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1 [The R.M.C. 803 session was called to order at 1353,  
2 7 September 2016.]

3 MJ [Col SPATH]: This commission is called to order. All  
4 of the parties are again present.

5 Trial Counsel, I know that we have, I think,  
6 Mr. Gill -- Lieutenant Commander Gill -- ready. If you could  
7 get him up on the screen, we'll go through the same process,  
8 swear him in and then we'll have the defense go through their  
9 questions.

10 ATC [LT MORRIS]: Mr. Gill, good afternoon. Lieutenant  
11 Paul Morris, prosecutor. Could I have you please stand and  
12 raise your right hand.

13 MR. STEPHEN D. GILL, civilian, was called as a witness for the  
14 defense, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

16 Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:

17 Q. Would you please -- you may have a seat -- state your  
18 full name, spelling it for the record.

19 A. Yes. It's Stephen, spelled with a P-H not a V,  
20 middle initial is D, for Dennis, Gill, G-I-L-L.

21 Q. Mr. Gill, can you still see us?

22 A. I can.

23 Q. Where are you from, Mr. Gill?

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1 A. I live in Massachusetts.

2 Q. Thank you. Your witness.

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

4 Q. Good afternoon, Mr. Gill. I'm Rick Kammen. We've  
5 talked on the phone, but this is the first time we've seen  
6 each other; is that correct?

7 A. Well, I've seen you on video before, but you've never  
8 seen me, I don't think.

9 Q. Okay. What is your profession or occupation?

10 A. Attorney.

11 Q. Okay. And you have offices in what city?

12 A. The town of Scituate, Massachusetts.

13 Q. Is that near Boston?

14 A. Somewhat, yeah. It's, I don't know, 16, 18 miles  
15 south.

16 Q. Are you also a member of the U.S. Navy reserve?

17 A. Yes.

18 Q. What is your rank?

19 A. Lieutenant Commander.

20 Q. As a Navy reservist, have you worked as a lawyer in  
21 the Navy JAG Corps?

22 A. Yes.

23 Q. What kind of assignments have you had as a Navy JAG

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1 lawyer?

2 A. I've had a number of different assignments. I have  
3 been ----

4 Q. If you can give us kind of an overview of your Navy  
5 legal experience.

6 A. Yeah, certainly. I did -- well, out of law school, I  
7 did an initial three year and a number of months requirement  
8 for active duty. At that time I was stationed at what they  
9 now call RLSO, which used to be called NLSO, a Navy Legal  
10 Service Office in Pensacola, Florida. I was a federal tort  
11 claims defense attorney there. I was also a legal assistance  
12 attorney.

13 At the end of that tour, I went to Submarine Base New  
14 London, which is in Groton, Connecticut. I served as an  
15 Assistant Staff Judge Advocate to a two-star admiral at dual  
16 command. It was Navy Region Northeast is what it was called  
17 at the time and as well as commander of Submarine Group 2,  
18 which was dual-hatted, two-star admiral command.

19 From there I went -- my active duty requirement had  
20 come to an end and I resumed my obligated service in the Navy  
21 reserve. While in the Navy reserve, I was a number of  
22 different reserve units over the years.

23 I will say -- I forgot to mention, before I got to my

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1 very first command in Pensacola, I served as a rules of  
2 engagement officer in a multinational maritime forces exercise  
3 with a number of vessels in the Atlantic. As a reservist, I  
4 was in a number of different units. I guess most memorable  
5 would be commander of Destroyer Squadron 6, and commander,  
6 Destroyer Squadron 6 -- I'm sorry, 4-0.

7 Q. And let me interrupt and, in the interest of time,  
8 would it be fair to say that you've had a very legal military  
9 career?

10 A. Yes.

11 Q. Okay. And you've also from time to time maintained a  
12 civilian legal practice; is that correct?

13 A. Not always. I mean, there were times when I was a  
14 civilian and I was working for other firms, but I ultimately  
15 had my own practice, yes.

16 Q. Okay. Now, was there a time in which you as a  
17 reservist were assigned to the Office of the Convening  
18 Authority of the Office of Military Commissions?

19 A. Yes.

20 Q. Could you tell us the approximate time of your  
21 service there?

22 A. My orders commenced on January 2 of 2015, but I  
23 ultimately did not arrive on station until, I believe it was,

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1 January 9, it was a Friday. But I just checked into the  
2 command to have my orders endorsed and I was released.

3 Q. Let me interrupt because we don't need ----

4 A. Sure.

5 Q. You started on January the 9th and ended ----

6 A. Well, the following Monday is when I really started.  
7 January 12th is when I started in earnest.

8 Q. And it ended in early May of 2015; is that fair to  
9 say?

10 A. The orders ended in May, but my time at the Office of  
11 Military Commissions ended around the 28th of April, 2015.

12 Q. Okay. Now, during the time -- your time with the  
13 military commissions, did you become familiar with an  
14 individual by the name of Michael Quinn?

15 A. Yes.

16 Q. And could you tell us briefly who Michael Quinn is  
17 and what his role was at the Office of the Convening Authority  
18 when you were there?

19 A. Sure. My understanding was he -- he previously --  
20 before my time, he previously had served there as the legal  
21 advisor to the convening authority, who at that time was the  
22 general counsel of the Navy, Mr. Paul Oostburg Sanz. And then  
23 by the time I arrived on station at OMC, convening authority,

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1 he was already gone, as well as Mr. Oostburg Sanz was gone,  
2 but they came back.

3           They were -- after this court entered its  
4 disqualification order of May 4 of 2015, within a two- to  
5 three-week period thereafter, Mr. Oostburg Sanz was reinstated  
6 as the acting convening authority, and then Mr. Quinn followed  
7 after that as the acting legal advisor and I think he also  
8 held the title of acting director of operations. I think he  
9 had a dual -- dual -- acting dual hat.

10       Q. So he was there during the time you were there, or  
11 part of the time ----

12       A. Correct.

13       Q. ---- you were there?

14       A. Yes.

15       Q. Okay. Did he observe the workings of the office, to  
16 your knowledge, during the time you were there?

17       A. I would have to say yes.

18       Q. Okay. And who is Colonel Edward, and I'll  
19 mispronounce it, Sheeran?

20       A. Colonel Ed Sheeran was, when I arrived on station at  
21 OMC-CA, he was the -- he was the director of -- he was either  
22 the acting director of operations or the director of  
23 operations. I was never quite sure of his title.

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1 Q. And was he there during the time you were there?

2 A. Yes.

3 Q. And would he ----

4 A. The whole time I was there he was there, yes.

5 Q. And would he have had the opportunity to observe the  
6 workings of the office?

7 A. I assume so.

8 Q. Okay. Did you have contact with him from time to  
9 time?

10 A. Not at first. I eventually came to have contact with  
11 him more than just in passing. But initially, first month or  
12 two, it was very ----

13 Q. But we'll ----

14 A. It was not much interaction.

15 Q. But ultimately you -- you had contact with him; is  
16 that correct?

17 A. Yes.

18 Q. Significant contact?

19 A. Yes. Significant contact, correct.

20 Q. Now, who was Ms. Samantha Chen, C-H-E-N?

21 A. She was a paralegal at the Office of Military  
22 Commissions convening authority. And, in fact, I saw her  
23 today here.

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1 Q. Okay. And did she -- did you have -- was she there  
2 and working in the office at the time you were present?

3 A. Yes.

4 Q. Okay. And so she also would have observed the  
5 workings of the office; is that correct?

6 A. I would assume she did.

7 Q. Okay. And who is Joseph Bagley, if you know?

8 A. I think he was -- I think he is a contractor who  
9 served as a security or assistant security officer. Something  
10 to do with security clearance type stuff.

11 Q. And who is Mark Toole?

12 A. Mark Toole was or is -- well, when I arrived he was  
13 the -- he was either the legal advisor to the convening  
14 authority or the acting legal advisor to the convening  
15 authority. I was never quite sure what their roles were at  
16 any given time -- at any given time.

17 Q. Okay ----

18 A. He was my direct supervisor as well.

19 Q. Over the course of time, as events unfolded during  
20 your time there, did you allege that Mr. Toole was engaging in  
21 a pattern of conduct which you believed was in violation of  
22 this court's order ----

23 A. Yes.

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1 Q. ---- this commission's order?

2 A. You mean the disqualification order of May 4? Yes.

3 Q. Yes.

4 Now, who is Captain Matthew Rich?

5 A. Captain Matthew Rich was also an assistant legal  
6 advisor. He was my, what we would call in the Navy, like the  
7 command sponsor. He was the person, like a peer, whom when  
8 you arrive on station kind of directs you around and shows you  
9 the ropes and where everything is and, you know, so on and so  
10 forth.

11 Q. And was he one of the legal advisors who was  
12 disqualified on the Nashiri case, if you know?

13 A. He was, yes. He was named in the order, yes.

14 Q. And was he present and did you observe things he did  
15 and didn't do during your time with the convening authority?

16 A. Well, I wouldn't observe things he didn't do because  
17 I don't think I could have done that.

18 Q. Sure.

19 A. But I periodically from time to time observed him  
20 doing his job.

21 Q. Okay. And who is Matthew Sharpe, if you know?

22 A. Matthew Sharpe. I'm thinking. Matthew Sharpe.

23 Matthew Sharpe. That name sounds familiar, but I can't quite

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1 place who that is.

2 Q. Okay. And who is Alyssa Adams?

3 A. Alyssa Adams was a -- she was an assistant legal  
4 advisor, a civilian employee, if I understand. She is  
5 lieutenant colonel in the Army Reserve. She was -- her office  
6 was right next door to Mr. Toole's. And the way the office  
7 functioned, that I observed, Mr. Toole and Ms. Adams were sort  
8 of the civilian corporate knowledge, so to speak, of the  
9 organization, if that makes any sense.

10 Q. It does.

11 And was she also one of the legal advisors who was  
12 disqualified as part of this court's 4 March order  
13 disqualifying the legal advisors?

14 A. Yes. She was one of the named legal advisors in that  
15 order.

16 Q. Okay. And who is Lieutenant Colonel Patricia Lewis?

17 A. She was also an assistant legal advisor. She is a  
18 judge advocate. She was one of the members of the legal  
19 staff.

20 Q. Okay. Now, you have filed in, I think United States  
21 District Court, a whistleblower complaint, have you not?

22 A. I have filed ----

23 Q. And --

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1           A. I filed a declaratory action. There is no individual  
2 right to bring a whistleblower complaint as such as a  
3 plaintiff to a military member, but I have a declaratory  
4 action pending to -- for clarification of some of the  
5 provisions of that act ----

6           Q. All right.

7           A. ---- as they applied, yeah.

8           Q. And sort of the basis of that conduct or that basis  
9 on which you filed that lawsuit in part was things you  
10 observed while you were at the Office of the Convening  
11 Authority; is that correct?

12          A. Yes.

13          Q. Okay. And would it be fair to say that you have  
14 alleged that you observed a pattern of conduct of Mark Toole  
15 violating this commission's order of 4 March?

16          A. You know, as I sit here today, I can't remember the  
17 exact wording of the complaint. I would just say that that is  
18 a legally operative document that speaks for itself. So if  
19 you want to read the provisions of it ----

20          Q. Well, I'm not reading from your complaint, but did  
21 you at some point write a letter to -- well, let me -- did you  
22 at some point write a letter to Colonel Karen Mayberry as the  
23 chief defense counsel?

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1 A. I did. I sent an e-mail to her ----

2 Q. Okay.

3 A. ---- I wouldn't call it a letter. Yep.

4 Q. And in part, and in relevant part, did that letter  
5 advise her of a pattern of conduct of Mark L. Toole between  
6 March and April of 2015 which, in your opinion, violated this  
7 commission's order of 4 March?

8 A. Yes.

9 Q. Okay. And specifically in that e-mail, did you  
10 indicate that you reported Mr. Toole's conduct to Colonel  
11 Sheeran ----

12 A. Yes, I did.

13 Q. ---- really what you perceive as Mr. Toole's  
14 misconduct to Colonel Sheeran?

15 A. I reported Mr. Toole's conduct to Mr. Sheeran --  
16 Colonel Sheeran, and I also stated that in the e-mail to  
17 Colonel Mayberry.

18 Q. Okay. And did you report Mr. Toole's conduct that  
19 you believed was improper to Mr. Quinn?

20 A. I did.

21 Q. And did you report that conduct or misconduct, my  
22 word, to Colonel Sheeran and Mr. Quinn on more than one  
23 occasion?

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1           A.    You know, as I sit here today, I think that I had  
2   voiced my concern and brought it to the attention of Colonel  
3   Sheeran on one occasion, and on two occasions to Mr. Quinn,  
4   because Mr. Quinn subsequently had arrived at OMC and had  
5   taken over the duties of Colonel Sheeran and Mr. Toole.  So he  
6   became my chain-of-command superior so I would have -- I  
7   reported it to him twice.  So a total of three times, once to  
8   Colonel Sheeran and twice to Mr. Quinn after his arrival.

9           Q.    And besides reporting the misconduct that you  
10  observed to Colonel Mayberry, did you report the misconduct  
11  that you observed to General Martins?

12          A.    Yeah.  I reported Mr. Toole's conduct that in my  
13  opinion was in violation of this court's disqualification  
14  order of May 4, 2015, to General Martins.  Yes, I did.

15          Q.    Did you receive any response from General Martins  
16  concerning your allegations of misconduct on behalf of  
17  Mr. Toole and others?  Did he respond at all?

18          A.    He did not respond personally.  I did send him a  
19  second e-mail a few days after the first, one informing him  
20  what I had informed him in the first one, that I hadn't heard  
21  back from him, and so that I was going to bring this to the  
22  attention of Colonel Mayberry.

23          Q.    Okay.  So you ----

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1           A.   Ultimately, I have never heard -- to this day, I have  
2 never heard from General Martins personally.

3           Q.   You actually, if I understand you correctly, you  
4 advised trial counsel of what you perceived as a violation of  
5 this commission's order on several occasions -- well, you've  
6 observed several violations. You advised trial counsel on, as  
7 I understand it, two occasions, and he never responded; is  
8 that correct?

9           A.   That would be correct, yes.

10          Q.   And that was only after that that you reached out to  
11 Colonel Mayberry?

12          A.   Yes. I was very circumspect with the whole matter.  
13 I mean, I did what you do in the military, is I reported what  
14 I perceived to be a violation of a court order by personnel up  
15 my chain of command to my superiors, and my chain of command  
16 was shuffled a little and it was ongoing. I had to then  
17 report it again and again. And after events transpired at  
18 that point, I felt I had to elevate it yet again to the chief  
19 prosecutor because of his higher duty as the trial counsel for  
20 the United States, the chief prosecutor. And I also informed  
21 him in both of my letters that I was going to bring it, I  
22 forewarned him that I would bring it to Colonel Mayberry's  
23 attention if this wasn't going to be addressed.

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1 Q. Now, can you -- let's go back. You indicated that  
2 you joined the Office of the Convening Authority, I think you  
3 told us, in the middle of January of 2015; is that correct?

4 A. Yeah. It was the 12th of January when I full-on came  
5 on board.

6 Q. All right. And at that time, had the UI motion,  
7 which I believe is AE 332, to your knowledge been filed?

8 A. I'm sorry. Could I have that one again?

9 Q. Sure. At the time you joined the Office of the  
10 Convening Authority, had the unlawful influence motion, AE  
11 332, the order that resulted in the order that was  
12 violated ----

13 A. The initial defense motion for UI, is that what  
14 you're talking about?

15 Q. Yes. Had that been filed?

16 A. Yes. It had been filed, and I had come -- I became  
17 aware of it at some point during my tenure there.

18 Q. And briefly, and I don't want to get into any  
19 detail ----

20 A. Yes.

21 Q. ---- before the hearing, was there any discussion  
22 about what would occur vis-a-vis the legal advisors in the  
23 event that motion was granted? Were any contingency plans

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1 made if that motion was granted and either the convening  
2 authority or the legal advisors were disqualified?

3 A. Your question may be seeking an answer that would be,  
4 I assume, protected by the attorney-client communication  
5 privilege. So without someone of authority from the  
6 government giving me permission to waive the privilege, I  
7 decline to answer and I invoke my client's attorney-client  
8 privilege.

9 Q. Sure. And I'm glad you did that. Thank you.

10 Now, there came a time when that motion was granted;  
11 is that correct? When the court dis ----

12 A. The first UI motion was granted?

13 Q. Yes.

14 A. Resulting in the entry of the disqualification order?

15 Q. Yes.

16 A. There came a time -- I note for the record here that  
17 there's a typo on the date on that order. It says 2014. It  
18 says May -- 4 May 2014, it really should say 4 May 2015.  
19 There was a typo.

20 Q. I think you mean "4 March."

21 A. I'm sorry. Did I say March? Yeah. That's right. 4  
22 March 2014 is what the paper says, but that's a typographical  
23 error on the court's part and should say 4 March 2015. So,

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1 yes, it ultimately entered on that date.

2 Q. And did you happen to be in Guantanamo at the time  
3 the hearing that resulted in the 4 March written order, when  
4 that hearing occurred?

5 A. Yes.

6 Q. Okay. And did you observe the hearing?

7 A. For the most part, yes.

8 Q. Okay. Now, were you present, either in the courtroom  
9 or watching by video, when the 2 March oral ruling from Judge  
10 Spath was handed down in which he orally disqualified the  
11 convening authority, General Ary, as well as the legal  
12 advisors, Mr. Toole, Ms. Adams, Commander Kotval, and Captain  
13 Rich?

14 A. I'm not exactly sure where I was physically located  
15 at that time. I know I was in the courtroom at one point. It  
16 might have been even before the hearing just to see it,  
17 because that was my first initial OJT trip down there. I  
18 watched most of it from what they call the MOC, which is where  
19 all of the media personnel are. But at some point, we went up  
20 the hill to the -- from the MOC up on top of the hill to the  
21 military commissions office spaces up there, and I don't  
22 recall if -- if the rule -- the oral ruling of Judge Spath  
23 came out and I learned of it while I was up at the OMC office

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1 spaces or if I was in the MOC. But we came to learn that, and  
2 I don't know -- I don't recall that -- if he named every -- if  
3 he named people at that point other than to say that the  
4 convening authority and the legal advisors were disqualified.  
5 I couldn't say.

6 Q. Now, this is a yes-or-no question, but after the oral  
7 order, and prior to the written order, was there any  
8 discussion among the legal advisors as to how that order would  
9 be complied with?

10 A. I'm going to have to invoke the government's  
11 attorney-client communication privilege.

12 Q. Okay. Now, ultimately there was the written order  
13 memorializing -- of 4 March memorializing the later order; is  
14 that correct? Or the earlier -- the oral order; is that  
15 correct?

16 A. Yes, a written order followed the oral ruling.

17 Q. Okay. And after the written order, who became the  
18 legal advisors on the Nashiri case? Who -- what changed, if  
19 anything?

20 A. It fell to me to serve as the legal advisor of the  
21 moment ----

22 Q. All right.

23 A. ---- for al Nashiri.

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1 Q. Okay. Now, if you were the legal advisor until you  
2 left the office, what then did Mr. Toole do that was improper?  
3 Did he continue to act as the legal advisor?

4 A. Mr. Toole did not segregate himself from the case.

5 Q. Okay. And could you flesh that out for us? When you  
6 say he didn't segregate himself from the case, could you fill  
7 in the details?

8 A. Well, you know, I'm thinking about -- I'm thinking  
9 about attorney-client ----

10 Q. Well, I'm not asking you ----

11 A. ---- communication privilege. I don't know work  
12 product privilege. I don't know if there's anyone from the  
13 government who would be willing to waive that for the purposes  
14 of answering this question only or not. And if I'm wrong,  
15 maybe Judge Spath can rule for me.

16 Q. Well, I'm not asking you what he said or what you  
17 said. I'm asking you what you observed that caused you to  
18 make the allegations that he was violating the commission's  
19 order.

20 A. Mr. Toole had -- there had been a -- and, again, now  
21 this goes into the defense's ex parte confidentiality, I don't  
22 know, privilege -- I don't know what you'd call it, but there  
23 was an ex parte motion that was pending that Mr. Toole was

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1 working, performing legal work on ----

2 Q. After he was -- after he was disqualified?

3 A. Well, no, it was pending and he was working on it  
4 before the order entered. So there was a motion ex parte from  
5 the defense that had come in on al Nashiri that Mr. Toole had  
6 on his desk for his action that he was working on and writing  
7 a legal opinion about and rendering a decision for the  
8 convening authority, et cetera.

9 The order came out. He continued to work on that  
10 motion and the memorandum and opinion for the convening  
11 authority, and he -- he tried to get me to put my name on it  
12 and sign off on it as if it was my work and not his.

13 Q. Did you agree to do that?

14 A. I did not.

15 Q. Why not?

16 A. Because I wasn't going to be a straw man to help  
17 violate Judge Spath's disqualification order.

18 Q. Is that what you perceived was occurring in that  
19 case -- that situation ----

20 A. Yes.

21 Q. ---- that you were asked to be a straw man by  
22 Mr. Toole?

23 A. Yes, I did. And when it came to me, since I was the

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1 legal advisor at that moment by operation of that  
2 disqualification order, I took Mr. Toole's work product and I  
3 rewrote it to make it my own. I made some changes. I felt  
4 that there was enough -- there were enough alterations of my  
5 own independent professional work that I would then be able to  
6 sign that recommendation for the convening authority.

7 Q. Now, was that the only time that Mr. Toole asked you  
8 in effect to be a strawman or were there other occasions?

9 A. Well, I don't -- as I'm sitting here today, I don't  
10 know that he had a hand in -- to my knowledge, in any more  
11 situations where he was actively working a legal matter, like  
12 a motion, an ex parte motion that had come in since they  
13 were -- I was then the one handling those.

14 However, the way the office worked, it used to -- up  
15 until the point of the disqualification order, we had fairly  
16 regular meetings where the legal advisors would meet. I think  
17 it was on like Monday mornings, if I'm not mistaken, at 8 or  
18 9:00 in the morning, could have been 10. You know, honestly,  
19 I don't recall.

20 But it was a regularly scheduled meeting whereby  
21 assistant legal advisors would all come in to Mr. Toole's  
22 office. We would all drag chairs in from the various office  
23 spaces into his and set them up like, you know, pews in a

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1 church, so to speak, and Mr. Toole would be behind his desk,  
2 and we would -- he had a -- there was a document that he  
3 generated that Samantha Chen was in charge of maintaining  
4 whereby whatever motion matters -- I call them motions. I  
5 don't know what else to call them. Whatever motions were  
6 before the convening authority for decision, you know, before  
7 the court ----

8 Q. Sure.

9 A. ---- may or may not get involved in the matter, there  
10 would be, I think -- they would be chronologically listed. So  
11 as they came into the office, Mr. Toole would delegate a  
12 particular motion to whatever assistant legal advisor was sort  
13 of next in line to be batter up to take the next case. And he  
14 sort of divvied up the work that way, and it was like a  
15 batting order, sort of.

16 And he would list on the tracker, a document called  
17 the tracker, the case, the motion, how many days we had to  
18 respond, where we were in the -- it was basically a synopsis  
19 of where we were chronologically on each and every matter that  
20 was before us. And he would call on each assistant legal  
21 advisor; he would go right down the list from top to bottom.  
22 Okay, you know, for example, Hadi matter, who's got this one?  
23 Okay, Lieutenant Colonel Lewis has that one, for example,

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1 where are we on that?

2 Q. Let me interrupt.

3 A. Yes.

4 Q. During that time after the Nashiri order, did that  
5 pattern continue?

6 A. Yes, the Nashiri -- the al Nashiri stayed on the  
7 tracker. I told Mr. Toole that it needed to be taken off due  
8 to the disqualification. When an attorney is disqualified  
9 under your rules of professional responsibility, my  
10 understanding, based on my personal experience in the civilian  
11 world, is that an attorney is to stay out of the case, not  
12 discuss it. Files are locked up. People aren't given access.  
13 You file an affidavit with the court saying all of the  
14 prophylactic measures you have taken to keep attorneys who  
15 have been disqualified or have a conflict of interest  
16 segregated and separated and compartmentalized from, away from  
17 the matter that the attorney is not supposed to have any  
18 discussion, knowledge, or anything about.

19 Q. And certainly don't tell us anything you said or  
20 Mr. Toole said, but did Mr. Toole continue to work on Nashiri  
21 matters, and is that why you in your letter to Colonel  
22 Mayberry said, and I'm quoting, Mr. Toole continued to engage  
23 in a pattern of conduct which, in my opinion, violates AE

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1 332U?

2 A. Yes. He would openly query me in meetings and alone  
3 in sidebar about the case, where it was, what was going on on  
4 a particular motion. And I -- I told him, in private and in  
5 front of other legal advisors during these meetings that I was  
6 uncomfortable with this -- his continued involvement in  
7 discussing the case in front of -- well, at all, and also in  
8 front of other disqualified legal advisors.

9 So, yeah, I ----

10 Q. Now, let's talk a little bit about what you're just  
11 describing, because where -- this conversation with Mr. Toole,  
12 where did that take place? Do you remember, was it -- I know  
13 it was in the Office of the Convening Authority, but was it in  
14 your office? Was it in his office? At your desk? Can you  
15 give us a little better ----

16 A. Yeah. No. I didn't have an office. My desk was at  
17 the end of a hallway. He -- it would mainly have taken place  
18 in his office ----

19 Q. Okay.

20 A. ---- either during a -- the meetings became ad hoc  
21 after a while. These meetings were -- we never knew when they  
22 were coming and we would be just be in there talking about  
23 things. The regular schedule vanished. But he would openly

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1 talk about these things on the tracker in front of other  
2 disqualified legal advisors.

3 Q. And when he talked about things -- again, I want to  
4 respect the privileges. Did he make statements and give --  
5 make statements that in your opinion violated the commission's  
6 order?

7 A. Yes.

8 Q. Okay. Now -- and would it be fair to say that you  
9 would not be comfortable answering specifics about those  
10 statements because of privilege issues?

11 A. For the most part, yes.

12 Q. Okay. Well, what can you tell us about those  
13 statements that in your opinion don't violate privilege --  
14 privileges?

15 A. It was difficult as the subordinate to -- who was now  
16 involuntarily thrust into a position of authority with respect  
17 to the al Nashiri case to try to tell this retired colonel,  
18 former military judge, former instructor for eight years at  
19 West Point, to adhere to the rules of professional  
20 responsibility and cease and desist from engaging in  
21 conversations.

22 It was very awkward. It was very uncomfortable. I  
23 continued to do what I could, within the parameters of respect

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1 for your superior, to basically act as his equal under the  
2 circumstances ----

3 Q. Now, to the ----

4 A. ---- as a peer, as an attorney peer.

5 Q. Okay. And to the extent you did that, to the extent  
6 you suggested that perhaps his conduct was in violation of  
7 Judge Spath's order and the rules of professional  
8 responsibility, did he appear to care? Did he say, oh, man, I  
9 got to stop this, or did he change -- did anything change?

10 A. Never. In fact, at one of the meetings when I said  
11 I'm uncomfortable with you asking me these questions in front  
12 of other assistant legal advisors, and I said we need a  
13 separate tracker, he refused. He said, we're not going to  
14 have a separate tracker and we're going to keep talking about  
15 these matters.

16 I believe it was at that point where I had enough and  
17 I made my way to Colonel Sheeran's office, who at that point  
18 was the default, only lawyer superior of mine who was not  
19 disqualified whom I could attempt to seek redress to remedy  
20 the situation. I wanted him to talk to Mr. Toole and tell him  
21 to stop.

22 Q. Okay. And did you -- and after you went to Mr. -- to  
23 Colonel Sheeran and asked him effectively talk to Toole, get

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1 him to stop, did anything change?

2 A. A little bit, yeah. A little bit. I think he was  
3 actually -- [audio interrupted] -- talking about matters in  
4 front of her assistant legal advisors, but he would continue  
5 to query me on the status of various motions.

6 Q. Okay. So he maybe stopped talking about things, I'll  
7 say publicly, for lack of a better word, but he continued to  
8 query you about your duties on the Nashiri case?

9 A. Yes.

10 Q. And as you perceived things, and don't violate any  
11 privileges, was he trying to influence your decisions? Maybe  
12 not successfully, but was he trying?

13 A. I don't know what he was trying to do.

14 Q. Okay. But did you perceive that he was trying to  
15 influence your decisions? Or let me ask it another way. Let  
16 me withdraw that question. As you perceived these  
17 conversations, did you perceive them to be in violation of the  
18 commission's order?

19 A. Yes, and I -- if I could just back up for one second  
20 because there was something that Colonel Sheeran had said to  
21 me when I brought this to his attention for redress, and he  
22 said, it's very difficult for Mr. Toole to disassociate  
23 himself from this case because he is responsible for it.

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1 Q. Okay.

2 A. That was a little troubling to me.

3 Q. That was troubling to you?

4 A. Yes.

5 Q. And I think it's obvious, but, for the record, why  
6 was the fact that Colonel Sheeran -- who had what job again?

7 A. He was either the director of operations or the  
8 acting director. I was never quite sure of what he was.

9 Q. So he's senior to you, for sure?

10 A. Yes.

11 Q. And he's telling you ----

12 A. Yes.

13 Q. Well, we have this order, but it's really hard to --  
14 it's really hard to follow because Toole's -- Nashiri is  
15 Toole's case; is that how you perceived what he was saying?

16 A. Essentially, yes.

17 Q. Okay. And as a lawyer and as somebody familiar with  
18 the concept of disqualification, was that troubling to you?

19 A. Very troubling to me. In fact, I had said to Colonel  
20 Sheeran, it is not -- it is no longer his responsibility  
21 because Judge Spath has relieved him of that responsibility.

22 Q. And did Colonel Sheeran have any response to that  
23 that you can share with us?

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1           A.   He really didn't have an adequate response to that,  
2 in my opinion.

3           Q.   Okay.  Can you share his inadequate response?  I  
4 understand you -- his response wasn't adequate.  Can you tell  
5 us what his inadequate response was?

6           A.   Well, he tried to say that, you know, he was still --  
7 he was still responsible for these cases, essentially, based  
8 on his position as the legal advisor or acting legal advisor,  
9 whatever his title was on that given day.

10          Q.   Now, ultimately -- and did this pattern of misconduct  
11 by Mr. Toole continue, and did -- as a result of that, did you  
12 go to Michael Quinn and report Mr. Toole's indifference to  
13 Judge Spath's order?

14          A.   I did, but what -- there was -- some of the other  
15 things that transpired, I -- you know, I had -- I'm not sure  
16 of the exact days because at some point, General Ary, after  
17 being disqualified, resigned and Mr. Oostburg Sanz -- so there  
18 was a number of days where -- I mean, the -- by operation of  
19 law and regulation, the convening authority was the Secretary  
20 of Defense.  It was the Honorable Ash Carter.

21          Q.   Okay.  And did you, in your capacity as the acting  
22 legal advisor on the Nashiri case, attempt to communicate with  
23 somebody in the Secretary of Defense's office concerning

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1 matters pertinent to the Nashiri case?

2 A. Well, yes. There were -- and there were -- there  
3 were new ex parte motions coming in from the defense, and  
4 there was one from the government that came to me, and  
5 I [audio interrupted] --

6 Q. Let me interrupt.

7 A. Yes.

8 Q. When the government files an ex parte motion, would  
9 it be the policy of the convening authority to reject that  
10 motion because it was ex parte, from the government?

11 A. To my understanding, the only ex parte motion that  
12 came -- that would come in from the government -- and I don't  
13 even know if it was a motion, it was a request -- the only  
14 ones I ever saw were requests for a funding of a translator to  
15 translate a particular document from whatever language it was  
16 in to English.

17 Q. And was -- was the government told go see if the  
18 defense will agree, or did they just ----

19 A. I have no idea. No idea.

20 Q. Okay. Well, okay ----

21 A. I didn't handle those matters. Like the only time I  
22 ever handled one was when it came in in al Nashiri.

23 Q. And did you contact anyone on the defense in response

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1 to the government's request for a translator?

2 A. No, I didn't -- I did not know to.

3 Q. Okay. All right. Now, I interrupted you. You said  
4 that you went to -- you were attempting to essentially -- the  
5 Secretary of Defense was the convening authority. And was the  
6 person that you attempted to interface with a person by the  
7 name of Jason Foster?

8 A. Yes. Jason Foster was a civilian attorney at the  
9 Office of the General Counsel for the Department of Defense,  
10 Mr. Robert Work.

11 Q. Okay. And was that, in your view, the appropriate  
12 person to try and communicate with about the Nashiri matter  
13 until who the convening authority was was clear?

14 A. Yeah, well, we had a clock that was ticking on these  
15 motions, and I was drafting memorandum and proposed decisions  
16 for the convening authority, who happened to just be the  
17 Secretary of Defense for a number of days during that time.

18 Q. Now, did you ----

19 A. And what I -- well, sorry.

20 Q. You go ahead. I apologize.

21 A. Okay. So I spoke with the only person I felt I could  
22 speak with to see if we had -- our office had any contacts at  
23 the Pentagon because I sure as heck wasn't going to pick up

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1 the phone and call the Secretary of Defense.

2           So I went to Samantha Chen, who had been there for a  
3 period of time and had a reasonable amount of corporate  
4 civilian employee knowledge about our contacts with DEPSECDEF  
5 and the SECDEF's office, and I asked her for a point of  
6 contact at DEPSECDEF's legal office, which I thought would be  
7 an appropriate level for me to directly communicate with as an  
8 O-4 in the Navy.

9           So Samantha Chen gave me the name, Jason -- you just  
10 said his name.

11         Q. Foster.

12         A. Jason.

13         Q. Foster.

14         A. I'm sorry?

15         Q. Foster.

16         A. Yeah, Jason Foster.

17           And I reached out -- I got his contact information  
18 from Samantha Chen, and he was not disqualified, and so I went  
19 to -- I communicated with him via e-mail and by telephone, and  
20 I sort of explained the scenario, which he was fully aware of.  
21 And it's interesting, though, at this time -- it was later  
22 that very same day, Mr. Toole contacted me and said -- out of  
23 the blue, and said, you know, are you -- are you -- how's your

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1 communications going with Jason Foster, or words to that  
2 effect. And I was a little dumbstruck by this, because I  
3 don't know how he had learned that I was attempting to  
4 communicate with Jason Foster, when Mr. Toole was  
5 disqualified. So I presumed that he must have learned this  
6 from Samantha Chen or someone else who had this information.

7 Q. Or -- do you have any reason to believe that  
8 Mr. Foster was communicating directly with Mr. Toole behind  
9 your back?

10 A. Mr. Foster could have had an independent  
11 communication with Mr. Toole. I don't know.

12 Q. Okay. In any event, Mr. Toole was aware of your  
13 efforts, if you will, and commented on those; is that correct?

14 A. Yes.

15 Q. Okay. Now, you went to Mr. Quinn at some point to  
16 complain about Mr. Toole's behavior?

17 A. Yes. Well, after -- well, another thing -- another  
18 thing -- I don't know if you want me to talk about, you know,  
19 sequentially what happened or if you want me to answer your  
20 question, because there was another significant event that  
21 happened -- shall I just answer your question?

22 Q. Concerning Mr. Toole's misconduct?

23 A. Concerning Mr. Toole's failure to abide by the

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1 disqualification order, yes.

2 Q. Okay. Please go ahead and tell us about it.

3 A. So the way military commission's interaction -- the  
4 trial judiciary's interaction with the convening authority's  
5 office mechanically happens, because, for example, when the  
6 defense brings an ex parte motion and we act upon it and the  
7 defense doesn't like our answer, invariably they would bring a  
8 motion in front of the court. They fulfill their requirement  
9 to ask us first; they don't like the response, they bring a  
10 motion to Judge Spath.

11 Q. Right.

12 A. When Judge Spath rules, there's a woman by the name  
13 of Donna Wilkins in the trial judiciary who then, when the  
14 order is entered telling us what to do, it somehow comes to  
15 Donna Wilkins who then transmits it to us. But because these  
16 matters may or may not end up ----

17 Q. Let me interrupt you just to clarify one thing.

18 A. Sure. Yes.

19 Q. When you say to us, do you mean the legal advisors?

20 A. Yeah, the convening authority's office. So the legal  
21 advisor is the convening authority, I mean, you know, yeah.

22 Q. Thank you.

23 A. The way we learn of what the judge has ruled is Donna

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1 Wilkins takes it from the judge's clerk, whatever, possession,  
2 and transmits it to us on the high side. We have the NIPR and  
3 the SIPR. It comes to us on the high side because, as you  
4 know, many of these motions contain information that may not  
5 be releasable to the general public, and therefore, you can  
6 find it on the OMC website some time later, weeks, days,  
7 months, I don't know, later.

8           So in the interim, we have to get it, but it's not --  
9 I'm not entirely sure of what its classification status is.  
10 There's really no third computer system to put this stuff on,  
11 so we end up practically using the high side because it's a  
12 way to keep it confidential and not, I guess, subject to  
13 release if someone made a FOIA request for it. So before it  
14 has its -- there's a term you use, like a review.

15       Q.    Security class ----

16       A.    Security review and redaction, et cetera.

17       Q.    ---- classification.

18       A.    So that's the mechanics of how that happens. Now, I  
19 had suggested that when the disqualification order came down  
20 and I was the de facto legal advisor for al Nashiri, I had  
21 said to Mr. Toole, can we password protect al Nashiri on the  
22 NIPR and the SIPR so you all disqualified folks won't have  
23 access to it? He refused to do that.

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1           I had a communication with Donna Wilkins, I don't  
2 know if it was an e-mail or by telephone or both, and I had  
3 asked her if she could do that, and she said she could not.  
4 And she ended up sending an e-mail to us at the convening  
5 authority saying that she was going to segregate on the high  
6 side two folders in al Nashiri. One was going to be the  
7 pre-disqualification materials, and all of the  
8 post-disqualification materials were going to go in this other  
9 one and we were sort of on scout's honor, if we were  
10 disqualified not to look in there, but that was about the only  
11 prophylactic measure that could reasonably be accomplished  
12 under the circumstances. So I e-mailed her and I agreed to  
13 that.

14       Q.    Okay.

15       A.    A couple of hours later, Mr. Toole e-mailed to her  
16 telling her, yes, he approved that, after [audio  
17 interrupted] -- or approved it, because I guess he felt he was  
18 competing with me as to who was in charge of al Nashiri.

19           So that was another thing that transpired that  
20 disturbed me.

21       Q.    And after we had these two segregated systems, and  
22 you were on scout's honor, using your term, not to -- the  
23 disqualified people were on scout's honor not to access them,

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1 did anything happen that caused to you believe that perhaps  
2 they weren't such good scouts, that they were continuing to  
3 access these things?

4 A. At that time, I don't think so. And around that  
5 time, shortly thereafter, Mr. Oostburg Sanz became appointed  
6 as the acting convening authority again. So it was Oostburg  
7 Sanz's, tenure two, was back. And Mr. Quinn, who works for  
8 Mr. Oostburg -- Mr. Oostburg Sanz is the general counsel of  
9 the Navy. Mr. Quinn, retired Admiral Quinn, is an Office  
10 of -- Navy OGC, Office of General Counsel civilian attorney in  
11 his civilian -- in his current occupation.

12 So Mr. Oostburg Sanz is his boss, if you will, in his  
13 regular job, and then he was his boss again here in this  
14 special assignment that they both were tasked with.

15 Before Mr. Quinn arrived on the scene, Mr. Oostburg  
16 Sanz came over to have a meeting with all of the legal  
17 advisors.

18 Q. And were you present ----

19 A. And ----

20 Q. Excuse me. Were you present at that meeting?

21 A. Yes. I was.

22 Q. And -- go ahead.

23 A. And there was a meeting, and it was -- it was held in

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1 the convening authority's office, which was empty at that  
2 point. And we went around the conference table, and he was  
3 just sort of giving the reintroduction to everyone. He was  
4 back. This is how things were going to go. We know that  
5 there's a disqualification situation, and he said that  
6 Lieutenant Commander Gill was going to be the legal advisor on  
7 that and we're going to segregate everything.

8           And he said -- Mr. Toole had the tracker again and  
9 was trying to brief Mr. Oostburg Sanz on the tracker that had  
10 al Nashiri matter on it. And Mr. Oostburg Sanz stopped him,  
11 and said, no, we have to have a separate tracker that you will  
12 not be involved with, which was exactly what I had said to  
13 Mr. Toole some two weeks prior and got the veto from.

14           So Mr. Oostburg Sanz set that straight, at least  
15 facially, as far as I know.

16           Q. Okay. Now, when you say "at least facially," do you  
17 have reason to believe that behind the scenes things had not  
18 changed?

19           A. Yeah, well, I don't have any firsthand knowledge of  
20 that. I just have what I subsequently observed and came to  
21 render a reasonable supposition about, I would say.

22           Q. Well, what did you subsequently -- is what you  
23 subsequently observed part of what caused you to reach out to

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1 General Martins and Colonel Mayberry and make the accusations  
2 that there was this ongoing pattern of violation of Judge  
3 Spath's order?

4 A. You may be getting ahead. I can answer your  
5 question, but it may be better for me to continue to talk  
6 about -- because you're really talking about my third  
7 complaint, which is my second complaint to Mr. Quinn.

8 Q. All right.

9 A. I had a first complaint to Mr. Quinn after he arrived  
10 on station, which was really my second complaint to my chain  
11 of command about Mr. Toole.

12 Q. Well, but let me, just in the interest of ----

13 A. Sure.

14 Q. Were all of the complaints about what you perceived  
15 to be violations of Judge Spath's order?

16 A. Yes.

17 Q. Okay. And when, in your memory, was the last  
18 complaint to somebody within the convening authority's chain  
19 of command?

20 A. As I sit here today, I'm going to just say, as far as  
21 I can recall, probably some day between perhaps April 14 or 15  
22 through April 21, if that's not a weekend.

23 Q. Okay. And so as late as a week before your leaving,

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1 you were still complaining about this pattern of, my word,  
2 misconduct?

3 A. Yes.

4 Q. Okay. And you complained to Mr. Quinn and you  
5 complained to Mr. Sheeran; is that correct?

6 A. Oh, yes. Complained to Colonel Sheeran once and then  
7 Mr. Quinn twice after he came on station.

8 Q. And did you complain -- before you reached outside  
9 the office, did you complain to anyone else about the pattern  
10 of mis -- of indifference in violation of Colonel Spath's ----

11 A. There was no one else for me to complain to.

12 Q. Okay.

13 A. I mean, I guess I could have contacted Mr. Oostburg  
14 Sanz or the -- you know, I just didn't. I felt like, you  
15 know, I was too junior of a person in rank-wise, not  
16 experience-wise, to be having a direct conversation absent an  
17 invitation from, you know, someone in the Secretary of  
18 Defense -- the Secretary of Defense's circle.

19 Q. So throughout the time you -- after Colonel Spath  
20 entered his order of 4 March until as late as 28 April, what  
21 you observed was this continuing pattern of misconduct by  
22 Mr. Toole in violating Colonel Spath's order?

23 A. Well, no. At some point it shifted to -- actually,

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1 at my third complaint -- the time of my third complaint, which  
2 is my second complaint to Mr. Quinn, Mr. Quinn's comments to  
3 me and other -- and a few other events that had transpired,  
4 led me to believe that not only was Mr. Toole ongoing but now  
5 Colonel Sheeran was in the loop on the -- in that Colonel  
6 Sheeran was -- Colonel Sheeran was not disqualified; however,  
7 engaging in discussions with Mr. Toole about the matter would  
8 have been a violation. Because as an attorney in the office,  
9 he really shouldn't have been engaging in any discussion  
10 whatsoever about al Nashiri with Mr. Toole. And then I came  
11 to have an understanding that Mr. Quinn also was involved with  
12 these.

13 Q. So how did you -- let's flesh this out. How did you  
14 come to understand that Colonel Sheeran was engaging in these  
15 communications with Mr. Toole about the al Nashiri case that  
16 Mr. Toole should not have been part of?

17 A. Well, there was one event that stands out in my mind  
18 where it was the -- I don't know what day it was. This would  
19 have been mid April -- mid April. It was the end of the day.  
20 It was after 1700, which is around the time that the legal  
21 advisors started to make their way out of the office, change  
22 into civilian clothes, you know, get ready to go home for the  
23 evening. I had changed into my civilian clothes. It was

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1 after 1700. I had turned down my -- you know, shut down my  
2 computers, my high side and low side, and was on my way out  
3 the door and I got stopped by somebody. I don't know if it  
4 was -- I don't know if it was Samantha Chen or somebody else.  
5 I know it wasn't Sergeant Jones because she was ----

6 Q. No. Let's jump ahead.

7 A. Yeah.

8 Q. Who ultimately said what to you that was important?

9 A. Well, I was delayed in leaving because somebody was  
10 talking to me. Colonel Sheeran came flying up to me holding  
11 an e-mail printed out in his hand saying -- he was very  
12 excited and he said, Did you see this e-mail? Did you see  
13 this e-mail? You know, words to that effect, very, very  
14 excited.

15 And I said, I have not seen this e-mail, I don't know  
16 what you you're talking about.

17 And he said, the court has ruled in Nashiri about the  
18 MRI, there was an -- a motion for an MRI.

19 Q. Okay.

20 A. And ----

21 Q. And what about that caused you to believe that he had  
22 talked to Toole about that?

23 A. Well, that -- as this unfolded, this is what

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1 happened. He said -- I said, I did not see the e-mail. He  
2 said -- he said, Do you have the motion?

3 And I said, I can look on the high side in the  
4 segregated folder on the high side that I discussed earlier  
5 with the scout's honor that people weren't supposed to look.

6 Q. Sure.

7 A. I said -- Colonel Sheeran didn't even know that  
8 folder existed apparently. I said, we have a high side folder  
9 that segregated that that Donna Wilkins created that I'll go  
10 look and see if the order is in there. He said, all I have is  
11 this e-mail from Donna Wilkins; I don't have the order. Which  
12 he wouldn't have, it would have been in NIPR e-mail and the  
13 order would have been on the high side. And I said, I'll go  
14 do it right now, sir. And I bolted back to my desk. The NIPR  
15 booted up first and the SIPR takes a little longer.

16 Q. Let's stay focused on where we are going.

17 A. These facts are critical to where I'm going so please  
18 indulge me.

19 Q. Okay.

20 A. I pulled up the low side e-mails. I was not included  
21 on these e-mails, even though Mr. Quinn had put out an e-mail  
22 earlier saying to Donna Wilkins and others that if you must  
23 e-mail on al Nashiri, you must include Lieutenant Commander

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1 Gill, Samantha Chen and myself, Mr. Quinn, and I believe  
2 Colonel Sheeran. And I wasn't included on this e-mail that I  
3 was supposed to be included on. I didn't have the e-mail. I  
4 checked on the high side. Meanwhile, Colonel Sheeran -- I  
5 came back immediately and I said, I don't have that e-mail.  
6 The high side is booting, I'll let you know.

7 He said, I got to meet with Mr. Quinn right now. He  
8 bolted down the hall into Mr. Quinn's office.

9 I went back to my desk, opened up -- the high side  
10 opened up. I checked the folder where it should have been  
11 placed, it wasn't there. I went back down the hall as fast as  
12 I could, because of this urgency that Mr. -- that Colonel  
13 Sheeran was expressing. Door was closed to Mr. Quinn's  
14 office, and I knocked on the door. And I'm thinking, it's  
15 just Sheeran and Quinn in there because Quinn is all --  
16 Sheeran is all excited to get this in front of Mr. Quinn and  
17 talk about it, like now, instantly.

18 And who opens the door, but it's Mr. Toole.

19 Q. So let's see if we got this right. There's this  
20 order regarding the MRI. People, for whatever reasons, this  
21 is a matter of some urgency, and it appeared to you that  
22 Mr. Quinn was excited about this, Colonel Sheeran was excited  
23 about this, and you go to the door because they want your

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1 involvement, and it appeared to you they had been talking to  
2 Mr. Toole about this?

3 A. Yeah. It was like, this was the only thing of the  
4 moment, and there was Mr. Toole opening the closed door.

5 Q. And was there a subsequent -- did you join the  
6 meeting or were you excluded?

7 A. No, I -- no, I was -- I was excluded. I was  
8 astounded and thunderstruck that Mr. Toole opened the door,  
9 and in my shock, I looked in and I saw Mr. Quinn and Colonel  
10 Sheeran sitting at Mr. Quinn's conference table, and I called  
11 in to -- mindful that I didn't want to speak of any  
12 substantive -- anything to do with al Nashiri in front of  
13 Mr. Toole, I said, Colonel, that document you wanted me to go  
14 get right now, it's not in -- it's not -- it hasn't been  
15 posted to the folder yet.

16 And he said okay.

17 And then Mr. Toole closed the door on me and I left  
18 the building.

19 Q. Okay. So when he closed the door, in your mind, was  
20 it clear you weren't wanted in this conversation?

21 A. Oh, absolutely. Absolutely. Yeah.

22 Q. Now, were there other events predating what you've  
23 said was the third complaint that caused you to believe that,

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1 I'm going to call it the cancer of indifference to Judge  
2 Spath's office -- order had spread from Toole to Quinn and on  
3 to Sheeran, were there other indications of the spread of the  
4 cancer?

5 A. Yeah. I don't think I can answer that question. I  
6 mean, you know, talking about cancer, I don't know.

7 Q. Okay.

8 A. Can we -- if we can dial down the flourish.

9 Q. Were there other indications that they were not --  
10 that the convening authority -- people in the convening  
11 authority were not paying attention to Judge Spath's  
12 disqualification?

13 A. Well, yeah, after that event -- I want to say it was  
14 the next day, if that wasn't a Friday, I don't know exactly  
15 what day that was, but the very next workday that Mr. Quinn  
16 was back in the office after that incident -- so essentially  
17 the very next time I saw Mr. Quinn in the office after that  
18 night when they closed the door in my face, I went to  
19 Mr. Quinn and I said, why are you and Mr. -- Colonel Sheeran  
20 discussing the al Nashiri, you know, MRI motion, you know, or  
21 words to that effect.

22 This would be my third complaint. Now ----

23 Q. All right.

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1           A.    Now I'm complaining to my chain of command about  
2 my -- about the person I'm complaining to. Mr. Quinn is one  
3 and the same. In addition now I'm adding Colonel Sheeran in  
4 for what I saw, and of course, Toole all along.

5           So I said, or words -- or actually, this is where I  
6 refer to this in my e-mail to General Martins as well as  
7 Colonel Mayberry, because they are essentially the same  
8 e-mail.

9           Q.    Okay.

10          A.    I said -- I said in that e-mail, correct me if I'm  
11 wrong, I said something like, Mr. Quinn's reaction to what I  
12 had said to him during my third complaint about the disregard  
13 for the failure to follow the disqualification order, he gave  
14 me a disproportionate response back, an incongruous or  
15 disproportionate response back to me from my third complaint.  
16 I say something like that.

17          And what I mean is, Mr. Quinn became -- I don't want  
18 to say irate, but he was not pleased. He said ----

19          Q.    Well ----

20          A.    He blamed me. He said it was my fault that Mr. Toole  
21 had been continuing to be engaged in the case because I  
22 hadn't -- I hadn't segregated him out of the case. And I was  
23 supposed to talk to -- he said, I -- or words to this effect,

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1 I was supposed to tell my boss -- and I was trying all along.  
2 I mean, you know, there's only so much you can do when you are  
3 a junior telling your senior cut it out.

4 And he should know anyway. He -- he's a judge. He's  
5 a former judge. He's a retired colonel in the U.S. Army.  
6 He's the convening authority's legal advisor. He should know  
7 this.

8 Q. Let's go back to what -- Mr. Quinn's disproportionate  
9 response. He was blaming you somehow for Mr. Toole's  
10 continued involvement. Can you tell us his exact words?

11 A. I can't tell you his exact words, but it was  
12 something like this: It was my fault that I hadn't properly  
13 segregated him out of the case.

14 Q. And is it fair to say that from March the 4th until  
15 that day, you had tried time and time and time again to  
16 segregate Toole out of the case?

17 A. I tried to -- yes, and I tried to implement a number  
18 of prophylactic measures that were vetoed unilaterally by  
19 Mr. Toole.

20 Q. Okay. And so then on roughly April the 21st, somehow  
21 all of this became your fault?

22 A. Yes. That's what Mr. Quinn was communicating to me.

23 Q. And ----

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1           A.    And the conversation got more interesting at that  
2 point.

3           Q.    Okay.  Did it become more interesting because he  
4 continued to make this your fault or blame you for Mr. Toole's  
5 misconduct?

6           A.    No.  He demonstrated to me his full-on understanding  
7 and complicity with Mr. Toole's involvement in the al Nashiri  
8 matter as a disqualified legal advisor.

9           Q.    And how did he -- can you tell us, with as much  
10 precision as possible, how he demonstrated to you his  
11 involvement and complicity in Mr. Toole's misconduct?

12          A.    In response to my salvo, again, to Mr. Quinn as to  
13 why he and Mr. -- Colonel Sheeran were discussing the  
14 al Nashiri MRI motion with Mr. Quinn behind locked -- behind  
15 closed doors that night, he said, Mr. Toole is a member of the  
16 general public.  We can't control his actions as a private  
17 citizen.  He is free, as is the rest of the world, to go  
18 online to omc.gov, or whatever the website is, and freely  
19 click on the al Nashiri case and read all about it.

20                    And I said, Admiral, he's not a member of the general  
21 public.  He is a disqualified member of the convening  
22 authority's legal staff who has professional responsibility  
23 and ethical obligations under a code of conduct to adhere to

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1 the disqualification order and implement prophylactic measures  
2 and abide by them.

3 But I said, that's interesting -- words to that  
4 effect. And I said, it's interesting, Admiral, because how in  
5 the world would he have read the MRI motion since it has not  
6 yet gone through its security review and been posted on that  
7 website? So he's obviously gotten his hands on it from some  
8 other method or some other location. And Admiral Quinn had no  
9 response to that. He -- I had caught him. I had basically  
10 successfully cross-examined him on the spot, and that just  
11 added to his displeasure with me.

12 Q. And ----

13 A. He further said that we are going to continue to talk  
14 about al Nashiri with other -- with the disqualified legal  
15 advisors in the interest of precedence. Because he -- as he  
16 explained, the convening authority is like a -- is like a  
17 judicial body, sort of. It's a -- you know, it renders -- it  
18 has a body of precedent that it developed -- has been  
19 developing over the course of the military commissions which,  
20 in fact, it does. All of its decisions are kept in hard copy  
21 folders in a filing cabinet three feet outside the front --  
22 outside of Mr. Toole's door to his office where, whenever we  
23 have a motion come in, ex parte, for example, from the defense

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1 and these motions -- these motions tend to be repetitive.

2           So in the interest of maintaining a stable  
3 jurisprudence from the convening authority standpoint and  
4 adhering to precedent, we are to dip back into the hard files,  
5 find cases in which a similar issue appeared, and attempt to  
6 rule similarly in a current motion as had been ruled in the  
7 past in the interest of the -- you know, some kind of  
8 quasi-stare decisis jurisprudence.

9           Q.    So I just want to make sure that I understand it.  
10 Mr. Quinn said to you, basically, we don't care what Judge  
11 Spath has ruled, we're going to continue to involve Mr. Toole  
12 in these discussions for the purposes of judicial or some kind  
13 of consistency, or words to that effect?

14           A.    Not quite, not quite that. What he said was -- is  
15 that they're going to be able to access the old al Nashiri  
16 files and we can discuss it as ----

17           Q.    And by the we ----

18           A.    ---- as matters arise, as matters arise, so we can  
19 rule consistent with rulings in the past.

20           Q.    But who it -- was Mr. Toole one of the ones who would  
21 continue to discuss it?

22           A.    Not in al Nashiri. In other cases. If a motion came  
23 in, for example, in Hadi where there was a request for an MRI,

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1 he said that the disqualified legal advisors would be able to  
2 access the old folders of al Nashiri ----

3 Q. Including al Nashiri -- including al Nashiri stuff?

4 A. Oh, yeah. That was the point of this conversation.  
5 So as to -- I don't want to say recycle, but to continue to  
6 rule in a line of stare decisis jurisprudence to be  
7 consistent.

8 Q. Now, I'm understanding that this roughly April 21st  
9 conversation with Mr. Quinn was pretty heated where he's --  
10 where his response is disproportionate, correct?

11 A. I think maybe the feed just skipped a little bit  
12 there. I didn't quite get that. Maybe you could rephrase,  
13 counsel.

14 Q. Let me try it again. I'm gathering that this  
15 conversation that you've just related was -- where Mr. Quinn's  
16 response is what you described as grossly disproportionate was  
17 fairly heated. He wasn't calm when he was being grossly  
18 disproportionate.

19 A. He was displeased with me.

20 Q. And as you've said, his displeasure morphed into this  
21 is somehow all your fault?

22 A. Oh, I was blamed, yes.

23 Q. Okay. And then it was a week later that, for lack of

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1 a better term, you were fired?

2 A. Yes.

3 Q. Okay. Excuse me just a second.

4 MJ [Col SPATH]: Mr. Kammen, let me just ask: Do you have  
5 a lot left where you are at? Close to the end?

6 LDC [MR. KAMMEN]: This is very short.

7 MJ [Col SPATH]: No worries. I was going to offer a  
8 recess. I'll wait and then we'll take a break before  
9 cross-examination. You may proceed.

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

11 Q. Now, I want to go back to shortly after Judge Spath's  
12 disqualification order. And after you read the  
13 disqualification order, were you unclear as to whether anybody  
14 in the Office of the Convening Authority could continue to  
15 serve as legal advisor?

16 A. Yeah. Initially, I had some concerns about the way  
17 Judge Spath had written who was to be disqualified. I mean,  
18 he had everyone listed by name, but then he added a line,  
19 perhaps in the next sentence, I haven't looked at that order  
20 in some time, but it said that the Secretary of Defense shall  
21 appoint a new convening authority who will receive legal  
22 advice from a legal advisor outside the Office of the  
23 Convening Authority.

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1 Q. And so did ----

2 A. I seized upon that "outside the Office of Convening  
3 Authority," and I thought to myself, is this a catch-all to  
4 cover someone like me who newly arrived after all of this  
5 had -- after all of the unlawful command influence had  
6 actually happened, and was I tainted or was I not tainted, or  
7 did it mean that or did it mean that since I had nothing --  
8 couldn't possibly have anything to do with the unlawful  
9 influence because I wasn't even there when the events occurred  
10 some months previous. Did it mean that I could -- I should  
11 physically leave the Office of the Convening Authority in  
12 order to be in compliance, you know, to the letter of the  
13 order?

14 So I said to -- I suggested to both Mr. Toole and  
15 Colonel Sheeran, I said, I'll be happy to take up an office  
16 somewhere in the Pentagon if they can spare me a desk so that  
17 I am outside the Office of the Convening Authority, and I'll  
18 do the job for you guys. I'll go be the legal advisor and  
19 we'll get it done and we'll be in compliance with the order,  
20 like with the letter of what it said.

21 Q. And their response was to let you do that, or to say  
22 no?

23 A. Oh, absolutely not. Yeah, no.

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1 Q. And did anyone suggest ----

2 A. Just like all of my other suggestions, the answer was  
3 no.

4 Q. Did anyone suggest, given this what may have been  
5 perceived as ambiguous, that you should find a way to get  
6 clarification?

7 A. No.

8 Q. Now, when Mr. Quinn came back, did you understand  
9 whether he was -- was this his first tenure with the Office of  
10 the Convening Authority, or had he been there before?

11 A. Yeah, it was my understanding that he had been there  
12 before, and I believe I had seen his name on some documents  
13 from that stare decisis paper file I was mentioning earlier.

14 Q. And do you know if he was -- if he was at the Office  
15 of the Convening Authority when what was known as Change 1,  
16 the attempts by the convening authority to force the judges to  
17 move to Guantanamo, was drafted?

18 A. I have no knowledge of any of that.

19 Q. Okay. Now, assume for the sake of my questions that  
20 he was there during that time, did anyone suggest at the time  
21 of bringing him back that we ought to clarify whether he would  
22 be covered by this disqualification order?

23 A. If I understand the question, then the answer is no.

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1 Q. Okay. Okay. Excuse me.

2 LDC [MR. KAMMEN]: I don't have any other questions.

3 Thank you very much. I'm sure the prosecutor will. Thank  
4 you.

5 MJ [Col SPATH]: All right. Before we do that, why don't  
6 we take a ten-minute recess and then we'll come back for  
7 cross-examination.

8 The commission is in recess.

9 [The R.M.C. 803 session recessed at 1519, 7 September 2016.]

10 [END OF PAGE]

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