely not. I was just -- I was receiving  
8 positive feedback all over the place.

9 Q. Okay. Besides the comment from Mr. Sheeran, could  
10 you tell the judge who else gave you positive feedback?

11 A. Oh, Lieutenant Colonel Lewis for sure.

12 Q. Okay. Anyone else? Did Mr. Toole give you positive  
13 feedback?

14 A. Yeah, from time to time. Sure.

15 Q. Okay. Could you tell us, do you happen to remember,  
16 again, in -- any specific instances of positive feedback you  
17 got from Mr. Toole?

18 A. As I'm sitting here today in this kind of foggy brain  
19 I have, nothing in particular jumps out like the Ed Sheeran  
20 comment jumped out to me, because that was -- you know, it was  
21 nice -- a guy like Ed Sheeran, he's a very avuncular man, kind  
22 of guy that you maybe want to grab a beer with, whatever,  
23 within the parameters of not fraternizing with a superior.

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1 Mr. Toole, not so much like that; very bookish man, very  
2 introverted. So not so much -- not anything in particular  
3 like that.

4 Q. Okay. But you do know and you are telling the judge  
5 that there were times that -- in this time frame that  
6 Mr. Toole gave you positive reinforcement?

7 A. Yes.

8 Q. Okay. Now, I want to move ahead. You were employed  
9 by the Convening -- the Office of the Convening Authority at  
10 the time when the defense -- when there was going to be a  
11 hearing on the defense's allegations that the convening  
12 authority had engaged in actual or apparent unlawful  
13 influence?

14 A. The UI motion you're referring to?

15 Q. Yes.

16 A. Yes. I remember that came to pass at some point.

17 Q. Now, focusing on the time immediately prior to the  
18 hearing, within the Office of the Convening Authority ----

19 A. Yep.

20 Q. ---- was there any discussion about what would happen  
21 within the office if that motion were granted?

22 A. I think I answered this last month. No. But not  
23 that I ----

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1 Q. So ----

2 A. ---- not that I was included in on. I wasn't  
3 included in on any conversation. If it happened, it was not  
4 to my knowledge.

5 Q. Okay. And just again for the record, I suspect we  
6 know the answer, was -- well, let's move ahead, then.

7 There was the hearing and there was the oral decision  
8 from Judge Spath that he was going to disqualify the convening  
9 authority and the named legal advisors, and then there was a  
10 subsequent written decision. Between the time ----

11 A. Right.

12 Q. ---- between the time of the oral decision and the  
13 written decision, was there any discussion that you  
14 participated in within the Office of the Convening Authority,  
15 and especially among the legal advisors, about what changes  
16 were going to have to be made?

17 A. Well, remember, I was in GTMO when the ruling came  
18 from the judge. We did have a conference call from up on the  
19 hill, at the OMC spaces up on the hill in the conference room  
20 up there. We were on a conference call, myself and Lieutenant  
21 Colonel Lewis. But Lieutenant Colonel Lewis was in charge at  
22 the time anyway. I was along for the -- kind of the OJT  
23 initial -- not my initial trip to GTMO, but my initial trip to

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1 GTMO with this organization.

2 Q. Let me interrupt you. Who else besides you and  
3 Lieutenant Colonel Lewis participated in this conference call?

4 A. I believe General Ary.

5 Q. Okay.

6 A. Mr. Toole.

7 Q. Okay.

8 A. Mr. Toole, General Ary, I -- I want to say Alyssa  
9 Adams was on the line.

10 Q. Okay.

11 A. Because remember, I was in GTMO with Lieutenant  
12 Colonel Lewis, so these are the folks who would have been on  
13 the line, the conference call back there. I believe Captain  
14 Matt Rich might have been in the room, I'm not entirely sure.  
15 Obviously I couldn't see them. I feel like Ed Sheeran was  
16 there ----

17 Q. Okay.

18 A. ---- and I also feel like Wendy Kelly might have been  
19 there, although I'm not 100 percent sure of that.

20 Q. Okay. Now, was there any discussion about what  
21 changes would be made in the way in which the office was being  
22 run as a result of Judge Spath's oral decision?

23 A. I'm not sure if this is an attorney-client privileged

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1 issue or not.

2 Q. Just answer -- please -- we'll take it question by  
3 question. It's yes or no. Were there discussions?

4 A. Well, it's not really a yes or no, because to say yes  
5 is to reveal the communications themselves. Can you ask the  
6 question again, sir? I'm sorry.

7 Q. Sure. In this conference call after the oral  
8 decision, was there any discussion about what changes would be  
9 made in the operation of the Office of the Convening Authority  
10 as a result of Judge Spath's oral ruling?

11 A. Not in the Offices of the Convening Authority, as  
12 you've asked that question. So I'm going to say no; best of  
13 my recollection, no.

14 Q. Was there any discussion about what changes there  
15 would be made among the legal advisors as a result of this  
16 decision?

17 A. Well -- I'm trying to recall here. I know -- I tell  
18 you what I do recall, I don't know if this answers your  
19 question, but as Lieutenant Colonel Lewis and I were watching  
20 the hearing unfold from the MOC before we went up the hill,  
21 she and I and one of the members of the media, who is someone  
22 that I know from the JAG Corps, now retired, a Captain Dan  
23 Eckstrom, JAG Corps, he's a judge in North Carolina [sic], he

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1 was there for the Naval Review.

2 Q. Let's stay focused on what you ----

3 A. Well, we had -- we were sort of wagering based on --  
4 as the hearing progressed, as to what the outcome was going to  
5 be. So as part of the, sort of betting as to what the final  
6 ruling was going to be, we, Patricia Lewis and I, talked about  
7 what that would entail if scenario one came to pass, if  
8 scenario two came to pass, if scenario three came to pass.  
9 But that was just she and I pontificating.

10 Q. Okay. So let's -- there came a point at which you  
11 essentially began to occupy the position of legal advisor for  
12 the Nashiri team, correct?

13 A. I'm sorry. One more time, sir.

14 Q. Yes. There came a time when you began to occupy the  
15 position of legal advisor for the Nashiri team; isn't that  
16 correct? For the Nashiri case, I'm sorry.

17 A. Case, yeah. Everything but the word team, yes.

18 Q. Yeah. And do you remember -- and when would you put  
19 that when you began to occupy that role? When ----

20 A. Well, I mean, I -- you know, factually or legally, I  
21 guess?

22 Q. Factually.

23 A. Factually, that's a -- that's actually a harder

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1 question to answer. Legally, I know when -- it was March 4th  
2 when that -- when the written order came out.

3 Q. Let's focus then on March 4th when the written order  
4 came out. Who -- did anyone tell you, you are now the legal  
5 advisor for the Nashiri case?

6 A. Not in those words, no.

7 Q. Well, in what words did you -- well, first, did you  
8 have a conversation -- let me finish, please.

9 A. Yes, yes.

10 Q. Did you have a conversation with somebody in which  
11 they said to you -- which -- at the end of which you  
12 understood you were the legal advisor for the Nashiri case?

13 A. There was an ad hoc, open bay sort of consensus that  
14 arose that I was the last man standing ----

15 Q. Okay.

16 A. ---- and so it was going to fall to me.

17 Q. Okay. And you say ad hoc open. Who else was in that  
18 open bay? And specifically, was Mr. Toole there?

19 A. Mr. Toole, General Ary, perhaps Samantha Chen.

20 Q. Okay.

21 A. Matt Rich, certainly. I can't recall if Patricia --  
22 Lieutenant Colonel Lewis was there or not, because, as I said  
23 before, she has a special-needs child and she was in and out

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1 of the office quite a bit. So she wasn't always around during  
2 the work hours.

3 Q. Okay.

4 A. And Alyssa Adams didn't seem to be around all the  
5 time during the work hours either, she was always -- I don't  
6 know where she was.

7 Q. Let's stay focused on who you remember being there.

8 A. Yeah. I'm trying to sound it out, sir.

9 Q. Let me interrupt because I'm -- you -- you've said  
10 you specifically remember Mr. Toole being present, correct?

11 A. Right.

12 Q. General Ary you remember being present?

13 A. Yes.

14 Q. And do you remember Colonel Sheeran being present?

15 A. Not -- if I do, it wasn't initially. Because what  
16 had happened, the order came to me. The order came to me and  
17 I got the order and, of course, I wanted to publish it to the  
18 individuals to whom it was applying so they would be cognizant  
19 of what just happened.

20 Q. Sure.

21 A. So the first person I handed a copy to, of course,  
22 literally hot off the press, was General Ary. I mean, I  
23 handed him the copies as it was still printing off the

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1 machine. Like I was -- he was reading the pages as I was  
2 handing them to him. So he was the initial person; Mr. Toole  
3 probably the second.

4 Q. Okay. Again, let's not worry too much about the  
5 order in which you handed people the paper. At the conclusion  
6 of this ad hoc meeting, in your mind was it clear that the  
7 designation had fallen to you of legal advisor for the Nashiri  
8 case?

9 A. Yes.

10 Q. Okay. And after that, you've indicated that one of  
11 the things you had to do was to familiarize yourself with  
12 matters that might be in that -- the Nashiri pipeline that  
13 needed to be dealt with; is that correct?

14 A. Yes.

15 Q. Now, to put it in context, at the time of the order  
16 disqualifying folks, there was going to be another hearing in  
17 Guantanamo sometime in April, in about a month or six weeks.  
18 Do you recall that?

19 A. As I'm sitting here today, I don't recall that.

20 Q. Fair enough.

21 But do you recall, and we don't need to get into the  
22 specifics, that there were things in the pipeline that, in  
23 your opinion as a lawyer and as the legal advisor, needed to

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1 be addressed that couldn't wait to be addressed?

2 A. Certainly.

3 Q. Okay. Now, did anybody tell you during this time, we  
4 are on full stop; we are not doing anything; we are sitting  
5 still until we sort this all out?

6 A. No. Only General Ary. General Ary, to his credit,  
7 prior -- in a week or so leading up to that March hearing, the  
8 February/March issuance of the order and the hearing, he had  
9 ceased performing anything whatsoever in the al Nashiri case.  
10 I guess it was out of an abundance of caution. And certainly  
11 after the order came out. And as you know, he subsequently  
12 resigned shortly thereafter.

13 Q. Right.

14 A. So he ceased doing anything, I believe, on any matter  
15 in the Office of the Convening Authority. He ceased signing  
16 any of the memos, recommendations, et cetera. To his credit,  
17 a very honorable man.

18 Q. Okay. And you indicated in your direct examination,  
19 and we know that shortly after you began acting as the legal  
20 advisor for the Nashiri case, it was your judgment that the  
21 person who had to approve things was -- became Jason Foster;  
22 is that correct?

23 A. No. Jason Foster was to be the point of contact

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1 conduit at DEPSECDEF's legal office as someone to whom I could  
2 funnel and relay matters. Because at that point, the  
3 Secretary of Defense himself had, by operation of law in that  
4 order, become the convening authority in al Nashiri.

5 Q. Okay.

6 A. So we had these pending issues that needed to be  
7 action taken upon by the convening authority, which at that  
8 point in time meant Ashton -- the Honorable Ashton Carter.

9 Q. Okay.

10 A. So I wasn't going to pick up the phone and call the  
11 Secretary of Defense. I got the contact, I think from  
12 Samantha Chen, I was given the name of Mr. Jason Foster, and I  
13 talked with him and I relayed documents up and he said, yeah,  
14 no problem, yeah, we'll get them looked at -- [VTC  
15 transmission interrupted] -- in due course.

16 Q. Now, was Mr. Toole aware that you were using  
17 Mr. Foster as the point of contact?

18 A. I became aware that he became aware that I was.

19 Q. And how did you become aware that he knew of that?

20 A. Mr. Toole -- I believe I testified about this  
21 previously, and I'm trying to recall exactly what I may have  
22 said. But I think it was something to the effect that, after  
23 I had gotten the name of Jason Foster from Samantha Chen and

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1 made communications with Jason Foster, I want to say it was  
2 the very same day, a little bit later in the day Mr. Toole had  
3 asked me how my interactions with Mr. Foster had been  
4 proceeding with these pending al Nashiri matters.

5 Q. Okay. Now ----

6 A. I was taken aback. I had no idea how he, one, found  
7 that out; and two, why he was still trying to stay involved in  
8 the case that he was professionally disqualified from  
9 participating in, so ----

10 Q. Okay. Now, I want to turn in your direct  
11 examination, and this came up in cross, you indicated, and I'm  
12 quoting, that, we had a clock that was ticking on various  
13 Nashiri issues, I'm paraphrasing there, "and I was drafting  
14 memorandum and proposed decisions to transmit to the Secretary  
15 of Defense."

16 A. That sounds right, yes.

17 Q. Who told you to be working on the memorandum and the  
18 various proposed decisions?

19 A. Oh, that was Mr. Toole. But I knew to do it anyway.  
20 I just didn't know what was pending. I had to get that -- I  
21 had to get those things from him, since he was the ----

22 Q. Sure ----

23 A. ---- he was the keeper of that stuff.

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1 Q. So once you got it from him, it was clear to you --  
2 was it clear to you that your responsibility was to do this  
3 work and get it through Mr. Foster to the Secretary of  
4 Defense?

5 A. I thought it was clear.

6 Q. Okay.

7 A. I found out later I guess it wasn't.

8 Q. Well, I understand things changed later, but in your  
9 mind at the time, is there any question ----

10 A. Yes.

11 Q. ---- that it was clear to you that this is what was  
12 supposed to happen?

13 A. No question.

14 Q. Okay. Now, in your direct examination, as I  
15 understand it correctly, and I want to synthesize it, you told  
16 the judge that -- you know, you've made various complaints  
17 about Mr. Toole and you told the judge that Mr. Toole did not  
18 segregate himself from the case after the order from Judge  
19 Spath.

20 A. Yes, I remember saying that.

21 Q. Okay. And was that -- is that still your testimony?

22 A. Sure. Yes. Absolutely.

23 Q. Okay. Now, what you said, and I just want to see if

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1 I've got it all, is that he -- among the things he did was you  
2 had -- one of the motions was something concerning a request  
3 for more hours for me and that he tried to use you as a straw  
4 man to simply transmit his work?

5 A. Yes. That was one of the matters that was pending  
6 that the clock, I think, had run on. And General Ary --  
7 remember, General Ary, I would say, he was not taking any  
8 action on anything.

9 Q. Right.

10 A. So I believe Mr. Toole had tried to get that to  
11 General Ary before the hearing and General Ary refused it.  
12 And so then we had the disqualification happen and now  
13 Mr. Toole sort of didn't know what to do with it, so he tried  
14 to just get me to sign my name to it.

15 Q. And you wouldn't do it, and rewrote it, and then  
16 transmitted it up, correct?

17 A. Yes. To Jason Foster, correct.

18 Q. Okay. Now, again assume for the sake of my questions  
19 that there was a hearing coming up. I mean, as you understood  
20 the process at that time, could things just stop if there was  
21 a hearing coming up or did they have to keep moving?

22 A. I'm not sure I understand the question.

23 Q. Okay.

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1 A. You mean requests in the pipeline ----

2 Q. Yes, did they have to keep ----

3 A. ---- that weren't affected by the motion that was  
4 being heard?

5 Q. Well, that's -- let's just move on.

6 A. Okay.

7 Q. Now, one of the other things that you said in your  
8 testimony is that after he was disqualified, Mr. Toole  
9 continued to question you about Nashiri matters; do you  
10 recall ----

11 A. Yes, regularly. Yep.

12 Q. When you say regularly, what do you mean?

13 A. Well, I mean.

14 Q. Regularly means different things to different people,  
15 so was this daily?

16 A. I don't mean periodically. Actually, you know what,  
17 yeah. I testified previously that we had had -- we had had  
18 like these Monday morning legal advisor meetings.

19 Q. Right.

20 A. After al Nashiri, everything blew up and these  
21 meetings became ad hoc. So there was no longer a set periodic  
22 schedule for these hearings. We never knew what a hearing --  
23 I'm sorry, I said hearing. Meeting. We never knew when the

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1 next meeting was coming. But when it came, we sat in his  
2 office and lined up the chairs and he went down his tracker.  
3 And he would query me on things that I said shouldn't even be  
4 on the tracker. Why is he -- why are you involved in this?  
5 This needs to be segregated.

6 Q. Excuse me.

7 A. Like I testified about this in September.

8 DDC [LCDR POLLI0]: Excuse me. I need to interrupt.  
9 There's no translation being submitted.

10 It's back now.

11 MJ [Col SPATH]: All right. Thank you. Sorry, we're  
12 having a problem with the translation. We're back.

13 Mr. Kammen, you can continue.

14 Q. Now, in these meetings that you were discussing, did  
15 Mr. Toole discuss Nashiri matters in front of other people?

16 A. Yes.

17 Q. Okay. And you thought that was inappropriate, as  
18 you've said?

19 A. Yes.

20 Q. Okay.

21 A. I voiced that to him in front of the other legal  
22 advisors. And I think I recall at the end of one of those, I  
23 immediately made a beeline out of his office down the hall

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1 to -- [VTC transmission interrupted] -- I don't know if that  
2 was my first complaint up the chain of command about his  
3 continued violation of the disqualification order, so that  
4 would have been to Ed Sheeran, or if that was my second  
5 complaint up the chain of command for his refusal to obey the  
6 order, and that I think that was to Admiral Quinn.

7 Q. I think in your testimony that was the first  
8 complaint.

9 A. Okay. Then that's what it was.

10 Q. After you made that complaint to Colonel Sheeran, did  
11 Mr. Toole's behavior change in any way?

12 A. No. I remember Mr. Sheeran -- I remember seeing  
13 Colonel Sheeran after we spoke go right out of his office  
14 immediately down the hall in Mr. Toole's office and close the  
15 door. I remember thinking, oh, good, he's going to be told to  
16 knock it off. And, of course, that didn't happen, and it  
17 actually continued after that, so ----

18 Q. And is -- as it continued after that, that resulted  
19 in your subsequent complaint to Mr. Quinn, correct?

20 A. Right.

21 Q. Now, during this time, and let's focus after General  
22 Ary's resignation and say, April 10 when Mr. Oostburg Sanz  
23 came aboard ----

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1 A. It -- did Mr. Ary resign on March 16 or 18? I can't  
2 quite recall.

3 Q. Whatever. I don't have that.

4 A. Okay.

5 Q. I don't have that at my fingertips. My question is,  
6 during that time, that ten days, two weeks, however long it  
7 was, did anybody complain about your work?

8 A. No.

9 Q. Did anybody complain and say your work is crap; your  
10 work is no good; you are -- you know ----

11 A. Mr. Toole -- I will say that Mr. Toole was very  
12 annoyed that I had signed papers in al Nashiri, as legal  
13 advisor pro tempore to U.S. v. al Nashiri.

14 Q. Okay. But beyond complaining about that, did he  
15 complain about the quality of your work, the quality of your  
16 writing?

17 A. No.

18 Q. Did he ever complain to you about some accusation  
19 that you weren't coming to work on time or weren't bringing  
20 your uniform or anything like that?

21 A. No. I was always to work on time, which I hate to be  
22 late for work, which is why I got that speeding ticket that  
23 time because I was trying to get to work on time. And there

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1 was one occasion where I had -- well, you know, for --  
2 whatever they call, OPSEC safety, whatever it is, you know,  
3 you come to work wearing civilian clothes and then you change  
4 into your uniform at work.

5 I had my khakis taken to the dry cleaners, I recall.  
6 And on a particular morning, I was getting ready to come to  
7 work and I was carrying my uniform in the cellophane, and I  
8 had my gym bag and my brief case. And as I was walking to my  
9 car, I realized it was trash day and I had to push out my  
10 Washington, D.C. recycle bin and trash bin. So I paused for a  
11 moment and I hung my uniform in the cellophane, in the dry  
12 cleaner cellophane on a light post right next to my vehicle,  
13 and I dropped my bags and I went and got my trash and put it  
14 out. And then in my haste to get to work, since I hate to be  
15 not on time to work, I grabbed my bags and put them in the car  
16 and didn't realize I had left my uniform hanging on the light  
17 post.

18 Q. So there was one time you forgot your uniform?

19 A. Correct.

20 Q. Okay.

21 A. And I was so embarrassed. I got into the office, I  
22 said, "Mr. Toole, I forgot my uniform. Should I go back and  
23 get it?" And he said, "Don't worry about it."

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1 Q. Okay. So just out of curiosity it was hanging on the  
2 light post. Was it there when you got back?

3 A. Thankfully, yes. I was in a decent part of D.C. so  
4 there was no criminal element to be able to get my beautiful  
5 polyester pajamas.

6 Q. Now, the important thing is, did Mr. Toole express to  
7 you at that time that this one mistake was a big problem?

8 A. No. But I will say Mr. Quinn was a little annoyed.  
9 Mr. Quinn -- I came into a meeting with him at the end of the  
10 day, he had been at the Pentagon all day, and he said, where's  
11 your uniform, and I explained it to him.

12 Q. Okay. So this is after Mr. Quinn is there?

13 A. Right. Yeah. This is was -- yeah, yeah. Right.  
14 Correct.

15 Q. Okay. So in the time after General Ary resigns and  
16 Mr. Quinn is there, did anyone complain about your work or  
17 your job performance or anything like that?

18 A. No. Like I say, just some praise from Ed Sheeran.

19 Q. Okay. Now, you were working other cases besides  
20 Nashiri from time to time; is that correct? Or did Nashiri  
21 take up all of your time?

22 A. No, I was still working other cases.

23 Q. All right. And I don't want to get into the

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1 specifics, but did anybody complain about your work in the  
2 other cases?

3 A. No.

4 Q. Okay. Did anybody say to you, your work is  
5 substandard, you know, this isn't any good, anything like  
6 that, in any of the other cases you were working on?

7 A. Never.

8 Q. And when I say anybody, specifically did Mr. Toole  
9 ever complain to you about your work in these other cases?

10 A. No.

11 Q. Now, you told the judge that at one point, I think it  
12 was, you had a conversation with Colonel Sheeran about your  
13 frustration with Mr. Toole's violation of the order and  
14 Mr. Toole said -- or Mr. Sheeran said it's difficult for Toole  
15 to let go because Nashiri is Toole's case.

16 A. Well, he said it's his responsibility.

17 Q. Okay.

18 A. And I believe I said to Colonel Sheeran, it is no  
19 longer his responsibility because Judge Spath's  
20 disqualification order has relieved him of that  
21 responsibility.

22 Q. And what did Colonel Sheeran say in response to that  
23 correct statement of fact?

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1 A. I'll talk to him.

2 Q. Okay. And after that interchange with Colonel  
3 Sheeran, did any of Toole's behavior change?

4 A. No.

5 Q. Now, did he continue to question you about Nashiri  
6 matters? He being Mr. Toole.

7 A. Yes.

8 Q. Now, one of the issues was -- that came up was  
9 there's this tracker that they had in the Office of the  
10 Convening Authority; is that correct?

11 A. There was a tracker.

12 Q. Okay. And can you just give us the kinds of things  
13 that were included on the tracker? I mean, I know -- we know  
14 it was the various cases, but were the titles of motions or  
15 the subjects of motions included in the tracker?

16 A. Yes. And the -- the -- and which legal -- which  
17 assistant legal advisor was working that particular -- not  
18 case, but particular motion or issue in the case, and the  
19 clock, this clock that they ----

20 Q. When it was due?

21 A. ---- I was never really sure where it came from, told  
22 us how many days we had left to finish it.

23 Q. All right. Now, one of the recommendations I

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1 understand that you made was that a separate tracker had to be  
2 created for the Nashiri case; is that ----

3 A. Right.

4 Q. Okay. And did I understand your testimony correctly  
5 that when you made that recommendation, Mr. Toole opposed  
6 creating a separate tracker?

7 A. Yes.

8 Q. Did anyone else who was disqualified oppose creating  
9 a separate tracker?

10 A. Nobody else said anything.

11 Q. Okay.

12 A. He was the boss. He's boss. No one else said  
13 anything. It's the military.

14 Q. This was Toole's responsibility and not Sheeran's, is  
15 that correct, of the whole tracker thing?

16 A. Oh, yeah, because it was a legal advisors' tool. It  
17 wasn't an operations tool.

18 Q. Okay. And when -- they wouldn't -- when Mr. Toole  
19 wouldn't allow the separate tracker, did you believe that to  
20 be potentially in an effort to get around the judge's order?

21 A. I believed it to be a violation of the judge's order,  
22 under the Rules of Professional Responsibility and the judge's  
23 order.

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1 Q. Okay. Now, did you tell Mr. Toole that as best you  
2 could?

3 A. As best I could, yeah. I don't -- you know, I mean,  
4 I actually said we shouldn't be doing this, and he, you know,  
5 gave me this look of death, and said, "We're going to do this.  
6 We're going to keep doing this."

7 Q. Okay.

8 A. Or words to that -- [VTC transmission interrupted]

9 Q. We lost him.

10 A. Very, very difficult, very disturbing to have, you  
11 know ----

12 Q. Excuse me. I need you to go back. We didn't hear  
13 your last answer. And so could you repeat your last answer  
14 when you were talking about what Mr. Toole said after he gave  
15 you the look of death.

16 A. Oh, he said, "We're not going to do that," meaning  
17 have another tracker. We're going to keep discussing these  
18 matters. This isn't -- something like, this isn't providing  
19 legal advice, you know.

20 Q. Now, one of the other recommendations you made was --  
21 as I understand it was that Nashiri should have a separate  
22 folder that would be password protected so that only  
23 nondisqualified people could have access to that. Did you

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1 make that recommendation?

2 A. Yeah. On the low side, I actually went ahead and  
3 created a separate folder that I titled something like  
4 post-disqualification. And then on the high side, I had --  
5 I'm not sure who initiated it, I can't -- I always forget the  
6 woman's name who works for the trial judiciary, but there was  
7 an exchange of ----

8 Q. Wendy Kelly?

9 A. No. No, not Wendy Kelly.

10 I can't think of the woman's name for the life of me.  
11 There was an exchange by e-mail to -- originally I had asked  
12 can we password protect the high side and all of that, and  
13 Mr. Toole vetoed that. So I then -- the next best thing I  
14 could do was to create this -- again, this separate folder  
15 saying pre- and post-disqualification. The woman who works  
16 for the trial judiciary, I'm sorry, I can't remember her name,  
17 she was the one who -- there was an e-mail exchange and she  
18 said she would create this separate high-side folder again  
19 with the post-disqualification folder saying that -- you know,  
20 something like we were on scout's -- the disqualified people  
21 were like on scout's honor not to go into it.

22 Q. And you thought that that wasn't adequate to comply  
23 with the judge's order, correct?

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1           A. Well, yeah. If I was -- if I was in charge, that was  
2 grossly inadequate. But as I was fighting to just get  
3 whatever prophylactic measures I could get in place, that was  
4 the best I felt that could be done under the circumstances at  
5 the moment.

6           Q. Okay. Now, during this time, did anybody send an  
7 authority -- Toole, Sheeran, anybody send out an office-wide  
8 e-mail saying the only people who are supposed to work on  
9 Nashiri matters are -- and, by name, disqualified people -- or  
10 qualified people?

11          A. I know what you're saying. I don't know that the  
12 question is -- can be answered as such. But what I understand  
13 your question to mean is that at some point, Admiral Quinn --  
14 of course, they had to listen to him, he -- oh ----

15          Q. Are we talking about before? We know about Admiral  
16 Quinn. Before Admiral Quinn got there ----

17          A. Well, Mr. Mr. Oostburg Sanz, he got appointed before  
18 Mr. Quinn arrived on station.

19          Q. Let me refocus this as to time.

20          A. Yeah.

21          Q. Before Mr. Oostburg Sanz got there, after General  
22 Ary's -- between -- after the judge's written order and before  
23 Oostburg Sanz, did anybody send out an office-wide ----

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1 A. Oh, no. No.

2 Q. ---- admonition that you were the legal advisor,  
3 everything had to go through you for -- everything Nashiri had  
4 to go through you?

5 A. If there was such an e-mail, I don't believe I was  
6 included on it, so I'm going to say no.

7 Q. Okay. Now, during this time when you were  
8 complaining to Colonel Sheeran about Mr. Toole, did you ever  
9 begin suggesting to Colonel Sheeran that, if this wasn't  
10 fixed, you were going to have to go up the chain of command to  
11 other people?

12 A. Can you say that one more time, sir?

13 Q. Yeah. You were complaining to Colonel Sheeran about  
14 Mr. Toole's refusal to follow the order. Did you ever suggest  
15 to Sheeran, look, if we don't fix this, I'm going to be  
16 obligated to go up the -- to go higher on the chain of  
17 command?

18 A. No. I thought -- I thought -- [VTC transmission  
19 interrupted].

20 -- was going to fix it and that was going to be the  
21 end of it.

22 Q. Okay.

23 A. I wasn't even thinking that far ahead. I was just

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1 trying to nip it in the bud the best way I could at the lowest  
2 level with the -- up the chain of command above me.

3 Q. Okay. Now, Mr. Oostburg Sanz came back -- well,  
4 again, between Ary's resignation and Oostburg Sanz coming  
5 back, did anybody tell you, We're not working Nashiri matters,  
6 full stop. Don't do anything on Nashiri?

7 A. No.

8 Q. Okay. Now, after Mr. Oostburg Sanz came back -- and  
9 about the same time Admiral Quinn came; is that correct?

10 A. Admiral Quinn came later, might have been ten days or  
11 so later.

12 Q. Okay. Was there a meeting at which -- I think you  
13 testified at which -- on direct where you were introduced to  
14 Mr. Oostburg Sanz?

15 A. Yeah. There was a -- there was a -- there was a --  
16 there were two types of meetings. The first one I was talking  
17 about was just the legal advisors' meetings where all of the  
18 assistants spoke with like Mr. Toole. Then there was the  
19 next-level-up meeting when the convening authority was  
20 actually there, and we all would come into those meetings.  
21 But Mr. Toole, as the legal advisor, or deputy or whatever the  
22 heck he was, acting, whatever, he was the mouthpiece directly  
23 to the convening authority. And we just all kind of sat there

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1 and smiled and we only spoke if we were spoken to.

2           So there was a meeting where that happened and  
3 Mr. Oostburg Sanz came and he said, Well, I'm back. Glad to  
4 be back here under difficult circumstances. You know, words  
5 to this effect. You know, here's -- kind of introducing and  
6 he said, here's what we're going to do.

7           So Mr. Toole proceeds to go down his tracker, and  
8 various assistant legal advisors, he's saying, oh, in this  
9 case we have got thus and such a thing going on and that's  
10 being handled by Alyssa Adams or something. This is where we  
11 are on that. And then he went to go to the al Nashiri stuff,  
12 and Oostburg Sanz was like, whoa, stop, what are you doing?  
13 This needs to be segregated out. We need a separate tracker.  
14 This is disqualification. I don't want to have a meeting with  
15 any of you folks other than, you know, Lieutenant Commander  
16 Gill on this matter. You are disqualified. Skip those for  
17 now. I'll meet with Lieutenant Commander Gill after this  
18 meeting to go over those, but there needs to be a separate  
19 tracker. And Mr. Toole says, oh, of course. Says, oh, yes,  
20 sir. Yes, sir. We'll do that right away.

21       Q. Two things. First, at that meeting or prior to that,  
22 had you been introduced to Mr. Oostburg Sanz as the legal  
23 advisor for the Nashiri case?

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1 A. No.

2 Q. Okay. How were you -- you were just told that you  
3 were a legal advisor?

4 A. Yeah, essentially. It was just -- kind of like fell  
5 to me and that was it, and everybody was just kind of ----

6 Q. No. Let me make sure we're communicating.

7 A. I had no appointing letter, nothing like that, no.

8 Q. I understand. But in this meeting, did somebody say,  
9 this is Lieutenant Commander Gill and he's the legal advisor  
10 on Nashiri?

11 A. Yeah. It's essentially what Mr. Oostburg Sanz had  
12 said.

13 Q. Okay. So everyone in this meeting, to your  
14 knowledge, understood that you were the legal advisor for the  
15 Nashiri case?

16 A. I don't know what other people understood.

17 Q. Well, did you -- as the meeting unfolded, did you  
18 believe that you were the -- that it was clear -- was it clear  
19 to you that for the purposes of this meeting you were the  
20 legal advisor for the Nashiri case?

21 A. It finally had been stated ----

22 Q. Okay.

23 A. ---- as such.

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1 Q. All right. Now, around this time, you began  
2 complaining -- Mr. Toole was behaving -- continuing to behave  
3 improperly; is that correct?

4 A. In my opinion, yes.

5 Q. And you complained to Admiral Quinn?

6 A. Yes, I did, twice.

7 Q. Okay. You did it twice, as you've told us about.  
8 Now, during this time, when you were complaining to Admiral  
9 Quinn, and this is sort of early April, did anybody complain  
10 about your work?

11 A. Never.

12 Q. Okay. Did Sheeran, Toole, Quinn ever say to you,  
13 essentially, your work is substandard, your work is not good,  
14 that sort of thing?

15 A. No. Mr. Quinn did think it was a little out of the  
16 box during the MRI ----

17 Q. We'll come to the MRI in a ----

18 A. ---- motion.

19 Q. We'll come to the MRI in a second.

20 A. I was doing some out-of-the-box thinking on that and  
21 he was kind of, you know, chuckling at it, but I wouldn't  
22 say ----

23 Q. Okay, but ----

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1           A.    ---- I wouldn't say it was -- I wouldn't say it  
2 was -- what am I trying to say? -- negative pejorative comment  
3 on me, no.

4           Q.    Okay.  Now, before the MRI issue, you complained to  
5 Quinn about Toole and what was -- tell us again what  
6 Mr. Quinn's response was.

7           A.    During my first complaint to Admiral Quinn or my  
8 second complaint?

9           Q.    Let's go to the second.

10          A.    The following -- the second.

11          Q.    The second.

12          A.    The second complaint, which would be my third  
13 complaint.

14          Q.    Yes.

15          A.    Yeah.  Well, I made my first complaint.  He went down  
16 and talked to Mr. Toole.  I thought it was all taken care of.  
17 It didn't stop.  I went down to Mr. Toole's office for the --  
18 now my third complaint, second to complaint to him.  I said  
19 he's still doing it.

20          Q.    And this is Quinn you're complaining to, correct?

21          A.    Complaining to Quinn, saying Toole is still  
22 interjecting himself into the case and remaining involved.  
23 Mr. Quinn said -- I testified to this previously, words to the

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1 effect of, he's a member of the general public and he is free  
2 to go online to the military commissions website and read all  
3 about al Nashiri all he wants and we can't stop him from doing  
4 that, words to this effect.

5 I said, well, he's not a member of the general  
6 public, he's a, by name, disqualified legal advisor and he  
7 needs to implement prophylactic measures as the rules dictate  
8 and stay the heck out of it, and not -- you know, you know,  
9 the old -- you know, monkey see no evil, you know, hear no  
10 evil, say no evil. He needs to just stay the heck out of the  
11 case.

12 And Admiral Quinn said, no, something like, we're  
13 going to be talking about al Nashiri with the legal advisors.  
14 He reiterated this in a meeting, by the way, with all of the  
15 legal advisors in and around this time. Because he was  
16 talking about the convening authority's stare decisis  
17 jurisprudence that they believe that they have and all of the  
18 paper files and that we are required to hear this.

19 Q. Let me interrupt.

20 Did you believe that that was improper?

21 A. Oh, absolutely for them to be ----

22 Q. And did ----

23 A. ---- meddling in the files.

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1 Q. And did you tell Admiral Quinn -- Mr. Quinn that you  
2 thought that was improper.

3 A. Yes, I did.

4 Q. And what was his reaction when you told him that you  
5 thought his behavior now was improper?

6 A. Oh, well, he became angry with me. He was very  
7 displeased. One of the things was when he was -- in this  
8 last -- third and final complaint up the chain to him, was he  
9 said that -- you know, we were talking about the Nashiri MRI  
10 order based on all of that, and how Quinn had, you know,  
11 somehow -- not Quinn, Toole had somehow accessed it and was  
12 looking at it. And I remember, I testified to this  
13 previously, I pretty much cross-examined Mr. Quinn and said  
14 how in the world as a member of the general public would he  
15 get a copy of the MRI order when it hasn't even been posted --  
16 it hasn't gone through a security scrub and been posted  
17 publicly on the website yet so he must have gotten it  
18 somewhere else.

19 And that just -- that just -- Mr. Quinn went over the  
20 top on that. He was just so displeased with me at this point.  
21 He began to blame me. He said it was my fault that Quinn --  
22 that Toole was continuing to violate the order and that he was  
23 staying involved in the case, and that I somehow was supposed

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1 to tell my superior, as I had been trying all along, and  
2 somehow order him magically to cease and desist and discharge  
3 his professional responsibilities and obey Judge Spath's  
4 order.

5           So suddenly the tables got turned on me. And the fix  
6 was in, I believe, from that point forward.

7           Q. And when after that did all of a sudden you -- well,  
8 let me ask you this: Did you ever -- we know from other  
9 evidence that your wife filed a complaint through your -- her  
10 congressman, a congressional. When did you become aware of  
11 that in reference -- in point of reference to when you were  
12 returned to the Navy?

13           A. That -- you were kind of broken up there. Could you  
14 maybe repeat. You kind of broke up toward the end.

15           Q. Absolutely. Well, no, it's the magic of video.

16           You were returned to the Navy, I think it was on the  
17 28th or 29th of April. When prior to that, if at all, did you  
18 learn that your wife had filed this complaint through her  
19 congressman?

20           A. I'm not sure if it was the 28th or the 29th that they  
21 escorted me out of the building, of April, but it was that --  
22 it was within -- it was within moments of me being escorted  
23 out of the building and them taking away my phone, my building

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1 credentials, my parking pass, et cetera.

2 What happened was I was sitting at my desk in my ----

3 Q. Let's not go through that.

4 A. Okay.

5 Q. Prior to you being escorted out of the building, did  
6 you know your wife had filed the complaint?

7 A. No.

8 Q. Okay. So at any time prior to you being fired, did  
9 anybody, Toole, Sheeran, Quinn, anybody come to you and say,  
10 your wife has made these accusations; what is your side of it?

11 A. No. Heck, no. Within moments of being summoned to  
12 the office by Colonel Sheeran into Admiral Quinn's office, it  
13 was spat at me in about ten seconds and I was bum-rushed out  
14 the door.

15 Q. Okay. Now, before you were bum-rushed out the door,  
16 using your words, did anybody, Toole, Sheeran, Quinn, come to  
17 you and say, we think there are problems with your SF-86, and  
18 you're not going to be able to ----

19 A. No.

20 Q. ---- get a security clearance?

21 A. No. Never.

22 Q. Okay. Did you -- Stephanie Flannery come to you and  
23 say anything ----

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1 A. I'm sorry. Who?

2 Q. Do you know who Stephanie Flannery is?

3 A. I do not know who that is.

4 Q. Okay. And so nobody by that name came and spoke with  
5 you about your SF-86?

6 A. If they did, I would have no recollection of that.

7 Q. Okay. Now, did anyone ask you for permission to  
8 access your SF-86?

9 A. I -- you know, I don't think it was the SF-86. I  
10 remember when I submitted the application electronically  
11 online, it was like April like 15th or 16th, and there was a  
12 guy named Matt. I think he was like the OSO or the assistant  
13 OSO, Matt something. Matt Bailey, Bagley, something like  
14 that. He came to my desk, and he said, hey, your application  
15 is not complete because -- and then he handed me this -- or I  
16 don't know if he e-mailed it to me or handed it to me, it was  
17 like an in-house form that was kind of like a junior version  
18 of an SF-86. I don't know how else to describe it. I guess  
19 it was like the -- the in-house one. I had no idea this paper  
20 even existed. No one had ever presented it to me before that  
21 moment.

22 Q. Okay.

23 A. And they said, you were supposed to fill this out.

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1 And I said, okay, first time anybody's told me. So I filled  
2 that out and I think Mr. Bagley may have asked me for my SF-86  
3 at that point, I think. I -- you know, I -- maybe I'm  
4 confusing the two papers, I don't know.

5 Q. Okay. Just a second. I need to step away.

6 [Pause.]

7 Q. With respect to your SF-86, have you ever been  
8 advised one way or the other about -- and I may get this  
9 wrong -- a DoD CAF -- the results of a DoD CAF adjudication?

10 A. Have I ever been given results of a DoD ----

11 Q. Yeah. Have you been given ----

12 A. Yeah. I previously held a TS/SCI, sure.

13 Q. On this one. On this one. Has your clearance been  
14 denied?

15 A. You broke up, sir.

16 Q. On the SF-86 you submitted to the Office of the  
17 Convening Authority during your employment there, was that --  
18 was that security clearance denied?

19 A. To my knowledge, no.

20 Q. Okay.

21 A. I think it's still pending. I have no idea. I've  
22 asked for it to be -- since it's no longer required, I've  
23 asked multiple sources to retract it. It's a waste of

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1 taxpayer dollars at this point.

2 Q. Sure. But nobody's ever -- they haven't come to you  
3 and said, oh, by the way, we've looked at it and it's denied,  
4 have they?

5 A. No. No.

6 Q. Okay. Now, one final question. Before -- in the  
7 time before you were bum-rushed out the door, in those last  
8 three weeks, did anybody complain about your work?

9 A. Not to my knowledge.

10 Q. Did anyone ever come to you ----

11 A. Not to me. Not to me. Not to me, no.

12 Q. Did anyone ever come to you and say your work is  
13 substandard, your work is not good, your -- you know, you're  
14 just not going to get this done, you -- you can't measure up,  
15 you're not a good enough lawyer, anything like that?

16 A. Given that we're supposed to essentially regurgitate  
17 prior rulings, a chimpanzee could do this job.

18 Q. Well, did anyone ever say you weren't up to  
19 chimpanzee standards?

20 A. No.

21 Q. Did anybody ever criticize your work to your face in  
22 any of the time you -- other than what you've told us about,  
23 during your employment with the convening authority?

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1 A. Not criticize, no. Maybe tweak some words, but no  
2 criticism, no.

3 Q. Okay. All right. Excuse me just a second.

4 LDC [MR. KAMMEN]: Mr. Gill, thank you very much. I know  
5 this has been difficult. I'm sure Lieutenant Morris will take  
6 quite a bit of time and then you will be done. Thank you.

7 WIT: Thank you.

8 MJ [Col SPATH]: We're going to take a ten-minute recess  
9 and then we're going to come back for questions. Hold on,  
10 I -- let me see what Lieutenant Morris has.

11 ATC [LT MORRIS]: Good morning, Your Honor. Good morning,  
12 Mr. Gill. The government has no further recross.

13 MJ [Col SPATH]: Well then, that makes it easier. Thank  
14 you, Lieutenant Morris. Thanks for saying that before we took  
15 a recess.

16 I am signing a discharge from the warrant of  
17 attachment. It's going to be 332YY. Let me get that signed  
18 by the court reporters. Or at least -- sorry, the number on  
19 it.

20 All right. Mr. Gill, we're going to transmit two  
21 documents to you. We're going to transmit the discharge to  
22 the office there. I assume they'll bring it in to work with  
23 the marshals to get you released from their custody. I'm also

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1 going to transmit a document filed with us. It made its way  
2 here. I don't know how it got here. It's from a Mr. Kamens,  
3 not related to or the same Mr. Kammen that is here at the  
4 commissions, but the last name is very similar. It's a Jeremy  
5 Kamens. He is apparently a Federal Public Defender in ----

6 WIT: Washington, D.C., sir.

7 MJ [Col SPATH]: Yeah. Eastern District of Virginia,  
8 Federal Public Defender. So he has discovered your ----

9 WIT: No doubt through Carol Rosenberg.

10 MJ [Col SPATH]: That may well be true, I don't know.

11 WIT: I accept his representation, sir, if he wants me to.  
12 I accept it.

13 MJ [Col SPATH]: I'm going to send them both to you. So  
14 you will get the discharge, you will get the -- that notice  
15 that was transmitted somewhere. I have a copy of it now. We  
16 got it before we began your testimony. We -- I didn't have  
17 the party -- I told the parties they could ask you whatever  
18 questions they wanted. I didn't have them provide you with  
19 that notice, but I'm sending it to you now.

20 LDC [MR. KAMMEN]: I -- you specifically ordered us not to  
21 advise him of the ----

22 MJ [Col SPATH]: I just said that, thank you.

23 LDC [MR. KAMMEN]: I just want to make that clear.

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1 MJ [Col SPATH]: I'll say it again, Mr. Gill, because  
2 apparently I need to say things twice. I said they could ask  
3 you whatever questions they wanted; however, I specifically  
4 told them, or ordered them not to discuss this with you, the  
5 notice here, until your testimony was finished.

6 We're going to transmit both of those documents to  
7 you. I would hope that that will resolve the issue with the  
8 marshals. And I'm going to have the government give me an  
9 update on that as soon as we can and make sure that we get you  
10 on your way. And you can work whatever travel arrangements  
11 need to be worked.

12 I'm getting nods of assent from the government on  
13 that. Thank you for your help. Thank you for your testimony.  
14 I'm going to give you a standard instruction. Until this  
15 issue is resolved, don't discuss your testimony or your  
16 knowledge of the case with anyone. Of course, if you get  
17 legal representation, you can talk with them about the  
18 matters. If you want to talk with the defense team or the  
19 trial team about these matters, you can. That's pretty  
20 standard. But don't talk to any other potential witnesses  
21 about what you've testified about or about the substance of  
22 your testimony until this particular issue is resolved. Do  
23 you understand that order?

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1 WIT: I do. I will obey, sir.

2 MJ [Col SPATH]: All right. Mr. Gill, thank you.

3 We're going to take a 15-minute recess and come back  
4 in to kind of figure out the road ahead before the lunch  
5 break. It might not be very long before the lunch break.  
6 I'll see you all in 15 minutes.

7 [The R.M.C. 803 session recessed at 1115, 19 October 2016.]

8 [END OF PAGE]

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