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1 [The R.M.C. 803 session was called to order at 0909,
2 12 September 2018.]

3 MJ [Col PARRELLA]: The commission is called to order.
4 Trial Counsel, are all the previous -- are all the government
5 counsel that were present at the previous session present
6 again this morning?

7 CP [BG MARTINS]: Your Honor, no. Major Dykstra, Major
8 Mills, and Captain Dastoor are tending to case business in our
9 workspaces. And, Your Honor, I'd like to request the
10 commission's permission that after Mr. Swann accounts for the
11 absence of Mr. Hawsawi, that he and Mr. Groharing also depart
12 the courtroom.

13 MJ [Col PARRELLA]: That's fine. Thank you,
14 General Martins.

15 Defense Counsel, are all the defense counsel who were
16 present yesterday at the close of the previous session present
17 again today?

18 LDC [MR. NEVIN]: On behalf of Mr. Mohammad, yes.

19 MJ [Col PARRELLA]: Thank you.

20 Ms. Bormann?

21 LDC [MS. BORMANN]: On behalf of Mr. Bin'Attash, we've
22 added Major Seeger once again.

23 MJ [Col PARRELLA]: Thank you.

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1 Mr. Harrington?

2 LDC [MR. HARRINGTON]: For Mr. Binalshibh, Judge, it's the
3 same. Thank you.

4 MJ [Col PARRELLA]: Mr. Connell?

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

6 MJ [Col PARRELLA]: Good morning.

7 LDC [MR. CONNELL]: All the same counsel are present.

8 MJ [Col PARRELLA]: Thank you.

9 Mr. Ruiz?

10 LDC [MR. RUIZ]: And, Judge, all the same counsel, and
11 Major Wilkinson is present as well.

12 MJ [Col PARRELLA]: Thank you. I note that the following
13 accused are present: Mr. Mohammad, Mr. Bin'Attash,
14 Mr. Binalshibh, Mr. Ali, and that Mr. al Hawsawi is absent.

15 Trial Counsel, do you have a witness to testify as to
16 the absence of Mr. al Hawsawi?

17 TC [MR. SWANN]: We do, Your Honor.

18 MJ [Col PARRELLA]: Please call your witness.

19 TC [MR. SWANN]: Major, have a seat, please.

20 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
21 was reminded of her oath, and testified as follows:

22 DIRECT EXAMINATION

23 Questions by the Trial Counsel [MR. SWANN]:

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1 Q. Major, you are the same witness who testified twice
2 yesterday?

3 A. Yes, sir.

4 Q. I remind you that you are still under oath.

5 A. Yes, sir.

6 Q. I have in front of me what's been marked as Appellate
7 Exhibit 597I, it's a waiver form concerning Mustafa al
8 Hawsawi. Do you have the original of that document in front
9 of you?

10 A. Yes, sir.

11 Q. This is a three-page document, it's a Statement of
12 Understanding of a Right to be Present at Commission
13 Proceedings. Did you use this document to advise Mr. Hawsawi
14 of his rights this morning?

15 A. I did.

16 Q. Did you use the form the same way you've used it many
17 hundreds of times?

18 A. I have.

19 Q. All right. The form is in English, it's in Arabic,
20 his signature is on page 2 of the English version, and again
21 on page 3 of the Arabic version. Tell us how you did it this
22 morning.

23 A. I showed up at camp at approximately 0705 and I read

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1 verbatim the rights in English and Mr. Hawsawi asked that it
2 be read in Arabic and we got a translator to read it in
3 Arabic. Then he signed the English version and the Arabic
4 version.

5 Q. All right. Do you believe that he understood his
6 right to attend this morning?

7 A. I do.

8 Q. And do you believe that he voluntarily waived that
9 right to attend?

10 A. I do.

11 TC [MR. SWANN]: Your Honor, I have nothing further.

12 MJ [Col PARRELLA]: Do any defense counsel have questions
13 of this witness? Okay.

14 Thank you, Major. You may step down.

15 WIT: Thank you.

16 [The witness was excused.]

17 MJ [Col PARRELLA]: The commission finds that Mr. Hawsawi
18 has voluntarily and knowingly waived his right to be present
19 at today's session.

20 Trial Counsel, can we please ask Lieutenant Newman to
21 resume his seat at the witness stand.

22 Before we resume taking testimony from this witness,
23 Trial Counsel, could you just for the record indicate whether

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1 this session is being broadcasted.

2 CP [BG MARTINS]: Yes, Your Honor. This session is being
3 broadcast, as was yesterday's.

4 MJ [Col PARRELLA]: Thank you. Lieutenant Newman, good
5 morning. Please take a seat. I'm just going to remind you
6 that you're still under oath.

7 WIT: Understood, sir.

8 MJ [Col PARRELLA]: Defense counsel, you may resume your
9 questions of this witness.

10 ADC [Capt ANDREU]: Thank you, sir.

11 LIEUTENANT DOUGLAS R. NEWMAN, U.S. NAVY, was called as a
12 witness for the defense, was reminded of his oath, and
13 testified as follows:

14 **DIRECT EXAMINATION CONTINUED**

15 Questions by the Assistant Defense Counsel [Capt ANDREU]:

16 Q. Good morning.

17 A. Good morning.

18 Q. We left off yesterday talking about your interview of
19 Admiral Lunday, and I believe we were at a point where we were
20 discussing his relationship with Mr. Rishikof. Can you please
21 pick up by telling us what he told you about that?

22 A. Yes. Admiral Lunday described both a personal and
23 professional relationship with Mr. Rishikof. He had described

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1 it as -- I don't remember the exact dates, but they had been
2 friends for close to a decade. They met when Admiral Lunday
3 was a student at the National War College. I believe that's
4 the name of the institution where Mr. Rishikof was a
5 professor.

6 Their friendship continued, and Admiral Lunday is an
7 attorney as well. They served together on a National Security
8 Committee of the American Bar Association so they would meet
9 time to time through that capacity. Admiral Lunday said that
10 they would talk a couple of times a year over the phone and
11 when one another was in the same geographic area, they would
12 try to get together for lunch or dinner. So he described that
13 aspect of being both personal and professional.

14 I asked specifically about the phone call, and he
15 said that he viewed the phone call as he would from any other
16 government official, that at that moment, even though that
17 they were -- they had a friendly relationship, that he treated
18 that call as if it was coming in a professional manner.

19 Q. When you're referring to the phone call, is that the
20 call that Mr. Rishikof placed to Admiral Lunday concerning the
21 need for aerial imagery?

22 A. I'm sorry, yes, that is correct.

23 Q. Did Admiral Lunday talk to you about that phone call?

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1 A. He did.

2 Q. What did he tell you?

3 A. He described it as a conference call. He mentioned
4 that Mr. Rishikof was on the other end and, if I recall
5 correctly, he couldn't identify who was on the other end of
6 the call. And the call was Mr. Rishikof calling to ask if the
7 Coast Guard could assist in getting updated imagery of the
8 Expeditionary Legal Complex, the ELC.

9 Q. Did Admiral Lunday view this request as unusual?

10 A. No, he didn't. I asked him that question and he said
11 he didn't find it odd.

12 Q. Did he view it as inappropriate?

13 A. No. I asked him that as well, and he didn't feel it
14 was inappropriate.

15 Q. Okay. So after getting this phone call from
16 Mr. Rishikof, what does Admiral Lunday do?

17 A. I believe that the response was, "I'll see what I can
18 do." Admiral Lunday then related to me that he checked -- his
19 words were he checked in the building, so I can only assume
20 that was Coast Guard Headquarters. He spoke to a public
21 affairs officer, described him as a captain in the Coast
22 Guard, to see if there was something in the digital library
23 that they had, updated imagery of the ELC that was more recent

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1 than what SOUTHCOM had. He also described contacting the
2 commandant's intel plot, which is an organizational term
3 within their organization.

4 Thereafter, e-mail traffic that the Coast Guard
5 provided to me indicates not only those steps, but it appears
6 that steps were taken to contact the Department of Defense,
7 the imagery service -- the name escapes me, but it's the
8 service that provides photos for websites, DoD websites,
9 et cetera -- and the National Geospatial-Intelligence Agency.
10 The response was they didn't have anything current. And then
11 they moved to -- or at least Admiral Lunday moved to
12 contacting Admiral Brown to see if air assets were available
13 to conduct imagery.

14 Q. I'd like to talk to you about that, but if we could
15 go back real quickly to the -- I meant to ask you something
16 about the phone call with Mr. Rishikof.

17 Did SOUTHCOM come up during that phone call?

18 A. I believe so. If I recall correctly, Mr. Rishikof
19 had made a comment to Admiral Lunday that SOUTHCOM didn't have
20 anything current, meaning in their possession they didn't have
21 a current image -- a more current image.

22 Q. Did you ask Admiral Lunday whether the Coast Guard
23 would need to coordinate with SOUTHCOM for an overflight?

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1 A. Yes, I did.

2 Q. What did he tell you?

3 A. I don't know if I -- I don't know if I put it in
4 those terms. I might have said -- I might have asked in
5 the -- you know, I might have framed it if the Coast Guard
6 needed permission from SOUTHCOM. I'd have to look at my
7 report, but I don't know if I put it in the terms that you're
8 framing it with respect to you.

9 But he said no. He said that SOUTHCOM -- excuse me,
10 that the Coast Guard operates under the Department of Homeland
11 Security; SOUTHCOM is Department of Defense. And unless a
12 Coast Guard tenant command was under tactical operational
13 control, or TACON, to the DoD, they didn't need permission to
14 operate in SOUTHCOM's area.

15 Q. Thank you. So you said that after Admiral Lunday
16 took several steps to try and get the imagery, he ends up
17 calling Admiral Brown; is that correct?

18 A. That's my understanding.

19 Q. You stated this yesterday, but remind us, who is
20 Admiral Brown?

21 A. Admiral Brown is the commander of U.S. Coast Guard
22 District 7.

23 Q. Did Admiral Lunday tell you what he told

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1 Admiral Brown?

2 A. I don't recall if he described what he told

3 Admiral Brown. I know that he relayed to me that he contacted

4 Admiral Brown.

5 Q. Did he tell you how he contacted him?

6 A. I don't recall that.

7 Q. As part of your investigation, did you obtain a Coast

8 Guard e-mail documenting this communication from

9 Admiral Lunday to Admiral Brown?

10 A. I did.

11 ADC [Capt ANDREU]: May I approach trial counsel?

12 MJ [Col PARRELLA]: You may.

13 ADC [Capt ANDREU]: Your Honor, I'm going to approach and

14 show trial counsel Appellate Exhibit 55500. I've previously

15 provided them with a copy.

16 Your Honor, this document has been submitted to the

17 CISO for review. It is CISO Exhibit 25.

18 May I have the feed to the document camera?

19 MJ [Col PARRELLA]: You may.

20 Q. Lieutenant Newman, can you see that?

21 A. Yes. Yes, I can.

22 Q. Do you recognize this e-mail?

23 A. I do.

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1 Q. Who is it from?

2 A. It is from -- it appears to be from Admiral Lunday.

3 Q. And who is it to?

4 A. Admiral Brown.

5 Q. Would you read the e-mail for us?

6 MJ [Col PARRELLA]: I don't think we need to have it read
7 out loud. Let's proceed with your next question.

8 Q. As part of that e-mail chain, was there also an
9 e-mail from Admiral Brown to Coast Guard personnel?

10 A. Yes, there was.

11 Q. Does this -- is this that e-mail?

12 A. It appears to be the same, yes.

13 Q. Thank you.

14 ADC [Capt ANDREU]: That's all I need for the document
15 camera.

16 Q. Lieutenant Newman, at the time of the overflight, who
17 was the commander of Joint Task Force Guantanamo Bay?

18 A. I believe it was Rear Admiral Cashman, Edward
19 Cashman.

20 Q. Did you have the opportunity to interview
21 Rear Admiral Cashman?

22 A. I did.

23 Q. Where did you interview Rear Admiral Cashman?

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1 A. U.S. Fleet Forces Headquarters Building, Norfolk,
2 Virginia, in his office there.

3 Q. Who was present for that interview?

4 A. Myself, the admiral, and you, Captain.

5 Q. And we've been talking about your interviews. Did
6 Mr. Connell conduct some interviews of witnesses separate from
7 you?

8 A. I believe so. I don't have a whole lot of knowledge
9 of that, but in discussing progress of the investigation and
10 informing him of witnesses that I intended to locate and speak
11 to, I was made aware that he had reached out to some people
12 whom I -- were on my independent witness list.

13 Q. Admiral Cashman, did you ask him about the
14 26 January 2018 overflight?

15 A. I did.

16 Q. What did he tell you?

17 A. He told me he was unaware of one occurring.

18 Q. Did he tell you, if this type of request for aerial
19 imagery came to him, how he would route it?

20 A. He told me that if there was an overflight, he wished
21 he would have known about it, because he would have routed it
22 to SOUTHCOM, that there were procedures in place for reviewing
23 such requests.

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1 Q. Did he explain to you the different chain of command
2 for JTF-GTMO and the naval station?

3 A. I asked him specifically about that. I asked him
4 about different, I guess, jurisdictional boundaries would be
5 the best way I could put it. He informed me that JTF, the
6 Joint Task Force here at Guantanamo Bay, reports to SOUTHCOM.
7 At one point, he characterized that as Admiral Tidd was his
8 boss, and that Naval Station Guantanamo Bay reports to Navy
9 region -- I asked him if it was Commander Naval Installation
10 Command, and he said that they reported to CNIC through Navy
11 Region Southeast. So you have JTF to SOUTHCOM and the Navy
12 station reporting to Navy Region Southeast.

13 Q. Did you ask the admiral who is responsible for
14 Guantanamo Bay airspace?

15 A. I did. And he indicated to me that it was -- it was
16 his opinion that the airspace was the responsibility of the
17 naval station. Excuse me.

18 ADC [Capt ANDREU]: Your Honor, I want to conclude today
19 by asking Lieutenant Newman some questions about his interview
20 with Scott Parr. Scott Parr is the branch chief of
21 information technology for the convening authority's office.
22 Mr. Parr is not on our witness list; however, he is relevant
23 because -- because of the interview with Mr. Parr, that's

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1 where we learn what Ms. Chen and Mr. Bumpus would testify to.
2 Each of them are, in fact, on our witness list. Moreover,
3 there is one particular document provided by Mr. Parr that
4 Mr. Connell intends to use in his argument, and it's important
5 to understand the context of that document.

6 MJ [Col PARRELLA]: Okay. I'll allow you to proceed.

7 ADC [Capt ANDREU]: Thank you, sir.

8 Q. Lieutenant Newman, I do want to finish by talking to
9 you about your interview of Mr. Parr. Who is Mr. Parr?

10 A. He is the branch chief of information -- excuse me.
11 He's the branch chief of information technology for the
12 convening authority. His offices are located here on
13 Guantanamo Bay.

14 Q. Did you interview him in person?

15 A. I did.

16 Q. Did you talk to Mr. Parr about this overflight that
17 we're discussing?

18 A. Yes, sir, I did.

19 Q. Did Mr. Parr know who actually took the photos?

20 A. It was -- he believed that it was a member of the
21 internal security force, one of the National Guard or -- and
22 I -- U.S. Army soldiers that operate within the ELC area.
23 That was his understanding.

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1 Q. Did he tell you who was -- who organized the
2 selection of this personnel?

3 A. Yes, he did. Mr. Tyrone Bumpus.

4 Q. Who is Tyrone Bumpus?

5 A. He is the chief of security for WHS Office of Special
6 Security here in Guantanamo Bay.

7 Q. Did you talk to Mr. Parr about the coordination of
8 the overflight?

9 A. I did. Specifically, that's why I requested to speak
10 with him.

11 Q. What did he tell you?

12 A. He had told me he'd received a request from the
13 convening authority to help coordinate the images that the
14 convening authority had already coordinated with the Coast
15 Guard, specifically the aviation DET here in Guantanamo Bay --
16 the AVDET, they call it here, AVDET GTMO -- and that he was to
17 work with Mr. Bumpus on the execution of this request, meaning
18 taking the pictures and obtaining them.

19 Q. Did Mr. Parr have any e-mails concerning the
20 overflight?

21 A. He did.

22 Q. Was he willing to provide them to you?

23 A. Well, I asked to see them, and he had printed them

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1 out for me, and he said he didn't feel comfortable with me
2 taking possession of them. I identified the e-mails as being
3 part of an original e-mail chain which was provided by the
4 Coast Guard, by Commander ██████████ that we discussed yesterday.

5 There was one e-mail in particular, though -- and
6 there were a few I didn't recognize, but one in particular
7 stood out to me. And due to the -- what I felt from the
8 investigative perspective, the relevance of it, I'd asked him
9 to make an exception to voluntarily allow me to take a copy
10 with me, and he did.

11 ADC [Capt ANDREU]: May I approach trial counsel?

12 MJ [Col PARRELLA]: You may.

13 ADC [Capt ANDREU]: Your Honor, I'm going to approach and
14 show trial counsel Appellate Exhibit 555QQ (AAA Sup). I've
15 previously provided them with a copy.

16 This document has been submitted to the CISO for
17 review. It is CISO Exhibit 41.

18 May I have the feed to the document camera?

19 MJ [Col PARRELLA]: You may.

20 Q. Lieutenant Newman, before we look at the e-mail, what
21 was the date of the overflight of the ELC?

22 A. It's my understanding it was executed on
23 26 January 2018.

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1 Q. This e-mail that we're looking at, who is it -- what
2 is the date of the e-mail?

3 A. It appears to be Thursday, January 25th, 2018.

4 Q. Who is it from?

5 A. It's from Ms. Julie Ann Ripley.

6 Q. What is her title?

7 A. At the time, I was able to positively -- to verify
8 that she was the public affairs officer for the Navy station
9 during the time this e-mail was generated. She is no longer
10 stationed here.

11 Q. Is there more than one public affairs officer at
12 GTMO?

13 A. Yes. Well, that depends on what your definition of
14 GTMO is.

15 Q. Okay. Does JTF-GTMO have its own public affairs
16 office?

17 A. That is my understanding.

18 Q. When you -- you talked a few minutes ago about your
19 interview of Admiral Cashman. When you interviewed
20 Admiral Cashman, did you talk to him about JTF-GTMO Public
21 Affairs Office training and guidance?

22 A. I did. I asked the admiral if the -- I first had
23 framed my question by saying that I had an indication that the

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1 ranking PAO was made aware of the overflight that he was
2 unaware of. I then followed up by asking if the PAOs assigned
3 to JTF had training, and I believe I asked if it was training
4 and guidance on vetting requests for photos being taken of
5 property within the JTF area of responsibility.

6 He told me that they did, that that was something
7 that -- it was a process that they were familiar with and that
8 they -- they should know that because they do that when it
9 comes to -- I believe -- I believe he said media releases --
10 or media tours is what he said.

11 Does that answer your question, Captain?

12 Q. It does.

13 ADC [Capt ANDREU]: Your Honor, this is a very brief
14 e-mail. It's our last exhibit. It's important to understand
15 the content of the e-mail in order to -- before we discuss who
16 it was to. So I'd ask if Lieutenant Newman be permitted to
17 read this e-mail.

18 MJ [Col PARRELLA]: I don't see how that's going to help
19 us understand it, so it's up on the ELMO, so let's go ahead
20 and proceed.

21 Q. Lieutenant Newman, does this e-mail -- is it
22 addressed to Coast Guard personnel?

23 A. Yes, sir.

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1 Q. Does it specifically include SOUTHCOM JTF PAO
2 personnel?

3 A. The title of the e-mail addresses indicate that from
4 what I see.

5 ADC [Capt ANDREU]: May I have a moment?

6 MJ [Col PARRELLA]: You can.

7 ADC [Capt ANDREU]: I have no further questions.

8 MJ [Col PARRELLA]: Thank you.

9 ADC [Capt ANDREU]: You can cut the feed to the document
10 camera.

11 MJ [Col PARRELLA]: Any other defense counsel have
12 questions for this witness?

13 Mr. Nevin?

14 **Questions by the Learned Defense Counsel [MR. NEVIN]:**

15 Q. Lieutenant Newman, David Nevin. I'm one of the
16 lawyers representing Mr. Mohammad. I heard your testimony
17 yesterday that Mr. Brown told you that, after he was restored
18 to his NIPR e-mail account, he went to see if his e-mails that
19 he had been -- that he had lost access to were still there and
20 he said someone had deleted them.

21 A. Well, good morning, sir.

22 I -- those weren't his exact words. He had told me
23 that his account had been restored, but that the e-mails had

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1 either been deleted or destroyed and that he was submitting
2 FOIA requests.

3 Q. And did he know at the time that you spoke to him who
4 had either deleted or destroyed them?

5 A. He did not indicate that, sir, or I don't recall
6 retaining that information.

7 Q. And have you had subsequent conversations with him
8 about that subject?

9 A. No, I have not, sir.

10 LDC [MR. NEVIN]: That's all I have, Your Honor. Thank
11 you.

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

13 Ms. Bormann?

14 **Questions by the Learned Defense Counsel [MS. BORMANN]:**

15 Q. Good morning, Lieutenant. How are you?

16 A. Good morning, ma'am. I'm fine.

17 Q. My name is Cheryl Bormann. We've actually never been
18 formally introduced, but we do know each other in passing,
19 right?

20 A. Yes, ma'am.

21 Q. I want to ask you a few questions about your
22 investigation. When you were assigned this investigation back
23 in January and you began it, you authored reports after each

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1 of your interviews; is that right?

2 A. Yes.

3 Q. And you authored those reports under penalty of
4 perjury?

5 A. I do.

6 Q. And you authored those reports near or at the time
7 that you actually performed the interview?

8 A. I do my best to do it as soon as possible.

9 Q. Sure. And the attachments that you testified to when
10 Captain Andreu was asking you questions, for instance, the
11 e-mail that Captain Andreu just discussed from -- dealing with
12 Scott Parr, to Mr. Parr, that was an attachment to one of your
13 reports, correct?

14 A. That is correct.

15 Q. As you sit here today, can you tell us, before you
16 took the stand yesterday, did you review all of your reports
17 prior to your testimony?

18 A. I have almost 88 pages of reports in this
19 investigation. Not all of them.

20 Q. Okay. Yes.

21 A. But I did -- I'm sorry, ma'am. To answer your
22 question, and I'm not trying to be inappropriate or
23 lighthearted, I did review some of my reports this morning. I

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1 did not last night.

2 Q. Okay. I'm talking about before your testimony in
3 general.

4 A. Oh, I'm sorry. Yes, I did.

5 Q. Yes, you did. Because on Monday, Mr. Connell
6 tendered to trial counsel and all of defense counsel what he
7 called 914 discovery, right?

8 A. I'm not familiar with the term.

9 Q. Okay. It's a disclosure. All of your reports,
10 right?

11 A. That's my understanding ----

12 Q. Okay.

13 A. ---- yes, ma'am.

14 Q. And there are 15 of them, right?

15 A. That sounds correct.

16 Q. Okay.

17 LDC [MS. BORMANN]: May I approach the witness, Judge?

18 MJ [Col PARRELLA]: You may.

19 LDC [MS. BORMANN]: Thank you. Do we have a number for
20 this?

21 [Ms. Bormann conferred with courtroom personnel.]

22 LDC [MS. BORMANN]: Your Honor ----

23 MJ [Col PARRELLA]: Before you approach, just for the

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1 record, have you provided a copy of -- or shown the trial
2 counsel what it is you intend to show the witness?

3 LDC [MS. BORMANN]: Judge, I've given -- all of the
4 counsel have a copy of this. I provided an extra copy to
5 counsel for the prosecution this morning. They indicated they
6 have a copy. So in an attempt not to kill extra trees, I
7 tried -- I checked with defense counsel, they all have copies.
8 We all received them on Monday.

9 MJ [Col PARRELLA]: Thank you.

10 LDC [MS. BORMANN]: Thank you. I was corrected. It was
11 Saturday, not Monday. It's been a long week, even though it's
12 only three days old.

13 Q. Lieutenant, I've deposited in front of you a red rope
14 folder that contains 15 reports and it's now marked as
15 AE 555SS. Do you see it in front of you?

16 A. I do.

17 Q. Okay. Can you take a look at the content of that red
18 rope folder, please, and look at it and let me know if that is
19 the 15 reports that were tendered to all of counsel on
20 Saturday just preceding?

21 A. Yes, ma'am.

22 Q. Okay.

23 LDC [MS. BORMANN]: I have nothing further, Judge. At

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1 this point, we'd ask to admit them into evidence.

2 MJ [Co1 PARRELLA]: Any objection?

3 MTC [MR. TRIVETT]: No, sir.

4 MJ [Co1 PARRELLA]: Okay. AE 555SS is admitted into
5 evidence.

6 Mr. Ruiz -- oh, sorry. Mr. Harrington?

7 LDC [MR. HARRINGTON]: No questions, Judge.

8 MJ [Co1 PARRELLA]: Mr. Ruiz?

9 LDC [MR. RUIZ]: No questions.

10 MJ [Co1 PARRELLA]: Cross-examination? Ms. Bormann, the
11 copy you provided to the witness, I assume this is just a
12 copy?

13 LDC [MS. BORMANN]: It is, Judge.

14 MJ [Co1 PARRELLA]: All right. Would you mind retrieving
15 that from the witness, please?

16 LDC [MS. BORMANN]: Of course not.

17 MJ [Co1 PARRELLA]: Trial Counsel has done as the
18 commission has requested.

19 Trial Counsel, you may proceed.

20 MTC [MR. TRIVETT]: Thank you, sir.

21 **CROSS-EXAMINATION**

22 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

23 Q. Good morning, LT.

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1 A. Good morning, sir.

2 Q. I want to briefly discuss some of the questions you
3 were asked regarding your interview with Admiral Cashman.

4 So when Admiral Cashman was asked whether or not he
5 was aware of the overflight, he said he wasn't, correct?

6 A. That is correct, sir.

7 Q. And he said if there was an overflight of JTF-GTMO,
8 he would have wanted to know.

9 A. That's correct, sir.

10 Q. And that's because there was a requirement to
11 coordinate through SOUTHCOM any release of aerial imagery.

12 A. I don't know if he framed it like that, sir. He said
13 there was a process from his perspective to route such
14 requests through SOUTHCOM.

15 Q. And I believe you testified that it was a JTF-GTMO
16 security force soldier who took the photos?

17 A. I did. To clarify, Mr. -- that is what Mr. Parr
18 believes it was -- or, excuse me, the individual whom he
19 thought actually physically took the photos. To the best of
20 Mr. Parr's knowledge, he referred to me, related to me, that
21 he thought it was a member of the internal security force here
22 within this area, the ELC.

23 Q. And the internal security force is owned by JTF-GTMO,

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1 correct?

2 A. I believe it is, yes.

3 Q. So one of Admiral Cashman's soldiers is flying in a
4 Coast Guard helicopter over his Navy base, and he knows
5 nothing about it?

6 A. I didn't ask Admiral Cashman that direct question,
7 sir.

8 Q. Well, he wasn't even aware of the flight, right?

9 A. That is correct, according to Admiral Cashman.

10 Q. Safe to say that he probably wasn't aware one of his
11 soldiers was on that flight?

12 A. He informed me that he wasn't aware of the flight,
13 sir.

14 Q. I want to talk a little bit about your process for
15 conducting interviews. Now, you did more than a dozen
16 interviews on this investigation?

17 A. That sounds accurate, sir.

18 Q. And what was the specific scope of the investigation
19 that Mr. Connell asked you to conduct?

20 A. So originally Mr. Connell asked me to look into the
21 facts and circumstances of the flight itself. And as the --
22 as I continued to look into that, it kept overlapping with the
23 other reasons for termination and my investigation. Then

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1 Mr. Connell said, I want you to continue forward with all the
2 reasons listed for the termination.

3 Q. So it was originally based just on the aerial images,
4 and then you expanded it based on Mr. Connell's direction?

5 A. That -- I would agree with that, yes, sir.

6 Q. So all in all, you conducted more than a dozen
7 interviews?

8 A. That sounds accurate.

9 Q. Okay. But you didn't speak to Mr. Rishikof, did you?

10 A. I did not, sir.

11 Q. Why is that?

12 A. I approached Mr. Connell, I informed him that I --
13 that he was on my list. Mr. Connell informed me that
14 Mr. Rishikof had obtained counsel and that he had spoken to
15 Mr. Rishikof and he would -- something to the effect of he'd
16 see what he could do. I had other witnesses on my list; I
17 proceeded with those witnesses. That was the last -- it was a
18 while ago, and it was the last conversation we had about that.

19 Q. So now Captain Andreu was almost always with you in
20 these interviews, correct?

21 A. That is correct, sir.

22 Q. Okay. Now, when you do the interview, are you both
23 asking questions or is it just you?

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1 A. It's predominantly me, but my practice has been at
2 the end to the other individual that's with me to observe the
3 interview, and that was Captain Andreu in this case, was to
4 ask if he had any questions to add. And at times,
5 Captain Andreu would ask questions here or there.

6 Q. And so if you're both asking questions at some point,
7 is there one set of notes or two sets of notes?

8 A. Two sets. Two sets.

9 Q. So Captain Andreu would have a set and you would have
10 a set?

11 A. Yes, sir.

12 Q. You describe your handwriting as legible to others.
13 Have you ever had a complaint that no one can read your
14 handwriting?

15 A. Yes.

16 Q. So your handwriting is not easily legible or it is?

17 A. It depends on how hard I'm trying; but from my notes,
18 they're probably challenging for most people to read.

19 Q. How would you describe Captain Andreu's handwriting?

20 A. A lot neater than mine.

21 Q. Would you say that most people would be able to read
22 his notes?

23 A. I don't feel comfortable commenting about other

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1 people, sir. I can read them.

2 Q. You were able to read them?

3 A. Yes, sir.

4 Q. So I notice in your reports that sometimes there's
5 things that are said in direct quotations and sometimes it's
6 more paraphrasing. Would you agree with that?

7 A. I would agree with that.

8 Q. Okay. So if it was in direct quotes in your
9 typewritten report, would you have also put it in direct
10 quotes in your handwritten notes?

11 A. Yes.

12 Q. So now your typical process after you write up an
13 interview, do you then go and type it up into a typewritten
14 report?

15 A. I do.

16 Q. And then that report would go to Mr. Connell for
17 approval?

18 A. Yes, sir.

19 Q. Okay.

20 A. Well, not immediately, no.

21 Q. Okay. Well, what would be the interim piece?

22 A. I turn my reports over to Captain Andreu, we share an
23 office. I ask him to check for -- to first proofread it but

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1 also check for accuracy and content based on his recollection
2 of the interviews ----

3 Q. Okay. So he ----

4 A. ---- to ensure that, you know, that kind of double
5 process. Then I will submit my report to lead counsel for the
6 team I'm assigned to.

7 Q. And if you know, does he review his notes while he's
8 doing the proofread?

9 A. I would ask that you ask him, sir. I don't feel
10 comfortable answering for him.

11 Q. I understand.

12 So ultimately after it's proofread, it eventually
13 goes to Mr. Connell for approval?

14 A. That's accurate, sir.

15 Q. Okay. And once he approves it, you guys destroy
16 those notes, correct?

17 A. I destroy them. I don't know -- I don't -- they
18 don't have access to the notes that I have, so I destroy my
19 notes.

20 Q. All right. So it's possible that Captain Andreu has
21 notes that are more contemporaneous than the actual written
22 documents, actual typewritten documents that you provided?

23 A. I don't know if I can -- could you rephrase the

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1 question?

2 Q. Sure, yeah. That was inartful.

3 A. Sorry.

4 Q. I apologize.

5 A. No, I'm sorry.

6 Q. All right. You destroy your notes. You don't
7 believe that Captain Andreu destroys his notes?

8 A. Well, I destroy his notes. He provides me his notes.
9 I write my report, I ask for his notes; I make sure there's
10 nothing in his notes that I haven't missed from the interview.
11 And once we're good on both, I hand my report -- hand deliver
12 it. I mean, we're within arm's distance of each other working
13 in the same office area. Once he gives me a thumbs-up on it,
14 then I take both sets of notes and put them into a burn bag.

15 Q. And is that the direction of Mr. Connell?

16 A. No, sir, it is not.

17 Q. Is that your standard practice?

18 A. Yes.

19 Q. Is that the practice you use in your civilian
20 capacity?

21 A. When I did investigations, it was, yes, sir. It's
22 been a while.

23 Q. You say that everything in those written reports are

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1 verbatim with what was in the handwritten notes.

2 A. They're quotes, sir, direct quotes.

3 Q. All right, not just the quotes. So ultimately,
4 everything in the notes make it into the typewritten report?

5 A. I don't know if I'd say everything.

6 Q. So some things you leave out?

7 A. Well, I want to clarify that.

8 Q. Sure.

9 A. If there are points that have been made more than
10 once, I won't put those in. If they are quotes or passages
11 that are in response to one of my direct questions, I will do
12 my best to use the words of the person I'm interviewing so
13 there's no confusion.

14 So when you ask if there are things I leave out of my
15 notes, there may be some things I leave out of my notes, but
16 it's only for the sake that the matter had been discussed in
17 another area of the conversation. So if there's a redundant
18 area where the person goes over another point, there's no -- I
19 may leave that aspect out.

20 Q. I see as a fellow Navy officer, you're in your
21 service dress blues; is that correct?

22 A. That is correct, sir.

23 Q. Do you ever wear your service dress blues to the

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1 interviews with any of the witnesses?

2 A. Not dress blues, no, sir.

3 Q. So what do you normally wear?

4 A. It depends. I usually wear khakis, based on the
5 position or former positions of the people we're speaking to
6 out of respect and to represent my service. I have -- when I
7 was here on station, based on the environment, I would wear my
8 NWUs, my cammies.

9 Q. What colored ones?

10 A. I'm sorry, sir?

11 Q. What color are they?

12 A. Green.

13 Q. Green?

14 A. Green camouflage, digital camouflage. NWU Type IIIs
15 are the official term.

16 And when we went to Capitol Hill, I wore my summer
17 working whites.

18 Q. And when you went to Capitol Hill, you hadn't
19 actually coordinated in advance. You just went into the
20 Capitol and knocked on some doors, correct?

21 A. That's correct, sir.

22 Q. Do all of your uniforms have that badge on it?

23 A. They do.

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1 Q. Okay. Are they all metal badges, or sometimes
2 they're ----

3 A. I'm sorry, sir. Your question?

4 Q. Sometimes they're an iron-on?

5 A. Yes, that is correct.

6 Q. Okay. And that badge you're wearing is because
7 you're a member of the Navy Security Forces; is that correct?

8 A. I'm a designated Security Forces officer, yes, sir.

9 Q. Okay. And are you required to wear that badge even
10 when you're not in an assigned Navy Security Forces billet?

11 A. If you are a designated officer, yes, it's a uniform
12 component.

13 Q. Okay. So you're required to wear it?

14 A. Per instruction, yes, sir.

15 Q. I want to talk to you a little bit about your
16 interview with Rear Admiral Lunday. And he described, I
17 believe you testified, two different ways that he gets
18 requests, one is through official channels and another one is
19 called the BRO-NET, correct?

20 A. Yes, sir.

21 Q. Okay. And ultimately, Mr. Rishikof was a good friend
22 of his?

23 A. Sir, could you ----

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1 Q. Sure.

2 A. ---- rephrase that statement you just said? Did you
3 say Admiral Lunday described the two routes of communication?

4 Q. That's correct.

5 A. No, sir.

6 Q. It was not Admiral Lunday?

7 A. No, that was Captain [REDACTED] that described the
8 by-the-book method and the BRO-NET method. I'm sorry. I
9 should have caught that the first time.

10 Q. That's all right. My apologies. I misunderstood.
11 So ultimately, Admiral Lunday does get a request from
12 Mr. Rishikof, correct?

13 A. It's my understanding, yes, sir.

14 Q. Mr. Rishikof calls him directly?

15 A. Yes.

16 Q. All right. And that was based on a -- I believe you
17 testified to a ten-year friendship after the National War
18 College?

19 A. I don't know if the call was based on that. They did
20 have a friendship.

21 Q. They had that friendship?

22 A. Yes, sir.

23 Q. And when you interviewed Admiral Lunday -- and let me

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1 back up for a second. So Admiral Lunday is a rear admiral?

2 A. Yes.

3 Q. All right. Lower half, upper half?

4 A. Upper half.

5 Q. All right. So he's an O-8?

6 A. That's correct, sir.

7 Q. And when you spoke with Admiral Lunday, he said that
8 he assumed Mr. Rishikof had the authority to ask for the
9 flight, correct?

10 A. That sounds accurate.

11 Q. Okay. He also said to you that if someone had said
12 they went to SOUTHCOM and that SOUTHCOM didn't want to do it,
13 he would have had to have worked through that with SOUTHCOM?

14 A. I do recall that, sir.

15 Q. But that never got mentioned to him in that phone
16 call from Mr. Rishikof?

17 A. I'm sorry, sir?

18 Q. Sure. He had mentioned that that wasn't part of the
19 discussion, whether or not SOUTHCOM had said they didn't want
20 to do it?

21 A. You are correct. He had indicated that that was
22 not -- that that, how you phrased it, was not discussed.

23 Q. Okay. Because ultimately, the Coast Guard was

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1 operating under its Department of Homeland Security
2 authorities?

3 A. According to the admiral, yes, sir.

4 Q. And SOUTHCOM, obviously, is a DoD component?

5 A. Yes, sir, my understanding and according to the
6 admiral.

7 Q. So a completely different executive agency, had they
8 been asked to do something, would have liked to have known
9 that the actual parent entity had said no to the request?

10 A. That's a broad question. I don't ----

11 Q. I'll move on.

12 A. ---- presume to -- I'd rather not presume to -- it's
13 above my pay grade.

14 Q. So it's safe to say that Admiral Lunday was worried
15 after he found out on his Google alert that Mr. Rishikof had
16 been terminated in part for the Coast Guard overflight?

17 A. With all due respect, I don't want to comment on,
18 presume what his emotional state was.

19 Q. Okay. Well, you did that a bunch yesterday, did you
20 not?

21 A. I didn't presume, no, sir.

22 Q. So ultimately, he contacted a bunch of his superiors?

23 A. That is correct. That's what the e-mail traffic

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1 indicates.

2 Q. Almost immediately to explain what he had done,
3 correct?

4 A. That I agree with, sir. Yes, sir.

5 Q. All right. And I believe he spoke with an
6 Admiral Brown?

7 A. Yes.

8 Q. And Admiral Brown was located in Miami?

9 A. Yes, sir.

10 Q. Okay. And what was Admiral Brown's rank?

11 A. Admiral -- rear admiral (upper half), I believe.

12 Q. Another 0-8. 0-8 to 0-8 conversation?

13 A. I believe so, yes, sir.

14 Q. So it's safe to say that a Coast Guard admiral in
15 Miami was aware of the overflight of the ELC and the rear
16 admiral in charge of the JTF-GTMO was not, correct?

17 A. Admiral Cashman was -- according to Admiral Cashman,
18 he was not aware. And to answer the other part of your
19 question, Admiral Lunday did help coordinate the overflight.

20 Q. Thank you. So I want to transition now to your
21 interview of Ms. Wendy Kelly. Do you recall that interview?

22 A. I do, sir.

23 Q. And do you recall testifying about that yesterday?

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1 A. Yes, sir.

2 Q. And that interview, I believe, was held on the
3 13th of July 2018, correct?

4 A. I'd have to review my notes.

5 Q. Okay. But if your notes indicate that that's the
6 date, then that's the date you did it?

7 A. Yes, thank you.

8 Q. Okay. And you spoke to her for over an hour and 15
9 minutes based on your report, correct?

10 A. If that's what my report indicates, sir, I'm
11 confident in that approximate time.

12 Q. Okay. You'd agree that Wendy Kelly was a longtime
13 convening authority employee?

14 A. I would, sir.

15 Q. Worked at the convening authority since 2005?

16 A. In one capacity or another, she related that to me.

17 Q. Okay. She worked for many different convening
18 authorities and many different legal advisors over the course
19 of those 13 years?

20 A. That is what she informed me of.

21 Q. And your investigation revealed that she was also an
22 experienced federal prosecutor as an AUSA in Philadelphia?

23 A. I believe we discussed that. I believe she had

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1 experience working as an attorney for the U.S. Marshals
2 office.

3 Q. Okay. So you'd agree that she was as experienced as
4 anybody in that office on how military commissions functions,
5 correct?

6 A. With all due respect to your question, I don't know
7 if I feel comfortable testifying to her level of experience,
8 but I do feel comfortable saying that she was a long-time
9 employee of the convening authority.

10 Q. And one of the things she clarified for you is that
11 the request for the image -- the updated image of the ELC was
12 actually her request; it wasn't requested from Congress,
13 correct?

14 A. I wasn't -- to answer your question, yes, she did
15 request that. I was not able to positively identify the
16 congressional request either way; but based on the indications
17 from Ms. Kelly, yes, you are correct.

18 Q. Okay. So if there's representations in earlier
19 filings that this aerial image was in response to a specific
20 congressional request, that would be inaccurate, correct, to
21 your knowledge, based on your investigation?

22 A. I can tell you that Ms. Kelly had informed me that
23 she requested the imagery.

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1 Q. Okay. And that's because the last image they had was
2 very old?

3 A. Yes, sir.

4 Q. All right. And she felt like if she was going to
5 Congress and asking for additional money for the ELC
6 expansion, that ultimately they wanted an updated photo?

7 A. That's accurate.

8 Q. Okay.

9 A. That's how I understood it.

10 Q. All right. Did she communicate that she felt bad
11 that ultimately that was one of the reasons she got fired --
12 that Mr. Rishikof got fired, because she had asked for that
13 photo?

14 A. She did.

15 Q. And I believe you testified -- and if not, perhaps
16 it's in your report -- that she wasn't actually on that phone
17 call with Admiral Tidd, correct?

18 A. Well, I wasn't -- according to Ms. Kelly, she was not
19 on that phone call, but that has been disputed by another
20 individual I interviewed.

21 Q. Okay. And who is that interview?

22 A. Mr. Gary Brown.

23 Q. So Mr. Brown seemed to recall that Wendy Kelly was on

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1 the interview -- on the phone call with Admiral Tidd?

2 A. That's my understanding. His notes indicate initials
3 HR, Harvey Rishikof; and WK, Wendy Kelly.

4 Q. And Ms. Kelly indicated that she actually personally
5 very much liked Mr. Rishikof, correct?

6 A. Yes, sir.

7 Q. She described him as friendly and gregarious and
8 professional?

9 A. Yes, sir.

10 Q. Okay. Then you followed up and asked her about her
11 feelings towards Mr. Gary Brown, correct?

12 A. I did.

13 Q. So while describing Mr. Rishikof as friendly and
14 gregarious, you asked her about Mr. Brown, and she said, "I
15 don't want to talk about it," correct?

16 A. That's my -- that's my recollection, yes.

17 Q. Turning specifically to Wendy Kelly's comments
18 regarding Mr. Rishikof and the performance of his duties as
19 convening authority and director of OMC, despite the fact that
20 she liked him very much personally, she described him as naive
21 about how you process actions at the Department of Defense; is
22 that correct?

23 A. That is accurate.

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1 Q. And naive about how you appropriately staff actions
2 for the Department of Defense, correct?

3 A. Yes, sir.

4 Q. At any point in the interview, did she tell you that
5 she had warned Mr. Rishikof that he was going to get fired if
6 he didn't coordinate properly?

7 A. She didn't use that -- I don't recall that
8 terminology. I'd have to refer to my report. I did ask her
9 if at any time noticing -- these are my terms, I'm summarizing
10 it -- if at any time when she noticed actions or behaviors
11 that wasn't in keeping with set policy, would she attempt to
12 intervene. I don't think I used the term "coach and counsel,"
13 but that's what I was trying to infer. And she said that --
14 she wasn't specific, but she said that attempts -- sometimes
15 attempts would be made. I think she framed it as "people in
16 the office."

17 Q. So based on your investigation, do you believe that
18 Wendy Kelly felt like Mr. Rishikof and Mr. Brown were staffing
19 things at the DoD different than any of the other convening
20 authorities and legal advisors had ever done?

21 A. I don't know if I feel comfortable answering that,
22 because I didn't specifically ask that question. If you ask
23 it maybe in a -- if you can reframe the question?

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1 Q. Sure. Ms. Kelly at some point told you that things
2 were staffed for action different than others may have done
3 it?

4 A. I'd have to refer to my reports, but she -- she
5 implied -- she gave that indication.

6 Does that answer your question, sir?

7 Q. Yes, thank you.

8 And so she had mentioned at some point she was trying
9 to steer him back to a more standardized process, correct?

10 A. I don't think -- I don't know if she used that
11 terminology.

12 Q. Okay. If it's -- would you like an opportunity to
13 review your report of Ms. Kelly?

14 MTC [MR. TRIVETT]: One second, Your Honor.

15 A. Sir, would you like me to -- I brought my reports.

16 Q. That would be helpful. Thank you. And they're
17 already marked, I believe. It's part of the appellate
18 exhibits that Ms. Bormann just tendered.

19 A. Sir, before --

20 WIT: I'm sorry, Your Honor.

21 MJ [Col PARRELLA]: Hold on one second. So for the
22 record, Lieutenant Newman, you have there your notes in front
23 of you; is that right?

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1 WIT: I have all of my written reports and an
2 investigative timeline that I use for reference.

3 MJ [Col PARRELLA]: Okay. Those notes have been marked as
4 Appellate Exhibit 555SS.

5 You may proceed, Trial Counsel.

6 Q. Do you want an opportunity to review that?

7 A. I would, but I'd like to clarify.

8 Q. Sure.

9 A. Could you please direct me to the specific area, the
10 question you'd like me to answer so I can go to that area of
11 the report?

12 Q. Sure. So the question was: At some point, did
13 Ms. Kelly indicate that either she or other people in the
14 office tried to steer Mr. Rishikof back to a more standardized
15 process?

16 A. If you'd give me a moment, sir, and let me look at my
17 report.

18 Q. Sure. Yeah, take your time.

19 [Pause.]

20 Q. And, LT, I'll just -- I've just gotten the document.
21 I'll refer you to page 4 of 6, beginning with "Observations of
22 Mr. Rishikof and Mr. Brown." I think it's in the second
23 paragraph under that heading.

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1 A. Thank you, sir. I've found that portion you're
2 referencing, sir.

3 Q. Okay. Thank you.

4 A. Thank you.

5 Q. So does that refresh your recollection as to what she
6 said regarding people in the office trying to steer him back
7 to a more standardized process?

8 A. It does, sir.

9 Q. And it wasn't just her who did it; it was other
10 people in the office, she indicated, correct?

11 A. Yes, sir. She says "people."

12 Q. Okay. And ultimately, Ms. Kelly, who had been in the
13 office for over 12 years, describes a very ritualized process
14 to get something staffed before the Deputy Secretary of
15 Defense; correct?

16 A. That is correct, sir.

17 Q. And that other offices have to give concurrence?

18 A. She indicated that.

19 Q. And that ultimately Mr. Rishikof wanted to move
20 faster?

21 A. She indicated that.

22 Q. He didn't like having to wait, according to
23 Ms. Kelly?

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1 A. That was the implication, yes, sir.

2 Q. Okay. And you're aware of the management memo that
3 was ultimately sent to the Deputy Secretary of Defense on
4 12 or 13 December, correct?

5 A. Yes, sir.

6 Q. Now, at the very end of that memo, Mr. Rishikof asks
7 for action quickly in order to effectuate the changes that he
8 was recommending, correct?

9 A. I don't ----

10 Q. Are you aware of the memo?

11 A. I am aware of it, yes, sir.

12 Q. And the contents of the memo?

13 A. Yes, I am. It's been a while since I read it.

14 Q. All right. So you just don't recall that part of it?

15 A. I don't, I'm not comfortable enough to say it here,
16 no.

17 Q. Mr. Rishikof didn't like that everyone had to look at
18 the document before he sent it? Ms. Kelly said that?

19 A. If you could point that -- that out in my report. I
20 don't know if she said that he didn't like it.

21 Q. Okay.

22 A. She did indicate that -- I don't think she read it in
23 its entirety. I think that she said that she contributed

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1 portions of it.

2 Q. Okay.

3 A. Buy I -- if you can point that out ----

4 Q. Sure. And actually, I was paraphrasing, so let me
5 ask the very specific question right from your report:

6 "Mr. Rishikof had angst about using the slow process."

7 A. That is -- that's -- is accurate from what was
8 related to me.

9 Q. And that ultimately she said, "Perhaps he thought
10 that he was more empowered than he actually was."

11 A. That is what Ms. Kelly stated to me.

12 Q. And you asked her specifically whether or not she
13 thought that the convening authority would go around
14 Admiral Tidd?

15 A. I did.

16 Q. Okay. And she had been very forthcoming about
17 describing her relationship with Mr. Rishikof before that?

18 A. I felt that way, yes.

19 Q. But ultimately she didn't want to talk to you about
20 whether she thought the CA would go around Admiral Tidd,
21 correct?

22 A. That is correct, sir.

23 Q. So I want to transition now to a little bit of what

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1 Ms. Kelly said about Gary Brown. Is it safe to say that she
2 was less forthcoming about her involvement with Mr. Gary Brown
3 when he was legal advisor and chief of staff there than she
4 was with Mr. Rishikof?

5 A. I would agree with that statement.

6 Q. Okay. And Mr. Brown had been a retired O-6 from the
7 Air Force, I believe, correct?

8 A. That's my understanding, sir.

9 Q. Air Force JAG?

10 A. Yes, sir.

11 Q. At some point, did Ms. Wendy Kelly say to you, "I
12 don't know how a retired Air Force O-6 with so much supposed
13 experience thinks they can just go VFR-direct to the SecDef.
14 You don't buck a process that has been in place for years"?
15 Ms. Wendy Kelly said that to you?

16 A. That is a direct quote that I incorporated in my
17 report from her.

18 Q. And did she indicate to you that whenever anyone told
19 Mr. Brown how it had been done in the past, he would often
20 respond, "Well, how did that work out for you?"

21 A. That, I don't recall. If it's in my report, I would
22 need to review my report, but that I -- that I don't recall.

23 Q. So specifically you asked Ms. Kelly regarding her

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1 awareness of the 13 December management memo?

2 A. Yes, I think I -- I think I -- we discussed this
3 outside of the -- when you interviewed me.

4 Q. Yep.

5 A. I referred to it as the 12 December, but, yes, I ----

6 Q. Let's just call it 12 December for now.

7 A. Just under oath, I want to be clear. Not to split
8 hairs.

9 Q. That's fine.

10 A. I'm aware of that.

11 Q. So you talked to her about that 12 December memo?

12 A. Yes, sir.

13 Q. All right. And she described it as, "Oh, the King Me
14 memo"?

15 A. Yes, sir.

16 Q. And did you take that as a checker reference, like
17 when a checker makes it across the board and gets kinged and
18 becomes more powerful than the other checkers?

19 A. In that context, I did not.

20 Q. And how did you take it?

21 A. I assumed she meant it was -- when she says "King
22 Me," to place someone at the highest level of an organization.

23 Q. Okay. So did you understand that that memo had asked

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1 for an extensive expansion of his power?

2 A. I know that it -- it requested a reorganization. I
3 don't -- I'll leave it at that.

4 Q. Okay. At the end of it, what was your perception
5 having talked to Ms. Kelly of who would have been the king?

6 ADC [Capt ANDREU]: Objection.

7 MJ [Col PARRELLA]: Basis?

8 ADC [Capt ANDREU]: Objection based on opinion.

9 MJ [Col PARRELLA]: Overruled.

10 A. Could you restate the question?

11 Q. Sure. In your conversation with Ms. Wendy Kelly who
12 described this memo as the "King Me memo," who is your
13 understanding of, if that memo had gotten signed, who would
14 have become the king?

15 A. I think in the context of the conversation, it was,
16 at least for me, it seemed obvious that the reference was to
17 Mr. Rishikof.

18 Q. And Ms. Wendy Kelly actually drafted or worked on
19 sections of this memo, correct?

20 A. Yes, sir. That's what she indicated to me.

21 Q. Did she tell you at any point that she was
22 specifically ordered not to share any of her sections with
23 anyone outside of the Office of the Convening Authority?

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1 A. I don't recall that, but I would ask to refer to my
2 report if that's ----

3 Q. We can move on.

4 I believe Ms. Wendy Kelly also indicated that she had
5 been an Army JAG at some point?

6 A. She did.

7 Q. Okay. So was it in that capacity that you asked her
8 for her opinion as to whether or not the firing of
9 Mr. Rishikof was -- if she had any concerns about it being
10 unlawful command influence?

11 A. I didn't have her -- if you're asking me if I asked
12 her in the capacity of her being an Army JAG, I think I just
13 asked her in her capacity of being an attorney ----

14 Q. Okay. So you just ----

15 A. ---- with knowledge of the, you know, OMC and
16 military criminal justice -- or, rather, military justice.

17 Q. Fair enough. But you asked her?

18 A. I did. I believe I did, yes.

19 Q. All right. And she specifically said that she didn't
20 think it was unlawful command influence?

21 A. I believe that that is correct.

22 Q. All right. She didn't like how it was done, but she
23 didn't think it was unlawful command influence?

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1 A. I think that's accurate, yes, sir.

2 Q. Okay. And you also asked her whether or not you
3 thought it was unusual for the Office of the General Counsel
4 to be recommending his termination to the Secretary of
5 Defense, correct?

6 A. Yes, sir.

7 Q. And it was her opinion that it was not unusual at all
8 for the recommendation because she thought the termination was
9 a legal matter that the general counsel would give an opinion
10 on?

11 A. She didn't use that -- those exact words, but she
12 indicated that to me.

13 Q. Okay. And the Secretary of Defense is responsible
14 for all of the military commissions, correct?

15 A. It's my understanding, sir.

16 Q. And the general counsel is his primary legal advisor
17 on all things that impacted the Department of Defense?

18 A. That I'd rather not answer. I don't have expertise
19 in -- I'm not an attorney.

20 Q. Okay.

21 A. And I've never worked at that level, so I don't feel
22 comfortable answering that.

23 Q. You would agree that, as the Secretary of Defense,

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1 you would want legal advice before making any decisions about
2 military commissions?

3 A. Could you state the question again, please?

4 Q. You would agree that as Secretary of Defense, you
5 would want legal advice before making any decisions on
6 military commissions?

7 A. With all due respect, sir, unless the court orders me
8 to, I'd rather not ----

9 Q. Very well. We'll move on.

10 A. ---- take the role of the Secretary of Defense. And
11 I don't mean to be aggressive with you.

12 Q. I understand.

13 A. Thank you.

14 Q. So in the end, Ms. Kelly believed that both
15 Mr. Rishikof and Mr. Brown were fired because, I think as she
16 stated, that the leadership here, meaning them, was not
17 respecting the DoD process, correct?

18 A. That does -- that is -- I do recollect that, yes,
19 sir.

20 Q. And that ultimately both Mr. Rishikof and Mr. Brown
21 came across like, quote, a bull in a china shop to the general
22 counsel's office.

23 A. She made that statement.

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1 Q. Okay. But through all this, she agreed that she
2 would work for Mr. Rishikof again because he was a nice guy?

3 A. She didn't frame it like that. She said she'd work
4 for Mr. Rishikof again.

5 Q. She'd work for him.

6 A. Yes.

7 Q. And then you asked her specifically about whether or
8 not she'd ever work for Mr. Brown again?

9 A. I'd have to refer to my report on that. I don't know
10 if I asked her that direct question.

11 Q. Okay.

12 A. I don't recall asking that question.

13 Q. Okay. And she worked there the entire time that
14 Mr. -- the entire nine months Mr. Rishikof was there, correct?

15 A. That's my understanding.

16 Q. The entire almost 13 months that Mr. Brown was there,
17 correct?

18 A. That is my understanding, sir.

19 Q. And did the discussion of plea agreements come up at
20 all during your interview with Mrs. Kelly?

21 A. It did.

22 Q. Okay. And she had been there for over 12 years at
23 that time, correct?

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1 A. Yes, sir, in one capacity or another.

2 Q. Okay. And she said the concept of considering plea
3 agreements was discussed from day one by almost every
4 convening authority.

5 A. That statement is familiar to me, yes.

6 Q. That it wasn't unusual for the convening authorities
7 to be considering pretrial agreements as part of the
8 resolution of these cases?

9 A. I don't recall that, the last statement you made.
10 She did make the statement -- and now I'm going to
11 summarize -- that that's not uncommon and that's -- she made a
12 comment, since day one of convening authorities -- convening
13 authorities since day one have ----

14 Q. Considered pretrial agreements?

15 A. ---- entertained that subject. She indicated that to
16 me. Again, I want to be clear that's according to Ms. Kelly,
17 what she related to me.

18 Q. Right. All right. I want to transition now to your
19 interview with Mr. Gary Brown. So that occurred, as indicated
20 on your report, on 27 June 2018?

21 A. If that's what my report states, sir, yes, sir.

22 Q. And he actually came to the Military Commission
23 Defense Organization offices for that interview?

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1 A. Our office -- we have several offices, but it's --
2 the ones located in Rosslyn is where my duty station is.

3 Q. Okay. And that interview was done with you and
4 Mr. Connell, correct?

5 A. That is correct.

6 Q. Was Captain Andreu also there?

7 A. He was not.

8 Q. Okay. So the only notes for that interview would
9 have been yours and Mr. Connell, if he took any?

10 A. Correct.

11 Q. Do you know if Mr. Connell took any?

12 A. He did.

13 Q. Okay. Was it the same process with Mr. Andreu, that
14 he provided them to you and then you destroyed them?

15 A. Yes, sir.

16 Q. Okay. So then the sole memorialization of that
17 interview is reflected in your typewritten report, correct?

18 A. I don't -- I can't comment on that. I don't know if
19 Mr. Connell made internal notes. I don't know if Mr. Brown
20 made notes regarding our meeting.

21 Q. Okay. Yeah, that was poorly -- that was poorly
22 worded on my part.

23 So it's possible Mr. Brown took notes, you don't

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1 know?

2 A. I don't know.

3 Q. You know Mr. Connell took notes.

4 A. I know that -- yes, I do.

5 Q. And you recall him providing those notes to you?

6 A. He provided a set of notes to me, yes, sir.

7 Q. It's possible that he took a separate set of notes?

8 A. I would respectfully request you ask Mr. Connell that
9 question.

10 Q. But it's possible.

11 A. I would respectfully request you ask Mr. Connell
12 that.

13 Q. Fair enough. But in any event, the notes that he did
14 give you went into the burn bag with your notes?

15 A. The set of notes that Mr. Connell gave me I destroyed
16 with my notes once the report was reviewed and approved and
17 submitted into our internal file system.

18 Q. So when you interviewed Mr. Brown in June of 2018,
19 that's about five months after he was fired, give or take?

20 A. Give or take.

21 Q. Okay. Safe to say that he was bitter about being
22 fired?

23 A. I would -- don't feel comfortable speaking on behalf

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1 of Mr. Brown when it comes to his emotional state.

2 Q. How would you describe his emotional state during the
3 interview?

4 A. He was professional.

5 Q. Safe to say that he disagreed with the reasons for
6 his termination?

7 A. Could you ask the question one more time?

8 Q. Is it safe to say that he disagreed with the reasons
9 that have been given for his termination?

10 A. That is -- that was my understanding, yes, sir.

11 Q. Okay. In his interview with you, would you say that
12 he was trying to defend the actions that he took as being
13 legitimate actions?

14 A. That's an interesting question. I don't know if I
15 would characterize it as defending his actions. He gave me
16 background and context to the decisions he made and provided
17 some reasons that led up to that.

18 A lot of the interview that we had, he had to kind of
19 educate me on the overall convening authority process. So
20 some of it, he was giving me -- for instance, when he
21 discussed the fast boat issue or the Hambali charges, he
22 really had to give me a historical perspective. Now, of
23 course, after the interview I researched that.

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1 But a lot of the interview, I don't know if I would
2 characterize it as him defending himself so much as answering
3 my questions and giving me clarification on when he would
4 depict certain instances that he would relate to me.

5 Q. It's safe to say that he disliked the chief
6 prosecutor, Brigadier General Mark Martins?

7 A. He never used those -- he never said he disliked the
8 chief prosecutor. I don't recall that.

9 Q. Okay. What did he say?

10 A. Again, I want to be very clear, sir. This is
11 according to Mr. Brown.

12 Q. No, I understand.

13 A. He painted the relationship as unhealthy and
14 contentious at times.

15 Q. Okay. And at one point, he indicated that he had
16 intended to discipline the chief prosecutor, correct?

17 A. He had said that he had drafted a memorandum for
18 discipline is the term he used.

19 Q. Okay. And as part of your investigation, are you
20 aware of the wire diagram of who reports to who in the Office
21 of Military Commissions?

22 A. I've seen several, several versions of it through --
23 through the time.

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1 Q. Okay. Under what authority did he claim to have the
2 ability to discipline an Army general officer in the Office of
3 the Chief Prosecutor?

4 A. I can't answer that, sir. I didn't ask that
5 question.

6 Q. Okay. And at some point during your interview, he
7 discussed his actual termination day with Mr. Castle, correct?

8 A. Yes, sir.

9 Q. Okay. And he mentioned that no reasons were actually
10 given other than the fact that they were just terminated?

11 A. Yes, sir.

12 Q. And that Mr. Castle didn't speak to them about any of
13 the reasons why they were being terminated, he simply just
14 indicated that they were being terminated?

15 A. That's how he depicted the incident to me.

16 Q. Okay. Did Mr. Brown discuss his ability to get along
17 with other people in the interagency process to you?

18 A. I don't -- I don't know if I framed it like that. I
19 asked him what other people in the organization may think of
20 him if I ask them. I think I framed it like that.

21 Q. Okay. And other than Wendy Kelly, did you ask anyone
22 else in that organization about what they thought of
23 Mr. Brown?

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1 A. If you'd give me a moment to ----

2 Q. Sure.

3 A. ---- think about it.

4 Q. Take your time.

5 A. I -- I had. I think I asked -- I asked Mr. Parr.

6 Q. Mr. Parr spends all of his time -- or almost all of
7 his working time down in Guantanamo, correct?

8 A. I don't feel qualified to answer that question. I
9 know he's stationed down here. I know his duty station is
10 here.

11 Q. Okay. And do you know that Mr. Brown was primarily
12 located up in the National Capital Region when he did his work
13 as legal advisor and chief of staff?

14 A. I didn't ask that specific question.

15 Q. Was that your understanding of where he is?

16 A. But I know that his offices were located in the
17 convening authority offices in the Mark Center.

18 Q. Okay. So did Mr. Brown ever mention to you that
19 before he was designated as legal advisor, Mr. Rishikof was
20 warned not to put him in that position from Office of General
21 Counsel people?

22 A. I'm sorry. Say that again?

23 Q. At any part of your interview with Mr. Brown, did he

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1 tell you that Mr. Rishikof had been warned not to hire him as
2 the legal advisor?

3 A. I do not recall that.

4 Q. Did he ask you -- did he ever tell you that
5 Mr. Rishikof was told that he was the wrong guy for the job,
6 meaning Mr. Brown?

7 A. I don't recall that.

8 Q. Did he ever use the term with you that "Me and
9 Mr. Rishikof were a package deal," and that if he weren't --
10 if Mr. Brown weren't hired, that Mr. Rishikof wasn't going to
11 become convening authority?

12 A. I don't recall that.

13 Q. Did Mr. Brown indicate to you that, before he was
14 made legal advisor, he had discussions with people in the
15 Office of the General Counsel about concerns regarding his
16 behavior and ability to work within the interagency process?

17 A. You're asking me if Mr. Brown ----

18 Q. Did Mr. Brown ever tell you that during your
19 interview of the reasons why he was terminated?

20 A. That he had discussions with people -- I apologize.

21 Q. All right.

22 A. Ask the question again.

23 Q. Another inartful question.

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1 A. No.

2 Q. It happens.

3 A. There's a reason why I'm an LDO. It takes me a
4 while.

5 Q. All right. Did Mr. Brown ever indicate that before
6 he was hired as legal advisor concerns were raised to him
7 about his ability to work in the interagency process and his
8 behavior so far since he was hired in January?

9 A. I do not recall that, sir.

10 Q. Okay. At some point I believe you discussed with
11 Mr. Castle that the attorney -- the conversation Mr. Castle
12 had with Mr. Rishikof regarding the Attorney General's phone
13 call to the Secretary of Defense. Do you recall that?

14 A. I do, sir.

15 Q. Okay. And did he specifically tell you that the main
16 reason Mr. Castle was upset was because he didn't know that
17 Mr. Rishikof was going over to the Department of Justice at
18 all?

19 A. I don't think he put it like that, but -- I don't
20 think he phrased it like that.

21 Q. Do you recall how he may have phrased it?

22 A. The -- from my recollection sitting here, it was
23 Mr. Castle was -- I don't know if I'd use the term upset, but

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1 was concerned that the Office of General Counsel was not
2 informed about the issue of pleas, communication with the
3 process of pleas ----

4 Q. So ----

5 A. ---- examining pleas.

6 Q. Okay. Do you recall Mr. Brown at all saying that
7 Mr. Castle had asked Mr. Rishikof who gave him approval to go
8 over to the Department of Justice?

9 A. One more time. I'm sorry.

10 Q. Sure.

11 A. I was distracted.

12 Q. That's all right.

13 MTC [MR. TRIVETT]: Sir, just so I know for my planning
14 purposes, were you planning on doing a normal 10:30 break
15 or ----

16 MJ [Col PARRELLA]: I'm going to flip the question on you.
17 How long do you anticipate going?

18 MTC [MR. TRIVETT]: Probably another half hour or so, sir.

19 MJ [Col PARRELLA]: Okay. We'll go ahead and take a
20 break. The commission is in recess until 1045.

21 [The R.M.C. 803 session recessed at 1031, 12 September 2018.]

22 [The R.M.C. 803 session was called to order at 1050,

23 12 September 2018.]

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1 MJ [Col PARRELLA]: This commission is called back to
2 order. All parties present when the commission last recessed
3 are again present.

4 Mr. Trivett, you may continue with your
5 cross-examination.

6 MTC [MR. TRIVETT]: Thank you, Your Honor.

7 **CROSS-EXAMINATION CONTINUED**

8 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

9 Q. LT, I think before the break, we were discussing
10 the Mr. Castle conversation with Mr. Rishikof and Mr. Brown.

11 As part of your investigation and the material -- did
12 you -- as part of your investigation, did you review the
13 materials that have been filed in this case by the parties?

14 A. Could you be more specific, sir?

15 Q. The motions and filings, have you read them?

16 A. I've read the declarations submitted by Mr. Castle,
17 Secretary Mattis, Mr. -- and then I believe there were joint
18 declarations, there was two of them from Mr. Rishikof and
19 Mr. Brown.

20 Q. Okay. So safe to say that you utilized those
21 declarations in conducting your investigation?

22 A. Yes, sir.

23 Q. And so in Mr. Castle's declaration, he indicated that

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1 he became the Acting General Counsel, I believe, in late
2 August; is that correct?

3 A. I can't recall the specifics. It's been a while
4 since I've read them.

5 Q. Okay. And as far as Mr. Brown was concerned, it was
6 in early October that this meeting occurred between Mr. Castle
7 and Mr. Rishikof regarding the trip to the Department of
8 Justice?

9 A. I don't know the date -- I don't know the specific
10 date. I have a note I can refer to, but I don't know the
11 specific date.

12 Q. Do you have the note with you?

13 A. I have my report and the notes. I can look.

14 Q. Sure.

15 A. Do you mind if I do that?

16 Q. I don't mind. Take your time. Let me know when
17 you've found them.

18 A. And to be clear, you want me to identify the date of
19 the Castle/Rishikof meeting that discussed the Attorney
20 General?

21 Q. Correct.

22 A. Okay.

23 [Pause.]

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1 A. Okay, sir. Thank you. I think I'm ready to proceed.
2 I appreciate the time.

3 Q. Okay. And what were you able to determine based on
4 your review of your report regarding the timing of that
5 Department of Justice meeting?

6 A. It appeared -- it appears that I recorded it as
7 taking place in October of 2017.

8 Q. And just to correct the record, I just said
9 Department of Justice meeting. I meant to say the Department
10 of Defense meeting regarding the Department of Justice trip,
11 just to be clear.

12 A. I think I understood you, sir.

13 Q. Okay. All right.

14 A. Or I think I understood you the way you intended it.

15 Q. Okay. So sometime in October.

16 A. That is what I -- that is what Mr. Brown related to
17 me.

18 Q. Okay. So Mr. Castle had been on the job for only
19 about a month and a half at the most at that time?

20 A. That sounds correct, I think.

21 Q. Okay. He was hired in late August, based on the
22 declaration, correct?

23 A. I have -- the timeline that I provided to you, the

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1 investigative timeline, do you mind if I take a look at
2 that ----

3 Q. No, please do.

4 A. ---- my notes? So in my investigative timeline, I
5 show Mr. Castle hired 27 August 2017.

6 Q. Okay. And then the meeting sometime in October, so
7 about a month and a half?

8 A. That sounds right, sir.

9 Q. Okay. And as you can imagine, there's a tremendous
10 amount of legal issues that the Department of Defense General
11 Counsel has to deal with as part of his duties, correct?

12 A. I would concede that, yeah.

13 Q. Safe to say that he might not have all of the facts
14 from everything in the month and a half he was there?

15 A. That I don't feel confident to comment on, with all
16 due respect to you, sir.

17 Q. That's fine. Okay.

18 And so ultimately, did Mr. Brown indicate that
19 Mr. Castle had asked them who approved their trip over to the
20 Department of Justice, and they responded that the Deputy
21 Secretary of Defense had?

22 A. I don't recall that. I don't recall that -- the way
23 you just characterized it, I don't recall that.

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1 Q. How do you recall it?

2 A. I don't recall Mr. Castle asking who approved it. I
3 recall Mr. Castle wanting to know why he -- why he wasn't kept
4 informed.

5 Q. Of the trip to the Department of Justice?

6 A. I don't recall them discussing a trip to the
7 Department of Justice specifically. I know the communication
8 between the CA and the Department of Justice came up, but I
9 don't -- I didn't ask about a specific meeting. That never
10 came up.

11 Q. Okay. So you have no -- your investigation did not
12 reveal that Mr. Brown had had authority to go over to the
13 Department of Justice that Mr. Castle wasn't aware of?

14 A. I didn't exam -- again, and I'm sorry, can you
15 rephrase the question?

16 Q. Sure. As part of your investigation, did you come to
17 learn that Mr. Brown and Mr. Rishikof had authority to go over
18 to the Department of Justice but that Mr. Castle did not know
19 that?

20 A. I didn't examine that aspect of it. I think that is
21 part of what was murky, but I didn't examine that aspect of
22 that.

23 Q. Fair enough. Isn't it true that Mr. Brown indicated

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1 that Mr. Castle refused to even speak about exploring pretrial
2 agreements when Mr. Rishikof brought them up because he didn't
3 want to know anything about that?

4 A. That sounds accurate, yes.

5 Q. Because he didn't want to be accused of trying to
6 influence that decision?

7 A. He didn't add that second part, no. He said that he
8 didn't want to hear about it.

9 Q. Okay. At all. Shut him right down when he started
10 talking about plea agreements?

11 A. He said he didn't want to hear about it.

12 Q. Okay. Did Mr. Brown indicate that he thought that
13 these pretrial agreements needed to be coordinated with lots
14 of different people in the government? Mr. Brown, now.

15 A. I don't know if Mr. Brown indicated that.

16 Q. Okay. At any point did Mr. Brown indicate that they
17 thought they needed to coordinate pieces of the pretrial
18 agreement with the Department of Justice?

19 A. The coordination with the Department of Justice did
20 come up.

21 Q. And Mr. Brown thought that that was a required part
22 of their responsibilities?

23 A. I recall Mr. Brown taking the position that that was

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1 within the scope of responsibility of the Office of the
2 Convening Authority.

3 Q. So ultimately, they go over to the Department of
4 Justice and they brief one of the Attorney General's staffers,
5 correct?

6 A. I -- I cannot comment on that. I did not obtain
7 information nor did I ask about a physical trip to the
8 Department of Justice. We discussed communication with the
9 Department of Justice, but I ----

10 Q. Okay. So is it your testimony that Mr. Brown and
11 Mr. Rishikof at some point communicated with the Department of
12 Justice -- thought they needed to communicate with the
13 Department of Justice about entertaining pretrial agreements?

14 A. It is my testimony, sir, that according to
15 Mr. Brown ----

16 Q. Right.

17 A. ---- he related to me that there was some form of
18 communication with the Department of Justice. This topic came
19 up when I -- when he informed me of the communication from the
20 Attorney General, I asked him, "How would the Attorney General
21 find out?" And that's when he said, "Through the liaison at
22 the Department of Justice with the convening authority."

23 So I just want to be very -- again, I'm not trying to

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1 be difficult with you.

2 Q. No.

3 A. I just want to be clear that it is my understanding,
4 and this is according to Mr. Brown, but we did not discuss a
5 physical trip or a physical meeting, per se, with the
6 Department of Justice.

7 Q. All right. Did Mr. Brown indicate that Mr. Castle
8 actually didn't think they needed to coordinate the PTAs as
9 much as the convening authority and the legal advisor did?

10 A. I don't recall that off the top of my head. I'd have
11 to review my report, but I do not recall how you just framed
12 that question to me.

13 Q. But if that's -- if words to that effect are in the
14 report, that's what Mr. Brown told you?

15 A. If words to that effect, yes, sir, yeah.

16 Q. Okay. And Mr. Brown followed up on the "King Me
17 memo" with Mr. Castle as well, correct?

18 A. I don't know if Mr. Brown did. Mr. Brown related to
19 me that the topic was brought up on the management
20 recommendations.

21 Q. So it's possible Mr. Rishikof brought it up, possible
22 Mr. Brown brought it up? Someone brought it up?

23 A. Someone brought it up.

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1 Q. To the Acting General Counsel?

2 A. Somebody from the convening authority's office
3 brought it up. I believe that Mr. Brown said it was
4 Mr. Rishikof.

5 Q. And that was in a meeting with Mr. Castle and Deputy
6 Secretary of Defense Shanahan, correct?

7 A. There were two meetings, and the second meeting with
8 the Deputy Secretary of Defense and Mr. Castle was described
9 as Mr. Castle running that meeting.

10 The way Mr. Brown related it to me was that the
11 issues of -- for paths moving forward were -- were again
12 brought up in that meeting. The first meeting that we were
13 just talking about, you and I, a question was asked, you know,
14 what's the status -- now I'm paraphrasing ----

15 Q. Sure.

16 A. ---- what's the status on the management
17 recommendation.

18 Q. And Mr. Castle simply asked how they believed it
19 would benefit the process?

20 A. Something to that effect.

21 Q. Okay. I want to talk specifically about the "We own
22 the commissions" comment. I believe your investigation
23 indicated that someone had said that within the Office of the

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1 General Counsel to Mr. Brown and/or Mr. Rishikof, correct?

2 A. Mr. Brown related to me that the statement was made
3 after the -- I believe it was the first October meeting by
4 Mr. Bob Easton, that that statement was made.

5 Q. And did your investigation indicate that Mr. Easton
6 later clarified what he meant by that, saying that the
7 Department of Defense structurally is responsible for military
8 commissions?

9 A. I don't recall that, sir.

10 Q. And going back to the "King Me memo" for a second,
11 did Mr. Brown admit to you that they sent the memo directly to
12 the Deputy Secretary of Defense without coordinating with any
13 other agencies?

14 A. No, he did not admit that.

15 Q. Okay. Did he indicate that he believed that the
16 coordination that was required for the "King Me memo" was
17 actually done via various different phone calls and
18 conferences that they had?

19 A. What I'm about to say, I hope I'm answering your
20 question. He -- I -- that was brought up in the interview. I
21 specifically asked that question. And his response was that
22 it was, quote -- I believe he said it was crazy -- something
23 to the effect of it was crazy that the Office of General

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1 Counsel was not aware of these recommendations. And so he
2 related to me the coordination was done in that manner. And
3 then throughout the interview, one of the main vehicles for
4 coordination that continually came up was the weekly video
5 teleconference call.

6 The issue of the e-mail that Mr. Nevin had asked me
7 about earlier came up because he said that he had a -- you
8 know, that's -- that's a very impacting claim to make in the
9 scope of this investigation. So I asked Mr. Brown if he had
10 further evidence of coordination, and he said it was -- it was
11 in his NIPR account.

12 So I hope I'm answering your question. I think I --
13 at least the spirit of the question. But these meetings,
14 these are very confusing timelines and a lot of different
15 players.

16 Q. So safe to say there were lots of conversations, lots
17 of conferences talking about some of those things that were in
18 the "King Me memo"?

19 A. According to Mr. Brown, there was communication
20 regarding those issues with the Office of General Counsel.

21 Q. All right. And have you reviewed the entire "King Me
22 memo"?

23 A. I have.

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1 Q. All right. Fairly lengthy, 50, 60 pages?

2 A. I'm sorry. I reviewed the cover sheet and then I
3 briefly reviewed the attachments to it.

4 Q. All right. But at no point during your investigation
5 did he say, we had sent that memo for formal chop and staffing
6 through the Department of Defense, correct?

7 A. Not like that, he didn't, no.

8 Q. And he admitted to you that they were considering
9 pretrial agreements and socialized some of these things with
10 the Department of Defense as early as the summer of 2017 to
11 bring closure to the families, correct?

12 A. He related that to me, yes, sir.

13 Q. And so early summer -- I'm sorry, I don't mean to put
14 words in his mouth.

15 Summer of 2017, Deputy Secretary Work is still the
16 Deputy Secretary of the Department of Defense, correct?

17 A. Yes. That's when -- it's my understanding that's
18 when the transition occurred.

19 Q. Okay. And it's safe to say, based on your
20 investigation, that they had a good working relationship with
21 Mr. Work, meaning -- "they" meaning Mr. Rishikof and
22 Mr. Brown?

23 A. That's what was -- that's how Mr. Brown framed it,

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1 yes.

2 Q. Okay. And they thought highly of each other based on
3 your conversations with both Secretary Work and Mr. Brown?

4 A. Secretary Work thought highly of Mr. Rishikof. I
5 didn't, in that interview -- that was during more of the early
6 stages of my investigation. I do not think I specifically
7 asked Mr. Work about his impressions of Mr. Brown. But
8 Mr. Brown had told me he felt -- he thought Work was -- he
9 thought highly of him in a professional manner, that's how
10 I'll phrase it.

11 Q. Okay. Safe to say that Mr. Brown didn't approve of
12 Mr. Shanahan's management style, meaning -- let me back up.

13 A. Thank you.

14 Q. That was a poorly asked question again.

15 At some point, Mr. Shanahan takes over for Mr. Work
16 in the summer of 2017?

17 A. Yes, sir. My understanding.

18 Q. And it's safe to say that Mr. Brown, as he relayed to
19 you, did not approve of Mr. Shanahan's management style?

20 A. I don't know if I'd characterize it like that. I
21 will tell you that Mr. Brown -- I asked Mr. Brown about
22 Mr. Shanahan's manner of communication and he had stated to me
23 that Mr. Shanahan didn't communicate much at all.

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1 Q. Okay. And isn't it true that he actually said he has
2 no management style at all because he just doesn't talk?

3 A. That does sound familiar to me, sir.

4 Q. All right. Now, as part of that "King Me memo," one
5 of the proposed changes was that the chief prosecutor would
6 report directly to the convening authority, correct? That was
7 one of the things in the "King Me memo" that Mr. Rishikof was
8 asking for?

9 A. Say that one more time, please.

10 Q. Sure. The "King Me memo" we've discussed?

11 A. Yes, sir.

12 Q. We'll just call it the management memo.

13 A. Yes, sir.

14 Q. So in the management memo, one of the things that he
15 wanted, Mr. Rishikof wanted to move the chief prosecutor's
16 office directly under his office so that he directly
17 supervised the chief prosecutor.

18 A. That is -- and, again, I'm not a specialist on the
19 organizational structure of the Office of Military
20 Commissions, but that is how I understood it.

21 Q. Okay.

22 A. Yes, sir.

23 Q. All right. Part of your interview with Mr. Brown,

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1 you also discussed the concept of Mike Vozzo's role for the
2 Department of Defense OGC, correct?

3 A. Yes, sir.

4 Q. All right. And would you agree with -- would you
5 agree with the characterization that Mr. Vozzo worked as a
6 pivot between the Office of the General Counsel and the Office
7 of the Chief Prosecutor?

8 A. I don't know if I would agree with that. I don't
9 know if I'm qualified to answer that.

10 Q. That's fine. Let me ask it in a different way.

11 Your investigation revealed that Mr. Vozzo worked for
12 the Office of General Counsel?

13 A. Yes, sir.

14 Q. And that as part of his portfolio, he had the Office
15 of the Chief Prosecutor as part of his duties in coordinating
16 with the Office of the Chief Prosecutor?

17 A. I didn't examine that aspect into that detail.

18 Q. Okay.

19 A. I -- Mr. Vozzo's name came up as a result of
20 Mr. Brown bringing it up. I didn't examine ----

21 Q. Okay. Fair enough. So at some point, Mr. Brown
22 raised concerns about Mike Vozzo's role?

23 A. Yes, sir.

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1 Q. And that was because he was involved with the general
2 counsel and had interaction with the chief prosecutor?

3 A. Again, I'm not trying to be difficult with you, but I
4 don't know if I would agree with that statement.

5 Q. Okay. Well, please, characterize it as -- you spoke
6 with him, I didn't, so please let me know.

7 A. So Mr. Brown -- from what I recall, not reviewing my
8 reports on that specific matter, Mr. Brown brought up
9 Mr. Vozzo for two reasons. One, again, according to
10 Mr. Brown, he felt -- he had concerns because the chief
11 prosecutor would openly talk about Mr. Vozzo being a valuable
12 part of his team, the prosecution. And second to that was the
13 observations that Mr. Brown related to me regarding Mr. Vozzo
14 when commissions were in progress here on the island.

15 Q. Okay. So at any point, did he discuss the fact that
16 the defense has a similar OGC pivot in Mr. Dwight Sullivan?

17 A. That's the first I've heard of that name, sir.

18 Q. Okay. So if there's a former chief prosecutor -- I'm
19 sorry, former chief defense counsel who works in the Office of
20 General Counsel who serves the same role that Mr. Vozzo does,
21 but only for the defense, would that be the first time you
22 heard that during your investigation?

23 A. In the course of interviewing Mr. Brown, yes.

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1 Q. Okay. At some point, did the issue of the fast
2 boat -- what we'll call the fast boat incident come up in your
3 conversations with Mr. Brown?

4 A. Yes, sir.

5 Q. Okay. And was it your understanding based on your
6 investigation that the judiciary had abated the case until
7 they could be brought across the bay in separate
8 transportation from the rest of the parties? Is that your
9 understanding?

10 A. That's my understanding, yes, sir.

11 Q. Okay. And that ultimately he relayed a disagreement
12 between himself and General Martins on the best way to end the
13 abatement and start the case again, correct?

14 A. He depicted, yes, that there was a difference of
15 professional opinion.

16 Q. And did he mention how much it would have cost the
17 convening authority to actually ensure that a separate boat
18 could come across for every hearing to bring the judiciary
19 over?

20 A. I don't recall discussing costs on that matter with
21 Mr. Brown.

22 Q. Okay. But Mr. Brown felt like the decision not to
23 fund a boat ride was something that we should have -- that the

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1 Office of the Chief Prosecutor should appeal to the Court of
2 Military Commissions Review?

3 A. Again, you're using the term funding. We didn't
4 discuss funding. We -- we discussed the convening authority's
5 position on supporting the issue of the boat. I didn't get
6 into funding, I didn't get into the logistics of it.

7 Q. Okay. So ultimately the convening authority -- based
8 on your investigation, did the convening authority need to
9 substantiate the need to JTF-GTMO or to the NAVSTA in order to
10 get the boat? Was that their role in the process?

11 A. I don't know.

12 Q. How many hearings have you come down for?

13 A. You'll have to give me a moment. I think -- I think
14 this might be my fourth.

15 Q. Okay.

16 A. But I want to certainly preface that with I could be
17 incorrect.

18 Q. Okay.

19 A. Third or fourth, at least.

20 Q. So based on your observations, is the judiciary, in
21 fact, brought over by a separate boat for all of those four
22 times you were here?

23 A. That's a good question, sir. Each time I come, I

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1 notice something different, and I've -- I've heard about a
2 U-boat. I've never really seen it other than -- I was on
3 island here last time for about 30 -- over 30 days, so I've
4 seen the U-boat come in and out, but I've never really seen --
5 I smile because it's been a source of -- now with this
6 investigation, I've kind of now been on the lookout for it,
7 and I've never even noticed the judges on the planes. So I
8 don't have an answer for you there.

9 Q. Okay.

10 A. Sorry.

11 Q. That's fine. So as no part in your investigation did
12 you determine whether or not that mode of transportation was
13 used every time for every hearing after the chief prosecutor
14 filed that that was the position of the convening authority?

15 A. After that incident?

16 Q. Right.

17 A. After that incident was resolved? No, I did not
18 examine that. I did not look into that.

19 Q. Okay.

20 A. It is my understanding that that is the process in
21 place. What did come up in my investigation was to confirm
22 doing historical -- making sure that I had -- that I
23 understood that -- the facts prior to that, that it was a

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1 Coast Guard boat, and now it's -- they call it a U-boat, which
2 I don't think belongs to the Coast Guard.

3 So I did examine that aspect of it, and it was my
4 understanding that the boat -- that the U-boat is now in place
5 after this conflict. But I did not use investigative efforts
6 to verify that in the context of understanding what happened
7 with the fast boat incident that Mr. Brown related to me.

8 Q. Okay. So did Mr. Brown at any point discuss his
9 belief that the issue should be appealed to an appellate
10 court?

11 A. Yes.

12 Q. And he claimed that it was inaccurate that the
13 convening authority supported the use of that boat and that if
14 we had, meaning the Office of the Chief Prosecutor, put that
15 in a motion, that that was factually incorrect?

16 A. According to Mr. Brown.

17 Q. According to Mr. Brown.

18 A. Yes, that is correct.

19 Q. But as far as you know, every time since then, the
20 U-boat has been here to pick up the judiciary, as far as you
21 know based on your investigation.

22 A. I can't -- I can't confirm that. I didn't look into
23 that. I didn't investigate that.

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1 Q. Did your investigation indicate that an entire week
2 of 9/11 hearings was cancelled over this issue of who will
3 fund the boat ride across the bay?

4 A. I am aware that there was a cease, that legal
5 proceedings stopped. I don't recall the exact amount of time,
6 but I am aware that court proceedings were abated.

7 Q. Did Mr. Brown indicate how much cancelling that
8 hearing cost the convening authority and the U.S. Government?

9 A. I never discussed cost or budgetary issues with
10 Mr. Brown, sir.

11 Q. Did he discuss with you the negative press attention
12 that it received?

13 A. I don't recall that being discussed, sir.

14 Q. Okay. Now, you would agree that unlawful influence
15 protects all participants in these proceedings, correct?

16 ADC [Capt ANDREU]: Objection, calls for a legal
17 conclusion.

18 MTC [MR. TRIVETT]: I'll move on, sir.

19 Q. So during your investigation of the aerial image
20 aspect, I think your testimony yesterday was that there's a
21 very complex protocol in place to contact a combatant
22 commander.

23 A. It's complex to me. I wouldn't say it's a complex

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1 process, but for me, it was -- I had to put some effort into
2 it.

3 Q. And you've been in the military, I believe your
4 testimony was, 19 years?

5 A. Total, time, yes, sir.

6 Q. Prior enlisted time?

7 A. Yes, sir.

8 Q. Time as an officer?

9 Combatant commanders are pretty high-ranking members
10 of the military?

11 A. Yes, sir.

12 Q. Generally just don't walk into their office?

13 A. Correct.

14 Q. Very busy, a lot of responsibility?

15 A. I would agree with that.

16 Q. Okay. So during -- Mr. Brown indicated he was part
17 of that phone call, correct ----

18 A. Yes.

19 Q. ---- between Mr. Rishikof and the SOUTHCOM commander?

20 A. I'm sorry, I assumed ----

21 Q. Right.

22 A. Yes ----

23 Q. I just wanted to clarify for the record?

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1 A. ---- we're talking about the same phone call, yes.

2 Q. And he indicated that the combatant commander did not
3 want to run a military operation to take an updated photo,
4 correct?

5 A. No, that is not correct.

6 Q. That's not correct? All right.

7 Please describe to me how Mr. Brown described
8 Admiral Tidd's reaction to the request.

9 A. From personal recollection from that interview, the
10 response was that SOUTHCOM didn't have an image, not that -- I
11 don't recall -- and if it's in my report, I'd like to review
12 it, but I don't recall Mr. Brown saying that the admiral said,
13 I'm not going to -- you know, your words -- execute a military
14 operation ----

15 Q. Okay.

16 A. ---- to obtain imagery. I don't recall that. In
17 fact, I can tell you that wasn't brought up, that Mr. Brown
18 didn't say that.

19 Q. All right. So ultimately, there's a phone call,
20 correct?

21 A. Yes, sir.

22 Q. There was a request for aerial imagery from
23 Mr. Rishikof to the combatant commander?

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1 A. There was a request to see if there was more current
2 imagery.

3 Q. Okay. And there was not, based on Admiral Tidd's
4 response?

5 A. That -- yes, sir. Thank you.

6 Q. Okay. All right. So at any point in time, did
7 Mr. Brown, as part of your investigation, indicate to you
8 that, upon Admiral Tidd's refusal, Mr. Rishikof said, "You
9 mean to tell me you have four stars and you can't even get me
10 a plane?"

11 A. Mr. Brown did not indicate that Admiral Tidd refused,
12 so ----

13 Q. Right. That wasn't my question, I'm sorry.

14 Did Mr. Brown communicate that Mr. Rishikof said,
15 "You mean you have four stars and you can't even get me a
16 plane?"

17 A. I have not heard that depiction, no, sir. I have not
18 heard that.

19 Q. That didn't come up in the investigation?

20 A. I have -- no, sir.

21 Q. Okay. Did it come up in the investigation that calls
22 went back from SOUTHCOM to the Office of General Counsel
23 because they perceived that statement to be disrespectful?

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1 A. No, sir, I'm unaware of that.

2 Q. All right. Your entire time in the military was
3 Navy?

4 A. No, sir.

5 Q. Okay. So your prior enlisted was?

6 A. I enlisted in the Marine Corps in 1992.

7 Q. So Marine Corps. Okay.

8 From your time in the Navy, are you familiar with the
9 term "East Coast sailor" and "West Coast sailor"?

10 A. I am.

11 Q. Okay. And you would agree that an East Coast sailor
12 looks for a regulation to be able to have authority to do
13 something?

14 A. I think that all good sailors do that, sir.

15 Q. Okay. What's the difference in your mind then
16 between an East Coast sailor and a West Coast sailor?

17 MJ [Col PARRELLA]: Trial Counsel, where are we going with
18 this?

19 MTC [MR. TRIVETT]: I have one more question on it.

20 MJ [Col PARRELLA]: You may proceed.

21 MTC [MR. TRIVETT]: Thank you, sir.

22 A. I don't -- just so I understand the question, could
23 you ask it again, please?

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1 Q. Sure. Would you agree that a West Coast sailor --
2 that the idea of a West Coast sailor is that, if there's not
3 something that prohibits them from doing it, they'll do it?

4 A. No. I don't ----

5 Q. Okay, we'll move on. That's fine.

6 A. I'm having a hard time with that question.

7 Q. That's fine.

8 A. I'm a West Coast sailor, by the way.

9 Q. So ultimately, Mr. Brown told you that Admiral Tidd
10 didn't -- I'm sorry. That the SOUTHCOM commander didn't tell
11 him specifically that he couldn't get the Coast Guard to go
12 take a picture of the ELC?

13 A. Yes, I would agree with what you just said.

14 Q. He didn't authorize him specifically to do it, he
15 just never said that "You can't have a Coast Guard helicopter
16 fly over my AOR"?

17 A. The -- that conference call that you are referencing,
18 sir, I did not obtain any information that specifically in
19 that conference call discussed the United States Coast Guard.
20 I'm not -- I -- I did not obtain any information where the
21 Coast Guard was discussed directly with -- in that conference
22 call.

23 Q. I understand. Okay.

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1 A. So I hope I'm answering your question.

2 Q. You are. Thank you.

3 A. Okay.

4 Q. And at some point did Mr. Brown give his opinion that
5 even normal logistics that the Office of Military Commissions
6 had to conduct constituted judicial acts under the unlawful
7 influence doctrine?

8 A. Well, I don't know if it was under -- I don't feel
9 comfortable saying it was under the UCI doctrine, but I will
10 tell you that he made a comment that, in regards to your
11 question, logistics and the overall operations of ensuring
12 that commissions are held, you know, the resources are
13 available. Did have a nexus to judicial acts.

14 Q. And he really didn't distinguish, he said pretty much
15 all of them.

16 A. I'd have to review my report. I do remember that
17 part of the interview. It was towards the end.

18 Q. Okay.

19 A. So I'd have to review my report to give you an
20 absolute firm answer on that, but he did talk about the
21 over -- the overall operations of the convening authority in
22 regards to what you're asking me.

23 Q. Okay. I just want to ask a couple more questions and

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1 we'll finish your time with your interview of Mr. Brown.

2 So at some point you asked him specifically about his
3 management style?

4 A. Mr. Brown's?

5 Q. Yes. Or what his employees would perceive with him.

6 A. I did.

7 Q. Okay. At some point, he makes a comment to you that
8 he tightened some people up. What does that mean? What did
9 you understand that to mean?

10 A. I understood it that he enforced standards, that's
11 how I took it. Maybe standards that were not adhered to.

12 Q. Okay. They said, but he recognized others. Did you
13 understand what that meant?

14 A. Yes. In the context of that, he recognized good
15 work.

16 Q. Okay.

17 A. That's how I took it.

18 Q. I want to transition now -- I just have questions
19 about -- I just want to say, just to give you an awareness --
20 two more of your interviews, and they're not as long as that.
21 So I appreciate the patience you have.

22 So at some point, you talked to Mr. Neil Eggleston as
23 well, correct?

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1 A. That is correct, sir.

2 Q. And he was the White House Counsel to
3 President Obama?

4 A. Yes, sir.

5 Q. And he served in that capacity from -- as reported --
6 as indicated in your reports, April 2014 to early 2016?

7 A. That's what my report states, sir, yes.

8 Q. And so as White House Counsel, he functions on all
9 legal matters that impact the President of the United States,
10 correct?

11 A. I asked him to explain to me exactly what White House
12 Counsel was, and he said that he was in charge of all legal
13 matters that affected the President of the United States in
14 his official capacity.

15 Q. Okay. So in many ways, his job as White House
16 Counsel is similar to the Office of General Counsel for the
17 Department of Defense?

18 A. I'd rather not comment on that. I don't feel
19 qualified to answer that question, sir.

20 Q. Fair enough. Thank you.

21 A. Thank you.

22 Q. Okay. And you sent him all of the declarations that
23 were filed in this case before interviewing him?

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1 A. I don't know if they were all the declarations. I
2 don't read every single response to -- to the motions. I sent
3 him the declarations that I had stated earlier. I believe I
4 sent him the declaration -- two declarations, joint
5 declarations by Mr. Rishikof and Mr. Brown, and Mr. Castle's
6 and the Secretary of Defense.

7 Q. Okay. And you asked him specifically whether or not
8 the Obama Administration was considering plea deals to resolve
9 these cases ----

10 A. I think I asked him -- I'm sorry, sir. I interrupted
11 you.

12 Q. Yeah. And I believe he said to you, "I don't know
13 that I can answer that." Is that -- do you recall that when
14 you asked him the first time about it?

15 A. I recall something like that. I did -- that was a
16 quote that I took from him.

17 Q. Okay. At any point in time, did he claim executive
18 privilege over anything you asked him?

19 A. I don't recall that. As you and I discussed prior to
20 my testimony, when we were discussing kind of the, my term,
21 ground rules, we did introductions. And I had said if anyone
22 in -- it was myself, Captain Andreu, and Mr. Eggleston. I
23 said, "If anyone in this room recognizes anything that

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1 remotely resembles" -- it was in his office, an unsecured
2 facility, "remotely resembles classified information, someone
3 please stop. Someone please indicate it."

4 And under the context -- when I said that, his
5 response was, "Well, also understand there may be issues of
6 executive privilege that I can't discuss." And then we moved
7 on to the body of the interview.

8 Q. Okay. And during your interview with Mr. Eggleston,
9 did he indicate that President Obama had grown frustrated at
10 the pace of the proceedings and the cost?

11 A. He had used the word either aggravated or annoyed, I
12 wrote that quote down. That's how he depicted it.

13 Q. Okay. And so then people in the White House, whether
14 it was President Obama or Mr. Eggleston, couldn't understand
15 why the judge wouldn't just set a trial schedule for the case,
16 correct?

17 A. I don't know if he put it that way, but he said that
18 they were having -- that -- and I'm sorry for stumbling, I
19 want to make sure I get this right.

20 Q. That's fine.

21 A. That they were having a hard -- that it was hard for
22 them to understand what was taking so long with the military
23 commissions.

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1 Q. Okay. And I think he made a comment that defense
2 counsel file motions forever, words to that effect?

3 A. I'd have to look at that. He did mention that there
4 were a lot of motions, but I'd have to look at how that quote
5 was written, sir.

6 Q. Okay. And did he discuss with you that the Obama
7 Administration pretty much from day one made a priority of
8 closing down Guantanamo Bay as a detention facility?

9 A. He didn't say it like that. He didn't say it like
10 that.

11 Q. The Obama ----

12 MJ [Col PARRELLA]: Trial Counsel, I think -- I think
13 yesterday I limited defense counsel's inquiry with respect to
14 Mr. Eggleston based on the government's representation that
15 there is no facts at issue based on the proffer provided in
16 the exhibit, so let's move on.

17 MTC [MR. TRIVETT]: Yes, sir.

18 Q. I want to talk to you then, to end our examination,
19 on a little bit from the Deputy Secretary of Defense Work
20 interview. So specifically he was told to try to reduce costs
21 for the military commissions process, correct?

22 A. I do not recall Mr. Work relating it to me like that,
23 the cost reduction. We did discuss the cost of the

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1 commissions. He informed me that the President of the
2 United States was shocked by the cost.

3 Q. Okay. So ultimately his time from January 2017 until
4 he left, he was working in the Trump Administration, but had
5 previously worked in the Obama Administration?

6 A. That is correct, sir.

7 Q. I believe he's a retired Marine colonel?

8 A. Yes, that's my understanding.

9 Q. And he indicated that the search for Mr. Rishikof
10 began during the Obama Administration?

11 A. He didn't say it like that, but that's -- you know,
12 when we were talking about the chronological chain of events
13 to try to identify a replacement and preparing for the
14 administration transfer, that was certainly -- he related to
15 me that that was certainly something that he was working on
16 and focusing on.

17 Q. And he indicated to you that he thought highly of
18 Mr. Rishikof?

19 A. Yes.

20 Q. And Mr. Rishikof could report directly to him?

21 A. Well, certainly on the paths forward, he had an
22 expectation that Mr. Rishikof would report directly to him.

23 Q. Okay. And specifically he said because he didn't

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1 want a lot of chatter about the way forward in the Pentagon,
2 or anywhere else for that matter?

3 A. Yes. He said that -- particularly when he was
4 talking about issues that were politically sensitive, that he
5 wanted -- that he expected Mr. Rishikof, the convening
6 authority, to report directly to him because he didn't want a
7 lot of chatter. And he was talking about that in regards, if
8 I recall, to the exploration of pleas.

9 Q. Okay. So he wanted to keep it quiet and within a
10 small group?

11 A. That's my understanding, sir.

12 Q. Okay. Now, he only overlapped with Mr. Rishikof,
13 based on your conversation with him, for about a month, right?

14 A. I believe that's -- that's almost the exact
15 terminology he used. It wasn't -- it wasn't long.

16 Q. So the other eight months Mr. Rishikof was the
17 convening authority and director of OMC, he was working for
18 Deputy Secretary of Defense Shanahan, correct?

19 A. That is -- that is my understanding, sir.

20 Q. Okay. All right. And in your conversation with
21 Mr. Work, you specifically discussed his 26 February 2015
22 coordination memo, correct?

23 A. Is that the ----

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1 Q. The memo that required the coordination with the
2 Office of the General Counsel and the TJAGs?

3 A. Is that the Recission to Change 1 memorandum?

4 Q. Correct.

5 A. Yes, sir, we did discuss that.

6 Q. So you discussed that?

7 A. Yes.

8 Q. Okay. And he explained to you that he wrote that
9 because he was embarrassed that he had to reverse course on
10 the decision to move the judges down to Guantanamo Bay,
11 correct?

12 A. That is correct, sir.

13 Q. All right. And he felt after the fact that that had
14 not been well enough coordinated through the Office of the
15 General Counsel and the TJAGs before he decided to put the
16 Change 1 into place, correct?

17 A. He didn't use those exact words.

18 Q. Words to that effect?

19 A. That's the picture that he depicted.

20 Q. Okay. So ultimately he communicated to you that the
21 intention of the memo was so the Office of the General Counsel
22 could give him legal advice on these types of requests?

23 A. Yes. Yes. During that time frame, he did.

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1 Q. Okay. And at any point in time, did he tell you that
2 he rescinded that memo?

3 A. I don't recall -- no, he did not.

4 Q. Okay. So the Deputy Secretary of Defense issues a
5 memo and leaves without rescinding it; another Secretary --
6 Deputy Secretary of Defense takes his place. You would agree
7 that that memo is still in place?

8 A. I would rather not -- I don't feel qualified to
9 comment on the administrative protocols and procedures at that
10 level of the Department of Defense. I'm unaware of that, sir.

11 Q. All right. So based on your experience in the
12 military then, there's a general order that's issued that
13 isn't rescinded, someone else takes command; you would agree
14 that that general order is still in place?

15 A. I would agree.

16 Q. Now, I believe that Deputy Secretary Work was asked
17 specifically by you whether or not, based on the facts that
18 you provided him, there was a reason to fire Mr. Rishikof, and
19 he thought that there wasn't?

20 A. Could you please ask the question again?

21 Q. Sure. So it was his opinion, based on your interview
22 with him, that Mr. Rishikof shouldn't have been terminated for
23 failing to coordinate the "King Me memo"?

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1 A. Well, he didn't use the term "King Me memo."

2 Q. Right.

3 A. And he ----

4 Q. Call it the management memo.

5 A. He -- you know, as I explained the circumstances or
6 the reasons provided for the termination, he said something to
7 the effect of, "Doug, I just don't see it. I just don't
8 see -- I don't see -- I don't see the justification."

9 Q. But he did caveat that with you saying, "Now, I have
10 to admit I don't know all the facts ----

11 A. That is correct.

12 Q. ---- "but based on what you're telling me."

13 A. Yes, "Based on what you're telling me, Doug, I just
14 don't see it." He said something to that effect.

15 Q. And he actually hadn't followed the issue after he
16 left as the Deputy Secretary of Defense, correct?

17 A. Could you clarify "the issue"?

18 Q. Sure. That was another poorly worded question.

19 Ultimately he didn't have a lot of the background on
20 the terminations when you went and spoke to him; isn't that
21 correct?

22 A. Well, that was the -- that was certainly the
23 impression that I got, based on the beginning of our

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1 conversation and that was -- you know, his -- this interview
2 was, from my perspective, my low-level perspective, important
3 to the scope of my investigation.

4 So to ensure that I understood what he said and that
5 he was providing me valid information based on all of the
6 facts that he may or may not have been aware of, that's why we
7 had follow-up e-mail correspondence and I wanted to send him
8 the declarations.

9 Q. Okay. And from all this involvement with the White
10 House and the Secretary of -- and the Deputy Secretary of
11 Defense at that time considering resolving commissions, at no
12 point in time did Mr. Connell or anyone else ask you to
13 investigate whether that constituted unlawful influence,
14 correct?

15 A. I will -- I will need you to repeat that one, that
16 question.

17 Q. You didn't investigate whether the White House's
18 interests in commissions constituted unlawful influence, did
19 you?

20 A. The instructions I received was to -- I mean, once
21 the -- the overflight information-gathering expanded, was to
22 focus my investigative efforts on the reasons for the
23 termination of Mr. Rishikof and Mr. Brown.

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1 Questions by the Assistant Defense Counsel [Capt ANDREU]:

2 Q. Lieutenant Newman, you were asked near the beginning
3 of the cross-examination if Admiral Cashman, the JTF
4 Commander, was aware of the overflight. And the answer was,
5 "No, he was not aware of it."

6 Was he aware of any complaints concerning the
7 overflight?

8 A. No.

9 Q. You were also asked about Captain [REDACTED] at District 7
10 and the request coming in through what he called the BRO-NET.
11 Did Captain [REDACTED] tell you whether he would have known if there
12 was any issue after the flight occurred?

13 A. Well, Captain, let me just clarify as to what he
14 called the BRO-NET, Captain [REDACTED]. And I specifically asked
15 him if there was a -- you know, an incursion into sensitive
16 airspace, would he have been made aware of it or would the
17 pilot have been made aware of it. And he said, "Absolutely."

18 And I pushed him a little bit on how important that
19 would be if there was an unsanctioned, illegal flight, and he
20 said, "Let me put it to you this way. Within an hour, the
21 Commandant of the Coast Guard would have known about that if
22 we violated some type of sensitive airspace."

23 Q. Did Captain [REDACTED] have any knowledge of that?

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1 A. No. No. And just to clarify, that was in the
2 context of me asking if he had been aware of any type of
3 complaint or issue with the flight. And then when I pushed,
4 you know, "Well, could it have been kept from you? Could it
5 have been -- someone got around you?" And that's when he went
6 into his explanation about the Commandant of the Coast Guard
7 being aware if there was an incursion into airspace they
8 shouldn't have flown into.

9 Q. You were asked about the phone call from Mr. Rishikof
10 to Admiral Lunday, and you were asked whether Mr. Rishikof did
11 not tell Admiral Lunday that SOUTHCOM had denied the request
12 for imagery. Based on your investigation, do you have --
13 based on your investigation, had SOUTHCOM denied the request
14 for imagery?

15 A. I did not receive that information. I have not been
16 able to verify that SOUTHCOM explicitly said no.

17 Q. You talked about the fact that you do not keep your
18 notes after your reports are complete. Does Mr. Connell
19 permit investigators on the team to use the same practice that
20 they used in their civilian job?

21 A. Mr. Connell's -- I don't mean this to be a criticism.
22 He's a very hands-off manager. As long as you're doing things
23 ethically and honestly, he -- in fact, he has told me that he

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1 feels more comfortable with me conducting investigations based
2 on my training and experience because, one, it's more
3 efficient. It's an economy of time thing. He doesn't have to
4 retrain his investigators. But, two, you know, he -- and I'm
5 paraphrasing, you know, the Navy assigned me here for a
6 reason, and, "Go do your job."

7 So he -- yes, to answer your question, he's never
8 given me instructions. He wants me to adhere to the practices
9 that I have been -- my training and experience has given me.

10 Q. And have you used the same practice in this case that
11 you have over the course of your law enforcement -- civilian
12 law enforcement career?

13 A. Yes, with the exception of recorded interviews and
14 interrogations or witness statements. Obviously we would have
15 those transcribed and saved and retained, and not everything a
16 witness or a suspect would say in a recorded interview would
17 be placed into an investigative -- you know, a police report.

18 But I've not been in the practice of -- I think the
19 only time I would keep my notes is when I was a patrol officer
20 and I would have an individual notebook that I would take
21 notes. And then once that notebook was done, I was in the
22 practice of getting rid of it. I want to preface that,
23 though, Captain, if I may. It's been a while.

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1 Q. Thank you.

2 A. Some procedures may have changed with some of the
3 agencies that I've worked with.

4 Q. You were asked about the draft memorandum that
5 Mr. Brown gave you a copy of. And specifically you were asked
6 about what authority Mr. Brown would have to discipline the
7 chief prosecutor. Did Mr. Brown tell you that the draft
8 memorandum was so that he could discipline the chief
9 prosecutor or so that he could recommend disciplining?

10 A. I don't -- I'd have to refer to my report. He said
11 he had drafted a memorandum for discipline, that's how I
12 recall him saying it. And that he -- that the convening
13 authority was aware of it, but that the convening authority
14 didn't feel it was prudent at the time to issue or serve --
15 those are my words -- the memorandum.

16 He felt that the convening authority -- you know, I
17 asked why. I pushed on that too. I asked why. And he said
18 that Mr. Rishikof had made the statement that "We need to work
19 with the chief prosecutor. We need to try to cooperate."

20 Q. There was some discussion about things that were said
21 during the hiring process for Mr. Rishikof and Mr. Brown. So
22 first of all, to be clear, who was hired first, Mr. Rishikof
23 or Mr. Brown?

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1 A. Mr. Brown was hired in, I believe, January of 2017 on
2 a reimbursable memorandum from the Marine Corps University.
3 And then Mr. -- I think Mr. Rishikof came in April of 2017.
4 I'd have to look at my investigative reports.

5 Q. You were asked about your interview with Ms. Wendy
6 Kelly, and you were asked about her saying that -- going back
7 in time, that all convening authorities had been pursuing or
8 at least entertaining the possibility of plea deals. Did she
9 say that that was the case specifically to the 9/11 case or
10 as -- or plea deals for the military commissions in total?

11 A. I don't -- she didn't -- when she made that
12 statement, she didn't refer to any specific case that I can
13 recall.

14 Q. You talked -- let's talk now about the coordination
15 between the Office of the Convening Authority and the Office
16 of the General Counsel. You were asked if Mr. Castle was
17 concerned about not being kept informed by the Office of the
18 Convening Authority, and you said that he was. What was
19 Mr. Brown's response when Mr. Castle raised that concern?

20 A. He had told him that they were informed, and he had
21 reminded him of a meeting where they tried to -- where they --
22 a meeting where he tried to keep him informed. And either
23 Mr. Rishikof or Mr. Brown provided electronic evidence of that

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1 meeting to refresh Mr. Castle's memory.

2 Q. You were asked about the fast boat issue and you were
3 asked questions about the cost of providing a separate boat
4 for the trial judiciary. Regarding the difference of opinion
5 between the Office of the Chief Prosecutor and the Office of
6 the Convening Authority, was Mr. Brown's concern over the
7 costs or was his concern over the chief prosecutor
8 misrepresenting the convening authority's position?

9 A. Well, because we didn't talk about cost, we only
10 spoke about the position of the Office of the Chief
11 Prosecutor.

12 Q. You were also asked as it relates to the fast boat
13 whether or not a separate boat is now or has since then been
14 used for the trial judiciary. From speaking to Mr. Brown, did
15 he tell you the chief prosecutor's position on the need, the
16 immediate need for a new -- or for a separate fast boat for
17 the military commissions?

18 A. I don't think I understand your question.

19 Q. Did Mr. Brown talk to you about the chief
20 prosecutor's position on the need for a fast boat -- on the
21 need for a separate fast boat as it related to the Nashiri
22 case?

23 MTC [MR. TRIVETT]: Objection, outside the scope.

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1 MJ [Col PARRELLA]: Sustained. Let's move on, please.

2 Q. You were asked a few questions about your interview
3 with Mr. Eggleston and something about the White House
4 committing UC -- unlawful command influence. Did you talk to
5 Mr. Eggleston about unlawful command influence?

6 A. I did.

7 Q. What did he tell you?

8 A. He told me that UCI -- well, I have to put it into
9 context here, how we got on to that. I had asked him
10 specifically if he knew anything about pleas. He told me he
11 received a phone call from Anthony Romero, who is the head of
12 the ACLU, that talked to him about pleas.

13 Mr. Eggleston had told me that he -- and I'm
14 paraphrasing -- I'm not the guy he needed to talk to about
15 this, he tells Mr. Romero. "You need to speak to Jennifer
16 O'Connor, who is counsel at the Department of Defense."

17 I asked him, "Did you take that to the President?"

18 And he said, "No, it -- I didn't feel it was an
19 actionable item."

20 And then he explained to me that, "You know, you
21 don't -- you don't just walk into the President of the
22 United States' office and ask him how his day is going or tell
23 him how your day is going. You have to action items. And I

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1 didn't feel it was an actionable item." When I asked him why,
2 he said UCI was ever present in their mind, that they didn't
3 want to be involved in individual prosecutions.

4 Then he brought up the issue of the trial judiciary
5 being moved down here, the Change 1 issue, and he said that
6 that was a lesson for them after that happened that, you know,
7 of the -- you know, he described it as a -- a dimension, I
8 think he said. You know, this dimension of unlawful command
9 influence was so broad that they were very concerned about
10 that.

11 So he didn't -- that's why he told Mr. Romero, "Look,
12 I'm not going to" -- the words he used was, "I'm not going to
13 carry your water on this. You need to speak to Ms. O'Connor."
14 And so he said he didn't bring it to the attention of the
15 President of the United States because of the concern, the
16 term he used was ever present.

17 ADC [Capt ANDREU]: May I have a moment?

18 MJ [Col PARRELLA]: You may.

19 ADC [Capt ANDREU]: I have no further questions.

20 MJ [Col PARRELLA]: Mr. Nevin?

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

22 Q. Lieutenant Newman, I would direct your attention to
23 chapter 12 of the Regulation for Trial by Military Commission.

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1 I recognize you don't have it before you, but I'll just tell
2 you that it says that "The decision to accept or reject a PTA
3 offer submitted by an accused is within the sole discretion of
4 the convening authority who referred the case to trial."

5 MTC [MR. TRIVETT]: Objection.

6 MJ [Col PARRELLA]: Basis?

7 MTC [MR. TRIVETT]: The witness is not competent to
8 answer.

9 MJ [Col PARRELLA]: Okay. Well, there were lots of
10 questions, I think, posed to him that he probably wasn't
11 competent to answer, as was demonstrated. I don't even know
12 that there was a question yet posed so, Mr. Nevin, you can
13 continue.

14 Q. I'll just represent to you, sir, that it says that.
15 And I'll also represent to you that in August of 2017 on
16 behalf of Mr. Mohammad, we forwarded a proposed pretrial
17 agreement to the then convening authority ----

18 MTC [MR. TRIVETT]: Objection, counsel testifying.

19 MJ [Col PARRELLA]: Mr. Nevin, let's get to a question
20 here, please. And also, I'd ask that you please just keep in
21 mind that the commission is aware of a lot of these underlying
22 facts.

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

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1 MJ [Col PARRELLA]: So please keep it contained to facts
2 perhaps that aren't already on the record.

3 LDC [MR. NEVIN]: Yes, sir. And I just needed to
4 represent that those two things are -- that those ----

5 Q. I just want to ask you, sir, did you -- there -- you
6 had a discussion that was just referenced on redirect with
7 Mr. Eggleston about the question of unlawful influence.

8 Did you have a discussion with any of these people
9 about the fact that there was a pending PTA, pretrial
10 agreement, a proposed pretrial agreement in front of
11 Mr. Rishikof after August of 2017 and the impact that that had
12 or didn't have on persons committing unlawful influence?

13 MTC [MR. TRIVETT]: Objection, compound question, calls
14 for a narrative.

15 MJ [Col PARRELLA]: Overruled. You may answer the
16 question.

17 WIT: Thank you, Your Honor.

18 A. The short answer is no. The long answer is I was
19 unaware of any plea agreements. Mr. Connell gave me strict
20 instructions. I had just gotten assigned to this command
21 after being mobilized as a Reservist. I come here in late
22 January, the convening authority is fired in February. I was
23 still learning which bus to take to the Pentagon at that

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1 point. Mr. Connell gave me strict instructions. He said that
2 he wanted someone who didn't have baggage, who didn't have
3 knowledge of the commissions, and that I needed to be
4 objective and approach this as objectively as possible with no
5 bias on either side.

6 That being said, I -- he -- he would only give me
7 background and the historical chain of events when I would
8 come to him and ask him through the course of my
9 investigation. I was unaware of any plea agreements and I
10 don't even know the details of them until, I think, just
11 recently when I real -- when I think the motions were joined
12 by the defense teams. And again, I apologize, I'm not going
13 to use the appropriate legal terms. But I was unaware of plea
14 agreements until -- an existing plea agreement that was out
15 there until, I want to say, maybe eight weeks, maybe three
16 months ago.

17 And I've spoken to Mr. Connell and I've told him that
18 some things I don't want to know about because I don't want to
19 jeopardize -- you know, there are a lot of -- I've never been
20 on a defense team before, and this case is obviously -- brings
21 a lot of conflicting issues for someone who is a patriot.

22 So I was unaware of any pleas, and I had heard that
23 there was a -- there was a plea, I believe, by your -- I don't

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1 know if it's by your team or not, but I heard that there was a
2 plea out there. And I didn't look into and I didn't research
3 it, I just drove -- I just pushed on.

4 Q. Okay. But you do -- it is true -- to summarize your
5 testimony, you came across a number of people who were
6 attempting to have input with Mr. Rishikof and to influence
7 him with respect to whether to accept that pretrial agreement;
8 isn't that true?

9 A. Could you reframe the question?

10 Q. Isn't it true that you came across a number of people
11 in the hierarchy of the Department of Defense who were trying
12 to affect Mr. Rishikof's decision on whether to accept or not
13 that pretrial agreement?

14 A. I think this is still an ongoing investigation. I
15 don't know if I feel comfortable answering either way to that.
16 I think that's what my investigation is all about, and I don't
17 know if my investigation is concluded. When I leave here
18 today, I'm going to continue on with my investigation. I'm
19 not trying to be difficult with you, sir, I just -- it's a
20 challenging question.

21 Q. Yeah, no, I -- and -- no, I appreciate it. I didn't
22 have the impression you were trying to be difficult. You --
23 well, your testimony will -- is on the record and I appreciate

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1 your answering my questions.

2 LDC [MR. NEVIN]: Thank you, Your Honor.

3 WIT: Thank you, sir.

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

5 Ms. Bormann?

6 **Questions by the Learned Defense Counsel [MS. BORMANN]:**

7 Q. Almost good afternoon, Lieutenant. I just want to
8 talk a little bit about your interview of Ms. Kelly that was
9 touched on by Mr. Trivett.

10 Do you remember your testimony when Mr. Trivett was
11 asking about Ms. Kelly?

12 A. I do, ma'am. And just to clarify, we're speaking
13 about Wendy Kelly?

14 Q. Wendy Kelly, that's correct.

15 A. Okay, ma'am.

16 Q. Mr. Trivett asked you what Ms. Kelly's opinion was
17 regarding whether or not there was UI, unlawful influence, in
18 the firing of Mr. Rishikof. Do you remember that question and
19 do you remember your answer?

20 A. I do remember the issue being discussed, ma'am.

21 Q. Great. So when Mr. Trivett solicited from you
22 Ms. Kelly's opinion that she didn't see any UI, I want to ask
23 you a few questions about what preceded that conversation that

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1 you had with Ms. Kelly, okay?

2 A. Yes, ma'am.

3 Q. Did you tell Ms. Kelly or did she ever tell you that
4 she knew there were pretrial agreements being discussed in the
5 9/11 case?

6 A. I'd have to refer to my report on that. I don't
7 specifically recall that.

8 Q. Okay.

9 LDC [MS. BORMANN]: Judge, may I ask the witness to refer
10 to his report on Ms. Kelly?

11 MJ [Col PARRELLA]: You may.

12 LDC [MS. BORMANN]: Thank you.

13 Q. Go ahead.

14 A. Thank you. And your question was if she had
15 referenced specific plea agreements regarding the 9/11 case?

16 Q. Sure. Yes. Go ahead and look at that.

17 A. **[Did as directed.]**

18 Q. Maybe I can direct your attention to the last page.

19 A. Yes, ma'am. I'm sorry.

20 Q. Under the section -- under the section called
21 "Closing Statements." Do you see that?

22 A. Yes, I do.

23 Q. Okay.

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1 A. I don't -- I don't -- maybe I'm missing it. I
2 apologize, I don't see anything in here specifically
3 referencing 9/11.

4 Q. I don't think you're missing anything at all.

5 A. Okay.

6 Q. So what I ----

7 A. That's a relief.

8 Q. ---- here's where I want to go with you, here's
9 what -- my question to you: So Ms. Kelly did tell you she was
10 completely unaware that pretrial agreements were discussed in
11 the management memo, right? That's contained in ----

12 A. If my report states that, I'm confident that
13 that's -- that was what happened. We discussed the -- we did
14 not specifically discuss 9/11 pleas.

15 Q. In the first -- in the second full paragraph under
16 closing statements of your report, which is found at 555SS,
17 page 6 of 6 of the Wendy Kelly interview notes, do you see the
18 paragraph that says, "Before concluding my questions"?

19 A. Yes, ma'am.

20 Q. Okay. You say that you asked her in discussing UCI
21 whether or not she was aware of the portion of the "King Me
22 memo" -- we also call that the management memo -- recommended
23 consideration of guilty pleas for capital cases. What did

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1 Ms. Kelly tell you?

2 A. She stated that she was unaware that pleas were
3 covered in the management memo.

4 Q. Okay. So it would be fair to say then that Ms. Kelly
5 was unaware -- since she was unaware that pleas were discussed
6 in the management memo, she was unaware that those pleas
7 involved the 9/11 case, right?

8 A. I don't know if I feel comfortable commenting on what
9 she knows or doesn't know.

10 Q. Well, she didn't tell you that she knew anything
11 about any proposed pleas in the 9/11 case, right?

12 A. We did not discuss the 9/11 case specifically.

13 Q. And she certainly didn't tell you, and neither did
14 you tell her, that those proposed pleas would have resulted in
15 a sentence of less than capital punishment, right?

16 A. I don't recall discussing that with her at all.

17 Q. Okay. Now, when you were asking about her opinion on
18 whether UI occurred with respect to Mr. Rishikof, did you
19 inform her that these management memo recommendation for
20 guilty pleas was communicated to a Department of Justice
21 liaison?

22 A. Just so I understand your question, you're asking me
23 if I discussed the management -- the pleas being discussed

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1 with the Department of Justice?

2 Q. That's correct.

3 A. To Ms. Kelly?

4 Q. To Ms. Kelly.

5 A. I don't recall that.

6 Q. Okay. Did Ms. Kelly say to you that she was aware
7 that the Department of Justice had been informed about
8 possible guilty pleas in the 9/11 case?

9 A. I don't recall the Department of Justice being
10 discussed at all with Ms. Kelly, ma'am.

11 Q. Okay. Did Ms. Kelly -- well, let me start with you.
12 Did you tell Ms. Kelly at that point that Attorney
13 General Sessions had been apprised at some point that plea
14 negotiations might have been going on in the 9/11 cases of
15 less than a death sentence?

16 MTC [MR. TRIVETT]: Objection. The witness has answered
17 that he didn't discuss any of the Department of Justice
18 aspects with Ms. Kelly.

19 MJ [Col PARRELLA]: Go ahead and answer the question,
20 please, Lieutenant Newman.

21 A. No, ma'am. I don't recall ever mentioning the
22 Attorney General to her at all.

23 Q. And did Ms. Kelly mention the Attorney General, that

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1 she had any knowledge about that to you?

2 A. No, ma'am. She did not mention the Attorney General.

3 Q. Did she mention to you or did you mention to her any
4 of the facts surrounding the fact that Attorney General
5 Sessions picked up the phone and called ----

6 MTC [MR. TRIVETT]: Same objection.

7 Q. ---- Secretary Mattis ----

8 MJ [Col PARRELLA]: Ms. Bormann, I do believe the witness
9 has now emphatically stated that there was no conversation
10 related to this, so let's please move on.

11 LDC [MS. BORMANN]: Okay.

12 Q. So let me ask you this question: Given that none of
13 that was discussed and Ms. Kelly -- between you and Ms. Kelly,
14 and Ms. Kelly never told you she was aware of any of these
15 underlying facts, do you believe as you sit here today that
16 her opinion about whether or not UI occurred was a complete
17 opinion based on all of the relevant facts?

18 MTC [MR. TRIVETT]: Objection, calls for speculation.

19 MJ [Col PARRELLA]: Sustained.

20 LDC [MS. BORMANN]: I have nothing else.

21 WIT: Thank you, ma'am.

22 MJ [Col PARRELLA]: Mr. Harrington?

23 LDC [MR. HARRINGTON]: No questions.

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1 MJ [Col PARRELLA]: Mr. Ruiz?

2 LDC [MR. RUIZ]: No questions. Thank you.

3 MJ [Col PARRELLA]: Any recross?

4 MTC [MR. TRIVETT]: No, sir. Thank you.

5 MJ [Col PARRELLA]: Lieutenant Newman, thank you for your
6 testimony. You may go ahead and step down and carry on with
7 your duties.

8 WIT: Thank you, Your Honor.

9 [The witness was excused and withdrew from the courtroom.]

10 MJ [Col PARRELLA]: Okay, Counsel. So the way I've sort
11 of -- and I think the parties are in agreement with this, but
12 in viewing these -- this 555 series is we have one motion for
13 reconsideration by the government as well as the two motions
14 pertaining to the witnesses submitted by defense. So it sort
15 of -- it sort of merge that together in the way that we did
16 the opening statements.

17 Is there any other evidence that the parties wish to
18 present with respect to their respective pleadings?

19 LDC [MR. CONNELL]: We have no further evidence, Your
20 Honor.

21 MTC [MR. TRIVETT]: One second, Your Honor.

22 So, sir, based on my statement following my
23 examination, we didn't have the specific code section for the

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1 general counsel's duties, so I'd like to communicate that to
2 you. We'll hand out copies to the defense. It's 10 U.S. Code
3 Section 140. And there's also a DoD directive we would ask
4 you to take judicial notice of, and it's Directive
5 Number 5145.01, copies of which we'll also provide to the
6 defense.

7 MJ [Col PARRELLA]: Okay. Thank you, Trial Counsel.

8 MTC [MR. TRIVETT]: No further evidence, sir.

9 MJ [Col PARRELLA]: Counsel, we're now at that point in
10 the proceedings that I referred to yesterday where I think
11 we're -- if we push any further, particularly now that we're
12 at the lunch recess, we're coming into jeopardizing, I guess,
13 the safe and efficient departure that we have set up for this
14 evening.

15 So I understand we're at the point where we talked
16 about oral argument. This obviously, I think, went a little
17 longer than I anticipated. So I'm going to direct the
18 following with respect to oral argument:

19 The commission is trying to balance, of course, the
20 parties' opportunity to argue on the motions with the need to
21 resolve this matter in a way that we can then, if the court
22 orders those witnesses to testify on the actual base motion,
23 we can do that at the next session of court and not have to, I

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1 guess, reconvene in November just to oral -- present oral
2 argument.

3 So what I'm going to do is I'm going to give the
4 parties two weeks to memorialize their oral arguments in
5 writing. I will allow you time to, I think, sufficiently
6 summarize the salient points that you want this commission to
7 consider. I'll just remind you that is only pertaining to the
8 motions currently before the commission. So there is no need
9 to argue the base motion, simply whether or not the court
10 should reconsider its earlier ruling or to produce the
11 witnesses that the defense would like to have produced to
12 testify on the base motion.

13 I will then give the parties an additional two weeks
14 to respond. I do not think that replies are necessary. And
15 the commission's goal will be to have a ruling out with
16 sufficient time that we can then take this up in the November
17 session of court.

18 With that being said, are there any questions?

19 LDC [MR. CONNELL]: Sir, I have a question.

20 MJ [Col PARRELLA]: Mr. Connell.

21 LDC [MR. CONNELL]: My question: Could you -- could you
22 please tell us what you understand two weeks to mean? I say
23 that because there was a practice where two weeks meant two

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1 weeks until we get back to the states or two weeks from the
2 following Monday.

3 Could you give us the date that you would like the
4 briefs?

5 MJ [Col PARRELLA]: That's an excellent question.
6 Anticipating that it's -- we're really landing for all intents
7 and purposes tomorrow, the two weeks will begin from tomorrow.
8 So two weeks from tomorrow is when the oral arguments are due.

9 LDC [MR. CONNELL]: So that would be the 27th, sir?

10 MJ [Col PARRELLA]: Mr. Connell, I don't have a calendar
11 in front of me, so I'm going to defer to you that that's two
12 weeks from tomorrow.

13 LDC [MR. CONNELL]: Okay. Thank you, sir.

14 MJ [Col PARRELLA]: Thank you.

15 LDC [MR. RUIZ]: Hi, Judge.

16 MJ [Col PARRELLA]: Hi, Mr. Ruiz.

17 LDC [MR. RUIZ]: I am reminded of an issue that we were
18 asked to bring up to you, but apparently there's -- or there
19 was a conflict with the scheduling for November that overlap
20 with another hearing. I just want to bring that to your
21 attention. I, quite frankly, was just told that, and I'm not
22 really sure exactly which week it is, but I'd bring it to your
23 attention.

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1 MJ [Col PARRELLA]: Thank you. The commission is aware of
2 the potential conflict. I believe it was with the Hadi case,
3 and I intend to speak to the military judge assigned to that
4 commission and come to some resolution. Once I come to that
5 resolution, I, of course, will disseminate that information as
6 quickly as possible.

7 Okay. That being said, the commission is in recess.
8 [The R.M.C. 803 session recessed at 1209, 12 September 2018.]

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