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1 [R.M.C. 803 session was called to order at 0903, 10  
2 September 2018.]

3 MJ [Col PARRELLA]: Good morning. This commission is  
4 called to order. I, Colonel Keith Parrella, United States  
5 Marine Corps, have replaced Colonel Pohl as the military  
6 judge. I will announce my detailing and qualifications after  
7 we identify who is here on behalf of the parties.

8 Trial Counsel, if you'd please identify who is here  
9 on behalf of the United States.

10 CP [BG MARTINS]: Good morning, Your Honor. Representing  
11 the United States: Brigadier General Mark Martins, Mr. Robert  
12 Swann, Mr. Edward Ryan, Mr. Clayton Trivett, Mr. Jeffrey  
13 Groharing, Ms. Nicole Tate, Major Christopher Dykstra, Major  
14 Benjamin Mills, Captain Neville Dastoor. Also present,  
15 Mr. Dale Cox, Mr. Pascual Tavarez, Staff Sergeant Jeffery  
16 Furr, and present in the courtroom also for the Federal Bureau  
17 of Investigation, Kimberly Waltz and Brianna Hearn.

18 Your Honor, these proceedings are being transmitted  
19 by closed-circuit television to locations in the continental  
20 United States pursuant to an order of the military commission.  
21 Your Honor, I'd like to note that Major ----

22 LDC [MS. BORMANN]: Judge, I'm sorry, to interrupt.

23 CP [BG MARTINS]: ---- Mills and Captain Dastoor ----

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1 LDC [MS. BORMANN]: Judge, I'm sorry to interrupt, but we  
2 can't hear back here because one of the translated headphones  
3 seems to be on maximum audio, and so we're unable to hear.

4 MJ [Col PARRELLA]: Okay. Trial Counsel, if you'd just  
5 hold on one moment. Is there an IT person in the courtroom?

6 LDC [MR. RUIZ]: **[Microphone button not pushed; no audio.]**

7 MJ [Col PARRELLA]: I'm sorry, Mr. Ruiz. I can't hear  
8 you.

9 LDC [MR. RUIZ]: I just got them. So they're working on  
10 it. We need the translator to speak so that we can monitor  
11 the volume.

12 MJ [Col PARRELLA]: Translator, if you could translate my  
13 words.

14 LDC [MR. RUIZ]: I believe we've resolved the issue,  
15 Judge.

16 MJ [Col PARRELLA]: Mr. Ruiz, does it seem to be working  
17 now?

18 LDC [MR. RUIZ]: Yes, I think it has been resolved.

19 MJ [Col PARRELLA]: Okay. General Martins, if you could  
20 please continue.

21 CP [BG MARTINS]: Your Honor, I will go ahead and  
22 re-announce that these proceedings are being transmitted by  
23 closed-circuit television to locations in the continental

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1 United States pursuant to the commission's order, and would  
2 like to note that Major Mills and Captain Dastoor need to  
3 place their qualifications on the record for the commission.

4 MJ [Col PARRELLA]: Thank you, General Martins.

5 At this time, why don't we go ahead and have Major  
6 Mills and Captain Dastoor place their qualifications on the  
7 record.

8 ATC [Maj MILLS]: Good morning, Your Honor.

9 MJ [Col PARRELLA]: Good morning.

10 ATC [Maj MILLS]: I'm Major Benjamin Mills, and I have  
11 been detailed to this commission by the Chief Prosecutor,  
12 Brigadier General Mark Martins. I am qualified under Rule for  
13 Military Commission 502(d), and I have been previously sworn  
14 in accordance with Rule for Military Commission 807. I have  
15 not acted in any disqualifying manner.

16 MJ [Col PARRELLA]: Thank you, Major Mills.

17 ATC [Maj MILLS]: Thank you, sir.

18 ATC [CPT DASTOOR]: Good morning, Your Honor.

19 MJ [Col PARRELLA]: Good morning.

20 ATC [CPT DASTOOR]: Captain Neville Dastoor. I've been  
21 detailed to this commission by the Chief Prosecutor, Brigadier  
22 General Mark Martins. I'm qualified under Rule for Military  
23 Commission 502(d), and I've been previously sworn in under

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1 Rule for Military Commissions 807. I've not acted in any way  
2 that might disqualify me from these proceedings.

3 MJ [Col PARRELLA]: Thank you, Captain Fastoor [sic].

4 ATC [CPT DASTOOR]: Thank you, Your Honor.

5 CP [BG MARTINS]: Your Honor, if I may, I probably haven't  
6 been saying it clearly enough. The last name is Dastoor with  
7 a D, delta.

8 MJ [Col PARRELLA]: I understand, and that's my mistake.  
9 Thank you for correcting me.

10 So Major Mills and Captain Dastoor, I understand  
11 you've been previously sworn. I'm going to go ahead and swear  
12 you nevertheless. If you'd please stand, raise your right  
13 hand.

14 [Counsel was sworn.]

15 MJ [Col PARRELLA]: Thank you. Mr. Nevin, will you please  
16 indicate for the record who is here on behalf of Mr. Mohammad?

17 LDC [MR. NEVIN]: Your Honor, David Nevin for Mr. Khalid  
18 Shaikh Mohammad; and Lieutenant Colonel Derek Poteet, U.S.  
19 Marine Corps; Ms. Denny Leboeuf; Mr. Gary Sowards; Ms. Rita  
20 Radostitz; and Your Honor, Mr. Mohammad is present.

21 MJ [Col PARRELLA]: Thank you, Mr. Nevin.

22 Ms. Bormann?

23 LDC [MS. BORMANN]: Judge, on behalf of Mr. Bin'Attash,

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1 myself, Mr. Edwin Perry, Mr. William Montross, Captain Brian  
2 Brady, Major Matthew Seeger.

3 Judge, we will be asking to excuse probably Major  
4 Seeger, although it may be Captain Brady, later on during the  
5 morning to attend to other matters. I just want to let the  
6 court know.

7 MJ [Col PARRELLA]: Okay. Mr. Harrington?

8 LDC [MR. HARRINGTON]: Judge, for Mr. Binalshibh, James  
9 Harrington, Navy Captain Mishael Danielson, and Alaina  
10 Wichner.

11 MJ [Col PARRELLA]: And, Mr. Harrington, it's my  
12 understanding that this is Lieutenant Danielson's first  
13 appearance?

14 LDC [MR. HARRINGTON]: It is, Judge, and he needs to have  
15 his credentials put on the record.

16 MJ [Col PARRELLA]: Okay. Lieutenant Danielson, if you'd  
17 please state your qualifications for the record.

18 ADC [LT DANIELSON]: Good morning, Your Honor.

19 MJ [Col PARRELLA]: Good morning.

20 ADC [LT DANIELSON]: Sir, I am Lieutenant Mishael  
21 Danielson, Mishael is spelled M-i-s-h-a-e-l, JAG Corps, United  
22 States Navy. I've been detailed to this case now in hearing  
23 by Brigadier General John G. Baker, United States Marine

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1 Corps, the Chief Defense Counsel. I'm also qualified and  
2 certificated under Article 27(b) and sworn under Article 42(a)  
3 of the Uniform Code of Military Justice. I'm also qualified  
4 and certified, sir, under Rules 502 and 503 of the Rules for  
5 Military Commission.

6 I have not acted in any way that might tend to  
7 disqualify me in these proceedings, sir.

8 MJ [Col PARRELLA]: Lieutenant Danielson, please raise  
9 your right hand.

10 [Counsel was sworn.]

11 MJ [Col PARRELLA]: Thank you, Lieutenant Danielson. You  
12 may have a seat.

13 ADC [LT DANIELSON]: Thank you, sir.

14 MJ [Col PARRELLA]: Mr. Connell?

15 LDC [MR. CONNELL]: Good morning, Your Honor.

16 MJ [Col PARRELLA]: Good morning.

17 LDC [MR. CONNELL]: On behalf of Mr. Al Baluchi is myself,  
18 James Connell, and Captain Mark Andreu of the United States  
19 Air Force. All other attorneys for Mr. al Baluchi have been  
20 excused by previous order of the military commission.

21 MJ [Col PARRELLA]: Thank you.

22 Mr. Ruiz.

23 LDC [MR. RUIZ]: On behalf of Mr. al Hawsawi, Ms. Suzanne

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1 Lachelier, Lieutenant Colonel Jennifer Williams, Major Joseph  
2 Wilkinson, Lieutenant Commander Dave Furry, and myself.

3 MJ [Col PARRELLA]: Thank you, Mr. Ruiz.

4 And for the record, is there anyone here from the  
5 chief defense counsel's office? Is it Commander Wall?

6 DCDC [CDR WALL]: Yes, Your Honor, Commander Wall, Deputy  
7 Chief Defense Counsel.

8 MJ [Col PARRELLA]: Thank you.

9 I will now advise the accused of their right to be  
10 present and their right to waive said appearance. You have  
11 the right to be present during all sessions of the commission.  
12 If you request to absent yourself from any session, such  
13 absence must be voluntary and of your own free will. Your  
14 voluntary absence from any session of the commission is an  
15 unequivocal waiver of the right to be present during that  
16 session.

17 Your absence from any session may negatively affect  
18 the presentation of the defense in your case. Your failure to  
19 meet with and cooperate with your defense counsel may also  
20 negatively affect the presentation of your case. Under  
21 certain circumstances, your attendance at a session can be  
22 compelled regardless of your personal desire not to be  
23 present.

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1           Regardless of your voluntary waiver to attend a  
2 particular session of the commission, you have the right at  
3 any time to decide to attend any subsequent session. If you  
4 decide not to attend the morning session but wish to attend  
5 the afternoon session, you must notify the guard force of your  
6 desires. Assuming there is enough time to arrange  
7 transportation, you will then be allowed to attend the  
8 afternoon session. You will be informed of the time and date  
9 of each commission session prior to the session to afford you  
10 the opportunity to decide whether or not to attend that  
11 session.

12           Mr. Mohammad, do you understand what I've just  
13 explained to you?

14           ACC [MR. MOHAMMAD]: Yes.

15           MJ [Co1 PARRELLA]: Mr. Bin'Attash, do you understand what  
16 I have just explained?

17           ACC [MR. BIN'ATTASH]: Yes. Yes, but I would like to put  
18 on the record my objection to the attorneys.

19           MJ [Co1 PARRELLA]: I understand that you've had  
20 objections to your attorneys, and I will afford you an  
21 opportunity to put that objection on the record. But you  
22 understand also the court's -- the commission's position on  
23 your attorneys as well; is that correct?

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1 ACC [MR. BIN'ATTASH]: Yes.

2 MJ [Co] PARRELLA]: So, Mr. Bin'Attash, is there anything  
3 that you want to tell the commission that you haven't already  
4 stated previously?

5 DC [MR. PERRY]: Judge, I need to interject. This is  
6 Edwin Perry, defense counsel for Mr. Bin'Attash.

7 If we're going to go into a more detailed complaint,  
8 there is an order by the commission, 380Z, that that needs to  
9 be in an ex parte closed session.

10 MJ [Co] PARRELLA]: I understand. Mr. Perry, what I'm  
11 going to try to ascertain at this point in time, if this is  
12 just the same standing objection that he's voiced in the past.  
13 Is there any issue with me proceeding with that question?

14 DC [MR. PERRY]: If you ask that question, that would be  
15 fine. If it -- if he goes into a more detailed complaint,  
16 then we need to go into a closed session because it involves  
17 privileged material.

18 MJ [Co] PARRELLA]: I understand.

19 So, Mr. Bin'Attash, what your counsel has just  
20 indicated is that if you want the commission to be aware that  
21 you have a standing objection to your counsel, I understand  
22 that objection and we can proceed. If there's something else  
23 that you want to tell the commission that is new or different,

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1 then we need to do that in a separate hearing. Do you  
2 understand?

3 ACC [MR. BIN'ATTASH]: Yes. The attorneys would like to  
4 have a closed session because they don't want the world to  
5 hear their scandals. But I don't have details to put on the  
6 record, only objection to my defense team that I have because  
7 they are working for their own interests and not my interests.  
8 This is all I have.

9 MJ [Co1 PARRELLA]: I understand.

10 Mr. Binalshibh, do you understand what I have  
11 explained to you?

12 ACC [MR. BINALSHIBH]: Yes, I understood.

13 MJ [Co1 PARRELLA]: Mr. Ali, do you understand what I've  
14 explained for you?

15 ACC [MR. AZIZ ALI]: Yes.

16 MJ [Co1 PARRELLA]: Mr. al Hawsawi, do you understand what  
17 I've explained to you?

18 ACC [MR. AL HAWSAWI]: Yes. And I would like to leave  
19 now.

20 MJ [Co1 PARRELLA]: Okay. Mr. al Hawsawi -- at this point  
21 in time, Mr. al Hawsawi ----

22 LDC [MR. RUIZ]: Judge ----

23 MJ [Co1 PARRELLA]: ---- I will require you to remain in

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1 the courtroom. You can leave after this session of court is  
2 complete. Do you understand?

3 ACC [MR. AL HAWSAWI]: Why is that? I was able to move at  
4 any time.

5 MJ [Co] PARRELLA]: Okay. I'm going to go through some  
6 additional information. If at that point in time when we take  
7 our first recess you would like to leave the courtroom, I will  
8 allow you to do so. But as this is our first session of  
9 court, you're going to remain here until we're done with that  
10 first session of court.

11 ACC [MR. AL HAWSAWI]: I've heard my entire rights, and I  
12 have the right to leave the court right now.

13 MJ [Co] PARRELLA]: I understand what you're saying. It's  
14 not going to happen.

15 All right. On 8 September 2018, I conducted an  
16 R.M.C. 802 conference with both trial and defense counsel.  
17 The accused were absent. At this conference, we discussed the  
18 following:

19 First, we conducted introductions. I informed  
20 counsel that I'd been detailed to this case and indicated that  
21 they would have the opportunity to conduct voir dire of me  
22 during this session. I indicated that I would only allow one  
23 counsel per party to conduct this questioning. I also

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1 indicated that I am granting AE 595 and provided all parties a  
2 copy of my unobserved fitness report covering the portion of  
3 time I conducted a Commandant of the Marine Corps Fellowship  
4 at the Department of Justice. That fitness report has been  
5 marked as AE 595B and inserted into the record.

6 I would like to make it clear that I am granting the  
7 motion and providing this information in order to expedite  
8 these proceedings, but my ruling should in no way be  
9 interpreted as the commission's position as to the  
10 appropriateness of the parties seeking discovery related to  
11 the military judge.

12 As to AE 595A, I am not going to order the discovery  
13 requested, but invite counsel to ask questions related to the  
14 matter during voir dire.

15 I also indicated that I intended to follow the  
16 previous military judge's practice of requiring all accused to  
17 be present for the first day of each session. I also  
18 indicated that I intend to continue the practice of timing  
19 breaks to coincide with prayer time to the extent practicable.

20 Upon inquiry from Mr. Connell, I also indicated that  
21 I would continue the practice of recording the 802 sessions  
22 and that counsel may make particularized requests for  
23 transcripts of those sessions.

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1           Upon inquiry from Mr. Nevin, I indicated I would also  
2 continue the practice of allowing defense teams to meet with  
3 their clients for a reasonable time after the conclusion of  
4 the afternoon session.

5           Thereafter, we discussed the tentative order of march  
6 for this week's sessions and generally adopted the order of  
7 march proposed by Mr. Connell in AE 591L, with a few  
8 exceptions. I indicated we would start with voir dire and  
9 challenges of the military judge, followed immediately by  
10 AE 591F, Mr. Hawsawi's motion to abate the proceedings. After  
11 AE 591F, we will take up the discovery motions. If we still  
12 have time, we will take up the unclassified portions of the  
13 UCI motions.

14           Tuesday's session will begin with an in camera  
15 session pursuant to M.C.R.E. 505(h). We will tentatively plan  
16 to begin an unclassified session on Tuesday at 1400 which will  
17 extend through Wednesday, wherein we will take up any  
18 remaining unclassified issues. On Thursday, we will conduct a  
19 closed session pursuant to R.M.C. 806.

20           Do counsel for any of the accused have any additions  
21 or corrections to the commission's summary of the R.M.C. 802  
22 conference, or does the trial counsel have any corrections or  
23 additions to the R.C.M. [sic] 802 conference?

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1 Start with the trial counsel.

2 CP [BG MARTINS]: Your Honor, the government has no  
3 additions.

4 MJ [Col PARRELLA]: Mr. Nevin.

5 LDC [MR. NEVIN]: Just to clarify, when will we begin with  
6 the closed session, the closed 505 session on Tuesday?

7 MJ [Col PARRELLA]: That will be at 0900.

8 LDC [MR. NEVIN]: At 0900, all right. Thank you, Your  
9 Honor.

10 MJ [Col PARRELLA]: Mr. Connell, you're standing.

11 LDC [MR. CONNELL]: Yes, sir, I was taking up your  
12 invitation to comment on the 802.

13 MJ [Col PARRELLA]: Please.

14 LDC [MR. CONNELL]: Yes. The -- one other matter is that  
15 I inquired of the military commission whether it would  
16 continue the practice of not shackling the defendants without  
17 some particularized cause, and the military commission  
18 indicated that it would continue the prior practice on that  
19 topic.

20 MJ [Col PARRELLA]: That is ----

21 LDC [MR. CONNELL]: The second is that I gave notice at  
22 the 802 hearing that Lieutenant Doug Newman would be available  
23 for interview on Sunday; the government took up that

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1 opportunity and some other counsel. I also indicated that I  
2 would be making advance 914 disclosures upon requests. The  
3 government made that request and I made the advanced 914  
4 disclosures.

5 MJ [Col PARRELLA]: Thank you, Mr. Connell.

6 Ms. Bormann?

7 LDC [MS. BORMANN]: Thank you, Judge. So my recollection  
8 of the 802 conference with respect to AE 595A was that you  
9 indicated that you were not going to be granting it prior to  
10 voir dire, which will occur this morning; but I did not  
11 understand that you were denying it in toto. Is that your  
12 ruling? I don't have a written -- I understood it that you  
13 were going to hold it in abeyance until after voir dire and  
14 then rule on it based on what happened.

15 MJ [Col PARRELLA]: Ms. Bormann, I think that's a correct  
16 summation. I think that the issue will largely become moot  
17 based on questions. If it's not, I will formally rule on it  
18 at that point in time.

19 LDC [MS. BORMANN]: Thank you.

20 MJ [Col PARRELLA]: You're welcome.

21 I've been detailed to this commission by the Chief  
22 Judge of the Military Commissions Trial Judiciary pursuant to  
23 R.M.C. 503. Appellate Exhibit 001A is my detailing

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1 memorandum.

2 I am certified and qualified in accordance with  
3 Articles 26(b) and (c) of the Uniform Code of Military Justice  
4 as well as R.M.C. 502 and 503. I've been previously sworn  
5 under Article 42(a) of the UCMJ and Article 807. I am not  
6 aware of any grounds for challenge against me.

7 I have previously provided counsel for both sides a  
8 copy of my biography, which is marked as Appellate  
9 Exhibit 001B, as well as my fitness report from my time as a  
10 Marine Corps Fellow at the Department of Justice, which is  
11 marked as AE 595B.

12 Do counsel desire to question or to challenge the  
13 military judge? Trial Counsel?

14 MTC [MR. TRIVETT]: Not at this time, sir, but we would  
15 like to reserve the opportunity to do so based on answers to  
16 questions that the defense may ask.

17 MJ [Col PARRELLA]: Okay. Mr. Nevin?

18 LDC [MR. HARRINGTON]: Excuse me. Could I just -- with  
19 respect to the voir dire, could I just put a procedural  
20 question on the -- before you?

21 MJ [Col PARRELLA]: Yes.

22 LDC [MR. HARRINGTON]: Judge, as you're going to find out,  
23 this case has many unexpected twists and turns, and your voir

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1 dire creates one that we didn't really fully identify until  
2 yesterday. But it deals with an issue that goes back to 2014  
3 and '15 and -- when a Special Review Team was appointed by --  
4 to replace the trial counsel because of an issue with respect  
5 to my team and to me individually.

6           And I don't want to go into that in front of you  
7 right now with trial counsel here. I think I need to put it  
8 on the record in front of you, and it's my position that  
9 there's certain questioning that needs to be done of you for  
10 which the Special Review Team really should be here because it  
11 deals with information which directly relates to them, and  
12 also much of the information is -- has been classified as a  
13 result of the national security investigation that was  
14 conducted with respect to me and several other members of our  
15 team.

16           So at some point in time, I think we either have to  
17 abate the proceedings here and get them there or figure out a  
18 way to -- for how we're going to handle that particular issue,  
19 so ----

20           MJ [Col PARRELLA]: Okay. Well, Mr. Harrington, I -- if I  
21 understand what you're asking of the commission, it's that you  
22 believe that based on information, that some of this  
23 questioning needs to take place in the presence of the Special

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1 Review Team?

2 LDC [MR. HARRINGTON]: If you don't want them here, Judge,  
3 and want to do it without the trial counsel here, we're not  
4 going to object to that. But if the government thinks that  
5 they need to have a presence here for it, then that's  
6 something that they need to address.

7 MJ [Col PARRELLA]: Okay. What we're going to do,  
8 Mr. Harrington, is we're going to go ahead and proceed with  
9 the questions. As you know, the rules allow counsel to  
10 challenge the military judge based on subsequent evidence at  
11 basically any point going forward.

12 But we'll go ahead and proceed with the questioning,  
13 and if there's still an issue out there, then what I'd ask is  
14 that you go ahead and put it in writing so that the commission  
15 can consider it and take appropriate action. Thank you.

16 Mr. Nevin?

17 LDC [MR. NEVIN]: Thank you, Your Honor. David Nevin on  
18 behalf of Mr. Khalid Shaikh Mohammad.

19 Sir, the -- as you know, this is a case that arises  
20 out of the events of September 11th, 2001, and as well I'll  
21 represent to you that the defendants, all but -- in  
22 particular, Mr. Mohammad, are devout Muslims, so I have a  
23 couple of questions that arise out of those two facts.

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1           The first is to ask you what knowledge you have of  
2 the religion of Islam.

3           MJ [Col PARRELLA]: So, Mr. Nevin, I am not going to go  
4 into a detailed explanation of my knowledge of Islam. I will  
5 simply state that there is nothing about my personal beliefs  
6 of Islam that will infect or affect my impartiality to sit  
7 here as a military judge.

8           LDC [MR. NEVIN]: Okay. And so just to make sure I  
9 understand the scope of your ruling, would you tell us whether  
10 you have made any particular study of the religion of Islam,  
11 such as, you know, in schooling or some kind of -- something  
12 other than just a passing awareness?

13          MJ [Col PARRELLA]: I have not. I have never taken a  
14 religious course. I have some general knowledge of religions,  
15 including Islam. I don't recall ever reading a book  
16 particularly about Islam. I've read books that include some  
17 explanation of it, but I couldn't tell you off the top of my  
18 head what they were. So I don't have any sort of special  
19 knowledge or background or expertise on Islam.

20          LDC [MR. NEVIN]: Okay. And I understood your remark --  
21 or the remark you made previously about affecting your ability  
22 to sit simply to mean that you don't have any particular  
23 animus against the religion or any feeling about its

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1 legitimacy or anything that would directly affect how you look  
2 at these proceedings. Do I have that right?

3 MJ [Col PARRELLA]: That's correct. Not at all.

4 LDC [MR. NEVIN]: All right. So may I ask where you were  
5 on September 11th of 2001?

6 MJ [Col PARRELLA]: I was actually on my way to the  
7 airport in San Diego for a temporary active duty sort of  
8 assignment.

9 LDC [MR. NEVIN]: And I am guessing you -- the plane that  
10 you were planning to get onto never took off?

11 MJ [Col PARRELLA]: Correct. I never made it even to the  
12 terminal. As I recall, I ran into folks exiting the terminal  
13 still in the parking lot. They said that the airport was  
14 closed. I turned around and drove back to the base. At the  
15 time I was stationed at the air station at Miramar.

16 LDC [MR. NEVIN]: And you were -- that's at a time when  
17 you were serving as -- I believe you served as defense  
18 counsel -- sorry, regional defense counsel and also trial  
19 counsel for a while there at Miramar, correct?

20 MJ [Col PARRELLA]: I was serving at the time as the  
21 senior defense counsel.

22 LDC [MR. NEVIN]: And that was -- the trip you had planned  
23 at that time was for some kind of temporary duty; I know it

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1 was an official military trip that was going on, not a  
2 personal ----

3 MJ [Col PARRELLA]: Correct.

4 LDC [MR. NEVIN]: Okay.

5 MJ [Col PARRELLA]: My recollection is it was to see a  
6 client who was incarcerated in a civilian penitentiary.

7 LDC [MR. NEVIN]: I see. And were you able to make that  
8 trip at a later time?

9 MJ [Col PARRELLA]: I was not.

10 LDC [MR. NEVIN]: May I ask whether persons close to you  
11 within the third degree of -- let's say within the third  
12 degree of relationship were affected by the events -- directly  
13 affected by the events of September 11th?

14 MJ [Col PARRELLA]: No.

15 LDC [MR. NEVIN]: Okay. And what about friends?

16 MJ [Col PARRELLA]: No.

17 LDC [MR. NEVIN]: Were any such persons injured in the  
18 events of September 11th, either in New York, in Northern  
19 Virginia, or in Pennsylvania?

20 MJ [Col PARRELLA]: No. I don't have any friends who I  
21 would say were any sort of victim to either of those  
22 instances. The only one I know who was injured was a former  
23 boss of mine who was counsel, or still is counsel, to the

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1 Commandant of the Marine Corps, and he was injured in 9/11.  
2 But I don't have any personal relationship with him. He was  
3 essentially the boss of an organization I worked with for a  
4 few years.

5 LDC [MR. NEVIN]: Could you say who that person was, sir?

6 MJ [Col PARRELLA]: [REDACTED].

7 LDC [MR. NEVIN]: Say it again?

8 MJ [Col PARRELLA]: [REDACTED].

9 LDC [MR. NEVIN]: All right. Thank you.

10 What about property damage, loss of -- loss of  
11 property or income, anything like that among your friends or  
12 relations within the third degree?

13 MJ [Col PARRELLA]: No.

14 LDC [MR. NEVIN]: All right. Are you familiar with the  
15 Code of Conduct for United States Judges?

16 MJ [Col PARRELLA]: To some extent.

17 LDC [MR. NEVIN]: Is that something that you -- I take it  
18 you are a United States judge. Is that something that you  
19 have consulted at any time in the past?

20 Here's my -- the reason for the question. I was --  
21 my intention was to ask you if there are any aspects of the  
22 disqualifications within the Code of Conduct for United States  
23 Judges that would require your disqualification.

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1 MJ [Col PARRELLA]: I'm not familiar. So to answer your  
2 question, obviously a military judge. I don't recall  
3 reviewing that as part of the training I received as a  
4 military judge, so I'm not probably prepared to tell you  
5 whether I've looked at each factor that's in there.

6 LDC [MR. NEVIN]: Do you hold membership in any  
7 organization that practices invidious discrimination on the  
8 basis of race, sex, religion, or national origin?

9 MJ [Col PARRELLA]: No.

10 LDC [MR. NEVIN]: I mean, for example, an exclusive  
11 country club, a particular club, something like that.

12 MJ [Col PARRELLA]: No.

13 LDC [MR. NEVIN]: And, Your Honor, I will consult the Code  
14 if we take a break and perhaps ask you some more specific  
15 questions. I meant to exclude with one question several  
16 questions and I didn't anticipate that the military commission  
17 wouldn't be familiar with that.

18 May I ask, you have -- I believe you said you were  
19 sworn, and I think you're referring to the oath under  
20 949g(a)(1). You have taken that oath?

21 MJ [Col PARRELLA]: I have.

22 LDC [MR. NEVIN]: And when did you take that oath?

23 MJ [Col PARRELLA]: I believe it was the same day that I

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1 was detailed, 27 August.

2 LDC [MR. NEVIN]: May I ask who administered it?

3 MJ [Col PARRELLA]: Colonel Pohl.

4 LDC [MR. NEVIN]: And where was that done?

5 MJ [Col PARRELLA]: It was not done in person. He sent me  
6 a written copy of the oath. He then called me, he read the  
7 oath over the phone as I stood, and then I signed the oath and  
8 sent it back to him.

9 LDC [MR. NEVIN]: Was anyone present in the room with you  
10 when you took the oath?

11 MJ [Col PARRELLA]: No.

12 LDC [MR. NEVIN]: And do you hold a TS//SCI clearance?

13 MJ [Col PARRELLA]: To the best of my knowledge, I do.

14 LDC [MR. NEVIN]: And when would that clearance have  
15 become effective, sir?

16 MJ [Col PARRELLA]: I don't know. I will tell you I  
17 recently went through a reinvestigation. I'd previously held  
18 TS//SCI, but as you know, it expires periodically.

19 LDC [MR. NEVIN]: Yes, I know.

20 MJ [Col PARRELLA]: So I just went through -- when I say  
21 just, I reinitiated the investigation in approximately June of  
22 2017, so I don't know when it was finished.

23 LDC [MR. NEVIN]: Could I ask when you first learned that

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1 you would be detailed to this present case?

2 MJ [Col PARRELLA]: Officially, 27 August. I did have a  
3 couple telephone communications with Judge Pohl where he  
4 indicated that he was considering detailing me. I think the  
5 earliest of those was probably sometime in middle or late  
6 July.

7 LDC [MR. NEVIN]: Sir, it's been reported to me, or to us,  
8 that you made a remark on the record in another case in early  
9 August that you were being detailed to this case, and I  
10 believe that was August the 3rd. Is that your -- do you  
11 recall what I'm referring to?

12 MJ [Col PARRELLA]: I recall. I've heard the same. I did  
13 not make any remark on the record about anything related to  
14 the commissions.

15 LDC [MR. NEVIN]: Right.

16 MJ [Col PARRELLA]: I think what -- or the genesis for  
17 that was during an 802 conference I had with counsel ----

18 LDC [MR. NEVIN]: Yeah.

19 MJ [Col PARRELLA]: ---- related to a murder case at  
20 Camp Lejeune, I informed the counsel that it was possible I  
21 might get detailed -- and my recollection was that I said to  
22 an OMC case, not a specific case -- and that that might  
23 jeopardize my ability to detail myself to the murder case.

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1 LDC [MR. NEVIN]: And I'll just represent that the parties  
2 recall that you made reference to KSM, the KSM case, which is  
3 a common abbreviation for my client's name. Do you recall  
4 making that remark?

5 MJ [Col PARRELLA]: I don't recall making that comment. I  
6 can't, obviously -- it was not a recorded session, like our  
7 802s here, but I don't recall it and I don't think I would  
8 have used those initials. I think OMC I probably would have  
9 said, just to give context, but I don't recall ever saying  
10 KSM.

11 LDC [MR. NEVIN]: Okay. Are you familiar with those  
12 initials or that -- I guess that's not an acronym, but you are  
13 familiar with that terminology?

14 MJ [Col PARRELLA]: I am now, certainly.

15 LDC [MR. NEVIN]: Okay. And may I ask, was that a murder  
16 case to which you were contemplating detailing yourself, was  
17 that a capital case?

18 MJ [Col PARRELLA]: It was not.

19 LDC [MR. NEVIN]: Okay. So if I understand correctly,  
20 because your periodic reinvestigation was begun in June of  
21 2017, that would be on the order of a year before you -- a  
22 question of your being detailed to this case would have come  
23 up. So that reinvestigation would have been separate from

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1 this case, am I right?

2 MJ [Col PARRELLA]: Completely separate.

3 LDC [MR. NEVIN]: Yeah. Okay. And are you saying that  
4 the reinvestigation was completed in June of 2017 or that it  
5 was begun then?

6 MJ [Col PARRELLA]: Begun.

7 LDC [MR. NEVIN]: And do you know when it was completed?

8 MJ [Col PARRELLA]: I do not.

9 LDC [MR. NEVIN]: Has it been completed?

10 MJ [Col PARRELLA]: The best of my knowledge.

11 LDC [MR. NEVIN]: Okay. So have you been read into the  
12 specific programs that relate to this case? And I won't say  
13 those, but there are ----

14 MJ [Col PARRELLA]: I have.

15 LDC [MR. NEVIN]: ---- there are ACCMs and there are  
16 special access programs. So you have been read into those?

17 MJ [Col PARRELLA]: Yes.

18 LDC [MR. NEVIN]: And when did that occur, sir?

19 MJ [Col PARRELLA]: Middle of August.

20 LDC [MR. NEVIN]: And where did that occur?

21 MJ [Col PARRELLA]: In Washington, D.C.

22 LDC [MR. NEVIN]: So if I understand correctly, you would  
23 not have been able to begin reviewing certain materials

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1 related to this case, at the TS level anyway, and certainly  
2 with respect to the SAP and the ACCM, you wouldn't have been  
3 able to begin reviewing those until mid-August of 2018.

4 MJ [Col PARRELLA]: Correct. And I'll just go ahead and,  
5 I think, jump ahead, Mr. Nevin, and tell you that I didn't  
6 review any materials related to this case prior to being  
7 detailed, which was on the 27th of August.

8 LDC [MR. NEVIN]: And have you been reviewing materials  
9 since that time?

10 MJ [Col PARRELLA]: I have.

11 LDC [MR. NEVIN]: I may have asked you when you were  
12 formally notified that you were being -- that you were, in  
13 fact, being detailed, but you mentioned as well that you had  
14 conversations with Judge Pohl. And by Judge Pohl, I'm  
15 referring to Judge James Pohl, the Chief Judge of the Military  
16 Commissions. You had conversations with him, I believe you  
17 said, in late July?

18 MJ [Col PARRELLA]: That's my best estimate of when the  
19 conversation took place, correct.

20 LDC [MR. NEVIN]: And did -- and he advised you that he  
21 was considering detailing you to this case, I take it, is  
22 what ----

23 MJ [Col PARRELLA]: Correct.

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1 LDC [MR. NEVIN]: ---- happened?

2 And did he gave you the option to say, don't detail  
3 me? I mean, in other words, my question is, was it, I'm  
4 detailing you, period, end of story, or was it, what do you  
5 think or something like that?

6 MJ [Col PARRELLA]: I don't specifically recall. But my  
7 understanding of the process is I'm one of a pool of nominees  
8 that are nominated by the service judge advocates to  
9 potentially be detailed to the Office of Commissions and that  
10 the chief judge retains the ability to detail who they deem  
11 fit.

12 So with that, when he indicated his potential  
13 decision to detail me, we may have discussed some of the  
14 potential issues that I have in terms of future orders and  
15 things of that nature ----

16 LDC [MR. NEVIN]: Yes, sir.

17 MJ [Col PARRELLA]: ---- but ultimately, I didn't push  
18 back, if you will.

19 LDC [MR. NEVIN]: Yeah. Really -- and I want to ask you  
20 about those orders, but that was really my question. Were you  
21 open or willing to be appointed or were you appointed against  
22 your -- over -- against your will, so to speak?

23 MJ [Col PARRELLA]: I guess, as a Marine, we do -- we

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1 follow orders. I expressed reservations about some of the  
2 time constraints with future orders, but ultimately, I didn't  
3 push back, I guess, if that answers your question.

4 LDC [MR. NEVIN]: Yes, sir, it does. Thank you.

5 And just to then return to the question of how you  
6 got into the pool in the first place, I take it you were  
7 nominated by the TJAG, if that's the right term, for the  
8 Marine Corps; is that correct?

9 MJ [Col PARRELLA]: I believe my nominee -- or I was  
10 nominated by the TJAG upon the recommendation of the Chief  
11 Trial Judge of the Navy.

12 LDC [MR. NEVIN]: I see. So that would be the TJAG for  
13 the -- and the military judge will perhaps understand that I'm  
14 a civilian, and so I find my way as best I can in some of  
15 these areas. But would that have been the TJAG of the Navy,  
16 or the -- or is there a TJAG in the Marine Corps as well?

17 MJ [Col PARRELLA]: Of the Navy.

18 LDC [MR. NEVIN]: Of the Navy. Okay.

19 And do you know when that occurred, sir?

20 MJ [Col PARRELLA]: I don't know when the nomination was  
21 made. All I know is that the chief trial judge contacted me  
22 when I was still in my former billet and indicated they  
23 intended to nominate me. I would estimate that was probably

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1 around May of 2018.

2 LDC [MR. NEVIN]: Ah. Okay. And at that time, you were  
3 SJA of the 2nd Marine Division, correct?

4 MJ [Col PARRELLA]: That is correct.

5 LDC [MR. NEVIN]: At Camp Lejeune.

6 MJ [Col PARRELLA]: Correct.

7 LDC [MR. NEVIN]: Right. Okay. Thank you, sir.

8 So I wanted to just ask you a question or two, and  
9 you answered some of this at the 802. And I'm referring  
10 specifically to your stating that until things change, you  
11 would maintain the status quo that Judge Pohl had maintained,  
12 and I appreciate that.

13 I wanted to ask whether you had any particular -- and  
14 this is an extraordinary case, sir, and there's a lot of  
15 discovery material in it, and there are many, many complex  
16 issues, and you're, of course, coming into it, let's say, in  
17 the middle. Do you have a particular plan for how to deal  
18 with that, with that problem?

19 MJ [Col PARRELLA]: Not yet.

20 LDC [MR. NEVIN]: Okay.

21 MJ [Col PARRELLA]: I mean, I will just tell you simply, I  
22 obviously am aware of the complexity of this litigation, the  
23 fact that this case has been going on for a long period of

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1 time. However, I have been detailed, and I will do my best to  
2 apply the law every day that I'm sitting up here as the  
3 military judge.

4 LDC [MR. NEVIN]: Yes, sir. And I think there are  
5 several -- there are several areas of the law that will be  
6 applicable to this case that require a comprehensive knowledge  
7 of everything that's happened in the case. For example, the  
8 most obvious example is the substitution process for  
9 classified information, when the government comes to you and  
10 says, here's the original. Here's the substitution that we  
11 plan to give to the defense. And in our view, this puts the  
12 defense in the same position that they would have been to make  
13 a defense as access to the original would have. That's a  
14 determination that will require you to know everything that's  
15 come before us, since all of that will inform the defense's  
16 ability to make a defense.

17 So -- and there are other examples. The Brady  
18 analysis is cumulative, for example, in determining whether  
19 information under Brady has to be produced, so it requires you  
20 to know what else has been produced and so on.

21 Is -- do you have a plan for how -- or I think it  
22 will take a long time for anyone to get all the material under  
23 control.

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1 MJ [Col PARRELLA]: I understand, Mr. Nevin, and -- so  
2 this sort of goes to, I think, qualifications. There is  
3 certainly going to be -- whenever somebody like the military  
4 judge or perhaps some other party is introduced to a case  
5 that's been ongoing, there's going to potentially be some  
6 delay as that individual gets up to speed. I will not allow  
7 the fact that I'm just coming into this case -- or at least I  
8 will do my best to mitigate against any disruption. If I need  
9 to slow the pace of litigation down so that I can get up to  
10 speed to feel comfortable that I'm making the right decision,  
11 I will do so.

12 But to the extent that we're starting to get down the  
13 road of qualifications, I'll simply say, I'm qualified  
14 pursuant to R.M.C. 502 and 503, I've been detailed by a  
15 competent authority, and we're moving out.

16 LDC [MR. NEVIN]: But the military judge doesn't fail to  
17 recognize that there are unique complexities in this case  
18 that -- at least on behalf of Mr. Mohammad, I do respectfully  
19 ask that -- that you become aware of everything that's  
20 pertinent and relevant in the case before you -- and,  
21 honestly, I considered asking you to not hold this voir dire  
22 until that had been accomplished, until you had absorbed  
23 everything. And I do ask on behalf of him that you absorb

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1 everything before you begin making substantive rulings. I  
2 think it's critically important, it's a capital case and so  
3 on.

4 MJ [Col PARRELLA]: I understand, and as I just  
5 articulated, I will not rush. I do not feel pressured to  
6 rush. I will set the pace such that I feel comfortable in  
7 every decision that I make that I understand the issues, the  
8 background, understanding that might be a quite intensive  
9 process of review, before I make any substantive decisions.

10 LDC [MR. NEVIN]: Yes, sir. Thank you. I appreciate  
11 that.

12 I will say that in civilian courts where I have  
13 practiced, when a judge replaces another, it is typical for  
14 the parties to ask, as they wish, for the new judge to review  
15 decisions that the prior judge made. And I guess my question  
16 would be: Have you replaced judges before? Do you have a  
17 particular practice that you follow in that respect?

18 MJ [Col PARRELLA]: I have replaced judges before, and  
19 typically, I do review all of the materials, past rulings,  
20 that are still applicable or may impact the trial.

21 LDC [MR. NEVIN]: All right. Thank you, sir.

22 I wanted just to take a minute to make sure I  
23 understood your background, and I'll do this -- I'll do this

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1 quickly, but I want to make sure that I'm not making any  
2 errors. I appreciate your -- or whoever filed 001B filing it  
3 so that we had that information. But there were some parts of  
4 it that I didn't completely understand.

5 I take it you have -- you graduated from law school  
6 in '98, and that's 20 years ago and a few months. And that of  
7 that 20 years, you have -- and I couldn't tell whether it was  
8 three or four years of law school. There was some indication  
9 that it might have been '94 to '98 that you were in law  
10 school.

11 MJ [Col PARRELLA]: It was three years, but again, I'm  
12 going to ask you: What's the relevance of this to  
13 impartiality or bias?

14 LDC [MR. NEVIN]: I want to ask you -- I want to be clear  
15 what time you have spent as a military judge and what time you  
16 have spent as a trial lawyer, and -- because it is -- because  
17 of the complexity and size of this case, I'm interested in  
18 knowing exactly what your experience has been as a trial  
19 lawyer and as a military judge.

20 MJ [Col PARRELLA]: I understand the concern that you have  
21 and maybe the curiosity, but what I don't see is the relevance  
22 towards my impartiality or bias. And I can certainly  
23 understand from where you're seated, just the reservations

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1 about what -- you know, qualifications, time, experience,  
2 those things.

3 But like I said, the rules are clear about what the  
4 qualifications are for a commissions judge, so unless the  
5 question is about my qualifications as a commissions judge or  
6 about my impartiality or bias, I'd ask that you please move  
7 on.

8 LDC [MR. NEVIN]: Yes, sir. And let me just say -- and  
9 I'm -- I will move on, of course. But it's not just  
10 qualifications. It's also whether there is any ground for  
11 disqualification under the rules that apply to judges and ----

12 MJ [Col PARRELLA]: And sorry to cut you off, Mr. Nevin,  
13 but then I'd welcome a particular question if there's  
14 something in my biography; that was the purpose of me  
15 providing it. If there's something in there that causes you  
16 to be concerned about an area of disqualification, I certainly  
17 welcome those questions.

18 LDC [MR. NEVIN]: Yes, and the question would be whether  
19 the -- whether you have sufficient experience to discharge the  
20 duties of a military judge effectively and fairly and  
21 efficiently. And I don't see how I can ask you that -- I can  
22 assess that -- and frankly, sir, you have been a judge for a  
23 relatively short period of time, and everybody tells me that

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1 you're very -- that you come up to speed very quickly, which I  
2 appreciate.

3           But it's an extraordinary case. The judge who is  
4 leaving had some decades of experience as a judge. And it --  
5 I mean no disrespect to you. I just think it's a fair line of  
6 inquiry to say how much time have you spent in the courtroom?  
7 Have you ever handled a capital case? Have you ever been a  
8 judge in a murder case and questions of that sort. And I  
9 don't intend to ----

10           MJ [Col PARRELLA]: So, Mr. Nevin, I take no disrespect  
11 from the questioning. I certainly -- like I said, I  
12 understand why you would ask those questions from your  
13 position. I certainly understand also that I'm replacing a  
14 judge who had been a trial judge substantially longer and had  
15 a lot more experience than I.

16           However, the detailing authority, who happens to be  
17 that same judge, selected me to be assigned to this case.

18           LDC [MR. NEVIN]: Yes, sir.

19           MJ [Col PARRELLA]: The qualifications, as I read them,  
20 are that you're a trial judge for at least two years. I  
21 provided my bio so that you would see that I've met those  
22 qualifications. I mean, I certainly understand the complexity  
23 just from the short time I've been a part of this case and

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1 will do my very best.

2 But I don't see the relevance of continuing to go on  
3 and ask questions that simply highlight this is a complex case  
4 that requires, you know, experience. I've met the experience.  
5 So I'd ask again, unless it goes to impartiality or bias or if  
6 you have a question that you think disqualifies me or pertains  
7 to those qualifications set forth in the rules, let's move on.

8 LDC [MR. NEVIN]: Okay. And again, my specific question  
9 would be the military judge's capability to handle this case  
10 as a military judge. And I believe that would disqualify you  
11 if, for whatever reason, you were incapable of doing that.

12 MJ [Col PARRELLA]: I would agree. If I felt I did not  
13 have the requisite qualifications, then I would be required to  
14 disqualify myself.

15 LDC [MR. NEVIN]: All right. And, sir, just to make my  
16 record, let me ask you specifically: Will you say how many  
17 cases you have tried to verdict as a lawyer or as a judge?  
18 And I recognize that might be a ballpark answer.

19 MJ [Col PARRELLA]: Right. So the best I can do for you,  
20 Mr. Nevin, is in terms of trying cases -- and I think this is  
21 just a summary of what's in the biography -- I spent  
22 collectively about six years on active duty as a litigator and  
23 probably took well over 100 trials to verdict. Two years as a

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1 military judge, maybe 20, 30, 40, I honestly don't know. And  
2 in there, as you can see, there is also several years where I  
3 spent supervising counsel as they performed those functions.

4 LDC [MR. NEVIN]: Right. Okay. Thank you.

5 So more than 100 trials in which you were the lawyer  
6 taken to verdict and ----

7 MJ [Col PARRELLA]: Correct. And I can't -- I mean, I  
8 don't know if you're asking me to distinguish between what we  
9 would consider members trials or jury trials vice a verdict,  
10 you know, through a guilty plea or some other avenue.

11 LDC [MR. NEVIN]: I'm sorry. I meant to specifically  
12 focus on trial to members, a jury trial in my parlance.

13 MJ [Col PARRELLA]: I have no idea, Mr. Nevin. It's not  
14 something I kept track of. I probably could go back and add  
15 that up ----

16 LDC [MR. NEVIN]: Yeah.

17 MJ [Col PARRELLA]: ---- but I'm not going to because,  
18 again, I don't think it's relevant.

19 LDC [MR. NEVIN]: Yes, sir, I understand.

20 And that more than 100 number was not isolated to  
21 members, that was ----

22 MJ [Col PARRELLA]: Probably not.

23 LDC [MR. NEVIN]: Okay. And did you, as a trial lawyer,

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1 as a judge, handle murder cases?

2 MJ [Col PARRELLA]: As a prosecutor, yes. I should say  
3 that I briefly practiced civilian -- in civilian jurisdiction  
4 before coming into the Marine Corps. For a period of time, I  
5 was essentially assisting through law school, so I would call  
6 it an internship ----

7 LDC [MR. NEVIN]: Yeah.

8 MJ [Col PARRELLA]: ---- or however you want to call it, a  
9 job ----

10 LDC [MR. NEVIN]: Yeah.

11 MJ [Col PARRELLA]: ---- where I worked with a civilian  
12 state practitioner doing criminal defense. I did actually  
13 work on a couple capital cases while working with his office.  
14 Again, I did some as a prosecutor in the military, and I can't  
15 recall if I ever did one as a defense counsel. I did not do  
16 one as a military judge.

17 LDC [MR. NEVIN]: Referring to murder cases?

18 MJ [Col PARRELLA]: Correct.

19 LDC [MR. NEVIN]: Okay. And if I could just ask you  
20 briefly, was the case when you were acting -- you would have  
21 been acting as an intern when you were in law school with  
22 the -- with the private firm?

23 MJ [Col PARRELLA]: Correct.

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1 LDC [MR. NEVIN]: Was that case tried?

2 MJ [Col PARRELLA]: There were two of them. One of them  
3 did go to trial.

4 LDC [MR. NEVIN]: While you were interning?

5 MJ [Col PARRELLA]: Yes.

6 LDC [MR. NEVIN]: Okay. And did I understand you  
7 correctly that those were both capital cases?

8 MJ [Col PARRELLA]: They were.

9 LDC [MR. NEVIN]: Okay. And what about multidefendant  
10 cases? Have you been involved in multidefendant cases?

11 MJ [Col PARRELLA]: Yes.

12 LDC [MR. NEVIN]: And roughly how many?

13 MJ [Col PARRELLA]: Again, we're getting into  
14 qualifications, Mr. Nevin. I'm trying to be patient here, but  
15 I'm not going to repeat the same thing over. We need to move  
16 on past qualifications. So if there's a particular question  
17 that you think pertains to qualifications, please ask it.

18 LDC [MR. NEVIN]: Yes, sir. And I can really only say  
19 what I said before, which is, that if for whatever reason a  
20 military judge is -- it's not within the scope of that  
21 person's experience to actually handle the case effectively or  
22 competently, that's a fair area of questioning. It -- under  
23 the code of judicial conduct for U.S. judges and ----

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1 MJ [Col PARRELLA]: I just don't see how you'd ask that  
2 question at this stage in the proceedings. So again, you  
3 retain the ability to challenge the military judge. It's an  
4 ability you retain even after we finish this voir dire here  
5 today. So if you have a question right now that you think  
6 pertains to that issue, then I'm happy to entertain it.

7 LDC [MR. NEVIN]: Do you -- does your experience in  
8 capital cases extend beyond those two when you were a law  
9 student?

10 MJ [Col PARRELLA]: The case I prosecuted in the military  
11 began as a capital case. It was ultimately later handled  
12 through a plea agreement where the accused pled noncapital,  
13 obviously.

14 LDC [MR. NEVIN]: So have you studied the law of capital  
15 punishment?

16 MJ [Col PARRELLA]: Not extensively.

17 LDC [MR. NEVIN]: And you, I'm sure, would recognize that  
18 there is a separate body of jurisprudence that comes out of  
19 the U.S. Supreme Court and -- as well as in the state courts,  
20 but important for us, the Supreme Court, that deals  
21 specifically with capital cases?

22 MJ [Col PARRELLA]: I'm aware.

23 LDC [MR. NEVIN]: Yeah. And is that -- has that been a

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1 part of the work that you have done coming up to speed on this  
2 case since you were detailed? In other words, becoming  
3 acquainted with that area of the law?

4 MTC [MR. TRIVETT]: Objection, relevance.

5 MJ [Col PARRELLA]: I'll answer the question, Mr. Nevin,  
6 simply to say that I have not attended any specific training  
7 to capital litigation at this point in time. I am, of course,  
8 aware that this is a capital case, and that factors into my  
9 decision that you ultimately addressed as to whether I believe  
10 personally that I'm qualified and whether I should recuse  
11 myself for that purpose.

12 LDC [MR. NEVIN]: Okay. And you do not.

13 MJ [Col PARRELLA]: I do not believe that ----

14 LDC [MR. NEVIN]: Right.

15 MJ [Col PARRELLA]: ---- I'm unqualified.

16 LDC [MR. NEVIN]: Yes, sir. One of the questions that I  
17 asked Judge Pohl during the voir dire process was about his  
18 understanding of the concept of mitigation, and I wanted to  
19 ask you the same question. It's important to us in this case.

20 I'll represent to you that Mr. Mohammad spent three  
21 and a half years in the CIA's RDI program, which is -- during  
22 which he was tortured, and so the question of mitigation is  
23 important to us. Is that an aspect of capital jurisprudence

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1 that the military judge has studied?

2 MJ [Col PARRELLA]: I certainly have studied that in the  
3 past with respect to capital litigation and when I worked as a  
4 defense counsel or assisting defense counsel on capital  
5 litigation, but I understand, obviously, the concept of what  
6 mitigation is and believe it is obviously important.

7 LDC [MR. NEVIN]: As Judge Pohl phrased it, he said  
8 basically whatever you think is mitigating, what the defense  
9 thinks is mitigating is and that he would treat it that way.  
10 Would you -- does that ----

11 MJ [Col PARRELLA]: I agree with that statement.

12 LDC [MR. NEVIN]: All right. Thank you.

13 Do you -- have you handled cases that are comparable  
14 to this case in terms of the amount of discovery that's at  
15 issue in previous cases?

16 MJ [Col PARRELLA]: I don't believe that question is  
17 relevant, Mr. Nevin, for the reasons I've already stated.

18 LDC [MR. NEVIN]: And so may I ask if you are familiar  
19 with the American Bar Association Guidelines for the  
20 appointment and performance of defense counsel in death  
21 penalty cases?

22 MJ [Col PARRELLA]: Not intimately.

23 LDC [MR. NEVIN]: And did you consider that those were

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1 applicable when you were acting as a defender in the capital  
2 cases you referred to?

3 MJ [Col PARRELLA]: I don't see the relevance of this  
4 question.

5 LDC [MR. NEVIN]: The -- Your Honor, the -- in this  
6 particular case, Congress has mandated the consideration of  
7 the ABA Guidelines by the conferee's mandated consideration of  
8 that in the formation of the Regulation for Trial by Military  
9 Commission, and I simply wonder if that is part of what the  
10 military commission has considered.

11 MJ [Col PARRELLA]: So, Mr. Nevin, I will follow every  
12 law, rule, and regulation that's applicable to this military  
13 commission. If that's applicable to this military commission,  
14 then I will follow it to the best of my ability.

15 LDC [MR. NEVIN]: Sir, I will represent to you that the  
16 American Bar Association offered to train members of the trial  
17 judiciary in the military commissions in 2011 on the  
18 Guidelines, and this would be a neutral organization, the  
19 American Bar Association. Is that something that the military  
20 judge would be willing to entertain?

21 MJ [Col PARRELLA]: I'm not ----

22 MTC [MR. TRIVETT]: Objection, relevance.

23 MJ [Col PARRELLA]: Sustained.

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1 LDC [MR. NEVIN]: Is this your first trip to  
2 Guantanamo Bay?

3 MJ [Col PARRELLA]: Yes, it is.

4 LDC [MR. NEVIN]: Could you say to us what you know about  
5 the rules? Have you read the Military Commissions Act, for  
6 example, the Manual for Military Commissions? Are you  
7 familiar with these areas of the law?

8 MJ [Col PARRELLA]: I am.

9 LDC [MR. NEVIN]: And you mentioned that you had spoken to  
10 Judge Pohl about the -- about being detailed. Could you  
11 describe that conversation, please?

12 MJ [Col PARRELLA]: I will simply say that we did not  
13 discuss any substance of the case. The decision -- or the  
14 discussion was brief, and it was related to the fact of him  
15 providing notice that he was considering detailing me to this  
16 case.

17 LDC [MR. NEVIN]: Have you spoken to other persons about  
18 this case?

19 MJ [Col PARRELLA]: I don't know who you're referring to,  
20 Mr. Nevin.

21 LDC [MR. NEVIN]: I'm referring to anyone, Your Honor.

22 MJ [Col PARRELLA]: As you're aware, Mr. Nevin, there's  
23 a -- the trial judiciary has legal advisors. Of course, I've

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1 spoken to other folks about this case.

2 LDC [MR. NEVIN]: Yes.

3 MJ [Col PARRELLA]: So you're going to have to narrow down  
4 that question.

5 LDC [MR. NEVIN]: Okay. Have you spoken to, let's say,  
6 anyone at the Pentagon about this case?

7 MJ [Col PARRELLA]: No.

8 LDC [MR. NEVIN]: Secretary of Defense or acting general  
9 counsel?

10 MJ [Col PARRELLA]: No one.

11 LDC [MR. NEVIN]: No one.

12 And apart from your legal advisor and staff, of  
13 course, has anyone else spoken to you about this case?

14 MJ [Col PARRELLA]: No.

15 LDC [MR. NEVIN]: Do you have any -- do you come here with  
16 any kind of expectation about what you should or ought to be  
17 accomplishing here?

18 MJ [Col PARRELLA]: Not at all.

19 LDC [MR. NEVIN]: Do you -- one of the things we hear  
20 frequently is that there is -- that there has been a lot of  
21 delay in this case. Do you -- are you aware of that?

22 MJ [Col PARRELLA]: Other than simply the fact that this  
23 case has been going on as long as it has, not specifically,

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1 no.

2 LDC [MR. NEVIN]: Do you see that -- do you take it that  
3 your job here is to make the case move more quickly?

4 MJ [Col PARRELLA]: No.

5 LDC [MR. NEVIN]: Okay. So no one has suggested to you  
6 that that would be something you should do?

7 MJ [Col PARRELLA]: Not at all.

8 LDC [MR. NEVIN]: All right. Do you have particular  
9 experience with the law of armed conflict, sir?

10 MJ [Col PARRELLA]: I have served in operational billets  
11 that have entailed the knowledge of the law of armed conflict.

12 LDC [MR. NEVIN]: Have you thought about or formed or  
13 expressed an opinion about whether the United States was  
14 involved in an armed conflict subject to the laws of war on  
15 September 11th, 2001?

16 MJ [Col PARRELLA]: Not specifically that I can recall.

17 LDC [MR. NEVIN]: Okay. Well, sometimes you say "no," so  
18 I ask: Is there -- is there an occasion where ----

19 MJ [Col PARRELLA]: Well, I'm hesitant to say it's never  
20 happened. I was a student at the Army's Judge Advocate School  
21 for a year.

22 LDC [MR. NEVIN]: Right.

23 MJ [Col PARRELLA]: Is it possible that there was a

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1 discussion about that during an operational international law  
2 class? It is possible. I just don't simply have a  
3 recollection of it.

4 LDC [MR. NEVIN]: Okay. And is that -- but that's -- is  
5 that something you formed an opinion on?

6 MJ [Col PARRELLA]: No.

7 LDC [MR. NEVIN]: I wanted to ask you some questions about  
8 595B. That's your fitness report out of the Commandant of the  
9 Marine Corps Fellowship Program. Could you say what you did  
10 on that, during that time?

11 MJ [Col PARRELLA]: Yes. So the Fellowship Program is  
12 part of Marine Corps University. Every year they select a  
13 handful of officers to serve as Fellows at different agencies  
14 and corporations and think tanks. I was selected to be the  
15 Fellow for the Department of Justice. With that, I was  
16 assigned to the National Security Division, and within that,  
17 the Counterterrorism Section.

18 So I think in the exhibit itself, you probably have  
19 an explanation of what the -- that -- those duties entailed.  
20 I will say that it was distinct from being a hired Department  
21 of Justice employee in the sense that the Marine Corps mandate  
22 was that I essentially bring something back to the  
23 organization, so I observe, attempt to attend meetings as

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1 frequently as possible, maybe provide some information to the  
2 Department of Justice about what DoD's mission is and answer  
3 any questions that they may have as well.

4 LDC [MR. NEVIN]: Did you participate in the litigation of  
5 a specific case?

6 MJ [Col PARRELLA]: I did. I can't tell you what those --  
7 I just don't recall what those cases were.

8 LDC [MR. NEVIN]: So it was more than one case?

9 MJ [Col PARRELLA]: It was more than one case. I was  
10 always co-detailed, so I was never assigned a case to myself.  
11 I was always co-detailed with an existing or a permanent  
12 employee of CTS so that I could essentially assist and  
13 observe.

14 LDC [MR. NEVIN]: Yeah. And you appeared on the record, I  
15 believe?

16 MJ [Col PARRELLA]: I never ----

17 LDC [MR. NEVIN]: I'm sorry. When you say detailed ----

18 MJ [Col PARRELLA]: Yeah, I never made an appearance in a  
19 courtroom while I was at the Department of Justice.

20 LDC [MR. NEVIN]: I see. Could you say who you worked  
21 with there?

22 MJ [Col PARRELLA]: I was assigned cases with a handful of  
23 attorneys. The only -- I would say, most frequently would be

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1 [REDACTED], who I think his name appears on the report, and a  
2 gentleman by the name of [REDACTED].

3 LDC [MR. NEVIN]: I'm sorry, would you say that again?

4 MJ [Col PARRELLA]: [REDACTED].

5 LDC [MR. NEVIN]: Okay. Did you become acquainted with  
6 any of the persons who are appearing here as trial counsel  
7 today?

8 MJ [Col PARRELLA]: I know Mr. Groharing from his time  
9 going back to when he served on active duty in the Marine  
10 Corps, and I did have occasion to see him at social functions,  
11 going-away, Christmas party. So maybe two or three times  
12 throughout that year I saw him in a going-away or social  
13 situation while there.

14 LDC [MR. NEVIN]: Was he associated with the National  
15 Security Division and the Counterterrorism Section?

16 MJ [Col PARRELLA]: I believe he was and that he was on  
17 detail to here, but I don't -- I don't know. And he didn't  
18 maintain a presence at the Department of Justice while I was  
19 there ----

20 LDC [MR. NEVIN]: Okay.

21 MJ [Col PARRELLA]: ---- other than those sort of  
22 appearances for social situations.

23 LDC [MR. NEVIN]: I wanted to make sure I understand what

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1 you just said. You said he was detailed "here," meaning to  
2 the military commission?

3 MJ [Col PARRELLA]: It's my understanding.

4 LDC [MR. NEVIN]: From DoJ?

5 MJ [Col PARRELLA]: Correct.

6 LDC [MR. NEVIN]: Okay. But he was in that section. It's  
7 just -- if I understand you, what you're saying correctly, he  
8 was in that section. You just don't work with him directly?

9 MJ [Col PARRELLA]: I don't know that I can answer that  
10 question because I don't know for sure. I believe the answer  
11 is yes.

12 LDC [MR. NEVIN]: Okay. What about other persons  
13 associated with the military commission -- with military  
14 commissions at NSD Counterterrorism?

15 MJ [Col PARRELLA]: I don't believe I've met anybody when  
16 I was at DoJ who was working on the commissions.

17 LDC [MR. NEVIN]: Michael Lebowitz?

18 MJ [Col PARRELLA]: Doesn't ring a bell.

19 LDC [MR. NEVIN]: Okay. Joanna Baltes?

20 MJ [Col PARRELLA]: Doesn't ring a bell either.

21 LDC [MR. NEVIN]: Okay. Mr. Trivett?

22 MJ [Col PARRELLA]: I don't think so. It's possible he  
23 may -- I may have met him at -- again, at a social function,

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1 but I never worked with him.

2 LDC [MR. NEVIN]: Okay. Mr. Ryan?

3 MJ [Col PARRELLA]: I don't believe so.

4 LDC [MR. NEVIN]: Okay. Could you -- did you receive  
5 particular training to do the work that you did there at the  
6 National Security Division?

7 MJ [Col PARRELLA]: No.

8 LDC [MR. NEVIN]: Did you read materials to get yourself  
9 up to speed? For example, did you read the 9/11 Report?

10 MJ [Col PARRELLA]: I did not read the 9/11 Report. The  
11 only thing I remember reading to sort of get up to speed was  
12 the statutes related to CIPA.

13 LDC [MR. NEVIN]: Did anybody offer you training about --  
14 about international terrorism, let's say, for want of a better  
15 way of phrasing it?

16 MJ [Col PARRELLA]: No.

17 LDC [MR. NEVIN]: And did you read materials that were  
18 related to that?

19 MJ [Col PARRELLA]: No.

20 LDC [MR. NEVIN]: I know that in the process of working on  
21 cases like that, that it becomes important to know the kind of  
22 general milieu of international terrorism. Was that the case  
23 for you and did you make -- did you make any effort to educate

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1 yourself in that area?

2 MJ [Col PARRELLA]: Not independent effort. I mean, other  
3 than my just base knowledge of the subject matter from my  
4 times in DoD, I don't recall any specific trying to get up to  
5 speed on the topic.

6 LDC [MR. NEVIN]: Have you reviewed or discussed the  
7 statements that the men in this case made at any time?

8 MJ [Col PARRELLA]: No.

9 LDC [MR. NEVIN]: You spent time as a commander of a  
10 regional group, I believe, Western -- it's Region 8, if I'm  
11 remembering correctly.

12 MJ [Col PARRELLA]: That's correct.

13 LDC [MR. NEVIN]: And that's Central Europe, is it not?

14 MJ [Col PARRELLA]: Yes, it is.

15 LDC [MR. NEVIN]: And that was the -- because the Marine  
16 Corps has as one of its responsibilities protection of  
17 United States embassies, correct?

18 MJ [Col PARRELLA]: That is correct.

19 LDC [MR. NEVIN]: All right. So you had then command of  
20 the Marines who were protecting the embassies in Region 8?

21 MJ [Col PARRELLA]: Yes.

22 LDC [MR. NEVIN]: Right. And my understanding was that  
23 you lived in Germany during that period.

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1 MJ [Col PARRELLA]: Yes.

2 LDC [MR. NEVIN]: Okay. And, of course, one of the -- one  
3 of the issues for protection of United States embassies would  
4 be threat from terrorism. And I take it you were aware of  
5 that threat and would have educated yourself about the extent  
6 of it. Would that be correct?

7 MJ [Col PARRELLA]: To a limited extent. The way that the  
8 program is designed is the Marines, when they're at embassies  
9 and consulates, are actually under the operational control of  
10 the regional security officer within the Department of State.  
11 Our job is to ensure that the Marines are adequately trained,  
12 that they're doing okay, that the State Department is abiding  
13 by the MoU that we have for the Marine security program.

14 LDC [MR. NEVIN]: Are you aware of what's been referred to  
15 as the East Africa Embassy Bombings that occurred in 1998?

16 MJ [Col PARRELLA]: Other than just media accounts, no.

17 LDC [MR. NEVIN]: Okay. And you didn't receive any  
18 information during your time as a commander regarding those  
19 events?

20 MJ [Col PARRELLA]: No.

21 LDC [MR. NEVIN]: And did you -- when you say media  
22 accounts, can you be more specific what you're referring to  
23 there?

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1 MJ [Col PARRELLA]: Just general media accounts, probably  
2 back when the incident occurred. I never reviewed, to my  
3 knowledge, any classified material while in command at  
4 Region 8.

5 LDC [MR. NEVIN]: I will tell you that the government  
6 relies in large part or in -- to a certain degree on the --  
7 those attacks as part of its argument that there were, indeed,  
8 hostilities subject to the law of war on September 11th. So I  
9 asked the question whether there's anything in your background  
10 that would -- any information that you would have had on that  
11 subject as you come here to the bench today.

12 MJ [Col PARRELLA]: No.

13 LDC [MR. NEVIN]: I take it we're going to be having  
14 argument on motions later today. I believe maybe there's a  
15 motion to abate until you have come up to speed, so -- so  
16 maybe we won't.

17 But I'm interested to know what you've read about the  
18 case at this point. We have some 20,000 pages of transcripts.  
19 Have you read -- have you read those or any portion of them?

20 MJ [Col PARRELLA]: I have read portions. Yes, I have.

21 LDC [MR. NEVIN]: Have you read -- did you read the prior  
22 voir dire?

23 MJ [Col PARRELLA]: Some of them.

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1 LDC [MR. NEVIN]: Okay. What about motions arguments?

2 MJ [Co1 PARRELLA]: I've read portions of the transcript  
3 that included motions arguments. Again, I've read portions of  
4 the voir dire. I've read pleadings applicable to what we're  
5 going to do in this session of court or this docket order.

6 LDC [MR. NEVIN]: Okay. But not the whole ----

7 MJ [Co1 PARRELLA]: No.

8 LDC [MR. NEVIN]: And could you say how much of the whole  
9 you've read at this point?

10 MJ [Co1 PARRELLA]: I can't.

11 LDC [MR. NEVIN]: Okay. And what about the pleadings in  
12 the case? Have you read the pleadings in the case?

13 MJ [Co1 PARRELLA]: Not all of them.

14 LDC [MR. NEVIN]: Could you give us an idea of  
15 what percentage?

16 MJ [Co1 PARRELLA]: Mr. Nevin, I'm not going to. I mean,  
17 obviously, there is a voluminous amount of material. I've  
18 read as much as I can, given the time constraints that I've  
19 had; and again, done everything I could to ensure that I'm at  
20 least able to preside and understand the issues and rule on  
21 the law to the best of my ability. And so that's the extent  
22 of which I'm going to answer that question.

23 LDC [MR. NEVIN]: Well, okay, Your Honor. Did I

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1 understand you to say that you did not begin reading materials  
2 until the 27th, until you were detailed on the 27th?

3 MJ [Col PARRELLA]: That's correct.

4 LDC [MR. NEVIN]: So something on the order of ten days  
5 ago?

6 MJ [Col PARRELLA]: Yeah. It's possible when I went up  
7 for the read-in that I might have reviewed a few matters, but  
8 I don't recall doing much. I think maybe I reviewed the  
9 protective order when I was up there in the middle of August.  
10 But that would have been the earliest I would have reviewed  
11 anything related to the case.

12 LDC [MR. NEVIN]: And when you say the protective order,  
13 what are you referring to?

14 MJ [Col PARRELLA]: Protective order, I believe it's  
15 Appellate Exhibit 013BBBB.

16 LDC [MR. NEVIN]: Protective Order #1.

17 MJ [Col PARRELLA]: Correct.

18 LDC [MR. NEVIN]: And have you read protective orders --  
19 have you read other protective orders?

20 MJ [Col PARRELLA]: I have since then.

21 LDC [MR. NEVIN]: Okay. And could I ask, have you read  
22 the 505 materials, meaning the government's submissions and  
23 proposed substitutions and the military judge's rulings?

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1 MJ [Col PARRELLA]: I'm going to ask you to move on,  
2 Mr. Nevin. I mean, if there's a particular thing that you're  
3 concerned that I might have formed an opinion, you can ask  
4 that question. But I will tell you that I have not formed any  
5 opinions, I haven't reviewed or pre-reviewed any materials  
6 that have caused me to form an opinion about how any  
7 particular issue should be resolved at this point.

8 LDC [MR. NEVIN]: No, but -- and again, Your Honor, I'm  
9 just -- the reason for the inquiry is just to know what your  
10 state of knowledge is because that shapes the way we argue the  
11 case, the way all the parties would argue the case. And --  
12 obviously, so that's the reason for the question.

13 MJ [Col PARRELLA]: Again, I can understand your -- why  
14 you'd want to know that. But since it's not relevant to my  
15 impartiality or bias, I'm going to ask you to move on.

16 LDC [MR. NEVIN]: Okay. So let me just run down this list  
17 quickly and ask you, have you read any of the cases of the  
18 United States Supreme Court or of the courts of appeals that  
19 directly relate to military commissions cases?

20 MTC [MR. TRIVETT]: Objection, relevance.

21 MJ [Col PARRELLA]: Yeah, I will briefly state that I have  
22 not -- not that I can recall. It's possible, but again, we're  
23 going to move on.

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1 LDC [MR. NEVIN]: All right. And I understand, Your  
2 Honor. I just -- I have to ask.

3 Have you read any of the journalism related to this  
4 case?

5 MTC [MR. TRIVETT]: Same objection.

6 MJ [Col PARRELLA]: I'll answer that briefly just because  
7 it's potentially related to why we're going through this  
8 question. I generally have not. I think that one of the  
9 attorney advisors provided me an article that was probably  
10 authored in 2012 or '13 that just had pictures of the trial  
11 participants, and I think that's why it was provided, is to  
12 put a face and a name together. That's the extent of the  
13 media I reviewed.

14 LDC [MR. NEVIN]: Okay. What about books?

15 MJ [Col PARRELLA]: No.

16 LDC [MR. NEVIN]: And there have been many books, of  
17 course, but you're saying you have read none of them?

18 MJ [Col PARRELLA]: I've never read a book particularly  
19 about this case or that I can recall specifically about 9/11.  
20 There may have been books that tangentially mentioned 9/11,  
21 but not specifically anything about this case.

22 LDC [MR. NEVIN]: All right. What about movies or  
23 documentaries?

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1 MJ [Col PARRELLA]: No.

2 LDC [MR. NEVIN]: And in particular, you've not seen *Zero*  
3 *Dark Thirty*?

4 MJ [Col PARRELLA]: I have seen *Zero Dark Thirty*.

5 LDC [MR. NEVIN]: *Doctors of the Dark Side*?

6 MJ [Col PARRELLA]: No.

7 LDC [MR. NEVIN]: Could you say what impact *Zero Dark*  
8 *Thirty* had on you?

9 MJ [Col PARRELLA]: Not a significant impact.

10 LDC [MR. NEVIN]: Sir, do you have information about the  
11 CIA torture program at all? And I'll just represent to you  
12 that this -- for example, there has been a book entitled  
13 *Enhanced Interrogation* written by one of the people who  
14 designed the program. Have you read that book?

15 MJ [Col PARRELLA]: I have not.

16 LDC [MR. NEVIN]: Okay. And do you have any other  
17 knowledge or information about the torture program?

18 MJ [Col PARRELLA]: No.

19 MTC [MR. TRIVETT]: Objection as to form.

20 LDC [MR. NEVIN]: And in particular, have you read the  
21 executive summary of the SSCI report on the torture program?

22 MJ [Col PARRELLA]: Hang on one second, Mr. Nevin.

23 Trial Counsel?

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1 MTC [MR. TRIVETT]: We object to this line of questioning  
2 based on form. Calls for a legal conclusion.

3 MJ [Col PARRELLA]: Okay. I'll allow the question.  
4 Mr. Nevin, just repeat that last question.

5 LDC [MR. NEVIN]: The question was whether you had read  
6 the -- or all or any part of the executive summary of the  
7 Senate Select Committee on Intelligence's report released  
8 December 9 of 2014 regarding the torture program.

9 MJ [Col PARRELLA]: I have not.

10 LDC [MR. NEVIN]: And have you read any of the Office of  
11 Legal Counsel memoranda that relate to the torture program?

12 MJ [Col PARRELLA]: I have not.

13 LDC [MR. NEVIN]: Okay. Have you formed or expressed an  
14 opinion about whether the torture was justified under the  
15 circumstances?

16 MJ [Col PARRELLA]: No.

17 LDC [MR. NEVIN]: That's all I have. Thank you, sir.

18 MJ [Col PARRELLA]: You're welcome.

19 Ms. Bormann?

20 LDC [MS. BORMANN]: Judge, if you will bear with us and we  
21 can go a little out of order, we just received -- given the  
22 line of questioning that Mr. Nevin just gave, we sent  
23 Captain Brady to retrieve a copy of the JAG rule that applies

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1 to you, so if you can give us a moment just to look at that  
2 and maybe Mr. Harrington could go first, that would be great.  
3 It literally was just delivered.

4 MJ [Col PARRELLA]: Okay. In the meantime,  
5 Mr. Harrington, would you like to proceed?

6 LDC [MR. HARRINGTON]: Judge, do you know what implicit  
7 bias is?

8 MJ [Col PARRELLA]: Mr. Harrington, I want to know where  
9 we're going with this, so why don't we just get to where we're  
10 going. I'm not going to answer that question.

11 LDC [MR. HARRINGTON]: All right. Well, Judge, you  
12 recognize that sometimes we don't necessarily understand our  
13 own biases?

14 MJ [Col PARRELLA]: I understand.

15 LDC [MR. HARRINGTON]: Okay. And that so you understand  
16 that some of these questions that we might ask you is really  
17 going to that and to understand not just what you might say to  
18 us, "I don't have any bias against somebody," that there may  
19 be some things that you're not even aware of that you have  
20 bias. That's really what we're trying to get at.

21 MJ [Col PARRELLA]: And I understand that, Mr. Harrington.  
22 So again, I understand the purpose of this portion, I believe  
23 in it, and I want to be as transparent as possible. But I'm

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1 going to try to keep us limited to areas that are pertinent  
2 per the rules.

3           So things like qualifications, unless it's calling  
4 into question my qualifications per the rules, we're simply  
5 just not going to go down that. Matters that pertain to my  
6 impartiality or bias I certainly will entertain. I'll  
7 entertain questions that perhaps reveal an implicit bias.

8           LDC [MR. HARRINGTON]: But the rule -- the qualifications  
9 in the rules also take into account the perception that the  
10 public and everybody else has about the court.

11          MJ [Col PARRELLA]: I understand.

12          LDC [MR. HARRINGTON]: Okay. Judge, after -- you  
13 testified about where you were when 9/11 happened. What was  
14 your reaction after 9/11 happened?

15          MJ [Col PARRELLA]: That's difficult for me to remember  
16 the exact emotions, so I will say that I probably felt similar  
17 to what everybody else felt in the country. But I don't have  
18 any feelings here today as I sit here, which I think is what's  
19 pertinent, that came about as a result of that experience that  
20 caused me to feel that I cannot be impartial or unbiased.

21          LDC [MR. HARRINGTON]: Do you have different feelings  
22 about it today than you did back at 9/11?

23          MJ [Col PARRELLA]: I don't know. It's possible. I mean,

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1 I imagine that time has an impact on the way people feel about  
2 certain events.

3 LDC [MR. HARRINGTON]: Well, you just mentioned that you  
4 had the feelings that everybody else has. I don't know what  
5 that means. What does that mean? What did everybody else  
6 feel? We're trying to find out what you felt about it.

7 MJ [Col PARRELLA]: Okay. I'll briefly answer this,  
8 Mr. Harrington, and then we're going to move on, because I  
9 don't think that my feelings back, you know, in 2000 -- I  
10 think what is pertinent is what my feelings are here today as  
11 I sit as the military judge.

12 I think the feeling is -- of the country, if you want  
13 me to try to ascribe, you know, what that was, I think it was  
14 probably anger and just shock.

15 LDC [MR. HARRINGTON]: Thank you.

16 MJ [Col PARRELLA]: So I think my feelings were probably  
17 similar, but again, I'm somewhat speculating because it's been  
18 a long time. As I sit here today, I feel that I can be  
19 impartial and unbiased.

20 LDC [MR. HARRINGTON]: All right. Did you ever express to  
21 anybody what you thought should happen to the people who were  
22 responsible for what happened on 9/11?

23 MJ [Col PARRELLA]: Not that I recall.

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1 LDC [MR. HARRINGTON]: Has anybody ever told you that  
2 you've heard say that these people should be killed, they  
3 should be tortured, they should be -- anything?

4 MJ [Col PARRELLA]: Not that I recall, no.

5 LDC [MR. HARRINGTON]: You've never had a conversation  
6 with anybody like that?

7 MJ [Col PARRELLA]: Not that I can recall, no.

8 LDC [MR. HARRINGTON]: And you were in the Marines then;  
9 is that right?

10 MJ [Col PARRELLA]: I was.

11 LDC [MR. HARRINGTON]: And have been since?

12 MJ [Col PARRELLA]: I have.

13 LDC [MR. HARRINGTON]: Did you ever hear anybody say that  
14 these men deserve the death penalty?

15 MJ [Col PARRELLA]: When you say "these men," I assume  
16 you're referring to the accused?

17 LDC [MR. HARRINGTON]: Yes.

18 MJ [Col PARRELLA]: No.

19 LDC [MR. HARRINGTON]: Have you ever expressed an opinion  
20 about whether they deserve the death penalty or any other  
21 punishment assuming they're convicted?

22 MJ [Col PARRELLA]: No.

23 LDC [MR. HARRINGTON]: After you were detailed to this

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1 position by Judge Pohl, did you tell others that you were  
2 detailed to this position?

3 MTC [MR. TRIVETT]: Objection, asked and answered.

4 MJ [Col PARRELLA]: I'm going to sustain the objection. I  
5 don't see the relevance of this.

6 LDC [MR. HARRINGTON]: Did you ever express any opinion  
7 about this job and what it would entail to anybody else?

8 MJ [Col PARRELLA]: Pertinent to this? To Judge Pohl.

9 LDC [MR. HARRINGTON]: Now, you said that you haven't  
10 really discussed, let's say, the nuts and bolts of this case  
11 with Judge Pohl; is that correct?

12 MJ [Col PARRELLA]: That's correct.

13 LDC [MR. HARRINGTON]: Is there some rule that prohibits  
14 you from doing that?

15 MJ [Col PARRELLA]: I think that Judge Pohl's concern was  
16 essentially ensuring that I remained impartial as I went  
17 through the voir dire process.

18 LDC [MR. HARRINGTON]: Do you intend to talk to him after  
19 the voir dire process?

20 MJ [Col PARRELLA]: If he -- if he avails himself, then I  
21 may talk to him, certainly. But I haven't arranged for that  
22 or prearranged for that conversation to take place.

23 LDC [MR. HARRINGTON]: Have you given that any thought?

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1 MJ [Col PARRELLA]: We're not going to go there. I don't  
2 see the relevance of it.

3 LDC [MR. HARRINGTON]: When you said that you, as a law  
4 school intern, participated in two capital cases, what did you  
5 do?

6 MTC [MR. TRIVETT]: Objection, relevance.

7 MJ [Col PARRELLA]: Overruled. I'll answer the question.  
8 So primarily, I assisted in preparation of pleadings.

9 LDC [MR. HARRINGTON]: For pretrial motions I take it?

10 MJ [Col PARRELLA]: Yes.

11 LDC [MR. HARRINGTON]: Did any of those deal with the  
12 sentencing phase of the case?

13 MJ [Col PARRELLA]: It's likely. I don't recall.

14 LDC [MR. HARRINGTON]: Judge, I take it that in your  
15 experience as both a trial lawyer and as a judge that you've  
16 participated in jury selection, is that right, or member  
17 selection?

18 MJ [Col PARRELLA]: Yes.

19 LDC [MR. HARRINGTON]: Okay. And have you studied about  
20 capital jury selection at all?

21 MJ [Col PARRELLA]: Have I studied about it?

22 LDC [MR. HARRINGTON]: Yes.

23 MJ [Col PARRELLA]: I think I've made -- answered

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1 Mr. Nevin's questions regarding -- I haven't attended any  
2 capital litigation courses, so I don't know what is meant by  
3 "studies," so the answer is likely no, if -- to your question.  
4 I mean, it's possible I've studied it at some point in time,  
5 but not that I can recall.

6 LDC [MR. HARRINGTON]: Have you made any decisions about  
7 what the procedures or forms are going to be for the jury  
8 selection in this case?

9 MJ [Col PARRELLA]: No.

10 LDC [MR. HARRINGTON]: Have you thought about it?

11 MJ [Col PARRELLA]: No.

12 LDC [MR. HARRINGTON]: Have you made any decisions or  
13 thought about the amount of time it would take to pick a jury  
14 in a capital case?

15 MJ [Col PARRELLA]: Not specific to this case.

16 LDC [MR. HARRINGTON]: And are you familiar with the  
17 concept of a death-penalty-qualified jury?

18 MJ [Col PARRELLA]: Yes.

19 LDC [MR. HARRINGTON]: Okay. What does that mean to you?

20 MTC [MR. TRIVETT]: Objection.

21 MJ [Col PARRELLA]: Yeah, sustained.

22 LDC [MR. HARRINGTON]: And how did you learn about that?

23 MJ [Col PARRELLA]: I don't recall where I -- where I

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1 learned about it. I mean, at some point in my training or my  
2 experience.

3 LDC [MR. HARRINGTON]: And can you tell me: Do you know  
4 as you enter this case whether the United States Constitution  
5 applies to these proceedings?

6 MTC [MR. TRIVETT]: Objection.

7 MJ [Col PARRELLA]: Mr. Harrington, what this feels like  
8 is a quiz of the military judge. I'm not going to do it.  
9 I've expressed my qualifications on the record. I've  
10 indicated what those qualifications are. You all have the  
11 copy of the rules.

12 So again, if the question pertains to what those  
13 qualifications are, if you have a reason to believe that I am  
14 not qualified, or again, if it goes to my impartiality or  
15 bias, I will answer the question. But I'm not going to stand  
16 up here and be quizzed. So please ask your next question.

17 LDC [MR. HARRINGTON]: Okay. Judge, if I could just  
18 state, we are given a very brief notice that you are assigned  
19 to this case, and the standard apparently that is being  
20 imposed on us is that it's just this very narrow thing. You  
21 meet this tiny little few sentences of what it is to be  
22 qualified and, therefore, you can do the case.

23 This is not a normal case. This is a death penalty

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1 case.

2 MJ [Col PARRELLA]: I understand, Mr. Harrington, but ----

3 LDC [MR. HARRINGTON]: It's a heightened standard of due  
4 process.

5 MJ [Col PARRELLA]: I understand. However, I didn't make  
6 those rules. I'm just simply applying the rules that were --  
7 that are in the statute and in the regulations. So those are  
8 the qualifications that they deemed appropriate for a military  
9 judge, and that's why I'm adhering to those standards.

10 I can only assume if Congress wanted to make a  
11 detailed analysis of qualifications part of the process, then  
12 they would have inserted that into the statute.

13 LDC [MR. HARRINGTON]: Can you tell us, Judge, how long  
14 you've been detailed to this case?

15 MJ [Col PARRELLA]: Yes, since August 27th.

16 LDC [MR. HARRINGTON]: And for what period of time? How  
17 long? Indefinitely or a specific period of time?

18 MJ [Col PARRELLA]: Until I'm replaced, so indefinitely.

19 LDC [MR. HARRINGTON]: All right. Because we were told  
20 that you were only here for a year or ten months or something  
21 like that. Is that the case or not?

22 MJ [Col PARRELLA]: So I think what you're referring to is  
23 that just prior to my detailing to this case, I was selected

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1 through the Marine Corps process for a command which is slated  
2 to begin in the summer of 2019. To the best of my knowledge,  
3 I plan on receiving orders to report to that command. So if  
4 that were to transpire, then obviously whoever is detailed as  
5 the next chief trial judge will have to replace me.

6 LDC [MR. HARRINGTON]: Okay. I take it that's something  
7 you don't have control of? The Marines decide that; is that  
8 right? You go where you're told; is that basically it?

9 MJ [Col PARRELLA]: Well, I don't know that that's the  
10 Marines. In terms of detailing me here, that would -- or to  
11 replace me or the decision to replace me would be by the chief  
12 trial judge, and I don't know that there's been one that's  
13 been appointed to replace Judge Pohl. The Marine Corps would  
14 have to issue me orders, yes, from my current duty assignment.

15 LDC [MR. HARRINGTON]: Judge, in terms of the panel that  
16 might be selected for this case, has anyone discussed with you  
17 about the cost and time and expense and inconvenience to panel  
18 members?

19 MJ [Col PARRELLA]: No.

20 LDC [MR. HARRINGTON]: Okay. Is that a concern of yours?

21 MJ [Col PARRELLA]: Not at this juncture.

22 LDC [MR. HARRINGTON]: Would you have any concern about  
23 the fact that we might not be able to impanel a jury from the

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1 first panel that's sent here?

2 MJ [Col PARRELLA]: I don't have a concern about that at  
3 this juncture.

4 LDC [MR. HARRINGTON]: Does that mean that you haven't  
5 really given it any thought or ----

6 MJ [Col PARRELLA]: I haven't given it a tremendous amount  
7 of thought, Mr. Harrington, at this point. But it's not a  
8 concern for me right now.

9 LDC [MR. HARRINGTON]: Have you given any thought, Judge,  
10 to the -- I take it from your previous answer that the answer  
11 would be no -- is that -- the amount of time that would be  
12 allowed for the questioning of panel members?

13 MJ [Col PARRELLA]: No.

14 LDC [MR. HARRINGTON]: Or the form, whether defense  
15 counsel will be allowed to do that?

16 MJ [Col PARRELLA]: I think the answer will remain no,  
17 Mr. Harrington. So let's just move on, if we could.

18 Mr. Harrington, if I may ask how many more questions  
19 you anticipate. I think we're at the point where it's  
20 probably appropriate we take a recess.

21 LDC [MR. HARRINGTON]: Why don't we do that, Judge. I  
22 have a few more.

23 MJ [Col PARRELLA]: The commission ----

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1 LDC [MR. RUIZ]: Judge, if I may. Back here, Judge.  
2 Judge, I just want to make sure that -- normally, the guard  
3 force needs you to affirm that Mr. Hawsawi can go back to the  
4 camp, so I'm asking that you please do that.

5 MJ [Co] PARRELLA]: Yes. So at this recess, Mr. Hawsawi  
6 can return to the camp.

7 LDC [MR. RUIZ]: Thank you.

8 MJ [Co] PARRELLA]: All right. Commission is in recess.  
9 [The R.M.C. 803 session recessed at 1038, 10 September 2018.]  
10 [The R.M.C. 803 session was called to order at 1056, 10  
11 September 2018.]

12 MJ [Co] PARRELLA]: This commission is called back to  
13 order. All parties present when the commission recessed are  
14 again present, with the exception of Mr. Hawsawi, who has  
15 voluntarily absented himself from the commission.

16 Mr. Harrington, you may proceed.

17 LDC [MR. HARRINGTON]: Yes, Judge. Just a few more  
18 questions, Judge.

19 Judge, were you an attorney on a prosecution of a  
20 material support of terrorism case?

21 MJ [Co] PARRELLA]: I did work on some cases while I was  
22 at the Department of Justice that would have involved those  
23 charges, correct.

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1 LDC [MR. HARRINGTON]: Okay. And was the person who was  
2 the subject of that charge, was there a particular  
3 organization that they were alleged to have been a member of,  
4 if you recall?

5 MJ [Col PARRELLA]: Yes.

6 LDC [MR. HARRINGTON]: What was that?

7 MJ [Col PARRELLA]: So I worked on several cases while I  
8 was at the Department of Justice. Again, like I indicated, I  
9 was co-detailed. Some of those cases had been around for a  
10 long time when I was co-detailed, and probably most of them  
11 were still around when I left at the end of the ten-month  
12 duration of my Fellowship.

13 Generically, organizations to which those individuals  
14 belonged included primarily, I would say, ISIS, or ISIL, as  
15 well as organizations like al-Shabaab. I think I even worked  
16 a little bit on a case involving the FARC at that time.

17 LDC [MR. HARRINGTON]: I take it those cases were  
18 relatively recent, though, right, since they were still active  
19 cases? Is that right? Yes? No?

20 MJ [Col PARRELLA]: I don't know that I can answer that  
21 other than to say that I was there, as you know, from 2014 to  
22 2015.

23 LDC [MR. HARRINGTON]: Judge, are you a member of any

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1 organizations, either military or nonmilitary, where you feel  
2 that you would have any obligation whatsoever to explain any  
3 actions that you take in this case?

4 MJ [Col PARRELLA]: No.

5 LDC [MR. HARRINGTON]: Judge, this morning when I got up  
6 earlier, I said that we have this bit of a complicated  
7 procedure, and I'm not sure what the extent of your knowledge  
8 of this issue is because you're so new to the case and that,  
9 but in -- AE 292 is the motion series where the Special Review  
10 Team was appointed, and we are preparing something in writing  
11 to give you some background and try and identify the issue for  
12 you.

13 But the initial procedural question is, whom should  
14 we serve with this? The trial counsel has been walled off  
15 from it, so they normally don't get any of the pleadings. And  
16 I didn't explain it to you in detail this morning because  
17 they -- because they are here. So the question becomes, is  
18 this just an ex parte filing with you? Do we serve the ----

19 MJ [Col PARRELLA]: I think -- so as I understand the  
20 nature of this, it would be questions you want to pose to the  
21 military judge as part of voir dire that you need to -- or  
22 feel you need to file ex parte. Is that a correct summary,  
23 Mr. Harrington?

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1 LDC [MR. HARRINGTON]: They don't have to be ex parte,  
2 they just need to be ex parte from the trial counsel. They  
3 have walled themselves off and have not participated in any of  
4 the proceedings we had with the Special Review Team. But the  
5 Special Review Team does obviously have an interest in it, I  
6 assume, because we're going to be asking questions about them  
7 and some of the people that they work with.

8 MJ [Col PARRELLA]: So what I would advise you to do is  
9 please file it in writing. If you feel that you need to  
10 request it to be ex parte, then please do so, just like you  
11 would any other ex parte matter, and I will take it under  
12 consideration.

13 LDC [MR. HARRINGTON]: And service on the SRT, yes or no?  
14 Do you want to decide that with our ex parte pleading?

15 MJ [Col PARRELLA]: Yeah, I'll decide that when you file  
16 the pleading.

17 LDC [MR. HARRINGTON]: Okay. Thank you.

18 MJ [Col PARRELLA]: Thank you, Mr. Harrington.

19 Ms. Bormann, are you prepared to proceed?

20 LDC [MS. BORMANN]: We are, Judge. It will be  
21 Mr. Montross.

22 MJ [Col PARRELLA]: Thank you.

23 DC [MR. MONTROSS]: Good morning.

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1 MJ [Col PARRELLA]: Good morning.

2 DC [MR. MONTROSS]: In order to be detailed to serve as  
3 the judge on the 9/11 trials, you had to be a military judge;  
4 is that correct?

5 MJ [Col PARRELLA]: Yes.

6 DC [MR. MONTROSS]: Okay. I would like to approach and  
7 have something marked for identification. I'm going to ask  
8 you some questions about a JAG instruction and also the -- and  
9 also the judicial canons. May I approach?

10 MJ [Col PARRELLA]: You may.

11 MTC [MR. TRIVETT]: Sir, we have not received a copy of  
12 this.

13 DC [MR. MONTROSS]: I understand that. As I was about to  
14 say, Ms. Bormann is giving copies to trial counsel as well as  
15 giving copies to the other defendants and their counsel.

16 MJ [Col PARRELLA]: Okay.

17 DC [MR. MONTROSS]: May I approach?

18 MJ [Col PARRELLA]: You may.

19 [The military judge conferred with courtroom personnel.]

20 [Pause.]

21 DC [MR. MONTROSS]: Your Honor, if I may ask, and I'll  
22 certainly give you an opportunity to look at them, how  
23 JAG Instruction 58 ----

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1 LDC [MR. RUIZ]: I'm sorry, Judge. We still have not  
2 received a copy. We would like a copy.

3 LDC [MS. BORMANN]: That's correct, Judge. Our copier was  
4 having difficulties, so we're a copy short. I'm happy to  
5 provide Mr. Ruiz my copy, if he needs it. It's the JAG rules  
6 that apply to him too.

7 MJ [Co1 PARRELLA]: All right. Let's please ensure that  
8 he has a copy. It looks like Mr. Connell just handed Mr. Ruiz  
9 a copy. Is that correct, Mr. Ruiz?

10 LDC [MR. RUIZ]: Yes, sir. I'm reviewing them now.

11 [Pause.]

12 MJ [Co1 PARRELLA]: Okay, Mr. Montross, you may proceed.

13 DC [MR. MONTROSS]: Your Honor, first as a procedural  
14 question, I handed up two documents to you. The first  
15 document is entitled JAG Instruction 5803.1E.

16 Just for the record, could you tell me what  
17 designation that has received?

18 MJ [Co1 PARRELLA]: I'm sorry. I don't understand your  
19 question.

20 DC [MR. MONTROSS]: As an exhibit number. I'm sorry, Your  
21 Honor.

22 MJ [Co1 PARRELLA]: 595C.

23 DC [MR. MONTROSS]: 595C. And, Your Honor, I also handed

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1 up from the code of judicial -- from the Canon of Judicial  
2 Conduct a number of rules. Is it safe to say that is AE 595D,  
3 as in delta?

4 MJ [Col PARRELLA]: That's correct.

5 DC [MR. MONTROSS]: Okay. Thank you.

6 Sir, I'm asking if you would agree with me -- or in  
7 your previous work as a military judge, are you familiar with  
8 JAG Instruction 5803.1E, as in Edward?

9 MJ [Col PARRELLA]: Yes.

10 DC [MR. MONTROSS]: And you agree that that instruction  
11 covers you; is that fair to say?

12 MJ [Col PARRELLA]: That is fair to say.

13 DC [MR. MONTROSS]: Okay. Sir, I was wondering -- I'm  
14 going to ask you if you can please turn to page 6. There's a  
15 middle of the page, Roman numeral -- I mean, Arabic numeral 7,  
16 "Judicial Conduct." If I may just briefly read that.

17 "To the extent that it does not conflict with  
18 statutes" ----

19 MJ [Col PARRELLA]: Mr. Montross, I'm sorry to cut you  
20 off. I can read that. Let's proceed.

21 DC [MR. MONTROSS]: Do you agree that the American Bar  
22 Association Model Code of Judicial Conduct applies to your  
23 role here at the 9/11 military commission?

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1 MJ [Col PARRELLA]: Well, it appears from the reading of  
2 this to the extent it doesn't conflict with the other  
3 statutes, regulations, or rules.

4 DC [MR. MONTROSS]: Okay. Do you believe it conflicts  
5 with any other statute, regulation, or rule?

6 MJ [Col PARRELLA]: I'd -- not to my knowledge.

7 DC [MR. MONTROSS]: Sir, I'm going to ask you then to look  
8 at AE 595D, as in delta, Rule 2.5: Competence, Diligence, and  
9 Cooperation.

10 MJ [Col PARRELLA]: Okay.

11 DC [MR. MONTROSS]: Okay. Do you agree that a judge  
12 should perform judicial and administrative duties competently  
13 and diligently?

14 MJ [Col PARRELLA]: What's the relevance of this?

15 DC [MR. MONTROSS]: Your Honor, if you look at the comment  
16 to Rule 2.5, it says, "Competence in the performance of  
17 judicial duties requires the legal knowledge, skill,  
18 thoroughness, and preparation reasonably necessary to perform  
19 a judge's responsibility of judicial office."

20 I would like to ask you questions about your capital  
21 legal knowledge, your skill, your thoroughness, and the  
22 preparation that you've done not only in general, but specific  
23 to the motions that are in front of you during this week of

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1 hearings. What pages of the transcript you read, what  
2 documents you reviewed, what pleadings, what attachments. And  
3 I would suggest that the comment of Rule 2.5 specifically  
4 grants me the authority to ask you those questions.

5 MJ [Col PARRELLA]: Okay. I disagree, Mr. Montross, and I  
6 understand that's your position and perhaps the position of  
7 other counsel. The commission's position is that the  
8 qualifications are stated, and I believe it's the discussion  
9 to Rule 902 that indicates that the military judge can place  
10 limits on the presentation of evidence, scope of the  
11 questioning, and argument.

12 And I'm simply just not going to go down the rabbit  
13 hole of the questions and answers about my qualifications. I  
14 think I've been pretty up front about the fact that I  
15 recognize that I don't have the experience of my predecessor;  
16 nevertheless, my predecessor is the one who selected me from a  
17 pool of nominees. Those nominees were screened by the service  
18 judge advocate. I've met all of the qualifications, to the  
19 best of my knowledge, that are set forth in R.M.C. 502 and  
20 503.

21 I have considered sort of the breadth of the task  
22 that faces me, and I think I've made it clear that I will not  
23 be rushed, I will not feel any pressure to rush, and I will

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1 take whatever time is necessary to ensure that I fully  
2 understand the issues before the commission before I make any  
3 ruling on the subject matter.

4           What I will not do is I will not go through in detail  
5 to specify what I did or did not do to prepare for today's  
6 hearing. As we address each appellate exhibit, hopefully  
7 throughout the week, if I have questions, I will ask them. If  
8 I need to take things under advisement, I shall do so.

9           So with that in mind, I'd ask you to please continue  
10 with your next question.

11           DC [MR. MONTROSS]: My next question would be: Is it your  
12 position, therefore, Your Honor, that outside of Rule 502 and  
13 Rule 503 of the military commission that there is no place  
14 during voir dire to ask you questions regarding your  
15 obligations under the Model Code of Judicial Conduct?

16           MJ [Col PARRELLA]: My position is with respect to  
17 qualifications, you can ask me questions regarding my  
18 qualifications that are set forth in the rules.

19           The rule -- or comment to Rule 2.5 reading this, to  
20 me, does not go beyond what's in 502 and 503. It's basically  
21 a tenet that's applicable to whatever case I'm assigned, and I  
22 understand the complexity and the -- sort of the history of  
23 this case enough to know the task at hand.

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1 DC [MR. MONTROSS]: I understand you understand. The  
2 point of voir dire, though, is for us to understand. So I'm  
3 asking specifically then: You referenced the comment to Rule  
4 2.5. Am I not permitted to ask, then, any questions about  
5 your capital legal knowledge other than what has been asked by  
6 Mr. Nevin?

7 MJ [Col PARRELLA]: I believe that I've already answered  
8 as much as I can answer. So I don't know that there's any  
9 good in asking me. You're welcome to ask me questions if it's  
10 relevant to my impartiality or bias or, you know, maybe a  
11 strong feeling I may have on capital punishment. But as to my  
12 qualifications to sit on a capital case, the answer is no.

13 I think we've addressed that topic. And again,  
14 you're welcome to challenge the military judge in that  
15 respect, but I don't see the productivity in asking further  
16 questions on that.

17 DC [MR. MONTROSS]: One other question. Does the Code of  
18 Judicial Conduct provide supplemental or additional  
19 obligations in your view beyond what is required by Rule 502  
20 and Rule 503?

21 MJ [Col PARRELLA]: I think that's sort of an advisory  
22 question. I'm not going to answer the question. Let's ask  
23 your next question.

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1 DC [MR. MONTROSS]: Okay. I'd like to ask you some  
2 questions about your time at the Department of Justice  
3 beginning in 2014.

4 Just to be clear, your biography indicates you  
5 started in July of 2014, though your fitness report seems to  
6 indicate the end of June 2014. I am a civilian, and I'm  
7 certainly not versed in military fitness reports. When did  
8 you start at the Department of Justice?

9 MJ [Col PARRELLA]: So it would have been in July. The  
10 reason for the reference to June on the fitness report is  
11 because in the military, you don't want gaps in your fitness  
12 reports. So the date of June would reflect when my previous  
13 fitness report had ended. In all likelihood, in the interim  
14 period, there was probably annual leave or some other event.

15 DC [MR. MONTROSS]: Okay. Were you familiar with the  
16 Fellowship position before you actually were assigned it?

17 MJ [Col PARRELLA]: I was selected for the Fellowship  
18 in -- sometime around December or January of the year  
19 preceding. That's when the message comes out that indicates  
20 who is selected for what Fellows.

21 Now, I believe I was the third person. It was a  
22 relatively new Fellowship, so I think I was the third person  
23 to hold that position from the Marine Corps. And I believe

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1 sometime in the late spring, I probably did speak with my  
2 predecessor just to get an idea of what the Fellowship  
3 entailed.

4 DC [MR. MONTROSS]: Okay. Did you actively seek out that  
5 assignment to work with DOJ?

6 MJ [Col PARRELLA]: No. It was -- it's assigned as part  
7 of a board selection process.

8 DC [MR. MONTROSS]: Okay. Did you indicate it as a  
9 preference?

10 MJ [Col PARRELLA]: My recollection -- so we do submit a  
11 questionnaire prior to that board. I believe my top  
12 preference was to attend top-level schools, so there's sort of  
13 the dichotomy of you can either be selected to attend a war  
14 college or a similar type school or a Fellowship. I believe  
15 the War College was my first preference. I don't know if I  
16 put specifically Department of Justice as a preference.

17 DC [MR. MONTROSS]: Now, the Fellowship, when you obtained  
18 it and you started in July of 2014, was your working office in  
19 Washington, D.C.?

20 MJ [Col PARRELLA]: It was. It was in the Department of  
21 Justice main building.

22 DC [MR. MONTROSS]: Okay. And in the Department of  
23 Justice main building, was -- not the -- a little bit broader

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1 than Counterterrorism Section, but the National Security  
2 Division, was that housed in its entirety at main Justice?

3 MJ [Col PARRELLA]: I don't know.

4 DC [MR. MONTROSS]: Okay. Was the Counterterrorism  
5 Section housed in its entirety at main Justice?

6 MJ [Col PARRELLA]: Honestly, I don't know.

7 DC [MR. MONTROSS]: Okay. How many attorneys were in the  
8 Counterterrorism Section of the National Security Division of  
9 the Department of Justice when you started there in July of  
10 2014?

11 MJ [Col PARRELLA]: I don't know.

12 DC [MR. MONTROSS]: Do you have an estimate?

13 MJ [Col PARRELLA]: My best estimate would be maybe 60 or  
14 70, but I never had occasion to be at a meeting or some sort  
15 of gathering with all the other attorneys.

16 DC [MR. MONTROSS]: Okay. The -- you provided to us on  
17 Saturday a fitness report which you have also placed into the  
18 record. Is that correct, Your Honor?

19 MJ [Col PARRELLA]: Correct.

20 DC [MR. MONTROSS]: Okay. Now, in the report, there's  
21 also a letter that's from [REDACTED]. Is that  
22 correct?

23 MJ [Col PARRELLA]: Yes.

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1 DC [MR. MONTROSS]: Okay. [REDACTED] indicates that  
2 upon your arrival, you "straightaway assumed all the duties  
3 and responsibilities of a DOJ counterterrorism prosecutor and  
4 immediately became an integral part of the DOJ's  
5 counterterrorism mission."

6 I understand that you said before that the duties and  
7 responsibilities of a DOJ counterterrorism prosecutor are  
8 self-evident in the letter. But frankly, Your Honor, I'm not  
9 seeing it. So can you explain to me what your duties and  
10 responsibilities were?

11 MJ [Col PARRELLA]: So I think if you look at page 1 of  
12 AE 595B, and specifically under Block B where it indicates the  
13 billet description, I will tell you that that's probably my --  
14 the best description that I can offer of what my role was as a  
15 CMC fellow to the Department of Justice.

16 DC [MR. MONTROSS]: Can you explain to me how so quickly  
17 you were seamlessly integrated as a full-fledged  
18 counterterrorism prosecutor? What does that mean?

19 MJ [Col PARRELLA]: Well, that would be a great question  
20 for [REDACTED].

21 DC [MR. MONTROSS]: Okay. Well, it's also -- you just  
22 read to me part of the billet description, and that's actually  
23 on your fitness rep report. It's not the letter from

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1 [REDACTED], it's on the fit rep. So it's under "DIRECTED  
2 AND ADDITIONAL COMMENTS." So that's where I'm asking it from.

3 MJ [Col PARRELLA]: Well, those directed comments are also  
4 not prepared by me. Those are prepared by the gentleman who  
5 signs in Block J, which is [REDACTED].

6 DC [MR. MONTROSS]: Do you believe that you seamlessly  
7 integrated yourself as a full-fledged counterterrorism  
8 prosecutor upon your arrival?

9 MJ [Col PARRELLA]: I would have to say it was probably a  
10 little less than seamless and that I was not quite ready or at  
11 the capability or competency of those who are permanent  
12 employees of the Department of Justice.

13 DC [MR. MONTROSS]: Well, I'm brand new to this case, too,  
14 so I feel the same way actually right now. So let me ask you,  
15 though, you said in terms -- you described your billeting as  
16 Part B. When you're integrated, do you have access to the  
17 same information as all the other counterterrorism prosecutors  
18 in that section?

19 MJ [Col PARRELLA]: I had a security clearance that  
20 allowed me access to the material that I needed to know.

21 DC [MR. MONTROSS]: What was your security clearance at  
22 that time?

23 MJ [Col PARRELLA]: TS//SCI.

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1 DC [MR. MONTROSS]: Okay. So you would have access to the  
2 same information and databases as anyone else who had TS//SCI  
3 clearance in the Department of Justice at that time; is that  
4 fair to say?

5 MJ [Co1 PARRELLA]: I don't know.

6 DC [MR. MONTROSS]: Okay. Now, you said before that, when  
7 you first got there, that one of the things you did was you  
8 observed and attended meetings as often as possible. Is that  
9 right?

10 MJ [Co1 PARRELLA]: That's a fair statement, yes.

11 DC [MR. MONTROSS]: All right. There would be staff  
12 meetings from -- for all the attorneys in the Counterterrorism  
13 Section that you would attend?

14 MJ [Co1 PARRELLA]: No.

15 DC [MR. MONTROSS]: Okay. What meetings would you attend?

16 MJ [Co1 PARRELLA]: So within the Counterterrorism  
17 Section, there were sections within the section.

18 DC [MR. MONTROSS]: Okay.

19 MJ [Co1 PARRELLA]: I don't remember the billet, I think  
20 it's maybe deputy chief. So that individual would hold maybe  
21 weekly meetings; I attended a few of those.

22 DC [MR. MONTROSS]: I'm sorry. You said weekly, sir?

23 MJ [Co1 PARRELLA]: I think they were weekly.

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1 I attended meetings related to cases that I was  
2 working on at various times and places. I never attended,  
3 that I recall, a regularly occurring meeting within the  
4 organization that was hosted by anybody. I might have sat in  
5 on a meeting once, somebody within the National Security  
6 Division's, you know, front office, but not that I can -- I  
7 certainly didn't do it on a recurring instance, and I can't  
8 even recall a specific instance.

9 DC [MR. MONTROSS]: Okay. Would there be documentation at  
10 the Counterterrorism Section about the meetings that you  
11 attended and who was present at these meetings?

12 MJ [Col PARRELLA]: I highly doubt it. I don't recall  
13 ever signing anything.

14 DC [MR. MONTROSS]: Okay. Would there have been e-mail  
15 notifications or counter notifications inviting you to staff  
16 meetings or team meetings?

17 MJ [Col PARRELLA]: No.

18 DC [MR. MONTROSS]: You indicated that there were sections  
19 within the Counterterrorism Section of the National Security  
20 Division. What sections did you work in?

21 MJ [Col PARRELLA]: I don't recall the designation. So  
22 all I can say is that I recall the initial team lead, for lack  
23 of a better word, was [REDACTED]. And then he departed at

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1 some point in time, and I believe his replacement was [REDACTED]  
2 [REDACTED].

3 DC [MR. MONTROSS]: [REDACTED] who? I'm sorry, Your Honor.

4 MJ [Co] PARRELLA: [REDACTED].

5 DC [MR. MONTROSS]: Could you estimate a spelling for me?

6 MJ [Co] PARRELLA: I really can't. I don't recall. I  
7 mean, it may be [REDACTED] -- I don't know. I would just be  
8 guessing as well.

9 DC [MR. MONTROSS]: You also, though, indicated that you  
10 were co-detailed, I believe, to a number of cases while you  
11 were at the National Security Division; is that right?

12 MJ [Co] PARRELLA: Yes.

13 DC [MR. MONTROSS]: Would you have been detailed to cases  
14 that were potentially in different units or subsections of the  
15 Counterterrorism Section itself? Is that question clear  
16 because if not, I can try and rephrase.

17 MJ [Co] PARRELLA: Yeah, it is clear. I think for the  
18 most part, most of my -- I can only recall being detailed to  
19 cases within my section.

20 DC [MR. MONTROSS]: Would there be memorialization or  
21 records of what cases specifically you worked on or touched  
22 during your time at the Counterterrorism Section?

23 MJ [Co] PARRELLA: I don't think it was ever

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1 memorialized. It was certainly not a written detailing. It  
2 was a very sort of informal process because, again, they sort  
3 of knew I was there for a very limited amount of time and that  
4 I was there for a different purpose than the other attorneys  
5 who were permanently assigned to the unit.

6 DC [MR. MONTROSS]: [REDACTED] also, though, indicated  
7 in his letter that "Furthermore, Lieutenant Colonel Parrella  
8 prepared memoranda on topics of current relevance to  
9 counterterrorism prosecutors, which were widely distributed  
10 and read within CTS."

11 So first, I'm going to ask you: What was the topics  
12 that you prepared memorandum on?

13 MJ [Col PARRELLA]: I can't remember what their reference  
14 was to that in terms of me preparing a particular memorandum  
15 related to maybe a topic that the -- that I had submit --  
16 background from the Marine Corps. It's possible that I  
17 prepared something that was related to a topic that -- to give  
18 the Department of Justice attorneys maybe some better context  
19 or understanding of how DOD, or specifically the Marine Corps,  
20 did something, but I can't recall those memorandum.

21 I think perhaps what he's primarily related to is  
22 there's memorandum that are prepared within in the regular  
23 course of business within CTS, and I assisted in the

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1 preparation of those memoranda.

2 DC [MR. MONTROSS]: But you have no independent  
3 recollection of what the topics of current relevance to  
4 counterterrorism prosecutors were that you prepared the  
5 memorandum on?

6 MJ [Col PARRELLA]: I don't, but I do know that they  
7 weren't related to anything involving the Office of  
8 Commissions or this case.

9 DC [MR. MONTROSS]: Okay. Was there anything related to  
10 al Qaeda or any organization that was potentially associated  
11 with al Qaeda?

12 MJ [Col PARRELLA]: No. I have no special background or  
13 information or knowledge about al Qaeda or any of the other  
14 terrorist organizations.

15 DC [MR. MONTROSS]: Or just not even relying on your  
16 special background, but just as a young, talented attorney who  
17 is in this Fellowship who would have access to databases and  
18 information, were you asked to prepare any memorandum that  
19 dealt with al Qaeda at all?

20 MJ [Col PARRELLA]: No.

21 DC [MR. MONTROSS]: Were you asked to prepare -- did you  
22 write any memorandum that dealt with the intersection of  
23 classification issues and the ability to present evidence in

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1 an open courtroom?

2 MJ [Col PARRELLA]: No. And I feel confident in saying  
3 that because I was learning the process myself.

4 DC [MR. MONTROSS]: [REDACTED] also -- [REDACTED], I'm  
5 sorry, also indicated that you "drafted legal memoranda and  
6 recommendations for the Assistant Attorney General that  
7 assessed the prosecutorial merit of terrorism cases." Is that  
8 referring to John Carlin as the Assistant Attorney General?

9 MJ [Col PARRELLA]: I don't know. The best I can recall,  
10 I only met Mr. Carlin once, perhaps twice in the entire year.

11 DC [MR. MONTROSS]: Okay. Do you know if he was the  
12 Assistant Attorney General at the time?

13 MJ [Col PARRELLA]: I believe he was the Assistant  
14 Attorney General. He was in charge of the National Security  
15 Division ----

16 DC [MR. MONTROSS]: Correct.

17 MJ [Col PARRELLA]: ---- I do know that.

18 DC [MR. MONTROSS]: Yes. So you were preparing memorandum  
19 for the individual who was in charge of NSD?

20 MJ [Col PARRELLA]: I was preparing memorandum that I  
21 understood was going to be approved by somebody in his office.  
22 I can't tell you whether it was specifically approved by him  
23 or one of his deputies.

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1 DC [MR. MONTROSS]: When [REDACTED] indicates that you  
2 prepared memorandum and recommendations for the Assistant  
3 Attorney General, you have no reason to believe that he's  
4 making an inaccurate statement ----

5 MJ [Col PARRELLA]: Not at all.

6 DC [MR. MONTROSS]: ---- that is actually going to the  
7 Assistant Attorney General or perhaps to Mr. Carlin?

8 MJ [Col PARRELLA]: It could have very well. I have no  
9 reason to doubt it. I just don't know whether it went to him  
10 or -- my understanding is his deputies or assistants signed  
11 off on a lot of that material.

12 DC [MR. MONTROSS]: Okay. And what was the subject matter  
13 of the legal memorandum that you submitted to the Assistant  
14 Attorney General for the National Security Division?

15 MJ [Col PARRELLA]: So there was probably more than one.  
16 I'm assuming what he's referring to is, again, in the regular  
17 course of business, I assisted in reviewing memoranda. To my  
18 recollection, it primarily involved things such as search  
19 warrant authorizations for cases that were being investigated  
20 by assistant U.S. Attorneys in the various districts. If they  
21 had a certain triggering event, nexus to terrorism, or some  
22 other reason, then they would come through CTS. They would be  
23 reviewed, memoranda was then prepared which would then be

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1 forwarded up to the chain of command.

2 DC [MR. MONTROSS]: As part of authorizing the search  
3 warrants, were you making determinations or recommendations or  
4 assessments about whether or not a person was or was not a  
5 member of a terrorist organization?

6 MJ [Col PARRELLA]: No, I don't recall doing that. It was  
7 primarily just a recommendation as to whether there was  
8 probable cause.

9 DC [MR. MONTROSS]: Okay. [REDACTED] also indicates  
10 that you wrote other court documents involving the prosecution  
11 of high-level international and domestic counterterrorism  
12 targets.

13 Who were the high-level international  
14 counterterrorism targets that you prepared court documents  
15 involving?

16 MJ [Col PARRELLA]: I honestly don't remember any  
17 particular name. They were individuals, to my knowledge, that  
18 were domestic -- living domestically and being investigated by  
19 domestic law enforcement agencies. They may have had a nexus  
20 with the intelligence community, but they were primarily --  
21 this was in preparation for prosecution in the Article III  
22 courts.

23 DC [MR. MONTROSS]: Okay. Any understanding then why

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1 [REDACTED] would write that you prepared court documents  
2 involved in the prosecution of high-level international  
3 targets? He does mention domestic, and I hear Your Honor.

4 But do you have any indication or understanding why  
5 [REDACTED] would also write in this letter that becomes part  
6 of your fit rep, apparently, that you were involved in the  
7 prosecution of high-level international targets?

8 MJ [Col PARRELLA]: I mean, it's certainly possible that  
9 one of the individuals that I was assisting on may have been  
10 located OCONUS, overseas. I just don't have a specific  
11 recollection of it.

12 I do recall, though, that none of the cases that I  
13 was working on involved anything other than Article III courts  
14 that had no workings with the OMC or the 9/11 case.

15 DC [MR. MONTROSS]: Okay. When you were present at the  
16 Counterterrorism Section, did you attend any trainings or  
17 speeches by individuals who were involved in the military  
18 commission cases?

19 MJ [Col PARRELLA]: No, not that I recall.

20 DC [MR. MONTROSS]: Okay. Present at the same time, at  
21 DOJ in the Counterterrorism Section when you were there, was  
22 Mr. Trivett; is that right?

23 MJ [Col PARRELLA]: It's possible. Again, I don't recall

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1 if I've met him. The only one I specifically know I know is  
2 Mr. Groharing.

3 DC [MR. MONTROSS]: Okay. Do you have any recollection of  
4 meeting or speaking to Mr. Edward Ryan while you were at DOJ?

5 MJ [Col PARRELLA]: I don't.

6 DC [MR. MONTROSS]: Did you ever see General Mark Martins  
7 while you were there?

8 MJ [Col PARRELLA]: I did not.

9 DC [MR. MONTROSS]: Okay. So Mr. Groharing -- Air Station  
10 Miramar, you were a defense attorney at Air Station Miramar;  
11 is that correct, sir?

12 MJ [Col PARRELLA]: I was a defense attorney and a  
13 prosecutor at Miramar. I know Mr. Groharing, I believe at the  
14 time he was at the recruit depot. My recollection is I first  
15 met him through a mutual friend. I didn't have very much  
16 interaction with him while we were both in the San Diego area,  
17 however.

18 DC [MR. MONTROSS]: When were you together in the  
19 San Diego area?

20 MJ [Col PARRELLA]: It would have been roughly late '90s,  
21 early 2000 time frame.

22 DC [MR. MONTROSS]: Okay. Was Mr. Groharing -- were you  
23 at Air Station Miramar when 9/11 happened, sir?

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1 MJ [Col PARRELLA]: I was stationed ----

2 DC [MR. MONTROSS]: You were at the airport, but you were  
3 stationed there is my understanding; is that fair?

4 MJ [Col PARRELLA]: Yes, that's correct.

5 DC [MR. MONTROSS]: Was Mr. Groharing also at Air Station  
6 Miramar at that time?

7 MJ [Col PARRELLA]: No. He was stationed at the recruit  
8 depot, which is in downtown San Diego.

9 DC [MR. MONTROSS]: Okay. When he was at the  
10 recruitment -- was he ever at Air Station Miramar with you?

11 MJ [Col PARRELLA]: Not as assigned personnel. So it's  
12 possible if he were in a defense counsel billet and we had a  
13 conflict case, he may have come up to Miramar to participate  
14 in a trial, but he was never assigned there, to my knowledge.

15 DC [MR. MONTROSS]: Okay. So the place that you worked at  
16 Air Station Miramar, was that called the law center or was it  
17 called LSSS?

18 MJ [Col PARRELLA]: I think at the time -- and this --  
19 there's been a reorganization. At the time, it was referred  
20 to as a Joint Law Center.

21 DC [MR. MONTROSS]: Okay. Did there -- during that time  
22 that you were at the Joint Law Center, did Mr. Groharing ever  
23 have an office there or was he a presence in the law center?

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1 MJ [Col PARRELLA]: No.

2 DC [MR. MONTROSS]: Okay. Did you have any social  
3 interaction with Mr. Groharing when you were at Air Station  
4 Miramar?

5 MJ [Col PARRELLA]: In that time frame, not that I  
6 specifically recall. It is likely that it did occur because,  
7 as you may know, the Marine Corps is a relatively small force,  
8 so the number of judge advocates is somewhat limited. So we  
9 have an annual Marine Corps Ball celebration. It is possible,  
10 and maybe probable, that at some point in the time that we  
11 were both in San Diego, we attended the same ball.

12 As I said, my recollection is that I was introduced  
13 to him through a mutual friend, but I don't have any specific  
14 recollection of any social events back in that time frame  
15 where we hung out together. I think it was mostly -- I would  
16 describe it as just an acquaintance.

17 DC [MR. MONTROSS]: So would you be willing to share with  
18 me who was the mutual friend that you two had?

19 MJ [Col PARRELLA]: So an active-duty Marine judge  
20 advocate who was stationed where he was in San Diego at the  
21 time, who I believe I met because he was also in a defense  
22 billet. So we probably met at some defense training on the  
23 West Coast.

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1 DC [MR. MONTROSS]: And who was that? I'm sorry.

2 MJ [Col PARRELLA]: [REDACTED].

3 DC [MR. MONTROSS]: Is that [REDACTED], sir?

4 MJ [Col PARRELLA]: Yes.

5 DC [MR. MONTROSS]: And in terms of -- besides sporadic or  
6 rare social events, did you have any other interaction with  
7 Mr. Groharing?

8 MJ [Col PARRELLA]: Not in that time period.

9 DC [MR. MONTROSS]: Okay. When was the next time period  
10 that you had interaction with Mr. Groharing?

11 MJ [Col PARRELLA]: I do recall in 2007 and '8, I believe,  
12 Mr. Groharing and I participated in an Armed Forces athletic  
13 event. It was an active-duty services competition, I believe  
14 hosted by the MWR in Norfolk, Virginia. The event took place  
15 in West Virginia.

16 And for those two years, the -- each service would  
17 put forward teams. There were two years in 2007, 2008 where  
18 we participated on the same team. And my recollection, it was  
19 a two-day event.

20 DC [MR. MONTROSS]: That was the team that was named the  
21 Dale Milton Racing Team; is that correct, sir?

22 MJ [Col PARRELLA]: That is correct.

23 DC [MR. MONTROSS]: Okay. Also on that team was

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1 Captain [REDACTED]; is that right?  
2 MJ [Col PARRELLA]: That's correct.  
3 DC [MR. MONTROSS]: Who is Captain [REDACTED] to you?  
4 Is he a friend?  
5 MJ [Col PARRELLA]: He was a neighbor.  
6 DC [MR. MONTROSS]: Okay.  
7 MJ [Col PARRELLA]: He's also a friend.  
8 DC [MR. MONTROSS]: Who lived next door to you?  
9 MJ [Col PARRELLA]: Yes.  
10 DC [MR. MONTROSS]: Okay. Also on the team was a  
11 Major [REDACTED].  
12 MJ [Col PARRELLA]: [REDACTED], correct.  
13 DC [MR. MONTROSS]: Okay. And that wasn't correct, but  
14 thank you for saying it was correct. Was she a friend of  
15 yours as well?  
16 MJ [Col PARRELLA]: She was a -- I think you could call  
17 her that, it was fair to say. We simply went to the JAG  
18 school, the Army JAG School together.  
19 DC [MR. MONTROSS]: Okay.  
20 MJ [Col PARRELLA]: It wasn't somebody who I regularly  
21 spoke to other than just a casual acquaintance.  
22 DC [MR. MONTROSS]: Okay. At that point in time,  
23 Major Groharing was a member of your team as well, of that

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1 team?

2 MJ [Col PARRELLA]: He was.

3 DC [MR. MONTROSS]: Four people, including yourself, on  
4 that team in total.

5 MJ [Col PARRELLA]: Correct.

6 DC [MR. MONTROSS]: Okay. Did you pick the team members?

7 MJ [Col PARRELLA]: I believe I was the one who organized  
8 it or signed us up, but I don't recall if I selected them or  
9 how I came to -- to ----

10 DC [MR. MONTROSS]: Well, one of ----

11 MJ [Col PARRELLA]: ---- how it came to be that  
12 Mr. Groharing ended up on the team, so ----

13 DC [MR. MONTROSS]: Well, two of them are friends of  
14 yours, one of them was a neighbor. How does Major Groharing  
15 end up on this team for two years?

16 MJ [Col PARRELLA]: A good question. So -- so we  
17 obviously were in it to win, so the selection ----

18 DC [MR. MONTROSS]: I'm sorry?

19 MJ [Col PARRELLA]: In it to win.

20 DC [MR. MONTROSS]: Okay.

21 MJ [Col PARRELLA]: So the selections were based upon just  
22 reputation of ability.

23 DC [MR. MONTROSS]: Okay. And for two years, this team

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1 was joined together ----

2 MJ [Col PARRELLA]: Yes.

3 DC [MR. MONTROSS]: ---- for training and racing purposes?

4 MJ [Col PARRELLA]: Not training, just the race.

5 DC [MR. MONTROSS]: Okay. How many races did you engage  
6 in?

7 MJ [Col PARRELLA]: Just the one.

8 DC [MR. MONTROSS]: There is an article in the *Army Times*  
9 dated October 20th, 2008, called "The Call of the Wild" that  
10 says there's perhaps no better way to build camaraderie and  
11 teamwork than to receive a collective physical beating,  
12 referring to that race in Fayetteville, West Virginia. Did  
13 you feel that your team had camaraderie and teamwork?

14 MJ [Col PARRELLA]: Yes.

15 DC [MR. MONTROSS]: You finished second, right?

16 MJ [Col PARRELLA]: So I'm going to try to speed things  
17 along here, Mr. Montross. I think obviously what you're  
18 interested in is my relationship with Mr. Groharing. So I  
19 would describe it as friendly, I would describe that we got  
20 along well during those times, we competed together. However,  
21 that was the extent of the relationship. And honestly, since  
22 that point in time, I've seen him a couple times, both at my  
23 time at Department of Justice. I also do believe we attended

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1 another Marine Corps Ball ceremony together at some time when  
2 I was at the Department of Justice, so that would have been  
3 about 2014. But since then, I don't have any sort of regular  
4 communication.

5 I have no recollection of ever discussing this case,  
6 the details or substance of this case with Mr. Groharing. I  
7 was aware that he was working or assigned to this case, but we  
8 never discussed the nuances or issues or substance of it; nor  
9 do I feel that his assignment as a trial counsel will in any  
10 way affect my impartiality or bias. I am quite capable of  
11 disagreeing with anything that he says, and I will not give  
12 his arguments any additional weight over anyone else in this  
13 courtroom.

14 DC [MR. MONTROSS]: Before today, before we started  
15 talking about Mr. Groharing, it was the questioning that first  
16 elicited that there was any relationship with Mr. Groharing  
17 today in this courtroom. Did you feel under the Code of  
18 Judicial Canon [sic] any obligation to disclose that you knew  
19 Mr. Groharing prior to today ----

20 MJ [Col PARRELLA]: No, for the very reason ----

21 DC [MR. MONTROSS]: ---- and that you had spent two years  
22 on a team with him where you were racing together and that you  
23 had served together -- or you had been together both at Air

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1 Station Miramar back in the late 1990s, early 2000s?

2 MJ [Col PARRELLA]: The reasons I just stated, I don't  
3 feel it has any impact on my impartiality or bias or causes me  
4 any cause for disqualification, which is what I would have  
5 certainly disclosed had I felt that. I was quite confident  
6 that it would come up during the question and answer portion;  
7 and had it not, I would have brought it up myself.

8 DC [MR. MONTROSS]: Okay. Do you accept that, regardless  
9 of whether you feel that it was even relevant to a possible  
10 motion for disqualification or if there's no basis for  
11 disqualification, that the Code of Judicial Conduct still  
12 requires that you should disclose on the record information  
13 that the judge believes the parties or their lawyers might  
14 reasonably consider relevant to a possible motion for  
15 disqualification even if the judge believes there is no basis  
16 for disqualification?

17 MJ [Col PARRELLA]: Let's go with your next question,  
18 Mr. Montross.

19 DC [MR. MONTROSS]: Okay. May I have one moment, Your  
20 Honor?

21 MJ [Col PARRELLA]: You may.

22 [Pause.]

23 DC [MR. MONTROSS]: I appreciate your indulgence. Two

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1 further questions.

2           Your Honor, I know this is not on the docket, so  
3 perhaps the answer may be self-evident, but are you -- or have  
4 you read specifically the pleadings in AE 425?

5           MJ [Co1 PARRELLA]: I don't know that I -- it's possible,  
6 but since it's not on the docket order, I also don't see the  
7 relevance.

8           DC [MR. MONTROSS]: Okay. Are you aware, okay, in that  
9 series, that Mr. Groharing's credibility is placed at issue in  
10 AE 425?

11          MJ [Co1 PARRELLA]: I was not aware of that.

12          DC [MR. MONTROSS]: Okay. Thank you.

13          MJ [Co1 PARRELLA]: You're welcome. Mr. Connell, but  
14 before you go, since it was raised by Mr. Montross, I'll also  
15 just indicate that I do know General Baker, so if anybody  
16 wants to question in that respect, I'll be happy to inform you  
17 how I know General Baker.

18                 Mr. Connell.

19          LDC [MR. CONNELL]: Do you like him, sir?

20          MJ [Co1 PARRELLA]: He seems like a good guy.

21          LDC [MR. CONNELL]: Good morning, Your Honor.

22          MJ [Co1 PARRELLA]: Good morning.

23          LDC [MR. CONNELL]: And I want to thank you for your

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1 commitment to candor during this process which cannot be  
2 pleasant, and certainly unique. I've never seen anything like  
3 it outside of this case, though I understand it's a routine  
4 part of military practice.

5 I'd like to begin -- my questions will fall into two  
6 main categories. The first is I'd like to follow up on some  
7 of the answers you've given this morning, and then, second,  
8 I'd like to ask some questions related to the appearance of  
9 bias under 902(b)(1).

10 Sir, you told Mr. Harrington that you had been  
11 selected through a Marine Corps process for a billet beginning  
12 in the summer of 2019. Could you explain that in a little  
13 more detail for the record?

14 MJ [Col PARRELLA]: Yes. So command selection is also a  
15 board-driven process. The board convened, I want to say,  
16 sometime in July, and the results come out usually shortly  
17 thereafter. I want to say it was early August the results  
18 came out this year. I was selected for a command that -- they  
19 always select command a year out, so presumably the change of  
20 command will be sometime during the summer of 2019.

21 I've indicated my intent to accept the command.  
22 That's a requirement under the applicable MARADMIN or message,  
23 and from here on out, then I wait for orders to be produced.

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1 LDC [MR. CONNELL]: And I just want to make sure I  
2 understood. That was past tense; you have indicated your  
3 intent to accept that command?

4 MJ [Col PARRELLA]: Yes.

5 LDC [MR. CONNELL]: Okay. And am I correct that that  
6 command involves embassy security in some way?

7 MJ [Col PARRELLA]: Yes.

8 LDC [MR. CONNELL]: And what is the command which you have  
9 indicated your intent to accept?

10 MJ [Col PARRELLA]: Marine Corps Embassy Security Group.  
11 So it's the same, in essence, command I held as a lieutenant  
12 colonel. The difference being now instead of being one  
13 region, it's the group. So it's the individual who will  
14 command all of the regions.

15 LDC [MR. CONNELL]: All Marines responsible for embassy  
16 security throughout the world?

17 MJ [Col PARRELLA]: Yes.

18 LDC [MR. CONNELL]: Okay. So you would be the commander  
19 of that unit; is that correct? Is that fair to say?

20 MJ [Col PARRELLA]: Yes.

21 LDC [MR. CONNELL]: Okay. And what I understood you to  
22 say was that you have done everything that you can or that  
23 you -- all of your responsibilities to accept that command

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1 have been fulfilled. You now wait, and the Marine Corps will  
2 decide who they're going to place in the billet? Is that fair  
3 to say?

4 MJ [Col PARRELLA]: The decision's been made. That was  
5 the board process. So I have been selected for that position.  
6 So ----

7 LDC [MR. CONNELL]: You're just waiting for orders?

8 MJ [Col PARRELLA]: Yes.

9 LDC [MR. CONNELL]: Okay. So it's your personal  
10 expectation as you sit here today that in the summer of 2019,  
11 you will be placed in a new billet responsible for worldwide  
12 embassy security?

13 MJ [Col PARRELLA]: Yes.

14 LDC [MR. CONNELL]: Okay. And who makes that decision?  
15 Who is responsible for issuing those orders?

16 MJ [Col PARRELLA]: In terms of issuing the orders, the  
17 orders come from an entity called Manpower. So Manpower  
18 within the Marine Corps will be responsible for actually  
19 issuing those orders.

20 LDC [MR. CONNELL]: And as far as Manpower goes, that's  
21 nondiscretionary to them, correct? They're not making a  
22 decision as to Colonel Parrella and whether he's a good  
23 person. That decision has already been made?

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1 MJ [Col PARRELLA]: Yes.

2 LDC [MR. CONNELL]: So as far as Manpower goes, that is a  
3 nondiscretionary decision?

4 MJ [Col PARRELLA]: Yes.

5 LDC [MR. CONNELL]: So unless something highly unusual  
6 happens, you will be issued orders for that new assignment  
7 effective January -- summer of 2019?

8 MJ [Col PARRELLA]: That's my belief.

9 LDC [MR. CONNELL]: Okay. Sir, I heard you mention to  
10 Judge Harrington [sic] that there was no chief judge at  
11 present. Did I understand that correctly?

12 MJ [Col PARRELLA]: That's my understanding.

13 LDC [MR. CONNELL]: And so I take it to be that you did  
14 not assume Military Judge Pohl's chief judge duties as well as  
15 his responsibilities in this courtroom?

16 MJ [Col PARRELLA]: I hope not.

17 LDC [MR. CONNELL]: Okay. Very good.

18 The -- moving on to another section, you told  
19 Mr. Nevin that -- and you just explained to me that you had  
20 been responsible for a region of embassy security; and for  
21 purposes of the record, Marines provide security to embassies  
22 throughout the -- U.S. embassies throughout the world under  
23 the supervision of the regional security officer of the

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1 Department of State under a memorandum of understanding with  
2 the Marine Corps; is that a fair summary?

3 MJ [Col PARRELLA]: That's a fair summary.

4 LDC [MR. CONNELL]: Okay. And in that -- what was your --  
5 as the commander of that region, what was your actual  
6 responsibility? What were your day-to-day duties like?

7 MJ [Col PARRELLA]: So there's terminology in the Marine  
8 Corps we use for OPCON, meaning operational control ----

9 LDC [MR. CONNELL]: Yes, sir.

10 MJ [Col PARRELLA]: ---- and ADCON, administrative  
11 control.

12 LDC [MR. CONNELL]: Yes.

13 MJ [Col PARRELLA]: I retained ADCON, so I had  
14 administrative control over the Marines, meaning I was  
15 responsible for ensuring that they were qualified, trained,  
16 properly supervised in the sense that they were within the  
17 detachment. The primary, I think, role was to ensure that we  
18 were executing an inspection program.

19 So to ensure that we're giving the service we've  
20 promised to the Department of State, we have officers who go  
21 out to those detachments routinely, they conduct inspections  
22 of those detachments and ensure that they're providing the  
23 service we've advertised to the Department of State.

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1           But in terms of OPCON, operational control, that all  
2 is retained by the regional security officer.

3           LDC [MR. CONNELL]: In that position, did you deal  
4 directly with embassy staff?

5           MJ [Col PARRELLA]: I did. So primarily, I would do that  
6 in the sense of I would also do visits of the detachments  
7 during those visits. I would usually as part of that visit  
8 have a meeting with the regional security officer as well as  
9 the embassy staff just to ensure that, again, as the customer,  
10 they were satisfied with the service we were providing.

11          LDC [MR. CONNELL]: In your role, did you either deal  
12 directly with the embassy staff or have site visits in  
13 Afghanistan?

14          MJ [Col PARRELLA]: No.

15          LDC [MR. CONNELL]: In that role, did you deal directly  
16 with embassy staff or have site visits in Morocco?

17          MJ [Col PARRELLA]: No.

18          LDC [MR. CONNELL]: Poland?

19          MJ [Col PARRELLA]: Yes.

20          MTC [MR. TRIVETT]: Objection.

21          MJ [Col PARRELLA]: Basis?

22          MTC [MR. TRIVETT]: Relevance to the qualification.

23          LDC [MR. CONNELL]: Your Honor, in an unclassified way, I

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1 can state that I am exploring whether there is a basis for a  
2 challenge under 902(b)(1), personal knowledge. I do not  
3 intend to inquire further in this setting.

4 MJ [Col PARRELLA]: Okay. And I will just state again  
5 that at no time during my tenure as the commanding officer at  
6 Region 8 did I ever have any opportunity to -- I don't even  
7 recall reading anything classified. I never had any  
8 discussions with regional security officers about a threat  
9 emanating from any organization related to this case.

10 LDC [MR. CONNELL]: I understand that, sir.

11 MJ [Col PARRELLA]: My focus was in Central Europe and  
12 Central Europe alone.

13 LDC [MR. CONNELL]: In Central Europe? All right.

14 And so -- so the answer to Poland was yes?

15 MJ [Col PARRELLA]: That was part of my region.

16 LDC [MR. CONNELL]: All right. And was Romania part of  
17 your region?

18 MJ [Col PARRELLA]: Yes.

19 LDC [MR. CONNELL]: Was Lithuania part of your region?

20 MJ [Col PARRELLA]: No.

21 LDC [MR. CONNELL]: Thank you. Sir, I heard you tell  
22 Mr. Nevin that, in your role as regional -- what was the  
23 title? I'm sorry. I apologize for the ignorance.

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1 MJ [Co1 PARRELLA]: Region 8 ----

2 LDC [MR. CONNELL]: Region 8 command ----

3 MJ [Co1 PARRELLA]: ---- commanding officer.

4 LDC [MR. CONNELL]: Region 8 commanding officer.

5 In your role as Region 8 commanding officer, you did  
6 not -- I understood you to tell Mr. Nevin that you did not  
7 receive any information specific to the East Africa Embassy  
8 Bombings, the most serious breach of embassy security ever in  
9 United States history. Was that accurate?

10 MJ [Co1 PARRELLA]: Yes.

11 LDC [MR. CONNELL]: You didn't train on it?

12 MJ [Co1 PARRELLA]: So the Marines may have trained on it.  
13 The Marines go through a schoolhouse that's designed to  
14 prepare them for their duty as a Marine security guard. The  
15 commanding officer does not receive any said training. So we  
16 don't receive any training specific to the embassy security  
17 program before assuming command.

18 LDC [MR. CONNELL]: Thank you, sir.

19 And I heard you mention to Mr. Montross that it would  
20 be appropriate to ask questions about strong feelings about  
21 capital punishment, so I'll ask: Do you have any strong  
22 feelings on capital punishment?

23 MJ [Co1 PARRELLA]: No, I -- what's pertinent is,

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1 regardless of what my personal opinions may or may not be, I  
2 will apply the law as it is, not as to what I think it should  
3 be. But I have no strong feeling that would prevent me from  
4 doing just that.

5 LDC [MR. CONNELL]: Thank you. All right.

6 Sir, the second part of my questioning relates to  
7 AE 595B, the fit rep. Do you have that in front of you, sir?

8 MJ [Col PARRELLA]: I do.

9 LDC [MR. CONNELL]: And, sir, for the record, a  
10 United States Marine Corps fitness report is essentially a  
11 statement of what your duties are and how well you fulfilled  
12 those duties, especially in relationship to other Marines, for  
13 purposes of eventual consideration for promotion and other --  
14 or commendation, correct?

15 MJ [Col PARRELLA]: That is correct. I will just note,  
16 though, that if you look at Block 5 ----

17 LDC [MR. CONNELL]: Yes, 5b.

18 MJ [Col PARRELLA]: ---- on the first page that this is a  
19 nonobserved fitness report. So because it was an academic  
20 setting, or the Fellowship program is considered an academic  
21 setting, we do not rate markings, the normal markings that you  
22 would receive. That's why it's two pages as opposed to the  
23 normal, I believe, seven pages.

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1 LDC [MR. CONNELL]: I understand, sir. And that -- in  
2 block I, there is a reference to the unique circumstances of  
3 this CMC fellow TLS assignment, and that's -- those are the  
4 unique circumstances that you describe; is that correct, sir?

5 MJ [Co1 PARRELLA]: Yes.

6 LDC [MR. CONNELL]: The -- there is a concern in fitness  
7 reports articulated in the Commandant's guidance about  
8 inflationary markings. They don't want, you know, everybody  
9 to be the top Marine that anybody has ever rated. Is that  
10 fair to say?

11 MJ [Co1 PARRELLA]: That's fair.

12 LDC [MR. CONNELL]: So there's a commitment on the part of  
13 the raters to accurately reflect the -- both the  
14 responsibilities and the performance of those responsibilities  
15 by the Marine at issue. Is that fair to say?

16 MJ [Co1 PARRELLA]: Yes.

17 LDC [MR. CONNELL]: And the reason for that is  
18 institution-wide because the Marine Corps as an institution  
19 needs to know who its best are so that it can promote them?

20 MJ [Co1 PARRELLA]: Yes.

21 LDC [MR. CONNELL]: So with that in mind, does Section B  
22 accurately describe the billet and the duties that you  
23 performed?

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1 MJ [Col PARRELLA]: It does to a point. I -- billet  
2 descriptions are typically generic, meaning that this may be a  
3 very similar template that's used for all Fellows. Obviously,  
4 it's tailored to the specific Department of Justice Fellowship  
5 at issue. It's not an indication that I performed all of  
6 these duties; it's just an indication of what the billet  
7 description broadly stated is.

8 LDC [MR. CONNELL]: I see.

9 MJ [Col PARRELLA]: So normally ----

10 LDC [MR. CONNELL]: It's the type of duties which would be  
11 performed by this Fellowship.

12 MJ [Col PARRELLA]: So normally, if it were an observed  
13 fitness report, Block C would be filled out, which would  
14 include the more detailed, specific accomplishments, basically  
15 what you did during the time period set forth.

16 LDC [MR. CONNELL]: Thank you, sir.

17 So let me ask you with respect -- and I'm going to  
18 refer to subsection B, and it has a number of individual  
19 bullets, nine individual bullets. I'll try to walk through  
20 those and tell you where I am as best as possible.

21 What is the TLS part of CMC? I take it CMC is  
22 Commandant of the Marine Corps. What does TLS stand for?

23 MJ [Col PARRELLA]: Top-level school.

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1 LDC [MR. CONNELL]: Top-level school. And what does that  
2 mean, top-level school?

3 MJ [Col PARRELLA]: It's just a generic term that's used  
4 to describe school opportunities that are slated for typically  
5 lieutenant colonels.

6 LDC [MR. CONNELL]: Which was your rank at the time of  
7 this Fellowship?

8 MJ [Col PARRELLA]: Yes.

9 LDC [MR. CONNELL]: All right. In the second bullet, the  
10 billet description states that the Fellow will "serve as a  
11 counterterrorism prosecutor within CTS/NSD." CTS stands for  
12 Counterterrorism Section, right?

13 MJ [Col PARRELLA]: Yes.

14 LDC [MR. CONNELL]: And NSD stands for National Security  
15 Division?

16 MJ [Col PARRELLA]: Yes.

17 LDC [MR. CONNELL]: And it says -- and so I'm going to  
18 stop there and just do the org chart for a second. Within the  
19 Department of Justice are a number of divisions, correct?

20 MJ [Col PARRELLA]: Yes.

21 LDC [MR. CONNELL]: National security being one of those?

22 MJ [Col PARRELLA]: Yes.

23 LDC [MR. CONNELL]: Others might be tax or civil or

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1 criminal, et cetera.

2           And under the National Security Division, there are a  
3 variety of sections, and one of those is the Counterterrorism  
4 Section; is that fair to say?

5           MJ [Col PARRELLA]: That's my understanding, yes.

6           LDC [MR. CONNELL]: And did I correctly understand you to  
7 tell Mr. Montross that the -- there were further subsections  
8 within the Counterterrorism Section?

9           MJ [Col PARRELLA]: I don't know if there are formal sort  
10 of subsections. I just know that while I was there, they  
11 divided into sort of teams.

12           LDC [MR. CONNELL]: Sure.

13           MJ [Col PARRELLA]: So that there was a deputy chief, if  
14 you will, somebody below ██████████ who provided some aspect  
15 of supervision to the CTS attorneys that were working on that  
16 particular team.

17           LDC [MR. CONNELL]: Sure. That makes sense.

18           The -- did your team have a name?

19           MJ [Col PARRELLA]: No. I don't believe they had names.  
20 They might have been numerically designated was my  
21 recollection, and I don't know what number it was.

22           LDC [MR. CONNELL]: Were you on a single team or were you  
23 a floater among teams?

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1 MJ [Col PARRELLA]: Same team generally throughout the  
2 time. Like I said, the section chief changed, but I was -- I  
3 think my recollection was is I was always on the same team.

4 LDC [MR. CONNELL]: All right. And you gave us a ballpark  
5 estimate earlier that there were somewhere between 60 and 70  
6 attorneys in the Counterterrorism Section as a whole. Just  
7 for reference, how many attorneys were on your team?

8 MJ [Col PARRELLA]: Maybe a dozen.

9 LDC [MR. CONNELL]: Okay. The second sentence in bullet 2  
10 of Section B states that you work with partners -- or that the  
11 fellow will work with partners in the intelligence community,  
12 including FBI, CIA, NSA, and DOD.

13 As fellow, did you work with partners in the FBI?

14 MJ [Col PARRELLA]: I did work with partners in the FBI.  
15 I don't recall working with anyone -- any person within the  
16 CIA. I do recall doing some document review at one of their  
17 facilities. I don't recall anybody or any interaction with  
18 the NSA.

19 LDC [MR. CONNELL]: And DOD, of course, were your  
20 colleagues on the ----

21 MJ [Col PARRELLA]: Yes.

22 LDC [MR. CONNELL]: ---- from the Marine Corps?

23 All right. The eighth bullet -- no, excuse me, the

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1 ninth bullet states that you will inform -- or the fellow will  
2 inform DOJ and interagency partners on the MAGTF, M-A-G-T-F,  
3 concept. What is that?

4 MJ [Col PARRELLA]: Marine Air-Ground Task Force.

5 LDC [MR. CONNELL]: And what is its relevance? What is  
6 it?

7 MJ [Col PARRELLA]: What it is is it's the way the Marine  
8 Corps fights. It just simply means that we don't have just  
9 one subset of skills. We bring a ground element, an air  
10 element, and a logistics element together. That's all that  
11 means.

12 LDC [MR. CONNELL]: Okay. The remainder of bullet nine  
13 states that you will build relation -- that the Fellow will  
14 "build relationships at DOJ."

15 Do you feel that you accomplished that task?

16 MJ [Col PARRELLA]: I hope so.

17 LDC [MR. CONNELL]: Okay. "And build relationships at DOJ  
18 and the interagency." Do you see that, "interagency" used as  
19 a noun?

20 MJ [Col PARRELLA]: I see that.

21 LDC [MR. CONNELL]: All right. And in the United States  
22 Government, "the interagency" is generally referred to -- it  
23 could have a lot of meanings, but in this context, it means in

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1 the intelligence community, correct?

2 MJ [Col PARRELLA]: I don't know that that was what that  
3 was meant. Like I said, the Fellowship program sends Marine  
4 Corps Fellows to a wide variety of organizations. We would  
5 consider that interagency, so anything from Department of  
6 Homeland Security to State Department, and I think even the  
7 Department -- the Department of Commerce we sent a fellow to  
8 as well as a variety of think tanks. So in our parlance,  
9 that's what that refers to, not specifically the intelligence  
10 community.

11 LDC [MR. CONNELL]: Okay. So I'd like to turn your  
12 attention to Block I on the second page. You were asked  
13 earlier about the integrating yourself, seamlessly or  
14 otherwise, as a full-fledged counterterrorism prosecutor. You  
15 understood that to mean that you had the responsibilities that  
16 other line prosecutors within the National Security Division  
17 had. Would that be fair to say?

18 MJ [Col PARRELLA]: No, I don't think it is. I think  
19 it's -- it would be -- it wasn't my understanding of my role  
20 being there. My understanding was I was not there to just be  
21 an extra asset for CTS, NSD, DOJ. My role was to be a  
22 representative of the Marine Corps, to glean some knowledge  
23 that I could potentially bring back to the Marine Corps, share

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1 some knowledge that might benefit the Department of Justice,  
2 and help communication between the two agencies.

3 LDC [MR. CONNELL]: You were functioning as an attorney,  
4 fair to say?

5 MJ [Col PARRELLA]: I was, yes.

6 LDC [MR. CONNELL]: Right. And you had a duty of loyalty  
7 to your client, at this point the United States ----

8 MJ [Col PARRELLA]: Yes.

9 LDC [MR. CONNELL]: ---- correct?

10 And in Block I, although not usual -- you know, not  
11 as in depth as it would normally be in the Marine Corps, is a  
12 description not of the fellow generally but of your specific  
13 performance; would you agree with that?

14 MJ [Col PARRELLA]: Oh, yes. This is -- this was  
15 designed, and it's -- again, I think I mentioned earlier,  
16 authored by the gentleman who signs the certification on  
17 Block J, but it's designed to be a comment of what I did.

18 Now, I will say it's out of the ordinary for there to  
19 be direct and additional comments on an unobserved fitness  
20 report. I think this was just an attempt by Department of  
21 Justice, knowing that this was going to be part of my  
22 permanent military record, to say some things that showed  
23 gratitude for the time I spent there.

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1 LDC [MR. CONNELL]: No doubt. You don't want a blank  
2 fitness report even if it -- you know, in your record.

3 And so the rater states, "Of note, he," meaning you,  
4 "worked directly with DOJ prosecutors and interagency partners  
5 in building solid cases against high-level international and  
6 domestic terrorism targets."

7 My question for you is: What interagency partners  
8 did you work with?

9 MJ [Col PARRELLA]: Just the ones we just referred to.

10 LDC [MR. CONNELL]: Which is?

11 MJ [Col PARRELLA]: FBI.

12 LDC [MR. CONNELL]: FBI, CIA, at least at document level,  
13 and Homeland Security?

14 MJ [Col PARRELLA]: I don't recall specifically working  
15 with Homeland Security. It is possible. Again, I don't  
16 recall working with anybody at NSA. It is possible that  
17 somebody might have been in the room or there might have been  
18 a document that emanated from them.

19 LDC [MR. CONNELL]: Okay. When did you leave the  
20 Department of Justice?

21 MJ [Col PARRELLA]: Sometime in June of 2015. According  
22 to this, June 30th. So that's ----

23 LDC [MR. CONNELL]: Fair enough.

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1 MJ [Col PARRELLA]: ---- my best guess.

2 LDC [MR. CONNELL]: So between summer 2014 and summer  
3 2015, you mentioned to Mr. Nevin attending some social  
4 events -- "social functions," excuse me, was your phrase. Do  
5 you recall that?

6 MJ [Col PARRELLA]: Between the summer of 2014 and summer  
7 of 2015? I don't recall that.

8 LDC [MR. CONNELL]: While you were at Department of  
9 Justice?

10 MJ [Col PARRELLA]: Yes. During the -- in that year, I do  
11 recall there were -- well, for one, there's a traditional  
12 annual Marine Corps Ball celebration. There is also, I think  
13 within CTS while I was there, there was -- every time somebody  
14 would leave or come, there would be some sort of informal  
15 social gathering.

16 LDC [MR. CONNELL]: Sure. Kind of standard government  
17 get-together. There might be a cake?

18 MJ [Col PARRELLA]: Yes.

19 LDC [MR. CONNELL]: You know, there might be a happy hour,  
20 something like that?

21 MJ [Col PARRELLA]: Yes.

22 LDC [MR. CONNELL]: Okay. So when you told Mr. Nevin that  
23 you had seen Mr. Groharing at social functions two to three

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1 times over the course of your Fellowship, were those sort of  
2 social functions -- I got the Marine Ball, but the other one  
3 or two ----

4 MJ [Col PARRELLA]: Yes.

5 LDC [MR. CONNELL]: ---- those were CTS social functions,  
6 correct?

7 MJ [Col PARRELLA]: Yes.

8 LDC [MR. CONNELL]: And if I understand what you're  
9 saying, they're not necessarily formal like they rented a  
10 conference room for them, but there was some kind of  
11 get-together within the CTS office. Is that fair to say?

12 MJ [Col PARRELLA]: Usually it was a gathering that would  
13 take place after the close of the regular business day. It  
14 might last an hour, hour and a half. My recollection of the  
15 instances applicable to Mr. Groharing was that my interaction  
16 with him would have been no more than 10, 15 minutes.

17 I was, at the time, living at a location where I had  
18 to commute, so I was usually anxious to get on the train  
19 before it got too late.

20 LDC [MR. CONNELL]: Sure. They were Counterterrorism  
21 Section social functions, however, though?

22 MJ [Col PARRELLA]: Yes.

23 LDC [MR. CONNELL]: Okay. And you told Mr. Nevin that you

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1 may have met Mr. Trivett at a social function. That would  
2 also be one of these Counterterrorism Section get-togethers?

3 MJ [Col PARRELLA]: Yes. And that's complete speculation.  
4 I don't recall meeting anyone else, but I don't want to say  
5 definitively that I didn't because it's possible that  
6 Mr. Trivett or Mr. Ryan or someone else might have come to one  
7 of those. I just have no recollection of meeting anyone else  
8 on the team.

9 LDC [MR. CONNELL]: And just so she doesn't feel left out,  
10 did you ever meet Ms. Tate?

11 MJ [Col PARRELLA]: Not to my knowledge.

12 LDC [MR. CONNELL]: Okay. The -- sir, I -- well, I have  
13 two other questions. The first is, you began by saying that  
14 you also know General Baker. Is there anything that you think  
15 that we should know about your relationship with General  
16 Baker?

17 MJ [Col PARRELLA]: So as I think I indicated earlier,  
18 we're a small organization. I served in Okinawa, Japan from  
19 2002 to 2005. During that time period or a portion of that  
20 time period, General Baker was a military judge, so I did have  
21 occasion to practice in front of General Baker. I think I was  
22 a defense counsel. I'm almost positive I was a defense  
23 counsel during the duration of that time.

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1           Other than that, yeah, I would -- I would, of course,  
2 see him at various trainings or social functions, say hello.  
3 But I have no special friendship or regular communication with  
4 him on any level.

5           I will say the last time I recall actually seeing him  
6 was he came to Camp Lejeune shortly after being promoted and  
7 hosted a social function. I was one of maybe 30 people who  
8 attended. It lasted no more than two hours.

9           LDC [MR. CONNELL]: All right. Are you aware, sir, that  
10 the Office of the Chief Prosecutor -- excuse me.

11           You've used the phrase -- and I know that I said I  
12 was almost done, which I am, but I do have a couple of  
13 questions. You've used the initials OMC a few times. What do  
14 you understand to be the scope of OMC?

15           MJ [Col PARRELLA]: When I say -- in the context I've used  
16 "OMC" or "Office of Military Commissions," what I'm saying is  
17 I haven't -- when I've used that terminology -- been involved  
18 in any of the cases that are currently or have been in the  
19 past before a commissions.

20           LDC [MR. CONNELL]: Are you aware that the Office of the  
21 Chief Prosecutor, which is a subset of the Office of Military  
22 Commissions, and elements of the FBI, including the FBI agents  
23 who are here today, elements of the CIA, and a number of other

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1 interagency partners together form a thing called the  
2 High-Value Detainee Prosecution Task Force?

3 MJ [Col PARRELLA]: I'm not aware of that.

4 LDC [MR. CONNELL]: Have you ever sent an e-mail or have  
5 anyone send on your behalf an e-mail to any of the ptf.org  
6 e-mail addresses of the prosecution?

7 MJ [Col PARRELLA]: Not that I can recall, no.

8 LDC [MR. CONNELL]: So what I hear you saying, sir, is  
9 that you were not aware that the -- and are you aware that  
10 that High-Value Detainee Prosecution Task Force includes  
11 elements of the Counterterrorism Section?

12 MJ [Col PARRELLA]: I was not aware of how it was  
13 organized or structured. Like I said, I was aware that  
14 Mr. Groharing was on detail and working with cases related to  
15 the commissions, but I -- as to how it is structured or how  
16 the -- how prosecutors and civilian prosecutors are selected,  
17 I don't know and did not know.

18 LDC [MR. CONNELL]: Okay. And I want to ask this final  
19 question, sir, in fairness and in respect for your candor  
20 during this process.

21 If you were a reasonable person out in the public  
22 with knowledge of all the facts and you knew that the new  
23 judge in a case within the past few years had worked for the

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1 exact office which is involved in the prosecution of the case,  
2 would you consider that to be the appearance of impartiality?

3 MJ [Col PARRELLA]: Well, I think the obvious answer here,  
4 Mr. Connell, is in this particular situation with me, if I  
5 did, then I would be having to consider whether I should  
6 recuse myself, and perhaps recuse myself.

7 I have considered the appearance aspect of my  
8 detailing to this case, but in light of the open opportunity  
9 I've given everybody in this courtroom to question me about my  
10 time there, and hopefully candid answers, I think that it  
11 overcomes any possible appearance issue about my brief time at  
12 the Department of Justice. I think there's some key  
13 distinctions between what a Marine Corps fellow did or does  
14 and a -- perhaps a member of the Department of Justice who's  
15 hired to work and prosecute in that agency.

16 So the answer to your question is no, I don't think  
17 there's an appearance issue at this point in time. But  
18 perhaps you or one of your associates, fellow counsel, will,  
19 of course, have an opportunity to continue to present evidence  
20 that may change my mind. In other words, I'm open to  
21 consideration.

22 LDC [MR. CONNELL]: Thank you, sir.

23 MJ [Col PARRELLA]: You're welcome.

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1 All right. Counsel, I think in light of the time,  
2 what we'll go ahead and do is we'll go ahead and take a recess  
3 for lunch. Unless I've miscalculated, I believe, Mr. Ruiz,  
4 you are the last counsel left to conduct voir dire, unless the  
5 government chooses to ask any follow-on questions.

6 So we will go ahead and recess until 1330. This  
7 commission is in recess.

8 [The R.M.C. 803 session recessed at 1214, 10 September 2018.]

9 [The R.M.C. 803 session was called to order at 1332,  
10 10 September 2018.]

11 MJ [Col PARRELLA]: Good afternoon. This commission is  
12 called back to order. All parties present when the commission  
13 recessed are again present.

14 Mr. Ruiz, I believe we are to you for your  
15 opportunity to question the military judge.

16 LDC [MR. RUIZ]: Judge, I want to go back to the subject  
17 of your selection for assignment to this military commission.  
18 As I understand it, at the time you were working as a staff  
19 judge advocate, correct?

20 MJ [Col PARRELLA]: Not at the time of my detailing. I  
21 think that the nomination process probably began while I was  
22 still working as a staff judge advocate.

23 LDC [MR. RUIZ]: And can you just elaborate briefly on

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1 what your duties and responsibilities were as the staff judge  
2 advocate at the time?

3 MJ [Col PARRELLA]: Primarily to provide legal advice in a  
4 number of areas to the Commanding General, 2nd Marine  
5 Division, as well as his commanders and staff.

6 LDC [MR. RUIZ]: Okay. And can you remind me of how it  
7 was that your name came up? It seems to be -- I'm trying to  
8 understand how you're working as a staff judge advocate. We  
9 know that our services have active judiciaries with Navy,  
10 Marine Corps, Air Force, Army, who are active judges, military  
11 judges, both active and reserve. So it seems a little bit  
12 unusual that, rather than picking from a pool of those  
13 candidates, they would reach out to somebody who is working in  
14 a different capacity as a staff judge advocate.

15 So my question to you, what I'm trying to really kind  
16 of understand is: How did that come about? How was it that  
17 your name came up out of that pool or that landscape of other  
18 military judges who presumably could have been named?

19 MJ [Col PARRELLA]: So in order to -- I would assume, and  
20 I'm making some assumptions here, that in order to have been  
21 considered as a nominee, it was because by May time frame, May  
22 of 2018, I had orders to go back to the trial judiciary. So I  
23 would presume that the decision or my selection as a nominee

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1 was made after and with the knowledge that I was heading back  
2 to the trial judiciary.

3 LDC [MR. RUIZ]: And by that, you mean the Navy-Marine  
4 Corps Trial Judiciary?

5 MJ [Col PARRELLA]: I do.

6 LDC [MR. RUIZ]: I understand.

7 And did anybody have a conversation with you at that  
8 point about the possibility of coming to the military  
9 commissions? I'm trying to pinpoint the earliest date that  
10 you remember that possibility coming about.

11 MJ [Col PARRELLA]: So the decision for me to return to  
12 the Navy-Marine Corps Trial Judiciary was made before and, I  
13 believe, independently of any thought of nominating me to be a  
14 member of the commissions.

15 LDC [MR. RUIZ]: So your end of tour would have been 2016  
16 as a staff judge advocate or 2017? I'm trying to figure out  
17 when your end of tour would have been.

18 MJ [Col PARRELLA]: My end of tour would have been just  
19 this last summer when I did, in fact, change jobs, which was  
20 the summer of 2018.

21 LDC [MR. RUIZ]: Summer 2018. And then you were slated to  
22 come to the Navy-Marine Corps Judiciary? I guess I'm trying  
23 to place that into context that you also talked about

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1 follow-on orders in 2019 in the summer. So it seems like a  
2 short amount of time. If you were going to, in fact, be  
3 assigned to the Navy-Marine Corps Trial Judiciary, it seems  
4 that that was going to be a compressed time period. It seems  
5 out of the ordinary itself.

6 MJ [Col PARRELLA]: I understand. I'll try to explain it  
7 to you in sort of chronological order ----

8 LDC [MR. RUIZ]: Sure.

9 MJ [Col PARRELLA]: ---- so you -- to elaborate. So  
10 sometime, I think, in the winter of 2017 to '18, I was  
11 informed that I would be moving from the Marine Corps Division  
12 Staff Judge Advocate job to resume duties as a military judge  
13 within the Navy-Marine Corps Trial Judiciary.

14 Sometime in the late spring -- I think around May --  
15 there was discussions -- they informed me that they were  
16 considering or were nominating me to be a part of the pool.  
17 The command selection board didn't even convene until July of  
18 2018, so after I had already essentially checked in and  
19 started my duties or resumed duties as a military judge.

20 LDC [MR. RUIZ]: Understood. Understood. I got it. That  
21 helps. Thank you very much.

22 I think you've clearly indicated that it is your  
23 understanding that those orders will be forthcoming in 2019,

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1 summer time frame?

2 MJ [Col PARRELLA]: Yes.

3 LDC [MR. RUIZ]: Do you have any guarantee that that's, in  
4 fact, the case?

5 MJ [Col PARRELLA]: I don't have any guarantees, it is the  
6 military, but I have nothing to suggest that anything to the  
7 contrary will occur.

8 LDC [MR. RUIZ]: So I know you did indicate that you had a  
9 conversation with Judge Pohl. Part of that conversation  
10 included you expressed some reservations about follow-on  
11 orders. Was that topic discussed further than that, in terms  
12 of was there any -- not guarantee, but was there any  
13 assurances that you would be able to follow on and a  
14 replacement would be found?

15 MJ [Col PARRELLA]: Not to that discussion, no, because  
16 obviously he's -- he is completely separate from any  
17 decision-making within the Marine Corps. The extent of the  
18 conversation was just me simply letting him know that I was  
19 being considered for command and then a subsequent  
20 conversation where I informed him that I had, in fact, been  
21 selected for command. All of that transpired prior to his  
22 decision to detail me to this case.

23 LDC [MR. RUIZ]: Okay. Have you received any assurances

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1 from anyone at all, Marine Corps ----

2 MJ [Col PARRELLA]: I have received no communication,  
3 either favorable or negative, with respect to the upcoming  
4 summer.

5 LDC [MR. RUIZ]: Understood. With respect to the  
6 fellowship program that you have discussed, you've talked  
7 about the selection. You've talked about the assignment and a  
8 little bit about the selection process. I get -- I get the  
9 concept of the selection board. We have those in the Navy as  
10 well.

11 But it is correct that you have to, to some degree,  
12 make an affirmative action to be considered for particular --  
13 particular fellowships, right? I think you indicated there  
14 was different ----

15 MJ [Col PARRELLA]: It's more of the opposite. You have  
16 to affirmatively decline to be considered. So if you're a  
17 lieutenant colonel in the Marine Corps and not otherwise  
18 disqualified for some other reason, you will be considered for  
19 top-level school unless you affirmatively withdraw your name  
20 from consideration.

21 LDC [MR. RUIZ]: Understood. And when -- that part of  
22 that consideration, do you get to submit -- I think you may  
23 have talked about this. You get to submit preferences within

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1 the different organizations that are part of the program?

2 MJ [Col PARRELLA]: Yes. And my recollection is that it's  
3 broken down into -- because the same board selects folks for  
4 top-level schools, war colleges and things of that nature, as  
5 well as fellowships.

6 So my recollection was the questionnaire gave you the  
7 option to state your preference for both. I remember stating  
8 preferences for certain war colleges. The fellowships, I  
9 don't recall. I would assume that I put down the Department  
10 of Justice just because the logical link between attorneys and  
11 the Department of Justice, but I couldn't tell you how I  
12 ultimately stated my preferences on that questionnaire.

13 LDC [MR. RUIZ]: So to your knowledge, does the selection  
14 process -- let's say, for instance, that there are a number of  
15 preferences you can -- one, two, three. We have a similar  
16 process in the Navy in terms of billets and assignments. It's  
17 called Apply. We submit a number of billets that we -- our  
18 preferences. However, if those are taken up, then billets  
19 that are not -- have not been submitted by us, preferences,  
20 may also be considered if we've elected for that option.

21 So is there a -- is there such a procedure in the  
22 fellowship program, to your knowledge, where you would have  
23 been considered for an organization that you would not have

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1 submitted to, or submitted a preference for?

2 MJ [Col PARRELLA]: So my understanding in the Marine  
3 Corps is that the board who does the selections is  
4 predominantly focused on who is going to have an opportunity  
5 for top-level school, period. The selection rate, I want to  
6 say, the year I was selected was somewhere around 17 percent  
7 of eligible lieutenant colonels, and only after they've  
8 selected those individuals did they even consider where to  
9 actually send them.

10 So during the sort of indoc for fellowships, what  
11 they told us, that those that had been selected, is that the  
12 vast majority of the effort goes into selecting who gets  
13 top-level school, only a minute level of effort goes into  
14 actually placing who goes to what agency, because from the  
15 Marine Corps's perspective, I think that's a secondary issue.

16 LDC [MR. RUIZ]: So to the best of your recollection, did  
17 you express a preference in any way, shape, or form for -- or  
18 an interest in going to the Department of Justice?

19 MJ [Col PARRELLA]: I think it's probably a fair  
20 assumption that I did put Department of Justice somewhere on  
21 my one through five or one through three or whatever it may  
22 have been.

23 LDC [MR. RUIZ]: And what is it about the Department of

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1 Justice that would have interested you and led you to express  
2 an interest in that as an option, were you to be selected?

3 MJ [Col PARRELLA]: So all of the other fellowships are  
4 open to Marines who hold any MOS; that's our Marine  
5 Occupational Specialty or Military Occupational Specialty.

6 The Department of Justice, because of the nature of  
7 the mission, has basically -- and again, this was at least  
8 when I was there, this may have changed -- expressed a  
9 preference to the Marine Corps that they only send attorneys.  
10 So at the time the board was doing the selection process, the  
11 Department of Justice fellowship was earmarked just for judge  
12 advocates. So that's why I think I probably would have put it  
13 down as a preference because, as a judge advocate, it fit.

14 LDC [MR. RUIZ]: I understand.

15 And just from looking at the timeline, is it a fair  
16 assumption to say that you're retirement eligible?

17 MJ [Col PARRELLA]: I am.

18 LDC [MR. RUIZ]: Okay. And in thinking about the -- once  
19 you hit retirement eligibility, from time to time you start  
20 thinking about the future, down the road. As you sit here  
21 today, can you tell us if you would exclude the Department of  
22 Justice as a potential employer in your future endeavors?

23 MJ [Col PARRELLA]: I have no current desire or preference

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1 to seek employment at the Department of Justice. I can't go  
2 so far because I think it would be speculative on my part to  
3 say that that would never change.

4 LDC [MR. RUIZ]: I understand.

5 And the same question with respect to the Federal  
6 Bureau of Investigation, for instance, as an in-house legal  
7 counsel, but it could also apply to any other appropriate  
8 positions.

9 MJ [Col PARRELLA]: Same answer.

10 LDC [MR. RUIZ]: Okay. The National Security Agency?

11 MJ [Col PARRELLA]: I mean, same answer.

12 LDC [MR. RUIZ]: I understand. Now, you've indicated that  
13 you did not feel pressured to rush, and there's also been  
14 significant questioning about the level of material, the time  
15 of litigation, and the efforts and preparations that you've  
16 made in trying to undertake this mission.

17 You did, however, indicate that you're qualified and  
18 we're moving out. What do you mean by "We're moving out"?  
19 What are you trying to say when you made that comment earlier  
20 on today?

21 MJ [Col PARRELLA]: What I'm trying to say is that I've  
22 looked at the rules; my interpretation is that I meet the  
23 qualifications. I was detailed to the case by an individual

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1 who was aware of my qualifications, as well as sort of the  
2 issues that we've discussed with my career and the timelines  
3 associated with that. What I mean is that, aside from that,  
4 I'm not going to answer a litany of questions about how much  
5 more qualified Judge Pohl was or any other judge in the  
6 military because I was the one that was detailed to this case.

7 LDC [MR. RUIZ]: Sure.

8 MJ [Col PARRELLA]: So as such, I intend to do the best of  
9 my ability for the time that I remain detailed to this case.

10 LDC [MR. RUIZ]: I understand.

11 So the "moving out" answer caught my attention  
12 because it seemed to be a judgment or a decision that you seem  
13 to have made that we are moving forth, predetermined, based on  
14 your exposure to the case and what you know of the case.  
15 That, in my mind, raises a concern and the question which is,  
16 the artificial -- or the expediting of a case for the sake of  
17 expediting of a case. And that's where the question goes to.

18 And I think you've answered that a number of times,  
19 but I just want to make sure that it's clear that you have no  
20 influence whatsoever on you that delaying this case, if that's  
21 what's necessary, would somehow detrimentally affect you or  
22 your career progression.

23 MJ [Col PARRELLA]: Not at all. And I have had no

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1 conversations with anybody, Judge Pohl included, about a need  
2 to move at a certain speed, to getting a certain amount done.  
3 And certainly if anything changes about my answers, if I feel  
4 any outside pressure or influence, I will certainly let  
5 everybody in this commission know that so that you have an  
6 opportunity to again ask questions.

7 LDC [MR. RUIZ]: Have you -- I understand feeling not  
8 pressured or that any influence impacts you. It's a little  
9 bit different from talking about being exposed to such  
10 influence. My next question goes to that specific point.

11 Have you had the opportunity to be exposed to any  
12 comments, conversations, articles, any -- anything that talks  
13 about the pace of this case, whether it's too fast, whether  
14 it's too slow; commentary, whether by colleagues, family,  
15 friends? It's a rather broad question here. Have you been  
16 exposed to ----

17 MJ [Col PARRELLA]: I think I understand the question. In  
18 terms of exposure, I'm aware -- and I don't remember which AE  
19 I was reading, but I came across previous litigation in this  
20 commission about pressure that may have been applied upon the  
21 judiciary with respect to moving locations down here. So in  
22 terms of exposure, I'm aware that there has been litigation in  
23 the past, and my reading of it is it didn't go well for the

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1 government in attempting to apply that pressure.

2 LDC [MR. RUIZ]: In your time in the Department of  
3 Justice, did you ever overhear any conversations or were part  
4 of conversations where there were comments about the pace of  
5 the litigation in this case?

6 MJ [Col PARRELLA]: No.

7 LDC [MR. RUIZ]: Anywhere else, have you ever been a part  
8 or privy of such conversations?

9 MJ [Col PARRELLA]: No.

10 LDC [MR. RUIZ]: Upon learning that you would be detailed  
11 to this case, has anybody inquired about your work on this  
12 case or expressed an opinion regarding the state of this case  
13 in terms of the pace of the current litigation?

14 MJ [Col PARRELLA]: No. I mean, I'm -- obviously when I'm  
15 answering these, I'm excluding just internal conversations  
16 I've had with members of the trial judiciary; but I'll say  
17 quite clearly nobody has attempted to influence or pressure or  
18 suggest that I should speed up in any fashion.

19 LDC [MR. RUIZ]: Sure. And the question was also intended  
20 to include, as I said, particularly during your time in the  
21 Department of Justice, any conversations that may have been  
22 had regarding the 9/11 case, the conduct of this prosecution,  
23 the pace of the case, any critical comments about the case

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1 itself.

2 MJ [Col PARRELLA]: I don't recall, Mr. Ruiz, any  
3 discussions while I was at the Department of Justice about the  
4 progress of this case, the speed of the case. The issue I  
5 just referred to, I probably -- just because the convening  
6 authority at the time, as you know, was a former Marine, I  
7 think I might have read an article in the newspaper about it.  
8 But I don't recall specific discussions or remember having an  
9 opinion one way or the other as to it because I just simply  
10 didn't know enough about it.

11 LDC [MR. RUIZ]: And just since you mentioned the prior  
12 convening authority, did you have any conversations with the  
13 prior convening authority ----

14 MJ [Col PARRELLA]: No.

15 LDC [MR. RUIZ]: ---- that you know of?

16 MJ [Col PARRELLA]: Not since he left active duty.

17 LDC [MR. RUIZ]: I understand. Okay.

18 Your fitness report in Block 4 references how your  
19 time at the Department of Justice would also increase your  
20 professional portfolio.

21 MJ [Col PARRELLA]: I'm sorry. Could you say which  
22 Block 4 you're referring to?

23 LDC [MR. RUIZ]: Sure. Yes. It's page 5 of -- page 5 of

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1 5 at the bottom, and it says -- it's Block 4, REVIEWING  
2 OFFICER COMMENTS.

3 MJ [Col PARRELLA]: Are you looking at 595B, Mr. Ruiz?  
4 Because I see that as a four-page document.

5 LDC [MR. RUIZ]: It is a four-page document, yes. I'm  
6 sorry. And it's page 2 of that four-page document, but it  
7 says page 5 of 5 in terms of the actual fitness report at the  
8 bottom.

9 MJ [Col PARRELLA]: Okay. I see where you are.

10 LDC [MR. RUIZ]: All right. So the REVIEWING OFFICER  
11 COMMENTS in Block 4.

12 MJ [Col PARRELLA]: And what was your question again?

13 LDC [MR. RUIZ]: It makes a statement about how your time  
14 at the Department of Justice also increased your professional  
15 portfolio. And my question is: Do you feel, as you sit here,  
16 Judge, that your assignment to this military commission will  
17 likely similarly increase your professional portfolio?

18 MJ [Col PARRELLA]: No. I haven't really honestly given  
19 it consideration, nor do I really ----

20 LDC [MR. RUIZ]: Before you took this position, you did  
21 not -- and having been in the military, where we think about  
22 our future assignments quite a bit, so prior to taking on this  
23 monumental case, you did not give any consideration how it may

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1 impact your career positively or negatively?

2 MJ [Col PARRELLA]: No, not really. Honestly, Mr. Ruiz,  
3 I've come to the realization I'm probably about as far as in  
4 this organization promotion-wise as I'm ever going to be and  
5 don't really care how this is viewed by entities within the  
6 Marine Corps one way or the other. I think I've indicated  
7 earlier I certainly didn't volunteer for this, but I will do  
8 the job to the best of my ability.

9 As to Block 4, I see the comments and, you know, this  
10 is, as I said, an unobserved fitness report. I don't even  
11 think I met the individual who authored that. It's something  
12 that's comments that are provided by Marine Corps University.

13 LDC [MR. RUIZ]: So let me ask you that question, because  
14 I think this is perhaps a -- I was going to say  
15 service-specific, but unlike Mr. Nevin, I understand that the  
16 Marine Corps is a part of the Navy. And so while you guys do  
17 things a little bit differently, we do have some experience  
18 with fitness reports.

19 At least in the Navy, we tend to have a pretty  
20 interactive process when we write our fitness reports. It  
21 tends to be pushed down to the level of the person actually  
22 being reviewed. Many times we're asked to provide a working  
23 draft. And certainly the reviewer and the -- finally the

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1 signing official ultimately determines what stays and what  
2 goes.

3           So am I to understand that in this particular fitness  
4 report, you did not have any input into the information or you  
5 had some input or what exactly did -- what process -- what  
6 part did you take in this process?

7           MJ [Col PARRELLA]: Yeah, so my recollection was that my  
8 input was very minimal. My -- I believe my predecessors had  
9 had this actually written as an observed fitness report, and I  
10 elected to go unobserved to put it more in line with all of  
11 the other fellowships and all of the other top-level school  
12 situations, but I don't recall.

13           I'm relatively certain, looking at this, that  
14 [REDACTED] probably authored what he has signed as authoring  
15 and probably provided input as well, or maybe not, for the  
16 colonel, [REDACTED], because again, I never met this individual,  
17 but there was a civilian who is assigned to Marine Corps  
18 University who probably -- who is our direct liaison who  
19 probably prepared the comments for the colonel to sign as  
20 well.

21           LDC [MR. RUIZ]: You did, however, have an opportunity to  
22 review this document and to review the information. Block 6,  
23 in fact, provides an opportunity to indicate if you disagree

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1 with the information provided within the fitness report, you  
2 could, in fact, make a comment or a statement relating to the  
3 substance contained in the fitness report, correct?

4 MJ [Col PARRELLA]: Only if it's adverse.

5 LDC [MR. RUIZ]: Sure. But I'm inferring in that  
6 possibility the opportunity to review the report and determine  
7 if you want to make a statement concerning the report.

8 MJ [Col PARRELLA]: Correct. But in Block 6, and I  
9 think -- when you read that in conjunction with the applicable  
10 order, Block 6 only applies in the case that the fitness  
11 report is marked as an adverse report, which then affords  
12 the ----

13 LDC [MR. RUIZ]: I see.

14 MJ [Col PARRELLA]: ---- Marine report an opportunity to  
15 respond.

16 LDC [MR. RUIZ]: So did you not see this fitness report  
17 before it made its way into your record?

18 MJ [Col PARRELLA]: It's possible I did. I honestly don't  
19 recall.

20 LDC [MR. RUIZ]: Okay. At the time you were rated in this  
21 report, you were a lieutenant colonel, correct?

22 MJ [Col PARRELLA]: That's correct.

23 LDC [MR. RUIZ]: And you are now a colonel?

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1 MJ [Col PARRELLA]: Correct.

2 LDC [MR. RUIZ]: When did you promote in relation to when  
3 this report was written?

4 MJ [Col PARRELLA]: My date of rank is 1 September 2017.

5 LDC [MR. RUIZ]: Okay. So subsequent to this fitness  
6 report?

7 MJ [Col PARRELLA]: Correct.

8 LDC [MR. RUIZ]: Prior to your consideration for  
9 promotion, did you scrub your military record, including your  
10 fitness reports?

11 MJ [Col PARRELLA]: Where are we ----

12 MTC [MR. TRIVETT]: Objection, relevance.

13 MJ [Col PARRELLA]: ---- going with this, Mr. Ruiz?

14 LDC [MR. RUIZ]: So what I'm trying to understand here is  
15 you've indicated to some extent that you really didn't have an  
16 interactive process in working -- or any information that's  
17 contained in this report. I want to ask you a follow-up  
18 question about the fully integrated language as a prosecutor.  
19 And so it makes a difference for me whether somebody just  
20 wrote this report, inserted it into your service record, and  
21 you never saw it and it went up for promotion and then you  
22 were promoted, or you actually took an interactive part in  
23 this process, looked at the fitness report, noted any

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1 discrepancies and your understanding of what that language  
2 meant. It makes a difference in my question and where I go  
3 with the question or don't go with the question.

4           So if you tell me I never saw this, I have no idea  
5 who wrote it ----

6           MJ [Co] PARRELLA]: It's possible I saw it, Mr. Ruiz, but  
7 keep in mind, that I don't think anybody who wrote it,  
8 including myself as the recipient, anticipated back in 2015  
9 that I would find myself sitting here having folks scrutinize  
10 the adjectives that were used in this report.

11          LDC [MR. RUIZ]: Sure.

12          MJ [Co] PARRELLA]: You know, at the end of the day it was  
13 an unobserved report, which I'm not sure how it is in the  
14 Navy, but in the Marine Corps it means that the report doesn't  
15 carry any weight with the board or doesn't carry significant  
16 weight with the board because it's unobserved. It doesn't  
17 have rating marks.

18                So the bottom line is -- and I think I've articulated  
19 this before: Nobody in the Department of Justice had the  
20 ability to influence my career in a professional standpoint  
21 other than perhaps calling up and saying I wasn't showing up  
22 to work. There was no rating, per se, that they were doing.

23          LDC [MR. RUIZ]: But certainly if it had been an adverse

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1 report or even nonobserved and they included negative language  
2 in this fitness report, you would agree that that would have  
3 been a cause for concern for you as you were being considered  
4 for promotion, right?

5 MJ [Col PARRELLA]: That is -- that is true. It could be  
6 a cause for concern. But as I've stated, I think -- I think  
7 I've described it ad nauseam, sort of my role at the  
8 Department of Justice. So let's get to a question that if you  
9 want to ask more questions or something has triggered a  
10 question for you, let's get there, please.

11 LDC [MR. RUIZ]: Sure. So the fully integrated piece, you  
12 were -- you had the requisite security clearance to access  
13 privileged documents with the Department of Justice?

14 MJ [Col PARRELLA]: Yes. If I -- on a need-to-know basis.

15 LDC [MR. RUIZ]: Did you have your personal swipe card  
16 that could have ingress and egress from the facilities without  
17 being escorted?

18 MJ [Col PARRELLA]: Yes.

19 LDC [MR. RUIZ]: Okay. So at least you had that level of  
20 trust and you were integrated to that extent?

21 MJ [Col PARRELLA]: Yes.

22 LDC [MR. RUIZ]: And you worked hand in hand with the  
23 Department of Justice prosecutors to carry out the mission of

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1 the office?

2 MJ [Col PARRELLA]: Yes.

3 LDC [MR. RUIZ]: In doing that, you prepared or reviewed  
4 search warrants, correct?

5 MJ [Col PARRELLA]: Yes.

6 LDC [MR. RUIZ]: As well as a number of other legal issues  
7 as they related to the work of the Department of Justice and  
8 further its counterterrorism mission?

9 MJ [Col PARRELLA]: Yes.

10 LDC [MR. RUIZ]: Okay. I think what you have indicated is  
11 that you were not -- you were never given a case, a standalone  
12 case, by yourself. You were co-detail, which seems the  
13 standard operating procedure, correct?

14 MJ [Col PARRELLA]: Yes.

15 LDC [MR. RUIZ]: But you did have some discretion in terms  
16 of your ability to provide input on the case. Did you have  
17 discretion in terms of providing recommendations for  
18 disposition of cases or how legal issues ought to be handled?

19 MJ [Col PARRELLA]: I had input, yes.

20 LDC [MR. RUIZ]: All right. Okay.

21 Mr. Harrington asked you a question, Judge, about how  
22 you felt when 9/11 happened, and your response was that  
23 similar to what everybody else felt in the country. I feel it

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1 is fair to say that many people in this country felt that  
2 whoever committed the 9/11 acts should die and pay for those  
3 acts with their lives?

4 MJ [Col PARRELLA]: I'm not going to speculate on that.  
5 Let's ask the next question, please.

6 LDC [MR. RUIZ]: Well, I'm not asking you to speculate.  
7 You did indicate that you felt how the country felt ----

8 MJ [Col PARRELLA]: I think I ----

9 LDC [MR. RUIZ]: ---- so you did speculate.

10 MJ [Col PARRELLA]: ---- prefaced that by saying that's my  
11 assumption. I don't know -- obviously know how the rest of  
12 the country felt other than from general media reports and  
13 things and my take from those reports were that the two  
14 predominant emotions were anger and shock.

15 LDC [MR. RUIZ]: Sure. So you're a citizen; you're a  
16 member of our military, our fighting force. When that  
17 happened, did you feel they needed payback and they should  
18 die?

19 MJ [Col PARRELLA]: I'm not going to answer the question.  
20 We're just rehashing what I've already stated.

21 LDC [MR. RUIZ]: Why not, Judge?

22 MJ [Col PARRELLA]: The answer is no. As I've said before  
23 and I'm going to say one last time, there's nothing about my

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1 experiences either on 9/11 or since that causes me to believe  
2 that I cannot be impartial and unbiased with respect to this  
3 commission.

4 LDC [MR. RUIZ]: Yes, sir. I believe the quote was "It's  
5 possible that my feelings have changed," was your response to  
6 the line of questioning from Mr. Harrington. That's a little  
7 bit different and that's the answer I want to explore.

8 When you say it's possible my feelings have changed,  
9 it's difficult to assess that answer without truly  
10 understanding what your feelings were, which is what I was  
11 trying to gather.

12 MJ [Col PARRELLA]: And to the best of my recollection,  
13 what I said was is probably anger and shock. I don't have a  
14 specific recollection of it. And, you know, what I said is I  
15 think over due course of time, those emotions may have, you  
16 know, waned just with the passage of time.

17 But as I sit here today, which is what I think is  
18 relevant, there's nothing about my past experiences that I  
19 feel will affect those two important factors.

20 LDC [MR. RUIZ]: So if a jury were being selected to sit  
21 as an impartial and fair juror and they indicated that they  
22 felt anger or shock, they wanted these men dead or whoever  
23 committed these acts to die, but they said that now everything

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1 was fine, they feel ----

2 MJ [Col PARRELLA]: I'm going to stop you there because  
3 I've never said that I ever expressed any desire for these men  
4 to die. In fact, I think I said the opposite, that I have  
5 never said that. I don't recall ever -- ever uttering those  
6 words or feeling that way because, frankly, this case -- at  
7 the time of 9/11, I don't think those facts -- a lot of those  
8 facts were known, essentially. So ----

9 LDC [MR. RUIZ]: I understand that.

10 MJ [Col PARRELLA]: ---- I just want to make it clear for  
11 the record. So what's your next question?

12 LDC [MR. RUIZ]: What I'm trying to get you to answer,  
13 Judge, directly and honestly, quite frankly, is: Did you feel  
14 that whoever committed these acts on 9/11 should pay a price  
15 and should be either eradicated, should be brought to justice?  
16 This is a reasonable question to ask in this case. I'm not  
17 just kind of pulling it out of nowhere, certainly since you're  
18 going to sit and you're going to be calling the balls and  
19 strikes.

20 If, in fact, you did espouse such an opinion, it may  
21 very well have waned over time, but then it goes to the  
22 weight, right, not necessarily the relevancy. But if, in  
23 fact, you or if a prospective juror felt that way, it's

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1 something that we need to be able to assess. We need to be  
2 able to think through and then determine if we want to make a  
3 challenge based on that. And, quite frankly, it just seems  
4 like if you asked me how I felt, I would say yes.

5 MJ [Col PARRELLA]: So, Mr. Ruiz, what's your question?

6 LDC [MR. RUIZ]: My question is, Judge: Did you feel that  
7 whoever committed these acts on 9/11 or shortly thereafter  
8 should pay a price; that there should be some retribution;  
9 that maybe they should die; that we should bomb them, whoever  
10 they were, after we found out who they were? Did you have  
11 those kinds of feelings? You're a member of our military, a  
12 citizen, an American.

13 MJ [Col PARRELLA]: I have no specific recollection of  
14 having those feelings. Is it possible? It's possible. I'm  
15 just speculating, Mr. Ruiz. It was a long time ago.

16 LDC [MR. RUIZ]: A pretty significant act. Pretty  
17 significant ----

18 MJ [Col PARRELLA]: I understand, but I'm, as a judge,  
19 very confident I can leave my personal feelings, whatever they  
20 might be on any particular topic, whether it be capital  
21 punishment or any other topic, outside and apply the law as I  
22 believe it to be inside this connection.

23 LDC [MR. RUIZ]: I understand that. But I still don't

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1 know what your personal feelings are. I mean, I know you're  
2 saying you can put them aside.

3 MJ [Col PARRELLA]: And I don't think it's relevant the  
4 way you're -- your line of questioning, so I'm not going to  
5 answer. Let's move on.

6 LDC [MR. RUIZ]: So your personal feelings on how you felt  
7 about 9/11 case are not relevant because you can put them  
8 aside?

9 MJ [Col PARRELLA]: Okay. So you're not correctly  
10 summarizing. I've answered that question; and for those  
11 reasons, I'm not going to answer it again.

12 LDC [MR. RUIZ]: Okay. The -- a little bit more about  
13 your document review. I think you indicated you conducted a  
14 document review at a CIA facility or a warehouse?

15 MJ [Col PARRELLA]: Correct.

16 LDC [MR. RUIZ]: Can you tell us a little bit more about  
17 that?

18 MJ [Col PARRELLA]: No.

19 LDC [MR. RUIZ]: Is that because you don't want to or you  
20 just don't remember or you've got a duty to protect that  
21 information?

22 MJ [Col PARRELLA]: I don't remember. I don't remember  
23 which case it was. And yeah, I honestly don't know that I

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1 could give you much details, and to the extent I might be able  
2 to, they are probably classified.

3 LDC [MR. RUIZ]: I understand.

4 So as you sit here as a member -- as a judge on this  
5 case, you do still have an obligation to protect classified  
6 information that may have come from the CIA?

7 MJ [Col PARRELLA]: Yes. I mean, as far as I know, that  
8 obligation hasn't ended.

9 LDC [MR. RUIZ]: And the obligation would also extend to  
10 any privileged communications, work product that you worked on  
11 during your time with the Federal Bureau of Investigation?  
12 You still have a duty of loyalty and confidentiality to that  
13 organization, correct?

14 MJ [Col PARRELLA]: Yes.

15 LDC [MR. RUIZ]: In terms of the -- I understand you don't  
16 remember much about the CIA facility. Do you remember if you  
17 had to be escorted or if you had the opportunity to enter that  
18 facility say, for instance, with your own swipe card or if  
19 there were particular procedures ----

20 MTC [MR. TRIVETT]: Objection, relevance.

21 MJ [Col PARRELLA]: Sustained. Let's move on, Mr. Ruiz.

22 LDC [MR. RUIZ]: Judge, this goes to a challenge based on  
23 your alignment with a party to this litigation. The CIA's

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1 involvement in this case is extensive and well documented. To  
2 the extent that you were embedded with the Department of  
3 Justice and had ease of access to CIA facilities, it's  
4 directly relevant to the questions that I'm asking. I don't  
5 see how that couldn't be more relevant.

6 MJ [Col PARRELLA]: Because I've answered the question  
7 several times now about my relationship with any of those  
8 agencies, the extent that I had any involvement with those  
9 agencies, what that involvement was, and all of what I did or  
10 didn't do while I was at the Department of Justice.

11 LDC [MR. RUIZ]: Well, the question was: Did you have  
12 access to their facility without an escort? Could you come  
13 and go as you pleased?

14 MJ [Col PARRELLA]: But that's -- I don't see that as  
15 relevant, so we're going to move on. I've described my  
16 relationship with that agency, what it was and what it wasn't.  
17 So whether I had access to the facility unescorted or escorted  
18 I don't see as relevant.

19 LDC [MR. RUIZ]: Okay. Judge, at one time you were  
20 deployed in support of Operation Iraqi Freedom II, correct?

21 MJ [Col PARRELLA]: That's correct.

22 LDC [MR. RUIZ]: During that deployment, did you have an  
23 opportunity to work with detainee populations?

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1 MJ [Col PARRELLA]: I did not.

2 LDC [MR. RUIZ]: All right. Did you have any advisory  
3 role or any role in regards to detention operations?

4 MJ [Col PARRELLA]: I did not.

5 LDC [MR. RUIZ]: Did you form any opinions regarding any  
6 detainees that were taken in by U.S. forces?

7 MJ [Col PARRELLA]: No.

8 LDC [MR. RUIZ]: Okay. May I have a moment?

9 MJ [Col PARRELLA]: You may.

10 [Pause.]

11 LDC [MR. RUIZ]: That's all I have, Judge. Thank you.

12 MJ [Col PARRELLA]: Thank you, Mr. Ruiz.

13 Trial Counsel, any questions for the military judge  
14 in light of counsel's questions?

15 MTC [MR. TRIVETT]: Good afternoon, Your Honor.

16 MJ [Col PARRELLA]: Good afternoon.

17 MTC [MR. TRIVETT]: I just have one question and one  
18 clarification for one of your answers earlier. Mr. Nevin  
19 asked you about DoJ personnel you had contact with. I'd like  
20 to add one name to that list to see if you had any contact  
21 with a Ms. Kiersten Korczynski while you worked at the  
22 Department of Justice Counterterrorism Section.

23 MJ [Col PARRELLA]: Is she a former Navy judge advocate?

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1 MTC [MR. TRIVETT]: Yes, sir.

2 MJ [Col PARRELLA]: My recollection was that she joined  
3 CTS while I was there, I want to say in the latter half of the  
4 year while I was there. So I did meet her. I never worked on  
5 a case with her.

6 MTC [MR. TRIVETT]: Anything about your relationship with  
7 her that would affect your ability to sit impartially on this  
8 case if she were to be detailed to this case by the chief  
9 prosecutor?

10 MJ [Col PARRELLA]: Absolutely not.

11 MTC [MR. TRIVETT]: And one clarification. Mr. Nevin  
12 asked questions about the law of capital punishment earlier,  
13 and you started a response by saying "I don't believe," and  
14 then you paused and then you said "I'm qualified."

15 Now, I heard it and understood to mean that you  
16 believed you were qualified to sit on this case. But if I  
17 heard it correctly, the record might indicate that you said "I  
18 don't believe I'm qualified." I just wanted to clarify that  
19 you believe that you're qualified to sit on this case,  
20 including with the answer to that question.

21 MJ [Col PARRELLA]: Yes. And if I started a half of a  
22 sentence and didn't finish it, then I can see how that would  
23 happen, so that was certainly not my intent. I do believe I

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1 am qualified to sit on this case with the full understanding  
2 that this is a capital case.

3 MTC [MR. TRIVETT]: Thank you, sir. No further questions.

4 MJ [Col PARRELLA]: Do any counsel desire to challenge the  
5 military judge? Trial Counsel?

6 MTC [MR. TRIVETT]: No, sir.

7 MJ [Col PARRELLA]: Mr. Nevin?

8 LDC [MR. NEVIN]: Your Honor, I make the motion today that  
9 the military judge recuse yourself from the case. I think  
10 it's probably a motion that should be briefed and presented to  
11 you more thoroughly, but I want to articulate it today because  
12 I know the military judge intends to continue and -- if you  
13 deny this motion, to hear additional arguments on other  
14 motions, and I want to present this motion prior to your doing  
15 that, so it will be perhaps somewhat incomplete. But it's  
16 basically on four grounds.

17 The first is that the ABA -- the ABA Code of Judicial  
18 Conduct -- and I cited the rules of the code of conduct for  
19 United States judges, but they essentially provide the same  
20 thing. And counsel previously pointed out to you that the  
21 JAG Instruction makes the ABA Model Code of Judicial Conduct  
22 applicable to you.

23 And the matter that I -- the matters that I sought to

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1 question you about regarding the number of trials you had been  
2 involved in, your experience with capital cases, and the rest,  
3 all of those, as I articulated to you previously, would have  
4 gone to your competence to serve as a judge in this case.  
5 Rule 2.5 of the ABA code says that "A judge shall perform  
6 judicial and administrative duties competently and also  
7 diligently." And the comment to the rule says that  
8 "competence in the performance of judicial duties requires the  
9 legal knowledge, skill, thoroughness, and preparation  
10 reasonably necessary to perform a judge's responsibilities of  
11 judicial office."

12           And meaning no disrespect previously and none now, as  
13 someone who's been struggling with this case for something  
14 like ten years and is aware of the complexity of it, I think  
15 it was reasonable for us to -- and it falls under the -- the  
16 rubric of competence. And I know based on your record, no one  
17 would say in a general sense that you're not a competent  
18 person. Clearly, you are.

19           But these were the kinds of questions that were  
20 necessary for us to get at the question of whether you are  
21 competent in this specific case, and your refusal to fully  
22 answer those questions leaves me in the position of just  
23 pointing out that you have a relatively short period of time

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1 of experience as a judge. And I believe it is the minimum  
2 under the statute, I acknowledge; but this is not a  
3 minimum-type case, if you understand my point.

4 And I wanted to pursue that, and my inability to  
5 pursue that leaves me in the position of feeling that to  
6 protect Mr. Mohammad's interests, I need to articulate that  
7 motion to disqualify you or recuse you on those grounds.

8 The second ground is -- comes also from the Code of  
9 Conduct for U.S. Judges, and I will just say that -- point you  
10 to Canon 3 of the Canons of Conduct, 3 -- Canon 3(c)(1) and  
11 subsection (b) states that "The judge shall disqualify himself  
12 or herself if the judge served as a lawyer in the matter in  
13 controversy" -- and I recognize you don't -- you have not done  
14 that, but it says, "or a lawyer with whom the judge previously  
15 practiced law served during such association as a lawyer  
16 concerning the matter."

17 And I call your attention, and I -- to your remarks  
18 previously that you practiced law for a year at the -- at DoJ  
19 in the fellowship program and that persons you practiced law  
20 with there were lawyers in the present case. And I hadn't  
21 thought of Ms. -- of Ms. Korczynski, but I do believe that  
22 Mr. Groharing was part of that organization, as were very  
23 possibly Mr. Trivett, Mr. Ryan, and Ms. Tate.

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1           And I will confess to not knowing the precision of  
2 their assignments and who their employer is and what their  
3 associations are, but I believe -- and I will say on  
4 information and belief I believe that they are a part of that  
5 organization. And so I think it is correct to say that you  
6 previously practiced law with those persons and that, while  
7 you were practicing law with them, they served as lawyers in  
8 this case. And that would -- that is a mandatory  
9 disqualification. A judge shall disqualify himself or  
10 herself.

11           I was struck by Mr. Connell's question of you that --  
12 and I will submit to you the idea of an appearance -- the  
13 appearances to the average person that you come out of an  
14 organization which is dedicated in the way that organization  
15 is dedicated, having worked with some of these people --  
16 although I recognize you didn't work on an actual case with  
17 them, if I -- at least that's how I understand your remarks --  
18 but now you're on the bench going to decide this case. And so  
19 for -- that's the -- all of that amounts to the second ground  
20 for disqualification.

21           The third is what appears to be the high likelihood  
22 that you'll be leaving within a year, and I think you've  
23 stopped short of saying that that is a certainty, but it

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1 sounds like it's something awfully close to a certainty, and I  
2 ask that you -- my last ground has to do with the amount of  
3 work that has to be done in order for you to be in a position  
4 to competently decide questions in this case. But I don't  
5 know how much work that is, but I know it is a monumental  
6 amount of work.

7           And the idea that you're going to do it now for  
8 however long it takes to do that and then leave and someone  
9 else is going to come in and do it all over again strikes me  
10 as a diseconomy of the first water, and so I don't -- I don't  
11 know exactly what rule that would come under, but I submit to  
12 you that you should recuse yourself from handling this case  
13 unless and until it is clear that your next assignment, the  
14 assignment that's been described as not going to arise or that  
15 you formally state in some way that you will decline it if it  
16 does arise.

17           And then finally, and the reason that I'm  
18 articulating the motion now -- or these motions now is that I  
19 ask that you take no action on this case beyond ruling on this  
20 motion for disqualification and conducting this voir dire  
21 until every substantive element of this case has been read and  
22 reviewed and understood by you.

23           And I respectfully suggest that it should not be --

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1 these things do not exist in isolation, and it is not  
2 appropriate in a capital case, and particularly a capital case  
3 of this magnitude that the whole world is watching, to simply  
4 come up to speed over time while simultaneously ruling on  
5 motions as they come up based on, you know, your good-faith  
6 understanding of their scope.

7 I think it requires more than that, and I ask that  
8 you -- it wouldn't be a recusal, obviously, it would be  
9 something on the order of an abatement, that you not take  
10 further action in the case until you can tell us that you have  
11 read everything that's necessary to understand the full scope  
12 of this case.

13 MJ [Col PARRELLA]: Mr. Nevin, on that note, can you cite  
14 for the commission any authority for the proposition that a  
15 judge who is inheriting a case must conduct a review of every  
16 page, every pleading that's transpired so far?

17 LDC [MR. NEVIN]: Give me a second. And I -- Your Honor,  
18 I'll say I do request the opportunity -- unless you are going  
19 to grant the motion from the bench, I do request the  
20 opportunity to brief this to you.

21 But I did take a look just over the last couple of  
22 days at a series of cases that hold that in civilian courts,  
23 at least, when one judge replaces another, there -- it is open

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1 for the judge to reconsider all of the materials -- all of the  
2 decisions, I'm sorry, that the prior judge made. And it's  
3 implicit in that that until the judge is in a position to  
4 understand all of those motions, that's a duty that can't be  
5 carried out.

6 I think the cases that are in front of me -- at this  
7 point I can't cite cases to you that stand for that  
8 proposition, but I'll make every effort to do so if you'll  
9 give me time to brief this.

10 But let me say also that I believe that that would  
11 come within the requirement of the rule that I just read you  
12 about competency, that that would include -- and I'm reading  
13 from the comment of Rule 2.5 of the ABA Model Code of Judicial  
14 Conduct. It would include -- "competence would include the  
15 legal knowledge, skill, thoroughness, and preparation  
16 necessary to perform a judge's responsibilities of judicial  
17 office." And I am submitting to you that that kind of review  
18 of the water that's gone under the bridge, particularly in  
19 this case, would be a requirement for preparation.

20 That's all I have. Do you have questions for me,  
21 sir?

22 MJ [Col PARRELLA]: I do not. Thank you, Mr. Nevin.

23 LDC [MR. NEVIN]: Okay. And, Your Honor, I don't move to

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1 disqualify you lightly. I mean no disrespect. I appreciate  
2 your hearing me out.

3 MJ [Col PARRELLA]: Mr. Nevin, I assure you none taken.  
4 As I indicated when you were asking your questions, I  
5 understand your interests in asking those questions. And  
6 again, it's my ultimate goal to be as open and transparent as  
7 possible, but no disrespect or any sort of thing taken by  
8 either your questions or your challenge.

9 Ms. Bormann?

10 LDC [MS. BORMANN]: Good afternoon, Judge.

11 MJ [Col PARRELLA]: Good afternoon.

12 LDC [MS. BORMANN]: We adopt what Mr. Nevin has so ably  
13 argued. However, we are asking for an opportunity to brief  
14 it. We're in a unique position where we are currently  
15 developing a factual record and evidence outside of the  
16 record, and so we'll be filing a brief forthwith and  
17 supplementing the record.

18 Unless you have any questions?

19 MJ [Col PARRELLA]: No questions. Thank you, Ms. Bormann.

20 LDC [MS. BORMANN]: Thank you.

21 MJ [Col PARRELLA]: Mr. Harrington?

22 LDC [MR. HARRINGTON]: Judge, I adopt the arguments of  
23 Mr. Nevin and Ms. Bormann.

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1           And, Judge, I would make a request of the court. The  
2 first thing I asked the court was a question about implicit  
3 bias. I would ask the court to get a transcript of today's  
4 proceedings and read your answers. And in particular, I'd  
5 like the court to read the answers which you gave about your  
6 recollection of yourself right after 9/11.

7           And I think we talked about the appearance to the  
8 public of the perception of bias in this particular case. And  
9 I think I speak for myself, but almost everyone that I know  
10 could tell you exactly where they were and exactly how they  
11 felt after 9/11, and that everybody talked to other people and  
12 that everyone heard people's opinions about retribution,  
13 punishment, revenge, and all sorts of things. And it's  
14 just -- it's hard to believe that anybody who is serving in  
15 the United States Marine Corps, which is at the forefront of  
16 our military force, would not have encountered that. It just  
17 seems to me to be incredulous.

18           And with respect to one of the arguments that  
19 Mr. Nevin made, I would ask the court to reserve decision on  
20 the one about practicing law with somebody who is involved in  
21 the prosecution of this case. And that will be developed  
22 further in the motion that we file with the court and in the  
23 issues related to AE 292. And the department that you were in

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1 for the -- when you were at the Department of Justice, a  
2 number of people who were involved in the investigation in 292  
3 and involved in the -- not only investigation by the FBI, but  
4 also an investigation for prosecution that was carried out by  
5 the Department of Justice and by one of the United States  
6 Attorneys assigned to it. So I would ask the court to hold  
7 your judgment until you see that and we develop that record  
8 further. Thank you.

9 MJ [Col PARRELLA]: Thank you, Mr. Harrington.

10 Mr. Connell?

11 LDC [MR. CONNELL]: Sir, Rule for Military Commission  
12 902(d)(2) gives the right to present evidence in support of a  
13 challenge to qualification or bias before the military judge  
14 rules. We'd request the opportunity to take advantage of  
15 that. We have some investigation to conduct based on your  
16 answers today and we will act with dispatch in doing so.

17 MJ [Col PARRELLA]: I understand. And I think the  
18 discussion section right above that indicates that this issue  
19 can be raised at any time, and an adverse ruling initially --  
20 not indicating that's where I'm going, but if I were to rule  
21 adversely, that that doesn't preclude you from doing  
22 subsequent investigation, finding evidence, presenting the  
23 evidence, and bringing the issue up again.

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1 LDC [MR. CONNELL]: Sir, I take your point. But I will  
2 make the additional observation that (d)(2) has an ordering  
3 aspect to it, which is that there -- there shall -- "each  
4 party shall be permitted to question the military judge and to  
5 present evidence regarding a possible ground for  
6 disqualification before the military judge decides the  
7 matter." So it seems to me that contemplates at least a  
8 reasonable opportunity to develop the factual basis.

9 MJ [Col PARRELLA]: And what do you opine, Mr. Connell, is  
10 a reasonable opportunity? You're welcome to stand there,  
11 whichever your preference is.

12 LDC [MR. CONNELL]: Yes, sir. I didn't want you to take  
13 any disrespect from me being at the table.

14 What -- I think what you're asking me is how long do  
15 I feel that that investigation would require?

16 MJ [Col PARRELLA]: Not specifically yours, but I'm asking  
17 you what do you opine is a reasonable opportunity to present  
18 evidence? Obviously, the fact that I've been detailed to this  
19 case has been known now since August 27th. The bio, I  
20 believe, was provided shortly thereafter. So it's, I think,  
21 disingenuous to say there hasn't been an opportunity to do  
22 some investigation. Clearly some counsel have done so.

23 LDC [MR. CONNELL]: Absolutely, sir. And the, you know,

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1 Google-level investigation is something that we were able to  
2 do while preparing for this hearing. And the details of your  
3 connection to the Department of Justice National Security  
4 Division Counterterrorism Section, of course, were not  
5 forthcoming until Sunday when you very -- in a spirit of  
6 candor, which I appreciate, provided us your fit rep. And we  
7 have already begun making some phone calls based on your  
8 answers this morning.

9 I would say that four weeks would be a reasonable  
10 time. And then if you set a briefing schedule, that means  
11 that the issue can be argued and finally dealt with at the  
12 next hearing.

13 MJ [Col PARRELLA]: Okay. I understand. Thank you.

14 Mr. Ruiz.

15 LDC [MR. RUIZ]: Judge, on behalf of Mr. al Hawsawi, I'm  
16 going to ask to reserve our right to challenge the military  
17 judge at a latter time. I'm also not explicitly at this time  
18 joining Mr. Nevin's argument, although I'm not unjoining it  
19 either. I simply want to have an opportunity to digest the  
20 arguments, the answers by the commission, and do some research  
21 on our own, put together this in a pleading, and submit it to  
22 the military commission.

23 I do, however, want to specifically join the portion

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1 of Mr. Nevin's argument where he requested no additional  
2 business be conducted until this issue has been resolved, and  
3 Mr. Connell's request for a reasonable opportunity to conduct  
4 follow-up investigation based on today's questions and  
5 answers.

6 My suggestion to the court would be that you set a  
7 briefing schedule for these challenges. We intend, in quite  
8 candor, to submit this to you. If we were required to go  
9 through hearings this week, our timeline would be sometime  
10 next week, depending on how quickly we can move on our  
11 research and integrate questions and answers; but also  
12 independent judgment. We want to do this sooner rather than  
13 later, but we do want to do it in an orderly fashion that we  
14 can put together our best argument for why we do or do not  
15 have a concern at this point.

16 But for now, we'd like to reserve with an explicit  
17 joinder to the request to delay the proceedings until the  
18 issue is fully briefed and resolved and we've had just an  
19 additional amount of time to conduct follow-up investigation  
20 based on some of the questions and answers today. Thank you.

21 MJ [Co1 PARRELLA]: Thank you, Mr. Ruiz.

22 Trial Counsel, would you like to be heard on this?

23 MTC [MR. TRIVETT]: Sir, R.M.C. 902(b) sections (1)

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1 through (3) list the grounds for disqualification of a  
2 military judge. Whether or not there's personal bias or  
3 prejudice, personal knowledge of disputed evidentiary facts;  
4 whether the military judge act as a counsel, SJA, or convening  
5 authority to any of the offenses charged or the case in  
6 general; whether or not the judge was a witness in the case;  
7 whether he forwarded charges; or whether he's expressed an  
8 opinion on guilt or innocence of the accused.

9           For the many hours that you were questioned by  
10 defense counsel this morning, the prosecution sees no grounds  
11 under which you are required to recuse yourself.

12           I wanted to address some specifics that Mr. Nevin  
13 indicated in his motion. In regard to the ABA Code of  
14 Judicial Conduct, if you look at R.M.C. 902, if you look at  
15 28 U.S.C. 455, which is the federal standard, the ABA Code of  
16 Judicial Conduct, and the Model Code Conducts and the Canons  
17 of Judicial Ethics, they're all based on the same principles,  
18 but they're certainly not and don't use verbatim language. We  
19 would ask that any analysis that you do, whether it be here  
20 today or later in writing, that you consider all of those  
21 standards. And the prosecution believes that all of those  
22 standards, if analyzed, still serve as no grounds for you to  
23 recuse yourself as the military judge.

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1           We're going to have to have an opportunity, clearly,  
2 if the defense counsel are going to file motions on this, to  
3 respond in writing. But there's some things that we don't  
4 want to concede up front, and we want to make sure that the  
5 record is clear on that.

6           The code of conduct that Mr. Nevin spoke about  
7 regarding working in the same practice of law with another  
8 lawyer we're not certain applies to government lawyers.  
9 Obviously, there's always going to be exceptions to certain  
10 government employment. The Department of Justice is one of  
11 the largest law firms in the world. Where that would stop,  
12 whether that would be at the National Security Division level,  
13 at the Counterterrorism Section level, or would it include all  
14 of the U.S. Attorneys' offices in the 93 various offices  
15 around the states?

16           So we certainly don't concede that that canon applies  
17 to federal government employment. We would like the  
18 opportunity to brief that, but we certainly didn't want the  
19 military judge to consider his work at CTS under that canon  
20 without having the opportunity to brief that piece of it.

21           What we can say as officers of the court and having  
22 worked at the Department of Justice Counterterrorism Section  
23 since 2009 is that all of the attorneys that are detailed to

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1 the case currently are assigned from Counterterrorism Section  
2 to the Department of Defense and work in the Office of the  
3 Chief Prosecutor. The case is not being prosecuted out of the  
4 Department of Justice. It is being prosecuted by the  
5 Department of Defense out of the Office of the Chief  
6 Prosecutor. We do not have information regarding this case,  
7 certainly none of the detailed attorneys at this time, over on  
8 government servers at the Department of Justice where you may  
9 have had access to them.

10 LDC [MR. RUIZ]: Judge, I object to that representation  
11 without -- that's testifying. If Mr. Trivett wants to  
12 testify, I would like to cross-examine him.

13 MJ [Col PARRELLA]: Mr. Ruiz, the objection is overruled.  
14 I understand that it's argument. Please continue.

15 MTC [MR. TRIVETT]: Thank you, sir.

16 Mr. Nevin seemed to indicate that you were leaving  
17 within a year was a legitimate ground to recuse yourself. I  
18 do not believe that that is the state of the law. Obviously,  
19 as an officer in the military, the needs of the service will  
20 dictate whether or not you get those orders.

21 And ultimately whether you do or whether you don't,  
22 you're assigned here for the purposes of being the military  
23 judge as long as those orders shall run, and that would not be

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1 a ground to disqualify any military judge. It's not how the  
2 government works. That's certainly not how the military  
3 works. And whether it's economical or not isn't a grounds for  
4 recusal.

5           Mr. Nevin seemed to indicate that abatement was a, I  
6 guess, alternate relief that he asked for in his oral motion  
7 to recuse. We would oppose abatement as well. I think the  
8 military judge rightly pointed out whether or not there was  
9 any authority that an abatement must occur until you've read  
10 every last jot and tittle of a record that is almost  
11 20,000 pages long and filings to date over the last six years  
12 that number well into the thousands. That's not a grounds for  
13 abatement.

14           The competency issue is not set forth in the ABA Code  
15 of Judicial Conduct. Also would not require that. The  
16 Navy-Marine Corps Trial Judiciary has found you competent to  
17 serve as a judge. You have satisfied all of the requirements  
18 of the Military Commission Act in regard to your experience,  
19 and, therefore, your leaving, or this request that you have to  
20 read everything beforehand is simply not a grounds for  
21 recusal, and that we should continue to move on with the  
22 remainder of the docket.

23           Mr. Connell has had a reasonable opportunity to

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1 investigate. I think what you will see when you do review  
2 most of the record and most of the documents is that the  
3 defense is never going to be satisfied with their level of  
4 investigation. It's not uncommon in death penalty  
5 jurisprudence for defense counsel to seek delay at every  
6 opportunity for it's in their clients' best interest. I'm not  
7 disparaging anyone, but it is a strategy that we've seen for  
8 the last six years.

9           And we believe that there is no need for a further  
10 defense investigation. You have been forthright in your  
11 answers. You have been accommodating in requests for  
12 reasonable discovery, and you have answered all of the  
13 defense's questions that were relevant, sometimes several  
14 different times, although they were the same question.

15           So we believe at this point in time there's no  
16 grounds for recusal and that we should move on with the  
17 remainder of the docket for the rest of the week.

18           Subject to your questions, sir.

19           MJ [Col PARRELLA]: I have none. Thank you.

20           Mr. Nevin?

21           LDC [MR. NEVIN]: Thanks, Your Honor. And perhaps this  
22 will be self-evident, but Rule 902 clearly sets out some  
23 grounds for disqualification, but it doesn't say these are the

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1 only grounds that you possibly can consider, no other grounds  
2 shall be considered.

3 That's why the ABA Code of -- that's why the  
4 JAG Instruction says that the ABA Code of Conduct applies  
5 unless it's directly inconsistent with something else. And if  
6 the rule -- if Rule 902 said, "You shall not consider anything  
7 except the grounds in this rule," then I think counsel would  
8 have a point. But that's not what it says.

9 There's certainly not an exception for government  
10 service on the face of the rule that I quoted to you about  
11 practicing law with someone who is a member of the -- who's  
12 litigating in the case. It could be either side, obviously.  
13 It doesn't contain that.

14 And I understand that if you had a friend who was in  
15 the United States Attorney's -- who was a line attorney in the  
16 U.S. Attorney's Office in Idaho, let's say, which is where I'm  
17 from, and if someone were saying disqualify because of that, I  
18 understand that it might look a little different.

19 But here you're working -- you were working as a  
20 prosecutor in the same division and in the same section. And  
21 I recognize there may be subsections, but now we have narrowed  
22 the obviously vast Department of Justice down to a pretty  
23 narrow subset. And I certainly think that would be an

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1 appropriate thing to address in briefing. But I see nothing  
2 in the rule -- I'll represent to you that there is nothing in  
3 the rule that makes an exception for the situation that is  
4 presented by these facts.

5 I thought -- I hear counsel saying whether it's  
6 economical or not is not a ground for relief, and I believe I  
7 said that recusal -- that I had some hesitation about the  
8 concept of recusal as such. But I think it does go -- the  
9 question of your leaving in a year or having to choose within  
10 a year between staying here to complete this situation on the  
11 one hand or on the other take -- and in the process, really,  
12 is what I mean, forgoing a really important opportunity seems  
13 to me to put you in something in the nature of a conflict kind  
14 of situation, that that would be a difficult decision to make.

15 And I have heard counsel again and again speak to the  
16 economy, to the need for judicial economy, the need to -- and  
17 really in the same breath, counsel is telling you that we seek  
18 delay at every opportunity.

19 I will say again what's maybe obvious on the record,  
20 is that we understand that this is -- you've been detailed to  
21 this case and you are a person who -- if I understand  
22 correctly, it's not a year; it's 11 months -- who may well  
23 leave within 11 months. And I would think maybe if I -- what

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1 I wanted was delay, I would be better off saying, "Yeah, sure,  
2 stay around, and we'll jump through all these hoops again 11  
3 months from now." And because that will provide a lot of  
4 delay. But I'm really coming at this from the opposite  
5 standpoint.

6 And, finally, I'm not asking for abatement until  
7 every last jot and tittle is brought under control by you.  
8 What I said was -- or what I intended to say was that until  
9 you have everything that's important substantively under  
10 control, I respectfully suggest you shouldn't be entering  
11 rulings or hearing argument or evidence on the case.

12 It is a cumulative whole, this case, in many ways,  
13 and sure, there's a motion here or a small matter there that  
14 you don't have to spend hours reading about. I would concede  
15 that there probably are such things. But there are many, many  
16 things that, I think, for you to understand the flow and the  
17 thrust of the case and what's fair to both sides, that you  
18 have to have brought it all under control.

19 And I don't mean -- I was going to say I'm sorry that  
20 you're in this position. I don't mean that. I just -- I  
21 recognize it's a huge task, and so it's not that. But I just  
22 think how can it be otherwise? How can you not be responsible  
23 to know everything important substantively about this case,

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1 this capital case, largest in the history of our country,  
2 before you enter rulings? And that's the basis for the -- and  
3 I think it's a motion to abate, actually. But anyway, thank  
4 you, Your Honor.

5 MJ [Col PARRELLA]: Thank you, Mr. Nevin. Okay.

6 I think we're at a logical place here to take a brief  
7 recess. Court is in recess until 1500.

8 [The R.M.C. 803 session recessed at 1444, 10 September 2018.]

9 [The R.M.C. 803 session was called to order at 1503,  
10 10 September 2018.]

11 MJ [Col PARRELLA]: This commission is called back to  
12 order. All parties present when the commission recessed are  
13 again present.

14 All right, Counsel. So here's what I'm going to do.  
15 I'm going to take the arguments of counsel, give it careful  
16 consideration this evening, take the matters under advisement.

17 As a result, what I am going to do to our order of  
18 march is I'm going to flip tomorrow's sessions. So we will  
19 start tomorrow at 0900 with an unclassified session. Assuming  
20 that I deny defense's motions, we will then proceed at 1400 --  
21 or, excuse me, 1330, which is what I approximate to be when we  
22 will resume the afternoon session, that will then be the  
23 closed session to take up the 505(g) notices.

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1           Any questions from counsel?

2           LDC [MR. CONNELL]: Sir, my only question is procedural.

3           The closed session is tomorrow afternoon at 1330, not  
4 at 1400?

5           MJ [Col PARRELLA]: Correct. I anticipate, and of course  
6 this is subject to change, but to maintain a sort of  
7 consistent afternoon or lunch recess for lunch to accommodate  
8 the prayer schedule, so normally we'll try to get to 1200 to  
9 1330. So whenever we start that afternoon session, whether it  
10 be 1330 or 1400, it will be a closed session.

11           Mr. Harrington?

12           LDC [MR. HARRINGTON]: Judge, just to update you on the  
13 filing that we talked about this morning, we're just getting  
14 an AE number now. We hope to get it filed this afternoon,  
15 so ----

16           MJ [Col PARRELLA]: Thank you.

17           LDC [MR. HARRINGTON]: Okay.

18           MJ [Col PARRELLA]: Okay. There being no other questions,  
19 this commission is in recess until 0900 tomorrow morning.

20 [The R.M.C. 803 session recessed at 1505, 10 September 2018.]

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