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1 [The R.M.C. 803 session was called to order at 0903,
2 25 February 2015.]

3 MJ [Col SPATH]: All right. These commissions are called
4 to order. All parties who were present before the recess are
5 again present.

6 Let's do a couple admin updates. I have marked or
7 had marked 332Q, which you all can get a copy of. I'm going
8 to give the original to the court reporter. Last night I was
9 working. I reviewed 3320, which is the exhibit, of course,
10 that the witness will be using, and the parties, and then I
11 switched and started to work on a motion ruling in an
12 unrelated case, but it's one we talked about earlier,
13 United States v. Wilson.

14 It should give you heart that I have to disclose a
15 few more facts, because I really do keep everything as
16 segregated as I possibly can when I have multiple trials, for
17 obvious reasons. So as I was going through that file last
18 night I came across the second supplement to the defense
19 motion for recusal and motion to abate proceedings dated
20 12 February 2015, and again this is the Wilson case.

21 But they filed a second supplement to let me know of
22 two additional facts. And the two facts are that on
23 10 February 2015 the Air Force Judge Advocate General informed

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1 the lead defense counsel of the following information with
2 respect to Change 1 to the Regulation for Trial by Military
3 Commissions: "A, in light of the requirement that military
4 commissions judges relocate to Guantanamo and cease judging in
5 courts-martial, TJAG does not intend to permit Colonel Spath
6 to continue to serve as a detailed military commissions judge;
7 and B, TJAG is in the process of finding a replacement for
8 Colonel Spath to serve as a military commission judge. The
9 timing of the replacement has not yet been determined.
10 Negotiations on the implementation of Change 1 are ongoing."

11 So as we debate later about the relevance of General
12 Burne's testimony, or if we're going to call him, as I saw
13 that last night -- frankly, I had forgotten all about it
14 because it wasn't a conversation I had with General Burne.
15 But at least according to Lieutenant Colonel Frakt, the
16 defense counsel, that's a conversation he had with the Air
17 Force Judge Advocate General.

18 So I disclose that to you all. And, again, I've had
19 no discussion like that, as I discuss with you all about any
20 discussions that I've had about Change 1, I have had no
21 conversations like that with General Burne. So I needed to
22 let you know for its relevance on this motion and any
23 potential unlawful influence. So here you go. And, again,

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1 you all can get copies. I gave that to the court reporter.
2 It's 332Q.

3 So I think the only order of business -- I'll check
4 with both sides if there's anything to take up -- is Mr. Ary
5 should be here at 9:30 by VTC, or however, whatever mechanism
6 we use to have him testify. We have the original exhibit,
7 3320, in the record. That is an unredacted version, and I
8 know they'll redact that as they need to as it goes through
9 the review process. My understanding is Mr. Ary has a copy of
10 3320 as well, and I -- to testify from. And his version also
11 is unredacted, which is good, so all of the names are in
12 there.

13 If you're going to use the ELM0, or whatever product
14 it is -- it is an ELM0 -- to display on the screens to the
15 back, there is a redacted version that has gone through the
16 procedure of ensuring there's no personal identifiable
17 information and the like. So you can use the redacted version
18 here -- or you can use the exhibit here. Just make sure you
19 use the redacted version if you are going to display in the
20 courtroom. But you're welcome to refer to names, of course,
21 because the names are going to be relevant to the testimony.
22 And if we have any issues, just let me know, but I think that
23 makes the most sense as we go through this.

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1 So are there any issues to take up before we start at
2 9:30 with Mr. Ary, Trial Counsel?

3 DCP [COL MOSCATI]: No, Your Honor.

4 MJ [Col SPATH]: Defense Counsel?

5 LDC [MR. KAMMEN]: May we have a moment to ----

6 [Pause.]

7 LDC [MR. KAMMEN]: We may ask for a little more time, but
8 I guess the question that comes to mind is, I presume if
9 General Burne says he'd rather have you as Chief Judge than
10 living in Guantanamo Bay, assuming Change 1 is -- has any
11 meaning, I assume you will follow those orders?

12 MJ [Col SPATH]: That's an interesting question. It's one
13 the -- I know you all appreciate it, didn't even -- when I was
14 going through discussions I had with Change 1, and the
15 dealings in the Wilson case really are separate in my mind,
16 and didn't even cross my mind about that conversation, because
17 it wasn't one I had with my boss.

18 LDC [MR. KAMMEN]: Please understand, we're not being
19 critical.

20 MJ [Col SPATH]: No, I know. I bring it up because I had
21 that same discussion during the Wilson case, because I had a
22 number of questions about which order are you going to follow,
23 and the difficulties that obviously this puts me in.

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1 The way the detailing appears to work to me, just the
2 detailing in general, is once detailed by TJAG, which I was at
3 one point, and then assigned to a commissions case, which
4 clearly I have been, at least under the current version the
5 way for me to leave this case is recusal, which of course is
6 within my own determination, if I believe that I can't be
7 impartial, or I don't appear impartial; Colonel Pohl has the
8 ability to undetail me as the Chief Judge; or I can be
9 reassigned from the judiciary in the normal course of TJAG's
10 assignment authority. If he were to remove me from the
11 judiciary and I was no longer a trial judge in the normal
12 course of assignments, that would have the effect of
13 undetailing me. That's at least how I read the instruction.

14 I don't know if TJAG -- this is not a ruling on
15 whether or not he does or doesn't, but I don't know if TJAG
16 has the authority to say you're going to be the chief trial
17 judge in the Air Force and you're not going to a commissions
18 case to which you are currently detailed. I don't know. So
19 that's why I paused on that answer.

20 LDC [MR. KAMMEN]: I mean, as much as we want to move
21 ahead, I mean, I'll defer to you, but is this the best use of
22 everyone's time, if you are going to be leaving the case?

23 MJ [Col SPATH]: It is, because I have no idea the -- I

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1 have no idea the context of that conversation. This is not
2 saying that Colonel Frakt didn't report it accurately. This
3 is not a critique. It's just everybody involved in a
4 conversation hears sometimes what they want to hope -- want to
5 hear or unintended comment. As I discussed yesterday,
6 everybody makes unintended comments.

7 And so I have no idea of the context, because I've
8 had no discussion with General Burne about that eventuality.

9 LDC [MR. KAMMEN]: That was going to be my next question,
10 is that maybe before we hear from Mr. Ary we really need to
11 hear from General Burne. And I guess formally we would renew
12 our request that he be produced briefly as a witness, because
13 if his position is you're gone from this case, I mean, I think
14 everybody -- I mean, first, in our view, quite candidly, if
15 his position is you're gone, the motion is proven.

16 MJ [Col SPATH]: That's a different issue, and so that's
17 something -- if the detailing is being affected, that's
18 certainly an issue to discuss with the unlawful influence, and
19 I know we will. But as of right now, never had a conversation
20 like that with General Burne. I reported it to you out of an
21 abundance of caution as I saw it last night as I was working
22 through that motion ruling in writing, and I think it's
23 important for me to disclose any outside contact issues like

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1 that.

2 LDC [MR. KAMMEN]: I appreciate that. And Commander Mizer
3 has handed me a note indicating that he confirmed a similar
4 conversation with Major Bieber (phonetic) last week, so
5 apparently that is floating around the Air Force -- whatever.

6 MJ [Col SPATH]: I do think it's something we'll talk
7 about as we do the UI motion. I certainly think it's
8 something we're going to be talking about, absolutely. But at
9 this point the wise use of time is I am detailed; I haven't
10 recused myself; nobody has said anything to me about an
11 attempt to undetail me without changing my judiciary duties;
12 Colonel Pohl certainly hasn't undetailed me; and I plan to
13 continue to move forward until such time as something occurs,
14 and I'm sure there will be more motion practice in that
15 eventuality.

16 But Mr. Ary is the first order of business, and then
17 we'll discuss any other witnesses that need to be ----

18 LDC [MR. KAMMEN]: Could we -- and I know we're going to
19 adjourn, and could we have just -- we may ask for a few extra
20 minutes, just to digest this, and ----

21 MJ [Col SPATH]: It shouldn't impact -- for Mr. Ary, he's
22 going to be ready at 9:30, and frankly this should not impact
23 our questions for Mr. Ary, other than maybe do you know of

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1 these discussions, and you're certainly welcome to ask him
2 that if you believe that's relevant to your inquiry. But my
3 plan is to start with Mr. Ary at 9:30.

4 LDC [MR. KAMMEN]: Fine. Okay.

5 MJ [Col SPATH]: All right. Thank you. Then I'll see you
6 all at 9:30. We're in recess.

7 [The R.M.C. 803 session recessed at 0914, 25 February 2015.]

8 [The R.M.C. 803 session was called to order at 0935,
9 25 February 2015.]

10 MJ [Col SPATH]: These commissions are called to order.
11 All parties present before the recess are again present.

12 Do we have Mr. Ary here by, I assume VTC, Trial
13 Counsel?

14 DCP [COL MOSCATI]: Yes, Judge.

15 MJ [Col SPATH]: All right. If you would, let's swear him
16 in.

17 ATC [LT MORRIS]: Sir, good morning. Can you hear me?
18 This is Lieutenant Morris.

19 WIT: Yes, I can. Can you hear me?

20 ATC [LT MORRIS]: We can hear you just fine. Thank you,
21 sir. Would you please stand and raise your right hand.

22 MR. VAUGHN ARY, civilian, was called as a witness for the
23 defense, was sworn, and testified as follows:

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1 DIRECT EXAMINATION

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

3 Q. Would you please state your full name, spelling your
4 last name for the record.

5 A. My name is Vaughn A. Ary. The last name is spelled
6 A-R-Y.

7 Q. What is the city and state of your residence?

8 A. Alexandria, Virginia.

9 Q. For the record, you are testifying via VTC. Sir, are
10 you in a room by yourself?

11 A. I am not. I have an IT technician. I have been
12 informed the conference room we have -- this is a green
13 building -- has motion detectors that turn the lights off
14 every ten minutes. So I have him here to keep the lights on
15 and to help me with any IT issues, if that's okay with the
16 commissions.

17 MJ [Col SPATH]: That's fine. Thank you.

18 Q. The judge has said that is permissible. And you do
19 have some materials, I see, that are in front of you; is that
20 correct?

21 A. Yes.

22 Q. And are these the materials that were provided to you
23 by the prosecution? And for -- is that correct?

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1 A. Yes.

2 ATC [LT MORRIS]: And for the record, Your Honor, these
3 are the product 105, 107, 111 through 113 material that has
4 been previously provided to defense counsel and to Your Honor
5 and has all been Bates stamped, Your Honor?

6 MJ [Col SPATH]: It has. And it's AE 3320. Thank you.

7 ATC [LT MORRIS]: Thank you.

8 MJ [Col SPATH]: Mr. Kammen.

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

10 Q. Mr. Ary, I put myself in your shoes. This is
11 probably kind of a complicated day for you, fair to say?

12 A. It's different than the usual day, yes.

13 Q. Certainly different than your usual day because
14 what's at issue here are the things you and your staff did;
15 isn't that -- that's your understanding; isn't that correct?

16 A. Yes.

17 Q. The things you and your staff didn't do are at issue
18 here; isn't that your understanding?

19 A. No. My understanding is that it's about a
20 recommendation I made to my boss.

21 Q. And the recommendation that was vetted by you and
22 vetted by your staff; isn't that correct?

23 ATC [LT MORRIS]: Your Honor, I'm going to object.

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1 Counsel is testifying. We ask that this is -- being direct
2 examination, that Mr. Ary be given he an opportunity to
3 testify.

4 LDC [MR. KAMMEN]: He's certainly an adverse witness, Your
5 Honor.

6 MJ [Col SPATH]: Mr. Kammen, let's do this. There is
7 little doubt that he likely is adverse to your theory of the
8 case. Let's start, though, with some open-ended questions,
9 give him an opportunity to answer some questions about what's
10 at issue. And I will give you some leeway under 104, I assure
11 you, to do some cross-examination as well.

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

13 Q. Well, is it correct that what's at issue is -- is it
14 correct that -- is it your understanding that what is at issue
15 is how the recommendation you made came to be?

16 A. I think that's probably one of many issues, yes.

17 Q. Okay. And is it -- are you familiar -- well, I mean,
18 and essentially, as you said in document 127498?

19 A. 127498.

20 Q. An information memo -- go ahead and find it.

21 MJ [Col SPATH]: Mr. Ary, those are the Bates stamp
22 numbers on the bottom right hand corner. It's the last six
23 digits you will see.

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1 WIT: I'm looking for which binder that's in. I don't
2 seem to have that one. 498?

3 LDC [MR. KAMMEN]: 127498, yes, sir. It's an information
4 memo ----

5 WIT: I have -- mine goes to 485 on the last -- and this
6 is in 107 or in 105?

7 LDC [MR. KAMMEN]: Neither. I don't know.

8 MJ [Col SPATH]: I do. It's in -- it should be in ----

9 LDC [MR. KAMMEN]: It's in Tab 2.1 of whatever that was.

10 WIT: Okay. Here we go, 498.

11 MJ [Col SPATH]: If yours are marked similar to mine,
12 Mr. Ary, it should be behind product 112, and then it will be
13 in those documents.

14 WIT: Okay, yes. I see the document.

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

16 Q. What's at issue, in part, is what you described as
17 the results of an assessment of the Office of Military
18 Commissions trial process and administration; is that your
19 understanding as among the things we're discussing?

20 A. Yes. This is many of the -- this is part of a
21 holistic approach that I took to my job and I ----

22 LDC [MR. KAMMEN]: We ----

23 ATC [LT MORRIS]: Objection. Again I would ask that

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1 Mr. Ary be allowed to answer the question.

2 LDC [MR. KAMMEN]: I have no objection, but the question
3 was answered and then he wanted to go and give a speech.

4 MJ [Col SPATH]: I understand. This is not in front of
5 members. This is informational for me. As I said, I
6 understand -- understanding his -- his understanding of why he
7 is here to testify is relevant, in part, just so we know if
8 he's situated to why he's here. But to begin, I think it's
9 important to ask some open-ended questions, to hear what he
10 has to say about the rationale, and then I will give you, I
11 assure you, leeway to probe his answers.

12 LDC [MR. KAMMEN]: Well, I don't want to get in a fight
13 with ----

14 MJ [Col SPATH]: I understand. You have called him as
15 your witness initially. The government didn't call him.

16 LDC [MR. KAMMEN]: Okay.

17 MJ [Col SPATH]: I just -- we need to get his rationale on
18 the record, if we want that.

19 LDC [MR. KAMMEN]: And we will. Can I do some other
20 things first?

21 MJ [Col SPATH]: You may.

22 LDC [MR. KAMMEN]: I promise you we will get ----

23 WIT: I'm ----

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1 LDC [MR. KAMMEN]: Okay.

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

3 Q. Now, additionally is it your understanding, and tell
4 us if it's not, that among the things that we'll be discussing
5 as reflected in document 127193 ----

6 A. Okay. I would like to make sure I clarify that I'm
7 not sure I have seen this draft, but this is not the final
8 information memo, this document 498. It was probably
9 something that my legal advisors were working on, but is not
10 the recommendation or the information memo I submitted to the
11 Deputy Secretary for him to consider in making the decision.

12 The other document you referred to, sir?

13 Q. 127498 -- or, excuse me, 127193.

14 We'll get to whether you saw it or not later.

15 A. Okay. Okay. Yes. This is the final executive
16 summary ----

17 Q. Okay. Thank you.

18 A. ---- that I submitted to the Deputy Secretary.

19 Q. Okay. No question you've seen this one?

20 A. Yes.

21 Q. Yes, you have seen it?

22 A. Yes.

23 Q. Okay. And one of the things at issue in this case

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1 was your desire to effect -- your desire as the convening
2 authority to impact the pace of litigation; isn't that true?
3 That's one of the things we're discussing here, correct?

4 A. This is a document that addressed my assessment of
5 where we were in the cases and the resourcing requirements of
6 the military commissions process.

7 Q. And one of the where we were, we'll be discussing,
8 was your desire to impact the pace of litigation; isn't that
9 true?

10 A. Yes. I believe that if the commissions were located
11 at the selected venue for the commissions, that they would be
12 available to go on the record on a more frequent basis.

13 LDC [MR. KAMMEN]: And, Your Honor, since we're going to
14 get a speech with every answer, at some point ----

15 MJ [Col SPATH]: Mr. Kammen, I don't take it that way.
16 The witness, again, is your witness, he has not yet
17 demonstrated he is a hostile witness. It is fair for him to
18 answer questions. He is answering your questions.

19 LDC [MR. KAMMEN]: Okay.

20 MJ [Col SPATH]: You may proceed.

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

22 Q. All right. Now, in affecting the pace of litigation,
23 your desire was to change the status quo, correct?

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1 A. That's correct.

2 Q. And the status quo was that the litigation, in your
3 view, was moving too slowly; isn't that right?

4 A. I believe there are a number of factors that affect
5 the pace of litigation in these cases.

6 Q. And ----

7 A. And I believe that ----

8 Q. And among those factors that affected the pace of
9 litigation, the end result was it was going too slowly; isn't
10 that -- wasn't that your opinion as reflected on December 9,
11 2014?

12 A. Yes.

13 Q. And your desire was to affect that status quo by
14 speeding it up, correct?

15 A. No. It was about resourcing and aligning and
16 positioning the commissions to be available to go on the
17 record on a more frequent basis.

18 Q. And the purpose of doing that was to impact the pace
19 of litigation, as you said, true?

20 A. No. I believe that's for the commissions to set the
21 trial schedule. This was to allow them to make it their
22 exclusive duty, the commissions, and to position them so that
23 they would be available to address these important cases in

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1 a -- what I thought was a more accessible manner.

2 Q. Okay. Now we are about how you might be feeling
3 today. And you're aware, are you not -- or are you aware of
4 Judge Spath's remarks yesterday that your actions have slowed
5 litigation? Are you aware of that?

6 A. I'm not sure that -- I'm not sure they've been
7 implemented yet.

8 Q. Are you aware of what Judge Spath said yesterday,
9 that your actions have slowed ----

10 A. I am now.

11 Q. -- the pace of litigation?

12 A. I am now.

13 Q. I'm sorry?

14 A. I am now. I assume that's what he said. I haven't
15 reviewed the transcript from yesterday.

16 Q. And you're aware, are you not, that this hearing
17 which you'll -- is preventing, according to Judge Spath, from
18 getting to litigation over evidentiary issues that had been
19 previously scheduled, right?

20 A. I understand that.

21 Q. Okay. And that you're also aware there's a lot of
22 people watching this, true?

23 A. Yes.

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1 Q. Members of the media here and at other places, right?

2 A. Yes.

3 Q. Members of the public here and at other places?

4 A. Yes.

5 Q. And who else do you think might be watching this?

6 A. I don't know. I think you probably covered most
7 everybody. The people in court.

8 Q. Well, there's the NGOs from all over the world that
9 are interested in this process, right? You're aware of that,
10 aren't you?

11 A. That's correct.

12 Q. Okay.

13 A. Yes.

14 Q. That's -- and all of this because of the things you
15 and your staff did in making this recommendation, right?

16 A. Yes. I initiated it, yes.

17 Q. Okay. And that's -- thank you.

18 So we're clear, it was your decision to initiate this
19 request, correct?

20 A. Yes. And it was based upon a request from the trial
21 judiciary initially to address resourcing constraints, and I
22 believed I needed to address a number of other issues to
23 accompany that.

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1 Q. Okay. And we'll come back to that.

2 But just so I'm clear, based on a request from the
3 trial judiciary, of Mr. Taylor, you then went on to make the
4 request, staff the request and make the request that became
5 Change 1, true?

6 A. Yes. There was also another issue. It was the
7 request from the prosecution to build a third courtroom.

8 Q. A request ----

9 A. And as part of my -- as part of my validation of the
10 requirement for a new courtroom, I looked into the number of
11 hours we had been on the record in the past years to determine
12 whether we needed a third courtroom.

13 Q. Excuse me for interrupting.

14 ATC [LT MORRIS]: Objection, Your Honor. I would ask that
15 the witness be allowed to testify. We'd like to hear again
16 the purposes of what his intent was.

17 MJ [Col SPATH]: Objection overruled. The question from
18 Mr. Kammen there was quite clear, and the witness can answer
19 it. You may ask it again.

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

21 Q. Was that request from the prosecution in writing or
22 oral?

23 A. There were e-mails, I believe, to my staff, that

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1 addressed that. It was one of the first issues that was
2 presented to me when I got here.

3 Q. From General Martins?

4 A. I'm sure ----

5 Q. From General Martins?

6 A. I'm sure Ms. Kelley would have those e-mails.

7 LDC [MR. KAMMEN]: Your Honor, we would need those
8 e-mails. Your Honor, we would move to adjourn until those
9 e-mails are produced.

10 MJ [Col SPATH]: You may proceed with your questions,
11 Mr. Kammen.

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

13 Q. When did you receive these e-mails from General
14 Martins or his staff?

15 A. This was something that was briefed to me as I took
16 this job, that there was a request for a -- or a concern that
17 we would have two trials ongoing at the same time in
18 Guantanamo and we would need two courtrooms.

19 Q. And my question, sir, is simple: When did you
20 receive the e-mails from General Martins or his staff that you
21 referred to?

22 A. I didn't receive an e-mail from General Martins. I
23 know it was part of my discussions with General Martins when I

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1 conducted my in-brief with him.

2 Q. And when did you meet with General Martins?

3 A. Early in my time here, probably my first two weeks in
4 the job. Early October, mid October.

5 Q. And who was present during that meeting with General
6 Martins?

7 A. I know my former legal advisor, Mike Quinn, members
8 of his staff.

9 Q. And was that recorded in any way?

10 A. No.

11 Q. Did you make notes of that meeting and General -- and
12 your conversations with General Martins?

13 A. I don't believe so.

14 Q. And did you discuss with General Martins in that
15 meeting the pace of litigation?

16 A. No.

17 Q. That didn't come up at all?

18 A. But I -- no. The context, I was just getting an
19 overview of the requirements. I also met with the Chief
20 Defense Counsel, I met with the clerks at the trial judiciary.
21 It was part of my rounds in this -- as I got sort of familiar
22 with the requirements of my job and my duties.

23 Q. Well, I appreciate that, but my question is: Did you

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1 discuss with General Martins the pace of litigation?

2 A. No.

3 Q. Did you discuss ----

4 A. Not that I recall.

5 Q. Not that you recall. Of course not.

6 And did you discuss with the Chief Defense Counsel
7 the pace of litigation?

8 A. No, not that I recall.

9 Q. Or the clerk? Was that an issue with the ----

10 A. No.

11 Q. ---- clerk of the courts?

12 A. No.

13 Q. Okay.

14 A. I know we discussed the complexity with the clerks.

15 Q. Well, okay, but -- and did you discuss the complexity
16 with General Martins?

17 A. I'm sure that came up.

18 Q. And as part of that ----

19 A. I think everyone realizes that these are complex
20 litigation.

21 Q. Right. And did he explain to you that as part of
22 complex litigation, things moved slowly?

23 A. Yes.

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1 Q. Did he explain to you that as part of complex
2 litigation, where there's national security issues at stake,
3 that things might move extra slowly?

4 A. You know, I'm not sure if he discussed all those, but
5 I know that I realized that, and that was a part of the
6 challenge ----

7 Q. Let's focus on your discussions with the prosecutor.
8 We'll come to your individual judgments in a second.

9 Did he tell you about some of the reasons from his
10 perspective why this complex litigation might move slowly?

11 A. I'm sure that probably came up.

12 Q. Okay. Now, did General Martins make the
13 recommendation to you, hey, the way to speed things up is move
14 the judges and only the judges to Guantanamo Bay? Did he make
15 that recommendation to you?

16 A. Absolutely not.

17 Q. I'm sorry?

18 A. Absolutely not.

19 Q. Okay.

20 A. Absolutely not.

21 Q. So we're all clear, that was your brainchild,
22 correct?

23 A. Yes.

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1 Q. That was your decision, true?

2 A. That was my recommendation.

3 Q. Okay. Now, just so we're clear, the clerk didn't
4 say, hey, it would be a good idea to move the judges to
5 Guantanamo Bay, did that person?

6 A. No.

7 Q. The Chief Defense Counsel certainly didn't say, boy,
8 the way to speed this deal up is move the judge to
9 Guantanamo Bay, did she?

10 A. No.

11 Q. Okay. Now I want to talk to you a second about
12 working with staff. You were a career lawyer in the United
13 States Marine Corps. Were you a career lawyer in the United
14 States Marine Corps?

15 A. Yes, I was, but I'm currently serving in a nonlegal
16 appointment.

17 Q. I understand that. But as a lawyer and as a leader,
18 were you used to, in your career as a Marine, working with
19 advisors?

20 A. Yes.

21 Q. Okay. In fact, part of leadership, is it true, that
22 one of the aspects that -- are you taught in your military
23 training that part of being a good leader and good commander

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1 is listening to advisors?

2 A. Yes, and I rely on my legal advisors.

3 Q. You rely on your legal advisors. Okay.

4 A. Yes.

5 Q. But as your career unfolded, you had times where you
6 were giving advice? Did you have times where you were giving
7 advice?

8 A. Yes.

9 Q. And did you have times when you were receiving
10 advice?

11 A. Yes, as a commander.

12 Q. I'm sorry? I didn't hear.

13 A. Yes, as a commander.

14 Q. As a commander.

15 A. As a commander.

16 Q. Right. And what you don't want to be, if you are an
17 advisor, is a yes-man, true?

18 A. That's correct.

19 Q. And as receiving advice and as a commander, you don't
20 want to have around you yes-men; would that be fair to say?

21 A. Yes. I always encourage a free and open discussion
22 between my legal advisors, because I think that gives me the
23 best legal advice when all opinions are considered.

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1 Q. Let me make sure that I understand your answer.

2 You always encourage free and open discussion with
3 your legal advisors, true?

4 A. Yes. Yes.

5 Q. You did that when you were in the Marines, right?

6 A. Yes.

7 Q. And you did that in your present position, true?

8 A. Yes.

9 Q. Okay. Because that's what commanders do; isn't that
10 right?

11 A. Yes. And I might point out that I'm not a commander
12 in this job, I'm just a convening authority. It's a ----

13 Q. It's true you're not a commander in the military
14 sense, and I accept that. But can we -- is it true that you
15 preside over a rather robust organization, correct?

16 A. Yes.

17 Q. Approximately how many ----

18 A. There are ----

19 Q. ---- work for -- approximately how many people work
20 for you?

21 A. There's probably around 80 in the Office of the
22 Convening Authority. The prosecution is independent, and the
23 defense is independent, and the judiciary is independent. So

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1 I have resourcing responsibilities ----

2 Q. Well, that's the issue here today, is whether the
3 judiciary is independent anymore.

4 But how many people work for the Office of Convening
5 Authority? Eighty?

6 A. Probably around 80.

7 Q. Okay. So while you're not a commander, can we
8 agree -- or is it true that you try to be a good leader?

9 A. Yes.

10 Q. And part of being ----

11 A. And I make decisions, as I see it, in the best
12 interests of justice.

13 Q. Absolutely. Part of being a good leader is, as you
14 said, listening to your advisors, right?

15 A. Yes.

16 Q. Having full, frank, robust discussions, true?

17 A. Yes.

18 Q. Airing everything out.

19 A. Yes.

20 Q. Do you try to get all of the cards on the table in
21 these full and frank and robust discussions?

22 A. Yes. In fact, where my office is, I'm surrounded by
23 my legal advisors, so ----

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1 Q. And so ----

2 A. ---- we have an open-door policy and have meetings on
3 a routine basis.

4 Q. And then you make the decisions, right?

5 A. In certain cases I make decisions. In other cases I
6 make recommendations.

7 Q. And you make the decision to make recommendations?

8 A. Yes.

9 Q. Now, as a -- I want to talk to you a little bit about
10 your history as a lawyer. You were -- how long were you a
11 military lawyer?

12 A. Approximately 27 years.

13 Q. And in that 27 years I'm going to guess you served in
14 a number of different legal capacities?

15 A. Yes.

16 Q. I suspect you served as trial counsel on occasion?

17 A. Yes.

18 Q. Maybe even defense counsel?

19 A. Yes.

20 Q. Judge?

21 A. No.

22 Q. Never served as a judge. Served as an ----

23 A. No, I did not.

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1 Q. I'm sorry?

2 A. I did not serve as a judge.

3 Q. Okay.

4 A. I have served as a Staff Judge Advocate.

5 Q. That was going to be my next question. And a Staff
6 Judge Advocate is a legal advisor to the commander of a
7 particular institution; isn't that correct?

8 A. Yes.

9 Q. For example -- and please understand if I mess this
10 up, but the camp commander at, say, Camp Lejeune would have a
11 Staff Judge Advocate who is his or her legal advisor?

12 A. That's correct, yes.

13 Q. Okay.

14 A. Yes.

15 Q. And is it true that the goal of the Staff Judge
16 Advocate is to advise the commander about legal issues? Is
17 that one of the Staff Judge Advocate's goals?

18 A. Yes.

19 Q. And to make sure he does things right, true?

20 A. Yes.

21 Q. And in fact you were at one time the Staff Judge
22 Advocate for the Commandant of the Marines?

23 A. That's correct.

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1 Q. Okay. Now, in your -- is it true that in your legal
2 career and in your duties as the Staff Judge Advocate for the
3 Commandant of the Marines, did you become familiar with what I
4 will call -- and this may be inelegant -- the TJAG system?

5 A. Yes.

6 Q. Okay. And just to make sure you and I are
7 communicating, because I think I get it, but I could well be
8 wrong: Is it correct that one of the functions of the TJAG of
9 a particular service is to control the duties and assignments
10 of the JAGs within their command?

11 A. That's correct.

12 Q. They might do it through deputies, but ultimately
13 they're the ultimate responsibility, true?

14 A. Yes.

15 Q. And as the Staff Judge Advocate for the Marines, was
16 that part of your -- you were essentially -- were you
17 essentially functioning as the TJAG for the Marines?

18 A. Yes.

19 Q. And I know it's a little complicated with the Navy.

20 A. It's slightly -- it's slightly different in the
21 Marine Corps. I would make recommendations, and assignments
22 under 10 U.S.C. 806 were made by the Commandant of the Marine
23 Corps in the Marine Corps because we didn't have a JAG Corps,

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1 but it's the same principle that you're describing.

2 Q. It's the same principle.

3 And in the services that have formal TJAGs, when
4 they're coming to the -- to judges, excuse me, the TJAG would
5 appoint a Chief Judge; isn't that correct?

6 A. Yes.

7 Q. For example, you knew that Colonel Spath is the Chief
8 Judge of the U.S. Air Force?

9 A. Yes.

10 Q. And you knew that -- in any event, a chief JAG -- the
11 Chief Judge of a particular service would then assign judges
12 to particular cases either directly or through deputies,
13 right?

14 A. Yes. Yes, the detailing process.

15 Q. And it was until recently, and only in this -- well,
16 strike that.

17 The TJAG in the TJAG system determined where the
18 judge -- the Chief Judge or the -- where the judges in his
19 command would be living; isn't that the way it works?

20 A. Yes, based upon the requirements and circuits
21 established.

22 Q. But it was always the decision of the TJAG, true?

23 A. Yes, and that's in the UCMJ system.

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1 Q. Right. That's in the UCMJ system.

2 And of course generally one lives at the location of
3 their duty station, unless sent TDY or there's some other
4 reason. That's what the TJAGs generally do, hasn't that been
5 your experience?

6 A. Yes.

7 Q. Now, in your military training, did you take courses
8 in military legal history?

9 A. Yes.

10 Q. American military legal history?

11 A. Yes.

12 Q. Okay. And as part of your military training were you
13 trained that -- or taught that the purpose of the TJAG system
14 was to ensure the independence of military judges?

15 A. Yes.

16 Q. Okay. Because you are familiar with the phrase -- or
17 are you familiar with the phrase, "Command influence --
18 unlawful command influence or command influence is the mortal
19 enemy of military justice"?

20 A. Yes.

21 Q. That's a phrase you're familiar with, right?

22 A. I'm aware.

23 Q. Right?

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1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. Now, the way it works in the court-martial system is
5 that the convening authority of a particular institution or
6 vessel, or what have you, might decide that there needs to
7 continue a prosecution, correct?

8 A. That's correct.

9 Q. And I know it's a little more complicated than that,
10 but that's generally what happens. And he might make a
11 recommendation, but ultimately he makes the decision to
12 institute charges, true?

13 A. That's correct.

14 Q. Okay. And then -- but he doesn't get to name the
15 judge, does he or she?

16 A. Absolutely not.

17 Q. Okay. Absolutely not.

18 The judge comes from the TJAG system. He just
19 tells -- he just puts the word out, we've got a case here at
20 Camp Lejeune, find us a judge. He has no role in who the
21 judge is, true?

22 A. That's correct.

23 Q. The only -- the job of the convening authority until

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1 the case is over, when he might have to approve a sentence or
2 a plea, is to deal with some resource issues for counsel;
3 isn't that true?

4 A. That's correct. But my position is not the
5 traditional convening authority in the sense that I have
6 resourcing requirements, to fill requirements for both the
7 trial judiciary, the prosecution and the defense ----

8 Q. Okay. So you view ----

9 A. ---- which is a little unusual.

10 Q. Just so I -- just to be clear, you view yourself as
11 something other than a traditional convening authority, kind
12 of a super convening authority?

13 A. I wouldn't use that phrase.

14 Q. Well, what phrase would you ----

15 A. By statute ----

16 Q. Excuse me. What phrase would you use?

17 A. I would just say that the duties of the convening
18 authority under the Military Commissions Act are slightly
19 different, and under the regulations, than the traditional
20 convening authority. I wouldn't expect any convening
21 authority to be responsible for hiring and approving
22 additional clerks for the trial judiciary or for taking the
23 action I recently took to approve the hiring of eight

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1 additional defense counsel for the Office of the Chief Defense
2 Counsel.

3 Q. Well ----

4 A. That's unusual, but it's defined ----

5 Q. Okay.

6 A. ---- in the Military Commissions Act.

7 Q. And, again, I appreciate that.

8 You see your role as somewhat different than the
9 traditional convening authority, right?

10 A. Yes.

11 Q. Okay.

12 A. By statute and regulation.

13 Q. Okay. All right.

14 And I'm curious, what provision of the statute can
15 you direct us to that says that you, as the super convening
16 authority, my words, get to fund the judiciary? What statute?

17 A. Well, the statute, actually it specifies that the
18 Secretary of Defense is the convening authority. But the
19 Secretary ----

20 Q. What statute? What statute specifically are you
21 referring to?

22 ATC [LT MORRIS]: Objection, Your Honor. I'd ask that the
23 witness be allowed to answer.

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1 MJ [Col SPATH]: Hold on for just a minute, Mr. Ary. I
2 know it's hard with everybody talking. Hold on just a minute.

3 Mr. Kammen, he has to be able to answer the question.
4 I appreciate what you are doing, but I also know the witness
5 has to be able to answer the questions. If he doesn't answer,
6 as you request, you can follow up and allow him to answer the
7 question. I'm also the fact-finder and I'm attempting to get
8 information, since it's a motion.

9 LDC [MR. KAMMEN]: And I'm attempting to get it to you as
10 economic -- I apologize.

11 MJ [Col SPATH]: I think we're doing the best we can over
12 VTC. If we could let him answer the questions, because
13 otherwise ----

14 LDC [MR. KAMMEN]: Let me re-ask it, just so we're all on
15 the same page.

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

17 Q. Can you just tell us what statutory provision you're
18 referring to that says that you get to fund the judiciary?

19 A. The statute -- that's part of the regulations in the
20 resourcing piece. I believe it's somewhere in Section 948. I
21 don't have the Military Commissions Act in front of me, but it
22 designates that the Secretary of Defense is the convening
23 authority and is responsible essentially for executing the

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1 Military Commissions Act.

2 My position is, I believe I'm the only one in the
3 Office of the Military Commissions that is part of the Office
4 of the Secretary of Defense, and I've been designated as a
5 convening authority. But my direct report, I report to the
6 Deputy Secretary of Defense.

7 The resourcing requirement is set forth in the
8 regulation where I have a duty to ensure that the trial
9 counsel or the trial judiciary is properly resourced, and it's
10 also addressed in some other memos by the DEPSECDEF.

11 Q. Okay. And have those other memos during your
12 discussions with General Martins -- were they provided to him?

13 A. You know, I'm not sure where they would be in the
14 document, but I can tell you that the relevant provisions were
15 cited in the request from the trial judiciary for me to
16 approve additional resources for the trial judiciary. That
17 was signed by Colonel Baine on the 2nd of July. I know it's
18 someplace in this packet.

19 But that request was to the convening authority
20 citing the DEPSECDEF memos that I was referring to, and I
21 believe they're part of the package.

22 Q. It sounds to me that what you're relying on is
23 regulatory rather than statutory; would that be fair to say?

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1 A. That's correct.

2 Q. Now, coming back to the non-super convening
3 authority, the regular convening authority can't tell a judge
4 in a court-martial to speed up or slow down, can he?

5 A. No. And I have not met or discussed anything with
6 either -- any of the judges that are detailed to these cases
7 other than today via VTC.

8 Q. Believe me, that, we understand.

9 A judge in a convening authority -- a convening
10 authority in a court-martial certainly can't tell the judge,
11 who may reside someplace else, oh, you've got to move here,
12 can he?

13 A. Not in the UCMJ system, no.

14 Q. Right. And in the UCMJ system the convening
15 authority can't say to the judge on a particular case you've
16 got to drop all your other duties and just work for me, can
17 he?

18 A. No.

19 Q. Okay. It's only in your super world that you get to
20 do that is your position, correct?

21 A. No. I believe that I have a duty to make
22 recommendations to the Deputy Secretary of Defense, and I
23 believe he has that authority ----

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1 Q. Okay.

2 A. ---- since he's approved the regulations and this
3 process.

4 Q. But again ----

5 A. He set forth ----

6 Q. Let me interrupt, because we understand you believe
7 you have this authority and it's a recommendation, and geez,
8 this doesn't involve you.

9 But in a court-martial ----

10 A. It ----

11 Q. ---- the Secretary of Defense can't call up the judge
12 and say drop all your other duties, can he?

13 A. No.

14 Q. The Secretary of Defense -- not a deputy, but the
15 Secretary of Defense couldn't call up a judge in a
16 court-martial and say, wow, you've got to speed this case up,
17 could he?

18 A. No.

19 Q. The Secretary of Defense ----

20 ATC [LT MORRIS]: Your Honor, I'm going to object to this
21 line of questioning unless defense counsel can articulate the
22 relevance of having this witness talk about courts-martial
23 when we're in a commission.

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1 LDC [MR. KAMMEN]: Well, it certainly goes to his
2 knowledge of the TJAG system, which we'll be dealing with at
3 some length.

4 MJ [Col SPATH]: I understand this line of questioning. I
5 understand. Your objection is overruled. You may proceed.

6 LDC [MR. KAMMEN]: And I'll be very brief.

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

8 Q. Nobody but a TJAG in the court-martial system can
9 control the duties of a judge; isn't that true?

10 A. That's correct.

11 Q. Thank you.

12 Now, even before you became the convening authority
13 you became familiar with some of the issues with respect to
14 the resources of military commissions; isn't that correct?

15 A. Yes. I was responsible to act essentially as a force
16 provider, providing judge advocates to work at the military
17 commissions.

18 Q. Right. And you attended a meeting on -- in October
19 of 2013 with the senior service judge advocates and Colonel
20 Karen Mayberry; isn't that correct?

21 A. Yes.

22 Q. And you did that in your capacity as the SJA for the
23 Commandant of the Marine Corps?

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1 A. Yes.

2 Q. And are you familiar, perhaps in preparation for your
3 testimony, with her letter to the convening authority on
4 April 7, 2014, that's reflected in Bates number 00127703?

5 A. Just a second. I believe I know which request. I
6 became aware of that when I arrived here in October of 2014.

7 Q. Okay. And as she recalled the meeting and as it's
8 reflected -- I'll see if this is your recollection -- during
9 the October '13 meeting, there was a candid dialogue regarding
10 the manning situation at the Office of the Chief Defense
11 Counsel, right?

12 A. Yes.

13 Q. And as she describes it, there was little support for
14 extended tours, true? Is that your memory as well?

15 A. Well, the services -- no, it's not, in the sense that
16 all of the services filled their requirements in a slightly
17 different way. Essentially, the Marine Corps was sending
18 active duty judge advocates to the commissions for a
19 three-year period. I think some of the other services were
20 using one-year activations or mobilizations, different terms
21 and different services.

22 Q. And different ----

23 A. And that was a big issue. That was a big issue for

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1 the defense, because they believed they needed a continuity
2 that the military fills, for lack of a better term, were not
3 providing.

4 Q. And as Colonel Mayberry said to the convening
5 authority in -- on 7 April 2014, there was little support for
6 extended tours, and it was clear that the military commissions
7 were not seen as a priority; is that your memory of the
8 meeting as well?

9 A. Yes, that's -- that's her -- that's ----

10 Q. By some services.

11 A. No, that's her assessment, and that opinion was
12 shared by the trial judiciary clerk in his submission of a
13 request for resources in July.

14 Q. Okay. So one of the ongoing realities is the
15 perception by at least the clerk and the chief defense counsel
16 that some of the services don't see military commissions as a
17 priority, true, as you've just told us?

18 A. Yes, I think that's clearly, from this document,
19 their perception of the issues.

20 Q. And you knew that when you, certainly when you took
21 the job as convening authority -- or did you know that when
22 you took the job as convening authority?

23 A. Yes, I was aware of that, which is part of why I ----

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1 Q. Okay.

2 A. ---- directed the chief of staff to send out a
3 memorandum on the 31st of October requesting input from the
4 trial judiciary, the Office of the Chief Defense Counsel, and
5 the Office of the Chief Prosecutor, not only to validate this
6 April requirement submitted by the defense that had not been
7 acted yet -- on yet, but also the trial judiciary, and to get
8 input from the prosecution.

9 As a result of that, this memo that we have discussed
10 earlier addressed the shortfalls identified by the trial
11 judiciary, and I took action to approve the hiring of five
12 legal attorneys to assist them as legal clerks, four
13 paralegals, three courtroom security officers and an office
14 manager.

15 Q. And ----

16 A. And I also addressed the defense request by hiring
17 eight civilians to address their need for continuity.

18 Q. Are you done?

19 A. Yes.

20 Q. I don't want to -- I mean, I just wanted an answer to
21 my question, but are you done with your speech?

22 ATC [LT MORRIS]: Objection, Your Honor.

23 A. I was trying to explain the context ----

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1 ATC [LT MORRIS]: He's being argumentative.

2 MJ [Col SPATH]: Hold on. I'm sorry, Mr. Ary. I know,
3 again, with the VTC display.

4 Sustained as to argumentative. Mr. Kammen, I don't
5 need any editorial comments here during the testimony in front
6 of me.

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

8 Q. Now, when you ----

9 MJ [Col SPATH]: Do you understand?

10 LDC [MR. KAMMEN]: Yes. But I do think it is unfair ----

11 MJ [Col SPATH]: It is for me to assess the witness'
12 credibility and his answers. What I need from you are
13 questions. Mr. Ary will answer the questions. That's it. I
14 don't need speeches from you, and I don't need you to comment
15 on the answers. I need questions and I need answers. I'll
16 deal with the credibility and the fact-finding.

17 LDC [MR. KAMMEN]: Fine, Your Honor.

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

19 Q. Back when you were the Staff Judge Advocate, did you
20 speak with the other TJAGs about filling what are called gap
21 billets at military commissions?

22 A. You know, I don't recall what the other services --
23 where they were. I think we were somewhere around 11 of 14,

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1 but I can't recall our fill ratio, but it was somewhere around
2 that. We had a requirement for a certain number of attorneys,
3 and we filled most of them. It may be identified in one of
4 these memos, but I don't recall.

5 Q. Now, did you speak with the TJAGs about providing
6 judges to the military commissions at any time?

7 A. I don't recall that.

8 Q. Okay.

9 A. I know we had Marine Corps judges that were assigned
10 to the pool.

11 Q. Okay. But my question was: Did you speak to any of
12 the other TJAGs about their attitude about signing -- about
13 providing judges to military commissions?

14 A. No, I don't believe so.

15 Q. Now, when did you leave active duty?

16 A. July 1st of 2014.

17 Q. And when did you become officially the convening
18 authority?

19 A. I was designated on the 1st of October 2014.

20 Q. Now, after leaving active duty, did you apply for the
21 job as convening authority or were you approached? How did
22 that come to be?

23 A. I had a conversation with the previous convening

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1 authority. It was just on my way out, kind of a farewell
2 luncheon. We discussed what I intended to do, and I said
3 that, essentially, I was interested in doing something where I
4 could make a difference and continuing to serve, public
5 service. And then a few weeks later he asked me if I would be
6 interested in the job as the convening authority. This is
7 Mr. Paul Oostburg Sanz.

8 And then the deputy, the Department of Defense
9 general counsel, Mr. Steve Preston asked me if I was
10 interested, and I put in for it and I was selected.

11 Q. Now, prior to putting in for it, other than
12 Mr. Preston and Mr. Oostburg Sanz, did you speak with anyone
13 else about the commissions and the commissions process?

14 A. No, I did not.

15 Q. Okay. And didn't speak with General Martins?

16 A. Absolutely not.

17 Q. Okay. Didn't speak with Colonel Mayberry?

18 A. Absolutely not. I talked to Mr. Mike Quinn, who was
19 the legal advisor and the chief of staff, but that was in
20 relation to basically the application and the human resources
21 requirements of working through the appointment process.

22 Q. And as you worked through the appointment process and
23 the interview process, did you have any discussions about the

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1 pace of military commissions?

2 A. Not that I recall.

3 Q. So when you were -- who were you interviewed by?

4 A. I really wasn't -- I didn't have a formal interview
5 with anyone. I just submitted the package through human
6 resources. I think the folks knew who I was and -- based upon
7 my past career and reputation, so ----

8 Q. And your past career had been as the Staff Judge
9 Advocate for the Commandant of the Marine Corps, right?

10 A. That's correct.

11 Q. Which had produced some, shall we say, controversial
12 issues during your tenure?

13 A. Yes. I mean, there were a number of issues.

14 Q. Yeah. And one of them was an allegation unlawful
15 command influence; isn't that true?

16 ATC [LT MORRIS]: I object, Your Honor, to relevance,
17 unless defense counsel can articulate how -- in your order of
18 332I, you say that this line of questioning is not relevant,
19 necessary or material to the resolution of the defense's
20 motion.

21 LDC [MR. KAMMEN]: May I respond, Your Honor?

22 MJ [Col SPATH]: You may, of course.

23 LDC [MR. KAMMEN]: He opened the door because he certainly

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1 said they knew about his past, and that's one of the reasons
2 they wanted him, and so -- and it's one question about this
3 is -- we all know this is true, and let's just get it out
4 there. And I'm not going to go into the details of it.

5 MJ [Col SPATH]: There may be some ways under the rules of
6 evidence, depending on if it's a mode of impeachment, to go
7 into it. I don't know if that's applicable or not. You can't
8 open the door to your own rebuttal. You can't open the door
9 to your cross. He is answering your questions. The trial
10 counsel may be fair to go into this if they desire, but your
11 objection is sustained. Next question.

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

13 Q. Now, when you were advised you were going to be
14 designated as the convening authority?

15 A. Probably sometime in late September.

16 Q. And between the time in late September and
17 October the 1st, did you do anything in preparation?

18 A. No.

19 Q. Okay. You didn't speak to anybody?

20 A. No, other than Mike Quinn.

21 Q. Okay. For the record, again, Mr. Quinn is who, with
22 the Office of the Convening Authority?

23 A. He was, up until I believe November 1 was his

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1 departure, he was the legal advisor and the convening
2 authority. I also talked to a couple of folks in the Office
3 of General Counsel who were kind of working through the
4 package from an administrative standpoint. They kept tabs on
5 where it was.

6 Q. And when you spoke -- after learning about your
7 selection, did you speak with Mr. Quinn or the Office of
8 General Counsel about the pace of litigation in military
9 commissions?

10 A. You know, I talked to Mr. Quinn about -- every day on
11 a wide variety of issues. I know we talked about challenges
12 with discovery. We talked about just a wide range of issues
13 that were affecting the litigation, how complex it was, what
14 my role was, as kind of the quasi-judicial function as a
15 convening authority, what his role as a legal advisor was.
16 Just those issues.

17 Q. And among those issues, did you discuss the pace of
18 litigation?

19 A. I don't recall that specifically. I'm sure it
20 probably came up. Pace of litigation probably means a lot of
21 things to a lot of folks.

22 Q. Well, when you talk about pace of litigation, what do
23 you mean?

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1 A. I believe litigation defines its own pace depending
2 on the issues that come up. You know, you can never probably
3 count on what's going to happen in any case, and I think that,
4 you know, you just have to work through the issues that come
5 up.

6 Q. So pace of litigation should define its own --
7 litigation should define its own pace, right?

8 A. That's correct.

9 Q. And are you telling this commission that that remains
10 your view today?

11 A. Yes. I think pace of litigation is something defined
12 by the issues. I think the only thing that you can -- you
13 know, from my perspective, when it relates to this issue, is I
14 have a duty to make sure everyone's properly resourced to
15 carry out -- and positioned to carry out their duties.

16 Q. Everyone's properly resourced. That's all this is
17 about, huh? Right?

18 A. Properly resourced and positioned to carry out ----

19 Q. Ah. Properly resourced and positioned.

20 Now, in your discussions with -- or prior to taking
21 the job as convening authority, did you learn about the
22 general history of the modern, post-9/11 military commissions?

23 A. Yes.

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1 Q. And did you familiarize yourself with the episode
2 involving General Hartmann some years ago?

3 A. Yes. I'm aware of it.

4 Q. Okay. And his removal as legal advisor for
5 attempted -- or actual unlawful influence?

6 A. Yes.

7 Q. Okay. Now, what we're here about, and it's my
8 understanding that you acknowledge that you and your staff
9 vetted the recommendation that became Change 1, correct?

10 A. Yes, and we also sent it to the DoD general counsel
11 for review.

12 Q. And you sent it to the DoD general counsel. You and
13 your staff vetted that, and you sent it, right?

14 A. Yes.

15 Q. And this was your doing, your creation?

16 A. Yes.

17 Q. Right?

18 A. Yes, it was my recommendation.

19 Q. In conjunction with your staff?

20 A. Yes.

21 Q. And communicated, after being passed -- or approved,
22 I guess is the correct word -- to the people associated with
23 the military commission on January 7th of this year, true?

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1 A. I'm not sure of the dates. Which document are you
2 referring to?

3 Q. 127234.

4 A. Is that an e-mail?

5 Q. Yes, it is.

6 A. Okay. So it's an e-mail in the binder. I'm not sure
7 I have that one marked. I have an e-mail binder with a tabbed
8 list of attachments.

9 Q. It's in 127234. It's in Production 105.

10 A. 12712 -- I'm sorry. Please say that again.

11 Q. Let me ask -- while we're hunting, let me -- we'll
12 come back to this.

13 A. I'm not sure which number I'm hunting for.

14 Q. 127234.

15 MJ [Col SPATH]: Is it 234 or 324?

16 LDC [MR. KAMMEN]: No, 234.

17 WIT: I don't ----

18 MJ [Col SPATH]: I don't have that, either.

19 WIT: I don't have that.

20 LDC [MR. KAMMEN]: Let me display it. It's an e-mail from
21 Vaughn R. Ary (sic) to number of ----

22 MJ [Col SPATH]: I do have it. Mine's out of order.

23 Mr. Ary, for whatever reason, it goes from 215, I

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1 believe, to 234, the Bates stamp numbers, and then it fixes
2 itself later. But if you find 215, I think you will find
3 right behind it 234, I hope.

4 WIT: 215? I have got -- 105 goes to 203, 127203, on my
5 version. Okay. Just a second. I don't ----

6 MJ [Col SPATH]: Are yours marked with the production?
7 It's PROD, and it's got 105 and 107, those numbers?

8 WIT: Yes.

9 MJ [Col SPATH]: It should be behind the 105 tab, and then
10 it is an e-mail from Mark Toole to a variety of people.

11 WIT: Okay.

12 MJ [Col SPATH]: And the date is January 7th at 7:21 p.m.;
13 do you see that?

14 WIT: I do not. What -- I'm sorry, what was the number
15 that I'm looking for?

16 MJ [Col SPATH]: That's all right. 127234 are the last
17 six.

18 WIT: Well, I'm not sure where to look. They're not --
19 they don't seem to be numbered there the same way.

20 MJ [Col SPATH]: All right. Let's do this. We're just
21 over an hour ----

22 WIT: My 105 goes to ----

23 MJ [Col SPATH]: Oh, sorry, Mr. Ary. We're a little over

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1 an hour. We're going to take a ten-minute break here. While
2 we're taking a ten-minute break, Trial Counsel, if you could
3 help orientate him ----

4 [No audio feed.]

5 [The R.M.C. 803 session recessed at 1040, 25 February 2015.]

6 [END OF PAGE]

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