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1 [The R.M.C. 803 session was called to order at 1531,  
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, you may cross-examine.

6 **CROSS-EXAMINATION**

7 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

8 Q. Good afternoon, Mr. Gill.

9 A. Good afternoon.

10 Q. Just for his Honor's awareness, you and I have spoken  
11 before on the 22nd of August, and again briefly on the 23rd of  
12 August?

13 A. If it those are the dates, then yes, I would agree  
14 with your representation.

15 Q. We spoke twice on the telephone; is that correct?

16 A. Yes.

17 Q. And present with me was my paralegal?

18 A. I believe you identified a paralegal, yes.

19 Q. Okay. You had also spoken to somebody from the  
20 Office of the Chief Prosecutor last year on 11 May of 2015,  
21 correct?

22 A. Yes.

23 Q. And that was in response to your e-mail to General

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1 Martins in which you memorialized your allegations, correct?

2 A. I think it was in response, but I wouldn't say that  
3 my allegations are memorialized in that e-mail. That e-mail  
4 says that the e-mail would not be a proper forum for me to go  
5 into the details of the incidents.

6 Q. You had shared on direct that you had never received  
7 a response back from General Martins. But, in fact, isn't it  
8 accurate to say that you did receive response back from  
9 General Martins' office that following week?

10 A. Yeah. My testimony was that I had never personally  
11 received a response from General Martins personally, and I  
12 started to explain that -- I was going to get into that, but  
13 defense counsel took another tack and was asking other  
14 questions, so I never actually got an opportunity to address  
15 the week or so later contacts that I had received from the  
16 prosecutor's office, not General Martins himself, like I said.

17 Q. You had received a response, and on 11 May somebody  
18 from the prosecutor's office drove from D.C. to Norfolk to  
19 speak to you face to face, correct?

20 A. Yes. We -- I had asked if they could come down and  
21 speak to me because I was in the process of demobilization,  
22 and there are a number of courses that we had to go through.  
23 And we were basically stuck in these classes and weren't

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1 allowed to leave because they were being run by the Department  
2 of Labor, and we had to go through the course, and we were  
3 getting a certificate that we had actually attended so many  
4 hours. So I was very limited as to my ability to, you know,  
5 talk at any point during the day.

6 And ultimately I said, can you just send somebody  
7 down here to talk to me? And a Navy lieutenant and an FBI  
8 agent were sent down, and I had made arrangements to speak  
9 with them at the Regional Legal Service Office Mid-Atlantic in  
10 Norfolk, Virginia, Naval Station Norfolk.

11 Q. Back up. Now, to get a better understanding of you  
12 coming in to the role as legal advisor at the convening  
13 authority's office, you originally were slated to begin in the  
14 November 2014 time frame; is that correct?

15 A. Yeah. Originally the posting had put that date  
16 forward as the fill date.

17 Q. And you were to be Commander Kotval's -- was it your  
18 understanding that you were to be Commander Kotval's  
19 replacement; is that correct?

20 A. I subsequently came to learn that he was the one that  
21 I would have -- well, I ultimately did replace.

22 Q. And you had a conversation sometime before you  
23 actually were hired for that job with Mr. Toole in which you

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1 furnished him your resume?

2 A. Yeah. I received a phone call from Mr. Toole long  
3 before the Navy reserve detailing chain of command had  
4 informed me that I in fact was going to be mobilized, and I  
5 was surprised to get a call from Mr. Toole. For one, I didn't  
6 know who he was; and two, when I learned who he was, during a  
7 lengthy conversation with him, I said, oh, so I've been  
8 selected for the billet?

9 And he said, oh, I don't know if you have or not.  
10 And he said, I assume you are because someone put your resume  
11 on my desk.

12 I said, well, I haven't been officially detailed to  
13 this job yet. And I said -- I asked him again, do I -- am  
14 I -- do I have the position?

15 And he said, just wait for, you know, the Navy  
16 detail -- [audio interrupted] reserve to actually take action  
17 on that, so ----

18 Q. But you had shared with me that he seemed excited to  
19 have you onboard and you knew that he was going to be your  
20 immediate supervisor; correct?

21 A. I wasn't really sure what his role was. I knew he  
22 was a supervisor. I did not really have a grasp at that  
23 point.

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1 Q. He seemed excited to have you onboard?

2 A. I don't know if he would -- I don't know if I would  
3 say he was excited. He was just talking to me matter of  
4 factually that I was the person who had the job and I was  
5 coming.

6 Q. And there's a job that you wanted and were interested  
7 in, at least on your end, that was a good sign that he was  
8 calling you, right?

9 A. I would say yes.

10 Q. And he also explained to you that you would need a  
11 TOP SECRET clearance for that position, correct?

12 A. No.

13 Q. So before January -- before your actual start date,  
14 were you aware that you would need a TOP SECRET clearance for  
15 the position?

16 A. I came to have an understanding of that from the JAG  
17 detailers.

18 Q. And the JAG detailers -- the JAG detailers explained  
19 to you that you would need a TOP SECRET clearance for that  
20 position, correct?

21 A. Yes, and I had previously had one, so it wasn't  
22 really going to be an issue. They said, oh, yeah, this will  
23 be a -- it's a recertification, I think it's a recertification

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1 or a reinvestigation, they call it, so they said, yeah, it  
2 would be lickety-split, don't worry about it.

3 Q. So you had done it before, you knew what it was ----

4 A. Yeah.

5 Q. That you had to provide your work background, right?

6 A. Yeah. Among a myriad of other things you have to  
7 provide, yes.

8 Q. Correct. Your relationships, there's a personal  
9 interview, your criminal background, all of those. When you  
10 were notified before you arrived there in January, you were  
11 aware that you would have to provide that information in order  
12 to get a clearance and in order to have the job, correct?

13 A. Yeah. At some point, yes.

14 Q. Now, you ended up, you said, getting there on 12  
15 January of 2015, correct?

16 A. Yeah. What had happened, and it was never explained  
17 to me why, I got a call from Commander Johnny Martinez, who I  
18 always thought was a judge advocate, but apparently he's not;  
19 he's just simply the detailer who works for Fleet Forces  
20 Command, the JAG detailing office; he's like a specialist in  
21 detailing; he's not a JAG.

22 And he initially had -- he said this is a short  
23 order, and I had to, you know, fill out a waiver. Reservists

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1 have a 60-day waiver to fill out if the government isn't going  
2 to be able to bring you on -- I guess you have rights or  
3 something, that you have to have 60 days' notice or something,  
4 and if they're trying to bring you on before that, you sign a  
5 waiver. And it's pretty much kind of like a standard thing.  
6 Everybody just waives it, because they're always trying to  
7 drag you right on immediately and -- on active duty.

8           And then I got a call from Commander Martinez saying,  
9 wait, hold up, the reporting date has changed. And he  
10 never -- he never told me why. So the reporting date got  
11 changed from like sometime in November to January 2 to report  
12 to NMPS in Norfolk for in-process.

13       Q. All right. So it's January 2 that you started your  
14 position at the Office of the Convening Authority; is that  
15 correct?

16       A. No. I was going through an NMPS, in-processing,  
17 being issued uniforms, going through all of the standard  
18 mobilization that takes one to two weeks, I think, because I  
19 was a CONUS guy, and I was going right up the street to the  
20 D.C. area, that I was able to sort of speed through it ----

21       Q. Gotcha.

22       A. ---- sort of quickly, yeah.

23       Q. So that's where you get your 12 January date is after

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1 you finished that initial pipeline?

2 A. Yeah.

3 Q. Okay.

4 A. I arrived -- I arrived on the 9th, but it was like a  
5 Friday, and I was checked into a hotel and they just -- OMC --  
6 Mr. Toole let me go to start, you know, apartment hunting and  
7 all that stuff. So I -- like I testified earlier, I reported  
8 onboard really 12 January for my first full, you know, day of  
9 work there.

10 Q. Now, from 12 January roughly until the judge's order  
11 on 4 March, you were getting up to speed and involved in a  
12 legal advising capacity, providing legal advice to Mr. Ary,  
13 correct?

14 A. Yeah. Well, it was very -- [audio interrupted] that  
15 command is organized there as far as administratively, in my  
16 experience when you report to a command, you have a sponsor  
17 and there's a checklist of things you have to do, you know, go  
18 to the Pentagon, get your security pass.

19 Q. Mr. Gill, I'm sorry to interrupt you, but the  
20 question is ----

21 A. Yeah.

22 Q. The question is not what was going on, it was just  
23 what was going on when you first got there that you had been

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1 involved in providing legal advice to Mr. Ary; is that a fact?

2 A. Eventually, yeah. After that first ten days to two  
3 weeks of all this administrative, you know, run-around, I  
4 began to do the job, I guess I would say.

5 Q. Okay. Now, what I want to try and do is understand  
6 the period from 4 March until you were returned to the Navy on  
7 28 April, and understand what it was that you were actually  
8 giving legal advice on. And I know that you had expressed  
9 some concern over deliberative or attorney-client privilege.  
10 And I would just let you know that while, you know, I have not  
11 been given a -- delegated the authority to waive that  
12 privilege entirely, that there has been documents that have  
13 been provided to the government in discovery, provided to the  
14 defense, provided to this court, and, you know, in implicitly  
15 waiving that privilege in providing that for litigation. And  
16 so the questions that I'm going to ask you specifically have  
17 to do with those documents.

18 LDC [MR. KAMMEN]: Excuse me, Your Honor.

19 MJ [Col SPATH]: Hang on one second.

20 LDC [MR. KAMMEN]: I don't -- if he doesn't have the  
21 authority to waive the privilege, I don't know that his  
22 representation that it's implicit or not carry the day. And  
23 in fairness to the witness, if somebody from the convening

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1 authority wants to waive the privilege, that's fine. But you  
2 can't have an implicit waiver of the attorney-client privilege  
3 or any other privilege.

4           So I think -- I don't care other than I don't want  
5 to -- you know, I just don't think that trial counsel has this  
6 authority. And if he does, then it's waived; if he doesn't,  
7 then it's not waived.

8           MJ [Col SPATH]: Let me just -- Trial Counsel, if I have  
9 it wrong, let me know. I believe what trial counsel is  
10 saying, if the documents have been released by the convening  
11 authority, they have certainly waived with regard to the  
12 contents of that document, just as with documents that you  
13 provide me or anybody else. And so the witness has been very  
14 good at letting us know when he is uncomfortable with  
15 privilege, as I would hope he would be, and no one has asked  
16 for me yet to give an order ordering a release of privilege.

17           My involvement was specifically not asked for during  
18 that last series of questioning with the defense counsel, and,  
19 as is my habit, I tend not to get involved unless I'm asked.

20           So at this point, you can go forward, and I know the  
21 witness, if the witness is uncomfortable, he will identify it  
22 and then we can work through that issue. If there's a been a  
23 waiver because a document has been produced in discovery and

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1 things like that, we can deal with it on a  
2 question-by-question basis.

3 ATC [LT MORRIS]: Yes, Your Honor.

4 MJ [Col SPATH]: I know you will let me know if you have  
5 any other objections. We can proceed.

6 ATC [LT MORRIS]: Let me just provide for the record, this  
7 exact issue was litigated with the convening authority  
8 asserting this exact privilege. And the outcome of that, in  
9 piercing that privilege, was to provide discovery. And so in  
10 a sense with these particular documents, we're at that end  
11 state.

12 MJ [Col SPATH]: And I, in fact, ordered discovery of  
13 those documents over the defense objection to the defense  
14 counsel -- or I mean over the prosecution objection to the  
15 defense counsel when we were litigating the UI motion with  
16 regard to change one. You proceed. If there's any  
17 objections, you let me know.

18 And for the witness, if you have any concerns, let me  
19 know. I think trial counsel is probably going to highlight  
20 some documents that they have. But, again, Mr. Gill, if you  
21 have an issue, let me know and we'll work through it.

22 WIT: Your Honor, if I may just say, I don't know what  
23 these documents are, but if they're going to be put forward

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1 one by one, I'll take them as they come.

2 MJ [Col SPATH]: Understand. And that's -- yes, we're in  
3 cross-examination, and we'll see how trial counsel has this  
4 unfold. So let me know if you have any issues with the  
5 question.

6 WIT: Thank you.

7 MJ [Col SPATH]: Trial counsel.

8 WIT: Yes, sir.

9 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

10 Q. Before we get into specific documents, just to get a  
11 better overview of how assignments were made and your role at  
12 the Office of the Convening Authority, I just want to go over  
13 again the conversation that we had back on the 22nd of August  
14 that, as requests for funding would come in from both the  
15 defense and the government, that these requests, if you will,  
16 if they required legal advice, would be farmed out during  
17 meetings or by e-mail to one of the legal advisors, and that  
18 legal advisor would prepare legal advice for the convening  
19 authority, who would then ultimately act on that resource  
20 request; is that correct?

21 A. It's somewhat correct. I mean, the assistant legal  
22 advisor puts together the memorandum and the recommended  
23 action of the convening authority, but it's given to, in this

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1 case, Mr. Toole as the -- the legal advisor to the convening  
2 authority or the acting legal advisor. He was the -- he was  
3 the bridge between assistants and the convening authority. So  
4 if he didn't like what the assistant legal advisor had put  
5 forth, he would say, no, change this, change that, and you  
6 basically did what he had asked you to do.

7 Q. Mr. Gill, you're talking about before 4 March with  
8 legal advice that you may have submitted up through Mr. Toole  
9 to Mr. Ary, correct?

10 A. Well, with the exception of the one motion that was  
11 already in progress on Mr. Toole's desk that he was working on  
12 when the order came down that subsequently became my  
13 responsibility.

14 Q. I know what you mean, but just to try and provide  
15 further clarity, you don't mean motion, you mean request,  
16 right? So that a request would be made by one of the parties,  
17 if it was denied, then that party could go to the commission  
18 with a motion asking for relief. But you mean request, right?

19 A. Right, and we colloquially referred to them in the  
20 office as motions, as a motion. So that was the -- that was  
21 the term of art that we just used colloquially, not -- you  
22 know, not professionally.

23 Q. Just asking for your assistance with the request.

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1 Let's talk specifically about that particular request that you  
2 said was the exception, or the pre-March spilling into  
3 post-March request by the defense, okay? Are you following  
4 me?

5 A. I am.

6 Q. Okay. So that was a request by Mr. Kammen for  
7 additional hours; isn't that correct?

8 A. Yes. Yes, it was.

9 Q. So that Mr. Kammen's annual allotment of hours was  
10 set to expire come 15 April, correct?

11 A. You know, I -- it was -- it was -- there was an  
12 annual cycle of contracts for counsel like Mr. Kammen. And if  
13 you tell me it was April 15th, then I will say, okay,  
14 April 15th. I knew it was April sometime; I just did not know  
15 what the date was.

16 Q. And from -- that request initially had gone to  
17 Mr. Toole in February sometime. I believe it was the 22nd of  
18 February?

19 A. I couldn't tell you. I think I was in GTMO on the  
20 22nd of February.

21 Q. But you knew that ----

22 A. Oh, no, I was supposed to go to GTMO. No, maybe I  
23 was. I know I had been scheduled to go and then hearings were

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1 canceled and then I subsequently ended up going for the UI, so  
2 I may have been in GTMO. I don't know the answer, I don't  
3 know.

4 Q. Did that request go to Toole -- Mr. Toole prior to  
5 the judge's order on 4 March?

6 A. Yes, it must have.

7 Q. Okay. Because Mr. Toole had already drafted some  
8 information in regards to that request, correct?

9 A. Yes.

10 Q. And post the judge's order in 4 March, you had  
11 received Mr. Toole's work product up to that point, correct?

12 A. On that particular issue, yes.

13 Q. On the ----

14 A. It came ----

15 Q. ---- hours for Mr. Kammen?

16 A. It came to me at some point. Correct. It came to me  
17 at some point.

18 Q. Okay. When we had talked on 22 August, you shared  
19 with me that you were in a position where you were the sole  
20 legal advisor for Nashiri at this point because, you know,  
21 looking around, you were the only person that -- as a legal  
22 advisor that wasn't disqualified by the judge's ruling,  
23 correct?

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1 A. Yes.

2 Q. And it was made clear to you, as the sole individual  
3 that wasn't precluded, that you would be the legal advisor for  
4 al Nashiri. There was no doubt in your mind that those  
5 were -- those were your work duties, correct?

6 A. No, that's not correct.

7 Q. Well, did you ----

8 A. I believed that to be the case, but that's not what  
9 was being -- that's not what was actually happening.

10 Q. I think you misunderstood my question. I was asking  
11 was that your understanding of what your duties would be? You  
12 would agree with that, right?

13 A. Yeah. That's what should have happened, yes.

14 Q. Okay. We're talking about -- so in your signature  
15 block, for example, you signed pro tempore for al Nashiri. I  
16 mean, you understood that post 4 March that you were assigned  
17 to be the legal advisor for al Nashiri, right?

18 A. Well, I coined that term, legal advisor pro tempore  
19 for U.S. v. al Nashiri.

20 Q. Mr. Gill, not to cut you off, I don't want to get  
21 distracted by the terms, but the question was, did you  
22 understand that you would be the legal advisor from 4 March  
23 onward for Mr. al Nashiri?

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1 A. No.

2 Q. Who did you understand would be the legal advisor  
3 from 4 March on al Nashiri?

4 A. Well, Mr. Toole told me that I was a facilitator, and  
5 I didn't really understand what that meant. I thought I was  
6 to be the legal advisor, but ----

7 Q. Well, you're ----

8 A. But he told me I was not.

9 LDC [MR. KAMMEN]: Excuse me. The witness should be  
10 allowed to finish his answer, Your Honor.

11 MJ [Col SPATH]: Appreciate that. It's cross-examination.  
12 You may proceed. I understand. Your objection is overruled.  
13 You may proceed.

14 ATC [LT MORRIS]: I'll try and make my questions clearer.

15 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

16 Q. The problem that you had and that you are sharing  
17 with the commission today is because you believed that you  
18 were to be the sole legal advisor for the Nashiri case,  
19 correct?

20 A. Yes, that was my hope and that's what I thought was  
21 happening.

22 Q. Okay. Now, you shared with me on 22 August, and  
23 we're just talking about Mr. Kammen's request for additional

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1 hours that might be set to expire and needed, you know,  
2 additional funding for that. You shared with me and my  
3 paralegal that, as the sole legal advisor, in your mind, you  
4 went to Mr. Toole to ask him who can I contact at the  
5 Secretary of Defense. And your words to me, I'm not just  
6 going to cold call the Secretary of Defense, so I went to  
7 Mr. Toole and asked him who can I contact. Do you recall  
8 sharing that with me and my paralegal?

9 A. No. If I said Mr. Toole, then I misspoke, because it  
10 would have been -- it was Samantha Chen who I went to to try  
11 and find out who we, as an organization, had a contact with at  
12 the Secretary of Defense for me to contact. And then  
13 Mr. Toole, as I testified to, subsequently told me the same  
14 thing.

15 Q. But at no time in our conversation did you tell me  
16 that you went to Samantha Chen, nor did you tell me that you  
17 then subsequently had a conversation with Mr. Toole in regards  
18 to him knowing about your contact with Mr. Foster; isn't that  
19 correct?

20 A. I don't understand the question, but I don't think  
21 that's correct.

22 Q. But you believed that you told me that you had a  
23 subsequent conversation with Mr. Toole in which he brought up

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1 your conversation with Mr. Foster, and that caused you  
2 concern.

3 A. Yes, yes, yes.

4 Q. Is it your testimony here today that you brought that  
5 up to me?

6 A. Yes.

7 Q. Okay.

8 A. Yes.

9 Q. So if I was to call my paralegal who took notes, you  
10 would expect to find that portion as well in his notes?

11 LDC [MR. KAMMEN]: That's way ----

12 A. Yes.

13 MJ [Col SPATH]: Hold on.

14 A. I don't know how ----

15 ATC [LT MORRIS]: I'll move on, Your Honor.

16 MJ [Col SPATH]: Objection sustained. You may proceed.

17 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

18 Q. So from this specific item, and we're going to take  
19 these one at a time. This is a request by Mr. Kammen for  
20 hours. Did you provide any legal advice to -- for this  
21 specific request?

22 A. Well, it is legal advice because it's a contractual  
23 matter. We're extending a contract, so that would be legal

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1 advice, I would say.

2 Q. So the basic -- let's go back to the basics. The  
3 basic bread and butter of the legal advisor's role of a  
4 defense request in providing legal advice to the convening  
5 authority. Did you provide legal advice to the convening  
6 authority on this request by Mr. Kammen for additional hours?

7 A. I tried. I transmitted it to Jason Foster and asked  
8 him if he could somehow get it to the Secretary of Defense  
9 who, at that point in time, was, by operation of law, the  
10 convening authority and by operation of the judge's ruling.

11 Q. Now, on your memorandum to Mr. Foster, did you not  
12 say in the subject line that this is not legal advice, that  
13 this is just a memorandum of facts?

14 A. I have no idea what I wrote. Maybe you could show me  
15 the document.

16 Q. You had received a number of vouchers of Mr. Kammen's  
17 hours, and those are things that you were forwarding on to  
18 Mr. Foster and hoped that he would be able to act with this  
19 specific request, right?

20 A. Yeah. I actually had contacted the defense and  
21 Mr. Kammen's office to find out where these vouchers were  
22 because they were missing from the information that I had  
23 received from Mr. Toole, is my recollection as I sit here

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1 today. And Mr. Toole somehow found out that I had called  
2 Mr. Kammen's office and the defense, and he became very  
3 distressed about that.

4 Q. And you -- do you know -- and if I was to tell you  
5 that Mr. Kammen never ran out of hours and it never required  
6 any action by the convening authority to grant funding, would  
7 that surprise you?

8 A. I have no frame of reference to be surprised or not  
9 surprised by that statement.

10 Q. Do you know whether or not Mr. Kammen required  
11 additional hours beyond his set allotment?

12 A. As I sit here today, I could not tell you.

13 Q. So as the sole legal advisor on this issue for  
14 Mr. Kammen's hours, you have no recollection of the outcome of  
15 that issue?

16 A. I think all of the memorandum and proposed decisions  
17 for the convening authority to act upon that I forwarded up to  
18 Mr. Foster, they never came back.

19 Q. So you weren't getting from Mr. Foster any responses,  
20 or at least anything that indicated that the Deputy Secretary  
21 of Defense was going to be taking on the role not as the  
22 convening authority but acting as the convening authority for  
23 requests; is that correct?

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1           A.    No.  My conversations with Jason Foster was, can  
2 you -- can your office act as a liaison between the military  
3 commission's Office of the Convening Authority and the  
4 Secretary of Defense himself to get these  
5 time-is-of-the-essence issues in front of him since he was, by  
6 operation of law for that period of time, the convening  
7 authority for al Nashiri.

8           Q.    And soon after Mr. Foster shared with you that he  
9 would not be involved in that role, nor would the Deputy  
10 Secretary of Defense because there was going to be a convening  
11 authority that would be appointed and sent to the Office of  
12 the Convening Authority; is that correct?

13          A.    No, that's not correct.  In all my -- sorry.

14          Q.    Did Mr. Foster let you know that the Deputy Secretary  
15 of Defense and Mr. Foster would not be fielding these types of  
16 requests?  Isn't that correct?

17          A.    No.  Initially, in my communications with Mr. Foster,  
18 he said sure, we'll do that, no problem.  I'll take it.

19                And I then -- I said, great.  And then as more  
20 requests came in from the defense on al Nashiri, I acted upon  
21 them, forwarded them to Mr. Foster in conjunction with my  
22 understanding in the conversation I had had with him about it,  
23 that he would be the -- his office would be a liaison for us

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1 until -- until a convening authority was appointed for  
2 al Nashiri, that they would continue to do this. And then I  
3 kept calling and e-mailing him because nothing was coming back  
4 over a period of days -- days and I guess a couple of weeks.

5           And I finally got a response from him that was a  
6 180-degree turn-around from what he had told me initially. He  
7 said words to the effect, I never read any of the documents  
8 you gave me, I never opened the attachments, I shoved them all  
9 in a folder, never forwarded them on to the Secretary of  
10 Defense. I took no action, I know nothing about this.

11           Q. So that should and did communicate to you that  
12 Mr. Foster wasn't going to be involved in the role of legal  
13 advising or facilitating requests to the Deputy Secretary of  
14 Defense, correct?

15           A. Yeah, after he told me he would. And I kept  
16 sending -- and he kept saying, just send them to me. All of a  
17 sudden, the story changed.

18           Q. Now, one of the things -- Mr. Gill, one of the things  
19 that we were just discussing that you did send to Mr. Foster  
20 was this request for hours. What I'm going to show you  
21 is ----

22           MJ [Col SPATH]: Hang on. Let me just -- have you shown  
23 that to the CSO yet?

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1 ATC [LT MORRIS]: These are -- what my request is, and I  
2 had spoken earlier, is that these just be transmitted to  
3 Mr. Gill. This is a memorandum to file with his signature on  
4 it, and I would ask that this not be transmitted beyond  
5 Mr. Gill.

6 MJ [Col SPATH]: And -- yes.

7 ATC [LT MORRIS]: Defense has been previously provided  
8 this discovery. It's Bates 130560 and '562 and that's in  
9 Production 124 given to the defense on 24 June, Your Honor.

10 MJ [Col SPATH]: I appreciate that. Can you, just as we  
11 would in court, it would be easier, if you're going to show  
12 the witness, show the defense. You do that, I'm just going to  
13 chat with the CS0. I think this will be easy to do to  
14 transmit to the witness and we'll just work from there.

15 Counsel, your plan will work just fine. You can  
16 transmit them to Mr. Gill and they're going to show myself and  
17 you and defense counsel.

18 ATC [LT MORRIS]: I have shown the document to defense  
19 counsel, Your Honor, and I would ask that these documents be  
20 marked as the next Appellate Exhibit in order and also ask, as  
21 I just shared, that this only be transmitted to Mr. Gill.

22 WIT: Your Honor, can I just have a clarification? Are we  
23 maintaining the attorney-client privilege on these documents;

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1 is that what's going on?

2 MJ [Col SPATH]: We are currently going to show them to  
3 you and hear what the question is. And then, if you have an  
4 issue, as I stated before, you're going to let me know. If  
5 you don't have an issue, answer the question, and we'll work  
6 from there.

7 WIT: Thank you.

8 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

9 Q. Mr. Gill, I'm going to put in front of you a  
10 memorandum that you wrote and signed dated 11 March. I'd ask  
11 that you look at it and tell me if it's familiar. Can you see  
12 that first page?

13 A. I see nothing.

14 MJ [Col SPATH]: Just give us a second, Mr. Gill. This is  
15 Colonel Spath.

16 WIT: Oh, I can see it. I'm sorry. I was starting to  
17 read it, Your Honor.

18 MJ [Col SPATH]: No, take your time. Let counsel know  
19 when you're done looking at it.

20 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

21 Q. Mr. Gill, I'm going to show you the entirety of this  
22 three-page with your signature at the end and then we'll come  
23 back to this first page. This is the first page of the

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1 memorandum, the second page, and the third page with your  
2 signature. Do you see your signature and recognize that as  
3 your signature?

4 A. Yes. I had a -- an electronic signature, I believe  
5 that's it, that I would drag on to a document in Word, and it  
6 would -- it would appear as a picture.

7 MJ [Col SPATH]: And just for the record, this document's  
8 going to be Appellate Exhibit 332HH.

9 Q. At the top of 332HH I direct your attention to line 1  
10 where you ----

11 A. Well, can I just read the whole document instead  
12 of -- so I know what this is before you ----

13 MJ [Col SPATH]: Mr. Gill, first answer the questions  
14 you're asked. If you want to follow up, counsel may, and  
15 Mr. Kammen will have an opportunity to follow up as well.

16 Q. Do you see in that first paragraph, it's -- you say  
17 that this is in response to Richard Kammen's request for 1,000  
18 hours of additional funding, correct?

19 A. Yes.

20 Q. And this was that one -- and this is what we're  
21 talking about?

22 LDC [MR. KAMMEN]: Excuse me. Is there some reason we  
23 can't see the witness? I don't know how the -- how this

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1 works, but we can't see the witness, and ----

2 ATC [LT MORRIS]: What I can do, Your Honor, is just  
3 address the substantive matter. There's three other  
4 questions, and then I can go back to the witness.

5 MJ [Col SPATH]: I understand. And Mr. Kammen, you  
6 know -- I mean, this is a preliminary pretrial hearing. We  
7 will see the witness soon. Okay. Even better.

8 LDC [MR. KAMMEN]: I didn't know if it was because he was  
9 showing him something and this was a defect in the system or  
10 there's some other problem.

11 MJ [Col SPATH]: I'm confident we'll find some defects in  
12 any system we're using. You can keep going, Trial Counsel.

13 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

14 Q. Can you still see the document, Mr. Gill?

15 A. Yes.

16 Q. On the paragraph 1, in regards to Mr. Kammen's hours,  
17 you state that this is not a recommendation, but rather, it is  
18 a mere exemplar for informational purposes only. Do you see  
19 that?

20 A. Yeah, I believe I'm referring to the contract itself.

21 Q. On page 2, in regards to the recommendation, you  
22 state, none. Do you see that?

23 A. I do.

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1 Q. And in the tabs, you have the e-mail chains with the  
2 emergency requests. You have all of the tabs that you were  
3 hoping to package on to the DEPSECDEF for Mr. Kammen to get  
4 funded, correct?

5 A. I'm reading it. I see it, yes. What was the  
6 question, I'm sorry?

7 Q. It was your hope that you packaging this information,  
8 sending it to Mr. Foster, that the Deputy Secretary of Defense  
9 would act on this packet and fund Mr. Kammen. That was your  
10 purpose of sending it to Mr. Foster, correct?

11 A. Yeah. Must have been.

12 Q. And you sent this on -- or you wrote this memorandum  
13 on 11 March, that same week that you were identified as the  
14 sole legal advisor for al Nashiri, correct?

15 A. No. Well, yeah, this was during -- this was during  
16 the time that there was -- this -- can you see me? I'm sorry.  
17 This was during the time when I still was not 100 percent  
18 clear, based on that language in Mr. -- I'm sorry, in Judge  
19 Spath's order where it said people outside -- legal advice  
20 from folks outside the current office. And so that's why I  
21 used the term pro tempore, it was like, yeah, temporary for  
22 the moment because there's no one else who can do this. At  
23 that time I still was not sure if the order applied to me or

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1 not, which I talked about in the direct examination.

2 Q. So there's this ----

3 A. That may be why I couched it in terms of, hey, this  
4 may or may not be legal advice because I didn't -- I wasn't  
5 sure.

6 Q. So this period of 4 March until you wrote this  
7 memorandum, it's fair to say that at the Office of the  
8 Convening Authority that people were adjusting to the  
9 commission's order and trying to figure out whose role was  
10 what and at the same time how to facilitate any requests that  
11 would be incoming; is that a fair statement?

12 A. Part of it is. It was kind of a long, conjunctive  
13 statement. I -- not all of it is correct.

14 Q. You would agree that on 4 March when Judge Spath  
15 wrote the order, there was an instant acknowledgement and  
16 recognition and awareness on how to proceed and this caused  
17 everything to come to a halt on 4 March, correct?

18 A. One more time?

19 Q. If all of your colleagues on 4 March shared that upon  
20 Colonel Spath's ruling in 332, that this caused everything to  
21 come to a halt initially on what to do and who was going to be  
22 acting on the al Nashiri case, that you would agree with your  
23 colleagues that that was the state of -- that was the state of

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1 people's duties or lack of duties in the week following  
2 Colonel Spath's ruling?

3 LDC [MR. KAMMEN]: Excuse me. I have to object.

4 WIT: I don't understand the question. I'm sorry.

5 LDC [MR. KAMMEN]: And I have to object. Because as I  
6 understand the question, it assumes facts not even close to  
7 being in evidence about what other people assumed and what  
8 other people thought. And the people he's referencing are the  
9 same people that he won't let us have as witnesses, so we  
10 object.

11 MJ [Col SPATH]: All right. You can certainly revisit it  
12 if that issue becomes something important. Your objection is  
13 overruled because the witness made clear he didn't understand  
14 the question. You may ask another question.

15 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

16 Q. When the judge ruled on 4 March, there was  
17 discussions in which it was determined that you'd be the sole  
18 legal advisor, correct?

19 A. Not as such.

20 Q. It was determined that the precluded legal advisors  
21 from the judge's ruling would not be involved in the Nashiri  
22 case, correct?

23 A. No.

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1 Q. Now, there was no acting convening authority acting  
2 on any requests up until Mr. Oostburg Sanz got there on 23  
3 March, correct?

4 A. Well, no. By operation of law and the judge's  
5 ruling, the Honorable Ashton Carter was the convening  
6 authority for that time.

7 Q. I'll rephrase the question. It wasn't there was a  
8 convening authority from 4 March until 23 March, but that  
9 there was no action taken on any matters for al Nashiri from 4  
10 March until Mr. Oostburg Sanz got there after 23 March,  
11 correct?

12 A. If I understand the question, the answer is no.

13 Q. That was made abundantly clear to you when Mr. Foster  
14 said, not only have I not read your e-mails but we're not  
15 going to take any action on any of your requests, correct?

16 A. No, it was not abundantly clear. It was exactly the  
17 opposite.

18 Q. Well, nothing ----

19 A. There was clarity before and then he said that, and  
20 that -- then I didn't know what -- obviously -- obviously  
21 somebody ----

22 Q. Mr. Gill, and I'll make it ----

23 A. ---- somebody said something and the story changed.

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1 Q. It's best if we don't talk ----

2 A. I'm sorry to answer this, Counsel, but that's the  
3 answer.

4 Q. Right. But it helps when you answer to understand  
5 the question and I'll try and give you a question that's  
6 straightforward that you can answer straightforwardly.

7 From 4 March -- and tell me if you don't understand  
8 my question. But ----

9 A. I haven't.

10 Q. ---- as straightforward as I can be, from 4 March  
11 until Mr. Oostburg Sanz got there on 23 March, there was no  
12 convening authority action on funding any resources in the  
13 al Nashiri case, correct?

14 A. Oh, in the al Nashiri. That sounds correct, yes. If  
15 I understand the question right, the answer is yes.

16 Q. So ----

17 A. Before the convening authority, there is no convening  
18 authority action.

19 Q. So before Mr. Oostburg Sanz got there on 23 March,  
20 there were some measures that were taken into place in order  
21 to, you know, find a way to work within Colonel Spath's -- the  
22 judge's order, correct?

23 A. Can you reask that question.

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1 Q. Let me ask you specific questions to help you with  
2 clarity. Ms. Donna Wilkins -- the judge's order came out, I  
3 think it was on Wednesday, on 4 March. On 9 March, which was  
4 a Monday, Ms. Donna Wilkins circulated an e-mail saying that  
5 she was going to be making separations between the al Nashiri  
6 case and other military commission cases, correct?

7 A. I don't know the date, but if you represent to me  
8 that that's the date and there's an e-mail that says it, then  
9 I would say that would be the dates it occurred.

10 Q. You remember that it was soon after, correct?

11 A. Well, I don't know what soon is, but it was -- I  
12 mean, we had an oral ruling days before the written ruling,  
13 and then at some point, if you're saying the 9th, and that's  
14 really seven days after the oral ruling, a week -- is a week  
15 soon? I don't know. But eventually, Donna Wilkins said, yes,  
16 she was going to attempt to do a segregation.

17 Q. And you're attempting to reach out to Mr. Foster to  
18 see if that was the avenue in which funding was going to take  
19 place for al Nashiri matters, correct? We just established  
20 that, correct?

21 A. I was reaching out to him for everything. He had  
22 told me that he -- [audio interrupted] between our office and  
23 the Secretary of Defense until such time as a -- another

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1 convening authority was appointed to handle al Nashiri.

2 Q. Now, the only other request that had come in during  
3 that time was -- and you referenced this in your e-mail to  
4 Mr. Foster, was the judge's ruling for funding in 145F. Does  
5 that sound right?

6 A. Judge's ruling for funding in 145F. I have no frame  
7 of reference of what you are asking me.

8 Q. Well, I'm asking from the period of 4 March until 23  
9 March when Mr. Oostburg Sanz got there -- I'm just trying to  
10 figure out what exactly you were doing in giving legal advice  
11 and we have, you know, covered Mr. Kammen, which you weren't  
12 giving legal advice, you were just trying to facilitate him  
13 getting paid and packaging that and sending it up to  
14 Mr. Foster. He tells you that I'm not going to do anything on  
15 it. And then the second item that happened ----

16 A. No, that's not correct.

17 Q. Was it a judge -- well, let me just ask you about  
18 this second item?

19 LDC [MR. KAMMEN]: Excuse me, if I may. First, the  
20 question is argumentative.

21 MJ [Col SPATH]: It is.

22 LDC [MR. KAMMEN]: Secondly, the question misstates what  
23 332HH says because it's at the very top ----

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1 MJ [Col SPATH]: We don't need argument. I understand the  
2 objection. Your objection to the phrasing of the question is  
3 sustained.

4 LDC [MR. KAMMEN]: Thank you.

5 MJ [Col SPATH]: You may re-ask your question, Trial  
6 Counsel.

7 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

8 Q. I would ask that, like before, I'll show defense  
9 counsel this document. It's an e-mail from Mr. Gill to  
10 Mr. Foster. It cc's Mr. Sheeran, Ms. Robinson, Ms. Chen,  
11 Mr. Roberson, and also show this document to defense, ask that  
12 it be marked in the next Appellate Exhibit.

13 MJ [Col SPATH]: You may do that. It's going to be 332II.  
14 Mr. Gill, just bear with us. We're going to go through the  
15 same process. They're going to show the document here and  
16 then we'll transmit it to you on the computer so you can see  
17 it.

18 WIT: Yes, sir.

19 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

20 Q. Mr. Gill, can you see the document that's in front of  
21 you?

22 A. Yes.

23 Q. Do you recognize that's from your address at the

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1 military office at the Office of the Convening Authority?

2 A. It looks like it, yes.

3 Q. It's to Mr. Foster sent 9 March, the Monday following  
4 the judge's ruling, correct?

5 A. I'm reading it. Yes, I see it and I recall, my  
6 recollection is refreshed after reading this, there had  
7 been -- uh-oh, should I -- I'll wait for the question. I'm  
8 sorry.

9 Q. Your recollection has been refreshed?

10 A. Yes, within the parameters of that document, yes.

11 Q. So with your communication to Mr. Foster, there were  
12 two items and only two items that were on your plate, if you  
13 will, to try and obtain funding for; is that correct?

14 A. In al Nashiri?

15 Q. In al Nashiri, yeah. And my questions ----

16 A. Yes. I had other cases going, but yes.

17 Q. Mr. Gill, yeah, we're going to focus the questions on  
18 specifically the al Nashiri case.

19 So those were the two items and the only two items  
20 that were on your plate for Mr. al Nashiri, correct?

21 A. Those were the only ones that were addressed in that  
22 e-mail. I don't know if there was a third one. I keep  
23 thinking that there were -- you know, as I sit here and try to

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1 think back on what there was, it seems to me that there were  
2 three items, possibly four, that had come in during that time.

3 So there were at least two, and then the one  
4 regarding Mr. Kammen's hours being increased. What -- yep.

5 Q. And at some point you had received e-mails directly  
6 from the defense on requests, ex parte requests from the  
7 defense for funding of specific items, correct?

8 A. Yes, and I remember what had happened after -- my  
9 recollection was refreshed after looking at that. General  
10 Ary ----

11 Q. You know, Mr. Gill, just ----

12 A. ---- ceased taking any action so these things were  
13 just kind of getting stale, they were sitting around and the  
14 clock was running on them and Mr. Ary was refusing to take any  
15 action going into the UI motion. I believe that was the case.

16 Q. And there was this staleness or this clock ticking up  
17 until Mr. Oostburg Sanz got there on 23 March?

18 A. Well, yeah, the clock is always ticking regardless of  
19 who gets there. The clock is always ticking. Doesn't matter  
20 who is there.

21 Q. Now, when Mr. Quinn got there on 6 April and then was  
22 officially appointed as the legal advisor the following week,  
23 he took additional measures to make clear distinctions between

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1 al Nashiri and the other military commission cases; isn't that  
2 correct?

3 A. He made -- yes, he made statements that that's what  
4 he was doing.

5 Q. Well, let's go through the subsequent ----

6 A. I said before that it wasn't actually happening.

7 Q. Mr. Gill, it will work better if I ask clear  
8 questions and you answer my questions in terms of the time  
9 that we have.

10 The question is: Mr. Quinn, when he arrived, he  
11 created an e-mail distribution list that was for both the  
12 defense and the prosecution that were only specific to certain  
13 individuals, including yourself?

14 A. Yes, that wasn't effectuated with regard to the  
15 al Nashiri MRI motion, but, yeah, he put out an e-mail that  
16 said that.

17 Q. My question is much simpler. So Mr. Quinn set that  
18 up on his first week when he arrived there, and sent e-mails  
19 out to both the defense and the prosecution to let them know  
20 that should any al Nashiri matters need to be addressed, that  
21 this was the e-mail to be -- for both parties to send those  
22 requests to; do you recall that? And you were on that e-mail,  
23 Samantha Chen was on that e-mail, Mr. Quinn was on that

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1 e-mail, but as a legal advisor, you and Mr. Quinn were the  
2 only attorneys on that; is that correct?

3 A. Perhaps if you showed me the document, I could answer  
4 the question. You're asking me to remember something that  
5 happened over a year and a half ago, and what the contents of  
6 an e-mail was and who was on it.

7 Q. Well, really what I'm getting at is here you are up  
8 until 6 April, and it's your testimony that you were  
9 concerned, and that you were in these heated conversations  
10 with Mr. Toole, and then what I'm asking you is, somebody  
11 comes in from the outside and is taking these very clear steps  
12 to wall things off and you're saying you have no recollection  
13 of these things. So what I'm asking you is the ----

14 A. I didn't say that, counsel. Please don't, you  
15 know -- argue back what I just said when I didn't say that.  
16 If you want to read the record back, I did not say that.

17 Q. Do you recall, yes or no, if a separate e-mail --  
18 distribution e-mail was presented -- created and presented to  
19 both the prosecution and the defense for al Nashiri related  
20 matters, yes or no?

21 A. There was an e-mail that came out at some point after  
22 Mr. Quinn got there that I understand he generated. I don't  
23 know where -- who it went to because it's a year and a half

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1 later and you haven't shown me the document.

2 If this fact can be established by an e-mail, why am  
3 I being asked the question?

4 Q. Well, your ----

5 MJ [Col SPATH]: Hold on. Mr. Gill, stop. Mr. Gill, I  
6 don't need you to comment, either. I appreciate your last  
7 answer, and I -- I respect that, but what I don't need you is  
8 commenting on the cross-examination that's underway.

9 You may ask another question, Trial Counsel.

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

11 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

12 Q. When Mr. Quinn got there, he put into place a number  
13 of additional factors to communicate very clearly, including  
14 an e-mail to you and the other legal advisors of the  
15 individuals that were on the al Nashiri case, which is you,  
16 and that to take care in communications and in actions to not  
17 violate the clear judge's order; you recall that e-mail,  
18 right?

19 A. I'm sure there was. He was telling me what I already  
20 knew and had been saying for weeks.

21 Q. You recall as well that there were separate meetings  
22 with the convening authority, with Mr. Oostburg Sanz, in which  
23 other military commission cases that you weren't there would

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1 be briefed to the convening authority at the weekly meeting  
2 and then the other legal advisors would depart, you would stay  
3 behind, and with a separate tracker, anything that needed to  
4 be briefed to the convening authority would then be done at  
5 that point; you recall that, correct?

6 A. Oh, yes. Yes, Mr. Oostburg Sanz was well protected  
7 from what was going on. I have no claim that Mr. Oostburg  
8 Sanz did anything wrong.

9 Q. So from 23 March when Mr. Oostburg Sanz arrived there  
10 and when Mr. Quinn got there with the additional prophylactic  
11 measures, that there was abundant clarity, especially during  
12 the meetings on who was and who was not, between you and  
13 Mr. Oostburg Sanz, legally advising on Mr. al Nashiri,  
14 correct?

15 LDC [MR. KAMMEN]: Excuse me, Your Honor, I object to the  
16 form of the question. It assumes about a dozen facts that are  
17 not in evidence.

18 MJ [Col SPATH]: Again, I don't need additional comment,  
19 but I appreciate the objection. The objection is sustained as  
20 to the form of the question.

21 Trial Counsel, you need to shorten the questions and  
22 rephrase.

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

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1 Q. After 23 March, even with these additional measures,  
2 you did not provide any legal advice to -- or have any matters  
3 before you from 23 March until you were returned to the Navy  
4 on 28 April; for that month and five or so days, you did not  
5 provide any written, legal advice to the convening authority  
6 during that time, correct?

7 LDC [MR. KAMMEN]: Excuse me. I have to object because it  
8 assumes that there were some prophylactic measures of which we  
9 have heard no evidence.

10 MJ [Col SPATH]: The question did not. The question was  
11 just did this witness provide legal advice during that month  
12 period. Objection overruled.

13 WIT: As to al Nashiri, I don't recall, but I was working  
14 on other cases.

15 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

16 Q. That's right.

17 A. And I was providing legal advice in other matters  
18 to -- I don't know if it ever got to the convening authority.  
19 I was giving it to Mr. Toole.

20 Q. This is, you know, specific and, as you know, this  
21 hearing is specific to al Nashiri, and so the questions that  
22 I'm asking you are specific to the accused in this case,  
23 Mr. al Nashiri.

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1           So, again, my question, from 23 March when  
2 Mr. Oostburg Sanz arrived until you were returned to the Navy  
3 on 28 April, you did not provide, to the best of your  
4 recollection, any written advice on any matters to  
5 Mr. Oostburg Sanz as a legal advisor during that time,  
6 correct?

7           A.    As to al Nashiri ----

8           Q.    As to al Nashiri?

9           A.    ---- probably, yeah.   Probably, yeah.

10          Q.    Before that, the only two items that you handled, as  
11 we just previously discussed, was the -- trying to facilitate  
12 hours for Mr. Kammen, and then the trying to facilitate the  
13 judge's funding of orders in his 145F order, correct?

14          A.    Well, I'm confused, because when I previously tried  
15 to say that I was -- you were trying to say I was providing  
16 legal advice and they said I was a facilitator and they said  
17 no, you're a legal advisor, and now you're saying I'm a  
18 facilitator.   So I don't know what -- I don't know what you're  
19 asking me, sir.

20          Q.    What we're getting at is what the universe of what  
21 your contributions in the al Nashiri case was.   And so you've  
22 shared with us that your contributions from Mr. Oostburg Sanz  
23 arriving there in 23 March onward until your departure date

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1 was zero, and before that ----

2 A. No, actually -- you know what? That's not correct.  
3 I just recalled. I actually had meetings with Mr. Quinn about  
4 the MRI motion. So I did discuss it with Mr. Quinn and was  
5 working on something. In fact, I recall, he directed me to --  
6 now, this is coming back to me. He directed me to a  
7 memorandum that had been written by a prior legal advisor, and  
8 I cannot recall his name, but he has a great reputation as a  
9 great legal scholar and mind in the Office of the Convening  
10 Authority. And for the life of me, I cannot recall that man's  
11 name.

12 Q. So you had provided some oral advice to Mr. Quinn.  
13 The MRI motion was an order, as you recall, from the judge  
14 ordering funding. So it wasn't a request from either of the  
15 parties, correct?

16 A. Oh, right. At that point it had become -- at some  
17 point it had become an order. You heard me testify about that  
18 on the direct.

19 Q. Correct. So it was just a matter of finding how to  
20 actually implement his Honor's order?

21 A. Right. I remember looking into if we can try and  
22 find out if we have the USS COMFORT, the Navy hospital. But  
23 we learned they did not have the MRIs onboard those vessels

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1 due to the sensitivity of the equipment, apparently.

2 Q. So it's your testimony here today -- we're going to  
3 pivot here towards your separation. It's your testimony that  
4 you believed you were being returned to the Navy on 28 April  
5 due to the allegations that you are raising in the Office of  
6 the Convening Authority about the judge's order not being  
7 followed. Is that your testimony here today?

8 A. My testimony is that the reason that I was given was  
9 a pretext for the real reason, which was my three complaints  
10 up the chain of command to the ongoing, pervasive violation of  
11 the judge's order.

12 Q. So that you had -- and those violations, pre-Oostburg  
13 Sanz, are your interactions with Mr. Toole, which you  
14 testified that after you went and made a complaint, that his  
15 bringing up matters in the meeting ceased at some point,  
16 correct?

17 A. I don't understand the question. And if I do, the  
18 answer is no. You're misstating my testimony.

19 Q. Okay. So at some point, you said that you raised a  
20 concern that Mr. Toole, prior to Mr. Quinn's arrival, was  
21 bringing up al Nashiri matters in legal advising meetings; and  
22 that after you had raised that concern with your chain of  
23 command that, within those meetings with all of the legal

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1 advisors, Mr. Toole's alleged bringing up these Nashiri  
2 matters ceased. That's your testimony, correct?

3 A. No. I don't understand the question.

4 Q. Okay. Now, in -- let's just -- so we can, you know,  
5 focus in on the -- your belief that this is why you were  
6 relieved -- or returned to the Navy, these allegations are  
7 being fully handled and being reviewed now in a district court  
8 in federal court in the Eastern District of Massachusetts; is  
9 that correct?

10 A. No, that's not correct.

11 Q. That you have a whistle-blowing claim currently  
12 pending in the Eastern District of Massachusetts, or filed  
13 this last month; isn't that correct?

14 A. No, that's incorrect. Most of the things you just  
15 said is incorrect.

16 Q. Okay.

17 A. I'll be happy to explain if you want me to or I can  
18 wait for another question.

19 Q. That you filed with the United States District Court,  
20 District of Massachusetts, Eastern Division you sued the  
21 United States by and through the Honorable Ashton Carter,  
22 Secretary of Defense, Honorable Raymond E. Mabus, Secretary of  
23 the Navy, and filed 6/27 of '16; is that correct?

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1           A. I thought it was June 28th that I filed my  
2 declaratory action to ask the court to clarify the parties'  
3 rights and to explain the meaning of the statute under the  
4 circumstances. As I had testified before, there is no private  
5 right to a, quote/unquote, whistleblower claim in federal  
6 court. I am not seeking damages, money damages, anything like  
7 that.

8           I'm asking the court to clarify, in a declaratory  
9 judgment under the Declaratory Judgment Act, to explain to the  
10 parties what the rights of the parties are with respect to  
11 that statute, 10 U.S.C. 1034, which is the whistleblower  
12 statute, under the circumstances of this case, including what  
13 is the triggering date of the statute of limitations to file  
14 an IG complaint in -- with the DODIG.

15          Q. And you're also asking for them to provide what the  
16 remedies are; isn't that correct?

17          A. Provide what the remedies -- I don't think so. The  
18 complaint speaks for itself. I don't know that you understand  
19 what my complaint is, so it's hard for me to answer your  
20 question.

21          Q. You are alleging specific facts in that -- that  
22 revolve around this specific subject matter; is that correct?

23          A. Yeah, I've said that over and over. I'm asking the

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1 court to declare the rights of the parties as they apply to  
2 that statute under the facts and circumstances presented in  
3 this situation.

4 Q. In fact ----

5 A. I think that's the fourth time I've said that now.

6 Q. So you're suing the United States. You have another  
7 lawsuit against the Commonwealth of Massachusetts for an  
8 unrelated matter but in the same court; is that correct?

9 A. Yes.

10 LDC [MR. KAMMEN]: Objection, irrelevant.

11 MJ [Col SPATH]: Trial Counsel.

12 ATC [LT MORRIS]: This goes to what will become, and as I  
13 ask the questions, at the heart of his SF-86, where it  
14 requires you to put in your civil litigation that you're  
15 involved with. And what I hope to establish is that -- if  
16 Your Honor allows me the leeway, is that Mr. Gill is an  
17 individual that not just in the last month has filed two  
18 lawsuits in the Eastern District of Massachusetts, one suing  
19 the United States and the other suing the Commonwealth of  
20 Massachusetts, within last ten years has filed upwards of  
21 eight civil matters, which was a stated reason for  
22 Mr. Sheeran -- then-Colonel Sheeran's concern of his ability  
23 to obtain a security clearance.

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1 MJ [Col SPATH]: So the relevance?

2 ATC [LT MORRIS]: Is his bias.

3 MJ [Col SPATH]: That -- all right. At least that's the  
4 argument. Mr. Kammen.

5 LDC [MR. KAMMEN]: Obviously, his lawsuit perhaps related  
6 to this matter goes to bias. Lawsuits he filed against  
7 whoever else he sued would hardly go to bias against the  
8 United States unless the United States or the Office of  
9 Convening Authority was a defendant in those cases.

10 MJ [Col SPATH]: I can see the argument. We know bias is  
11 supposed to be liberally construed and allowed. I'm letting  
12 it in under M.C.R.E. 104, preliminarily. It will help me. It  
13 will assist me. Again, if it's not helpful, it's just a short  
14 waste of time, but I understand what you are saying, Trial  
15 Counsel, and you may proceed.

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

17 Q. Did you understand my question or would you like me  
18 to ask it?

19 A. I'm just going to try to answer it instead of having  
20 to have you rephrase again.

21 Q. It's a simple, Mr. Gill, yes-or-no question. Last  
22 month are you suing ----

23 A. No, it's not. It absolutely is not a simple

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1 yes-or-no question.

2 Q. Well, let me make the question simple then. Last  
3 month, did you sue the Commonwealth of Massachusetts in  
4 regards to your involvement in state politics? Yes or no.

5 A. Yes. Yes. I would not have disclosed that on an  
6 SF-86 a year and a half ago because the lawsuit did not exist.

7 Q. Okay. And you are correct there and we'll get into  
8 your SF-86 here in a moment.

9 But you filed a FOIA request after the motions were  
10 filed back and forth to get the underlying attachments of the  
11 motion in 332Y; is that correct?

12 A. I don't know what the attachments are.

13 LDC [MR. KAMMEN]: Again, what is the relevance? I mean,  
14 you know, we're in a situation where ----

15 MJ [Col SPATH]: Mr. Kammen, first, it's cross, it's in a  
16 motion session, and it's bias. He's trying to figure out if  
17 the witness is trying to get documents underlying 332, the  
18 unlawful influence motion that led to the declaratory action  
19 he filed. I don't know if that's accurate or not. I just  
20 know that's where trial counsel is going. Pretty standard  
21 cross-examination. Objection overruled.

22 You may proceed.

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

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1 Q. Did you file a FOIA request to get the government's  
2 motion in 332Y, specifically those portions that had been  
3 filed under seal?

4 A. I have -- I made a number of FOIA requests,  
5 starting -- starting in -- I think in May is when I sent the  
6 first one, trying to find out information on -- to get to the  
7 bottom of this situation, and I -- the Navy has never -- and  
8 the DoD has never given me any of those. And interestingly,  
9 they have never actually given me a legal justification of  
10 the ----

11 Q. My question, Mr. Gill, before we get into ----

12 A. ---- of why they're withholding it from me.

13 Q. So your response to me in our interview of 22 August  
14 that you did receive information from your FOIA request but it  
15 was heavily redacted, that you did, in fact, is that not your  
16 testimony here today?

17 A. No. You're talking about a completely different FOIA  
18 request made way after this incident to the Navy Reserve,  
19 which ultimately was provided to me in April of this year.

20 Q. Mr. Gill, my -- the reason I'm asking my question,  
21 maybe we can cut to the chase, is because I want to see if  
22 you're aware of the underlying reasons for -- the underlying  
23 stated reasons for why Colonel Sheeran, you know, in his

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1 investigative inquiry for letting you go, what those  
2 underlying reasons were. Have you ever been made aware of  
3 those reasons?

4 A. I was told -- first of all, I am totally unaware that  
5 Colonel Sheeran would be the one to have made that decision.  
6 It's my understanding, based on a direct face-to-face  
7 conversation with Mr. Quinn on April 28th of 2015 in his  
8 office with Ed Sheeran standing next to me, that I was being  
9 let go because, quote, we got a congressional inquiry from  
10 your wife saying that you weren't paying child support.

11 Q. Are you aware that on 16 April, so roughly over two  
12 weeks before this conversation with Mr. Sheeran, that your  
13 wife called the Office of the Convening Authority,  
14 specifically Colonel Sheeran, and stating that she could not  
15 get an I.D. card or -- and as well that you had taken her off  
16 of her TRICARE insurance and was calling to ask for help from  
17 that, and that conversation had taken place?

18 A. What? I'm sorry. Was I aware what?

19 Q. Is this the first time you're hearing that on 16  
20 April your wife called Colonel Sheeran stating that she had  
21 concerns over you provided numerous amounts of documents but  
22 that her specific -- her specific issues that she was having  
23 that she was seeking assistance was that you had not signed a

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1 form for her to get her Navy I.D. card and that she did not  
2 have insurance on TRICARE and that -- at least allegations --  
3 but that Colonel Sheeran had received these from your wife?  
4 Are you aware of that?

5 A. If I understand what you're saying, and believe me,  
6 I'm not sure I do, my wife -- I'm aware that my -- that there  
7 was -- that there was an order in my divorce proceedings that  
8 had been going on for three years where the court of competent  
9 jurisdiction, the divorce court in Plymouth County,  
10 Massachusetts, has a temporary order in place to this day,  
11 from 2013 to date, that says that my wife is the one who is  
12 required to provide health insurance for me and my children.

13 Q. Mr. Gill, I'm sorry to interrupt you.

14 A. And that she ----

15 Q. Mr. Gill. Mr. Gill?

16 A. Yes.

17 Q. My question is much more focused and -- it's my  
18 understanding that you're in a contentious divorce with your  
19 wife; is that correct?

20 MJ [Col SPATH]: Well, let's -- I just want an answer to  
21 the first question.

22 WIT: Sure.

23 MJ [Col SPATH]: All's I need, Mr. Gill, there are a lot

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1 of facts in the question again from trial counsel that need to  
2 be broken down into individual facts with you. Here is the  
3 question: Are you aware that around 13 April she called  
4 Colonel Sheeran and made these allegations?

5 WIT: I guess I am now. Yes, I am.

6 MJ [Col SPATH]: Okay. Were you aware of that before now  
7 about that phone call?

8 WIT: I gleaned that from the information that the Navy  
9 Reserve gave me in response to my FOIA request to them which  
10 arrived, you know, months and months later.

11 MJ [Col SPATH]: Understand. Okay. Thank you.

12 Trial Counsel, you may proceed.

13 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

14 Q. Are you aware that on 20 April Congressman Keaton's  
15 office from Massachusetts also called Colonel Sheeran stating  
16 that they would be sending a congressional inquiry in regards  
17 to your wife's allegations that she had made? You were aware  
18 of that?

19 A. I'm aware of it in that it is my understanding that  
20 Colonel Sheeran, after speaking to my wife, told her to put  
21 her complaint in writing, and then it's my understanding that  
22 he also instructed her to file a congressional inquiry because  
23 my wife would not know to do that.

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1 Q. You don't know that he instructed her to do that, do  
2 you?

3 LDC [MR. KAMMEN]: Excuse me. Argumentative.

4 MJ [Col SPATH]: Argumentative, sustained. Rephrase.

5 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

6 Q. You shared with me in our interview of 22 August, you  
7 based that on the timeline; isn't that correct?

8 A. I based that on the response that I got to my FOIA  
9 request to the Naval Operational Support Center, Norfolk,  
10 Virginia, and my wife's own letter to Colonel Sheeran  
11 following the phone call and a -- what appears to be a letter  
12 from Congressman William Keating of Massachusetts.

13 Q. Now, you're aware that the ultimate stated reason  
14 without, you know, understanding all that was going on with  
15 phone calls between your wife and Colonel Sheeran and a  
16 congressional inquiry, that was coming into the office of the  
17 convening authority, you were aware what their stated reason  
18 was that they had some concerns over your security clearance;  
19 isn't that correct?

20 LDC [MR. KAMMEN]: Judge, I have to object to the form of  
21 the question. It is so broad that it is virtually not  
22 intelligible.

23 MJ [Col SPATH]: Trial Counsel, you need to cut out the

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1 intro to the question and just ask the question.

2 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

3 Q. You had a conversation with Colonel Sheeran and  
4 Mr. Quinn approximately on 28 April in which they let you know  
5 why you were being sent back to the Navy, correct?

6 A. They gave me a reason why they were sending me back.

7 Q. And you were aware that there were concerns over your  
8 ability to obtain a security clearance, correct?

9 A. Yes. And as I stated in my e-mail to General  
10 Martins, I think that they are incorrect.

11 Q. Now that you had -- you thought that it was incorrect  
12 that your boss would have concerns over your security  
13 clearance; is that what you're saying, Mr. Gill?

14 A. No.

15 Q. Okay. Well, before you even got to the Office of the  
16 Convening Authority, you yourself had significant concerns,  
17 and I'm talking about in December of 2014, about your ability  
18 to obtain a security clearance, correct?

19 A. I had significant concerns?

20 Q. I'm asking, did you have significant concerns in  
21 December of 2014, about your ability to obtain a security  
22 clearance?

23 A. Not significant, no. I had concerns.

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1 Q. And you were aware, as you testified before, that you  
2 needed to obtain a security clearance as had been shared with  
3 you by the JAG in order to have the job of legal advisor at  
4 the Office of the Convening Authority, correct?

5 A. On paper. But in practice at the OMC, they -- it  
6 didn't seem to be a big deal for the time that I was there.

7 Q. I'm asking about ----

8 A. In fact ----

9 Q. I'm asking about in December of 2014, you were aware  
10 that you needed a TOP SECRET clearance, correct?

11 A. Well, I was under the impression that I needed an  
12 interim anyway, and I felt that I would be able to get that  
13 based on my prior TS/SCI that I already had.

14 Q. You said you had some concerns about your ability to  
15 get a clearance, correct?

16 A. Yeah, I -- as -- I'm concerned. My wife has been on  
17 a campaign to ----

18 Q. I'm going to ask some specific questions, Mr. Gill.

19 A. Can I answer the question?

20 Q. Well, your yes that you were concerned came through  
21 loud and clear.

22 A. My wife has been making a number of false allegations  
23 against me which cause me concern.

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1 Q. So you had reached out to your wife's mother to tell  
2 her in December of 2014 to drop the restraining order because  
3 you would not be able to obtain a security clearance that you  
4 needed to continue your Navy Reserve career; isn't that  
5 correct?

6 A. No, that's incorrect.

7 Q. Okay.

8 ATC [LT MORRIS]: Your Honor, I ask that this be marked as  
9 the next appellate exhibit. This is -- has been previously  
10 provided to the defense, and as well to Your Honor. It's  
11 Attachment M in 332Y.

12 MJ [Col SPATH]: If it's already an attachment, we don't  
13 have to mark it as an additional appellate exhibit. Just make  
14 sure you identify where it comes from and make sure you show  
15 defense counsel if you are going to show the witness.

16 Just again, if you would identify clearly where it  
17 comes from. I know you said Attachment M.

18 ATC [LT MORRIS]: This is Attachment M of 332Y, Your  
19 Honor. I'd ask -- I have shown this to defense counsel. I'm  
20 going to present this to Mr. Gill. I ask again that this be  
21 transmitted to Mr. Gill.

22 MJ [Col SPATH]: You may.

23 WIT: I see it. I'm familiar with this e-mail.

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

2 Q. This is an e-mail from yourself to Ms. -- to your  
3 wife's mother; is that correct?

4 A. No, that's incorrect.

5 Q. Who is the individual identified in this e-mail?

6 A. My wife.

7 Q. Okay. This is to your wife, and you state to her  
8 that -- your wife's last name is Mrs. Gill, correct?

9 A. I'm sorry?

10 Q. Your wife's name is Mrs. Gill?

11 A. Yes. I refer to her by her maiden name because I'm  
12 so disgusted with her behavior that I don't like the idea of  
13 her using my surname.

14 Q. And in the e-mail in disgust to your wife you say,  
15 please be sure to tell the girls that their college education  
16 would have been fully paid for, but their mother refused to  
17 drop restraining order, did not do so, consequently their  
18 father could not obtain the security clearance he needed to  
19 continue his Navy Reserve career and lost the post-9/11 GI  
20 Bill benefits that would have paid for their college education  
21 in full.

22 So in sending this e-mail, you were aware that the  
23 restraining order that you were concerned about would, as you

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1 say, not allow you to obtain the necessary security clearance,  
2 correct?

3 A. That's what it says, but that's not what -- that's --  
4 whether it's true or not is another question.

5 Q. So you weren't being truthful to your wife; is that  
6 what you are saying here?

7 A. I was trying to strong-arm my wife into retracting  
8 her false allegations against me. This -- at this point in  
9 time, I was -- I -- oh, no, I wasn't my own attorney at that  
10 point in time. No. Yeah, I was -- I was trying to use a  
11 hardball litigation tactic against an opposing party, yes.

12 Q. And you're strong-arming your wife. The date of that  
13 is 23 December, roughly two weeks before you started at the  
14 Office of the Convening Authority, correct?

15 A. Yes.

16 Q. Now, you have -- Your Honor wife has a restraining  
17 order against you at this time, correct?

18 A. Well, no, it's called a no-abuse order. It's a civil  
19 order. It's not a restraining -- it's not really a  
20 restraining order. People may colloquially refer to it as  
21 that.

22 Q. Are you prohibited from communicating with your wife?

23 A. Nope. Oh, that restraining order has been dissolved.

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1 I got it dismissed oh, god, a year ago, maybe.

2 Q. You sent another communication to your wife within a  
3 week on 29 December also expressing significant concern. I'm  
4 going to show you -- the defense counsel that and I'll come  
5 back to you.

6 ATC [LT MORRIS]: Your Honor, I'd ask that, as this is not  
7 a part of a motion, that this be marked as the next appellate  
8 exhibit.

9 MJ [Col SPATH]: It's 332JJ.

10 ATC [LT MORRIS]: I'm showing it to defense counsel.

11 MJ [Col SPATH]: Show to defense counsel.

12 LDC [MR. KAMMEN]: Can we get a copy of that at an  
13 appropriate time?

14 MJ [Col SPATH]: You may. Hopefully we can do it.

15 ATC [LT MORRIS]: Defense has already received a copy of  
16 this. This is Bates 130715 of Production 124.

17 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

18 Q. Now showing Mr. Gill what has been marked as 332JJ.

19 A. Yep. I'm fully aware. I don't need to read this.  
20 I'm fully aware of this.

21 Q. Because that's your writing, correct?

22 A. Absolutely. Yes, it is. It's on my dentist's sticky  
23 pad -- sticky pads.

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1 Q. And on your dentist's sticky pads, you say to your  
2 wife, I need to have my security clearance renewed to stay in  
3 the U.S. Navy and possibly go back to active duty. I will not  
4 pass security clearance with the restraining order in place.  
5 If I cannot pass security clearance, then no chance ----

6 MJ [Col SPATH]: Counsel, he said he remembers it. I've  
7 got it in evidence. Do you have a question about the  
8 document?

9 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

10 Q. You had significant concerns, as expressed to your  
11 wife, that you would not pass your security clearance because,  
12 in this note, of your restraining order, correct?

13 A. I did not have significant concerns, I had concerns.  
14 And again, this was another hardball litigation tactic to an  
15 opposing party.

16 Q. Another strong-arm towards your wife at the end of  
17 December?

18 A. Yes.

19 Q. Now, in January, you knew that you had to fill out  
20 your SF-86, and, in fact, you were given a deadline by WHS;  
21 isn't that correct?

22 A. I think I was, yes.

23 Q. And that by 23 March, January, February, 23 March,

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1 you still hadn't filled out your SF-86, and so -- is that  
2 correct?

3 A. I had tried to, but my password was -- these things  
4 are highly password sensitive and I could not remember the  
5 18-character password and the thing -- it locked up on me and  
6 it took me a while to actually get a new password issued. And  
7 by the way, at this time, all the trouble was going on with  
8 the -- in the office with the disqualification order and all  
9 of the difficulties I was having there, so this became a  
10 back-burner issue for me. I was more concerned about trying  
11 to get -- bring Mr. Toole in line and to have the office  
12 actually ----

13 Q. Now, Mr. Gill, my ----

14 A. ---- obey the court order.

15 Q. My question was much clearer. Before the judge's  
16 order came out on 4 March, you had opportunities to fill out  
17 your SF-86 and you did not do so, correct?

18 A. I tried to, but like I said, I had password problems.  
19 I had to go get it renewed.

20 Q. You had password problems from January 12th until 4  
21 March; is that your testimony here today?

22 A. On and off. And also, I went down to Guantanamo Bay  
23 in February so that was -- that week was lost to me to get it

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1 done as well. Yeah ----

2 Q. Colonel Sheeran on 23 March told you especially --  
3 and this is post the judge's order, especially given the  
4 situation with the legal advisors, you needed to fill out your  
5 SF-86 so you can get a TS clearance, correct?

6 A. Well, he actually said -- he actually said -- I don't  
7 know if he said exactly those words, but I do remember what he  
8 said in that discussion, now that I'm thinking about it. He  
9 said, you know, it's really good to have a TS/SCI if you want  
10 to get a civilian job in D.C. and so get it done.

11 Q. On 6 April, you still hadn't completed it, and  
12 Colonel Sheeran told you if you don't do this, we won't be  
13 able to use you here at the OCA, correct?

14 A. No, and the -- by the way, my mother, who was  
15 elderly, she was 88 years old at the time, she actually passed  
16 away in August at the age of 89, she was in a nursing home for  
17 some time and had been hospitalized. And while in the  
18 hospital for other illnesses, she fell and broke her hip and  
19 she had to have surgery. And when you put someone who is  
20 88 years old under the knife, there's a real concern they may  
21 not come out.

22 And I had asked for leave to go home to be there for  
23 the operation in case my mother died and didn't come out of

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1 the anesthesia. So I was allowed to go home on leave at the  
2 end of March into April, and I came back. So that was -- that  
3 was an unexpected family emergency that further put this issue  
4 on the back burner for me.

5 Q. And, Mr. Gill, you didn't fill out your SF-86 until  
6 15 April of 2015, correct?

7 A. I think it was the 14th of April. I think it was  
8 April 14th.

9 Q. In regards to concerns of Colonel Sheeran and their  
10 ultimate reason to return you to the Navy, your malingering in  
11 filling out your security clearance was one of them. But the  
12 second one, are you aware, was also what you -- what  
13 information you put in your SF-86?

14 A. I'm sorry, you made a statement about me malingering.  
15 Is that a question? I'm sorry, I don't understand what you're  
16 asking me. You just said I was malingering.

17 Q. Did Colonel Sheeran or Mr. Quinn share with you  
18 concerns not just about the tardiness from January until  
19 April 15th of filling out your SF-86, but also the information  
20 that you had put in your SF-86?

21 A. No. False. That's not true.

22 Q. Okay. So in your SF-86, in regards to your job with  
23 the Office of General Counsel with the Department of Veterans

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1 Services, do you recall submitting that information with your  
2 SF-86 that you, in fact, had had that job?

3 A. Probably, yeah. Yes. Probably, yes.

4 Q. Well, probably ----

5 A. I hope I did.

6 Q. Well, when it asked what jobs you had, had you worked  
7 for the Office of General Counsel with the Department of  
8 Veterans Services for Massachusetts?

9 A. There is no such office. I was the general counsel  
10 for the Massachusetts Department of Veterans Services.

11 Q. And that was a job that you had that you would have  
12 recorded on your SF-86, correct?

13 A. Yes.

14 Q. And at the end of all of the jobs that you state in  
15 your SF-86, there's a section that says, for this employment  
16 have any of the following happened to you in the last seven  
17 years: Fired, quit after being told you were going to be  
18 fired, left my mutual agreement. There's a whole list of  
19 things. And do you recall answering that question no in  
20 regards to this job, as you state, with the Commonwealth of  
21 Massachusetts Department of Veterans Services?

22 A. There is -- I currently have administrative  
23 litigation -- I don't know if it's litigation. It's

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1 administrative proceedings that are still ongoing with regard  
2 to that matter. And since it is quasi-litigation, I'd like to  
3 ask the judge permission not to have to discuss it.

4 MJ [Col SPATH]: Let me hear the next question. You don't  
5 have to -- right now the question was just -- I think it's  
6 going to be what your answer was on the SF-86, correct?

7 ATC [LT MORRIS]: Yes, and ----

8 MJ [Col SPATH]: Let's start there.

9 ATC [LT MORRIS]: Maybe we can get at this another way.

10 **Questions by the ASSISTANT TRIAL COUNSEL [LT MORRIS]:**

11 Q. You were in quasi-litigation when you filled out this  
12 SF-86 in April 14 of 2015?

13 A. Yeah, it was an administrative claim, yes.

14 Q. And nowhere in your SF-86 did you indicate, with all  
15 of the litany of options that you had to include additional  
16 information, that you were discharged or that there was an  
17 administrative claim that you were challenging your discharge  
18 from that, was there?

19 A. There is no block on there that says, do you have an  
20 administrative claim pending. It just talked about actual --  
21 the litigation you've ever filed in your life. Lawsuits.  
22 Civil matters.

23 Q. But you were fired from that job, correct?

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1 A. That depends on what you think firing means.

2 Q. Well, I'm reading what the SF-86 says. For this  
3 employment, have any of the following happened to you in the  
4 past seven years: Fired; quit after being told that you would  
5 be fired; left by mutual agreement following charges or  
6 allegations of misconduct; left by mutual agreement following  
7 notice of unsatisfactory performance. And to those questions,  
8 you answered no.

9 LDC [MR. KAMMEN]: And ----

10 WIT: Yeah. None of those questions applied.

11 LDC [MR. KAMMEN]: Your Honor, if I may, because obviously  
12 we're going to be here a while, I suppose if the court --  
13 commission rules this goes to bias that, you know, there's a  
14 point to it. But it does seem to me that none of this goes to  
15 what he observed.

16 MJ [Col SPATH]: Correct. It doesn't, but it goes to  
17 either bias or -- I'm sure counsel will point out  
18 truthfulness, individual acts that demonstrate whether or not  
19 someone is truthful. This is not me deciding. I don't have  
20 to right now. I get to sort out credibility later. But  
21 it's -- if trial counsel has a good-faith basis to ask a  
22 question that impugns whether or not somebody is truthful,  
23 counsel can do that under the rules of evidence. We all know

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1 that.

2 LDC [MR. KAMMEN]: That's true, but then -- so if it's  
3 going simply to some sort of, you know -- first, as I recall,  
4 specific acts of misconduct, but forget that for the moment,  
5 as long as the rules go the same way, it goes ----

6 MJ [Col SPATH]: Of course they do.

7 LDC [MR. KAMMEN]: Well, we'll see.

8 MJ [Col SPATH]: Well, they have, Mr. Kammen. I was --  
9 you were so complimentary earlier about the rulings you've  
10 received in your favor. The rules of evidence apply to both  
11 sides. They're not going to change when we get to redirect.

12 And, Counsel, just keep it focused. Am I correct in  
13 that's the basis for this question?

14 ATC [LT MORRIS]: That is correct. And I would ----

15 MJ [Col SPATH]: You may proceed.

16 ATC [LT MORRIS]: And I would just add on top of that for  
17 defense counsel to make the allegation and to use Mr. Gill as  
18 their sole witness in making their allegation that there  
19 was ----

20 MJ [Col SPATH]: I know. They asked for other witnesses;  
21 I denied them. I'm confident we're going to readdress. So  
22 let's finish with this witness. Because what we do also have  
23 people who are going to work a lot later than we are into the

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1 evening and we are going to have to figure out what time is  
2 best to start tomorrow. I more than recognize that. I know  
3 everyone here will be patient with us tonight and we will  
4 figure out tomorrow because of that.

5 Trial Counsel, you may proceed.

6 Your objection is overruled.

7 WIT: None of those answers applied under the peculiar  
8 circumstances under this incident for which I have an attorney  
9 representing me.

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

11 Q. In the SF-86, there is also a section in which it is  
12 labeled your police record, and asks you to place any items  
13 above a certain threshold on the SF-86, correct? Do you  
14 recall that?

15 A. If you say so. I'm just going to say yes to move  
16 this along.

17 LDC [MR. KAMMEN]: Just say yes to move this along  
18 because ----

19 MJ [Col SPATH]: I agree.

20 LDC [MR. KAMMEN]: ---- the questions are so broad, but  
21 you do need to pay attention to them.

22 MJ [Col SPATH]: Yeah. Mr. Gill, let me just ask for you,  
23 I think there's some time issues with you tomorrow, am I

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1 correct, that you don't -- you cannot testify tomorrow?

2 WIT: Yeah. I'm in a primary tomorrow in Massachusetts.  
3 I'm running for state senate. So I have to be at the polls to  
4 meet and greet my voters and wave to them, et cetera.

5 MJ [Col SPATH]: I understand. I'm just trying to work  
6 through. What time -- do you have a flight there?

7 WIT: They have given me a flight tonight at 9:30 on the  
8 shuttle, the American Airlines shuttle. And so apparently  
9 there are a number of to and fro flights I can switch to back  
10 and forth.

11 MJ [Col SPATH]: All right. Well, let's hope that doesn't  
12 happen and we'll try to get you on that flight. What we are  
13 going to do is take a short recess. We have been in here a  
14 long time and Mr. Kammen's point is well taken. For any  
15 witness, it can get very difficult to answer questions, people  
16 get tired, and tempers start to get frayed.

17 So we'll take ten minutes and we're going to come  
18 back and keep going on cross-examination. Court's in recess  
19 for ten minutes.

20 [The R.M.C. 803 session recessed at 1711, 7 September 2016.]

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