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1 [The R.M.C. 803 session was called to order at 0903,
2 13 November 2018.]

3 MJ [Col PARRELLA]: The commission is called to order.
4 Trial Counsel, are all the government counsel who were present
5 at the close of the previous session again present?

6 CP [BG MARTINS]: Good morning, Your Honor. No.
7 Mr. Groharing is absent. And with the commission's
8 indulgence, Your Honor, he will be in and out today -- I'll
9 announce it of course -- to do commission business.

10 MJ [Col PARRELLA]: Okay. I have no issue with that.
11 Defense Counsel. Mr. Nevin?

12 LDC [MR. NEVIN]: [Microphone button not pushed; no
13 audio.]

14 MJ [Col PARRELLA]: You may.

15 LDC [MR. NEVIN]: Sorry, Your Honor. You were asking do
16 we have all the same folks here, and we do. And I will advise
17 the military commission that, with your permission, Lieutenant
18 Colonel Poteet would like to leave the courtroom at various
19 times today to conduct other business.

20 MJ [Col PARRELLA]: Yes. I have no issue with that. So
21 for all the counsel, I have no issue with counsel at your
22 table, with the exception of learned counsel, exiting and
23 entering the courtroom, as long as you obviously keep

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1 disruptions to a minimum.

2 LDC [MR. NEVIN]: Thanks, Your Honor. Can I say, I have a
3 matter I want to ask the military commission to take up,
4 presumably after you get waivers but before testimony.

5 MJ [Col PARRELLA]: Understand.

6 LDC [MR. NEVIN]: Thank you.

7 MJ [Col PARRELLA]: Ms. Bormann?

8 LDC [MS. BORMANN]: Judge, present in court is everybody
9 who was here yesterday.

10 MJ [Col PARRELLA]: Thank you.

11 Mr. Harrington?

12 LDC [MR. HARRINGTON]: We're the same as yesterday, Judge.

13 MJ [Col PARRELLA]: Mr. Connell?

14 LDC [MR. CONNELL]: Your Honor, all counsel are present,
15 including Mr. Farley. On that point, I'll advise the military
16 commission that we intend to file our reply in the 604 series
17 today, and we'll be ready to argue tomorrow.

18 MJ [Col PARRELLA]: Thank you.

19 And Mr. Ruiz?

20 LDC [MR. RUIZ]: Judge, all the same counsel who were
21 present at the onset of yesterday's proceedings are present
22 again on behalf of Mr. al Hawsawi.

23 MJ [Col PARRELLA]: Okay. And I note the following

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1 accused are absent: Mr. Ali and Mr. Hawsawi. The remaining
2 accused are present.

3 Trial Counsel, do you have a witness to testify as to
4 the absences I just noted?

5 CP [BG MARTINS]: Yes, Your Honor.

6 Captain, if you could please proceed to the witness
7 stand, remain standing and raise your right hand for the oath.

8 CAPTAIN, U.S. NAVY, was called as a witness for the
9 prosecution, was sworn, and testified as follows:

10 **DIRECT EXAMINATION**

11 Questions by the Chief Prosecutor [BG MARTINS]:

12 Q. You are a U.S. Navy captain?

13 A. Yes, sir.

14 Q. And you are an assistant SJA; is that correct?

15 A. Yes, sir.

16 Q. And your place of duty is Joint Task Force
17 Guantanamo?

18 A. Yes, sir.

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

20 Q. Captain, did you have occasion to advise the accused
21 of their right to attend today's proceedings?

22 A. With respect to the two accused not here, yes, sir.

23 Q. All right. Let's take Ali Abdul Aziz Ali first.

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1 That's Appellate Exhibit 608, consisting of three pages. You
2 have a copy of that, I believe, in front of you?

3 A. Yes, sir.

4 Q. Did you use this form to advise Mr. Ali of his right
5 to attend this morning's proceeding?

6 A. I did.

7 Q. Did you read it in English or in Arabic?

8 A. I read it in English, sir.

9 Q. Did he indicate that he did not want to attend this
10 morning's proceedings?

11 A. He did.

12 Q. And is that his signature that appears on page 2 of 3
13 of Appellate Exhibit 608?

14 A. It is.

15 Q. Mustafa Ahmed al Hawsawi, Appellate Exhibit 608A,
16 consisting of three pages, do you have a copy of that in front
17 of you?

18 A. Yes, sir, I do.

19 Q. Did you advise him of his right to attend this
20 morning's proceeding?

21 A. I did.

22 Q. Did you do it in English or in Arabic?

23 A. English, sir.

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1 Q. Did he indicate that he did not wish to attend
2 today's proceedings?

3 A. He did.

4 Q. And did he sign page 2 of that document?

5 A. He signed both page 2 and page 3.

6 Q. Do you believe that both of these gentlemen
7 voluntarily waived their right to attend this morning's
8 proceedings?

9 A. I do.

10 TC [MR. SWANN]: I have no further questions, Your Honor.

11 MJ [Col PARRELLA]: Thank you, Trial Counsel.

12 Do any defense counsel have questions of this
13 witness?

14 LDC [MR. CONNELL]: One second.

15 **CROSS-EXAMINATION**

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

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. My name is James Connell. I am attorney for Ammar
20 al Baluchi, also known as 10018, or Ali Abdul Aziz Ali.

21 Could you please state your full name?

22 TC [MR. SWANN]: Objection, Your Honor.

23 MJ [Col PARRELLA]: Sustained.

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1 LDC [MR. CONNELL]: Your Honor, I would like to be heard.

2 MJ [Col PARRELLA]: You may.

3 LDC [MR. CONNELL]: Thank you, sir. The last time this
4 issue came up, the military commission directed us to brief
5 it, and our brief is found at AE 603. I object on the basis
6 of the First Amendment right to public trial, the Sixth
7 Amendment right to public trial and to cross-examination, as
8 well as Regulation for Trial by Military Commission 20-7.

9 The idea of anonymous testimony by the ASJA is a
10 relatively recent vintage. Major Griffin testified on -- his
11 name was on the record on January 29, 2013. Commander Strazza
12 testified on -- her name was revealed on the same date. It
13 had previously been withheld. Lieutenant Commander Massucco
14 testified on 12 different occasions under his own different
15 name and many other witnesses have testified not anonymously,
16 but where there was an issue as to their safety or security,
17 under pseudonyms, and the real name was provided to defense
18 counsel.

19 The cases are uniform in holding that ----

20 MJ [Col PARRELLA]: Mr. Connell, I am going to just stop
21 you right there. I have read your brief.

22 LDC [MR. CONNELL]: Yes, sir.

23 MJ [Col PARRELLA]: And I frankly wrote a ruling on this.

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1 I was under the impression it was published, it may not have
2 been, but if not, I apologize. But your relief requested in
3 your previous objection that was briefed was overruled and I
4 think it's 603C. So from the commission's perspective, I
5 understand your objection, the objection is overruled as to
6 the anonymous testimony. And so I don't think there is any
7 need to go through this each and every time we go through this
8 process. Hence the briefing, hence the commission's ruling.

9 So I think your objection is noted for the record.
10 If the appellate court sees it differently, then they can
11 certainly see it differently and overrule it. But we are
12 going to go ahead and proceed with this and not go through it
13 each and every time we have this.

14 LDC [MR. CONNELL]: Sir, I understand about each and every
15 time. I thought you wanted me to brief it and argue it, and
16 so that's what I was doing. If there has been a ruling -- and
17 you know better than I, but it has not been released to the
18 parties.

19 MJ [Col PARRELLA]: Okay. Then I certainly accept the
20 responsibility for that. I was under the impression it had
21 been published. I know I authored it.

22 LDC [MR. CONNELL]: Maybe it was last night. I don't
23 know, sir.

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1 MJ [Col PARRELLA]: Okay.

2 TC [MR. SWANN]: Your Honor, that ruling was issued, quite
3 frankly -- well, at least last Friday. The government
4 received a copy of it, and it was published to all the
5 parties.

6 MJ [Col PARRELLA]: Okay. So that was my understanding as
7 well. But, Mr. Connell, why don't we do this. Why don't you
8 just maybe check and see if you didn't receive a copy of it --
9 I believe it is 603C -- and then we can reengage if you have
10 questions about the commission's ruling.

11 LDC [MR. CONNELL]: Thank you, sir.

12 MJ [Col PARRELLA]: You are welcome.

13 Any other defense counsel have questions for this
14 witness?

15 LDC [MR. RUIZ]: No questions.

16 MJ [Col PARRELLA]: Okay. Thank you. You may step down.

17 **[The witness was excused.]**

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

21 LDC [MR. CONNELL]: Sir, I am informed by the paralegals,
22 who have obviously a better command of the record than I do,
23 that in fact we did receive it. My apologies.

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1 MJ [Col PARRELLA]: No problem.

2 Mr. Nevin.

3 LDC [MR. NEVIN]: Thanks, Your Honor. Ahead of
4 Mr. Castle's testimony, I wanted to ask you for -- to give us
5 some guidance on the ground rules here. I have taken it that
6 you -- that the reason for your order directing that he
7 testify is that you concluded there was -- that we had crossed
8 the "some evidence" threshold for demonstrating some evidence
9 of unlawful influence and that the burden would have shifted
10 to the government to disprove that beyond a reasonable doubt
11 and as set out, let's say, in Boyce.

12 But your ruling was not -- didn't address that
13 question. It just simply said that he would testify, and I
14 would just like to be clear who the proponent of this witness
15 is and what -- where we are in the process.

16 We filed AE 555GG to ask for a ruling on this
17 question and at one time this was on your -- it was on the
18 docket, and it seems that it's been collapsed. But I -- you
19 know, I just request that the military commission tell us
20 where we stand and what's happening here.

21 I guess I couldn't rule out the possibility that this
22 was a witness called by the commission under 614 as well, but
23 it's really more a matter for us of just knowing where we

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1 stand. So that's my request.

2 And if the military commission has already ruled on
3 this and I haven't seen it, then I apologize.

4 MJ [Col PARRELLA]: Thank you, Mr. Nevin. The commission
5 has ruled on this. I believe the ruling is 555AAA ----

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

7 MJ [Col PARRELLA]: ---- dated 1 November.

8 LDC [MR. NEVIN]: I read that again this morning and I
9 didn't -- I read it to simply say that the military commission
10 was directing that Mr. Castle testify, period, but I didn't
11 read it to say I have found some evidence or not or where we
12 are in the process.

13 MJ [Col PARRELLA]: That is correct, Mr. Nevin. And I
14 think we talked about this a little bit during the 802
15 conference, but that was deliberate on the commission's part.
16 The commission has not issued a ruling on 555GG.

17 At this stage, essentially all the commission has
18 ruled is that with respect to the motion to reconsider
19 regarding Judge Pohl's order to produce AGC Castle, the
20 government's motion in that respect was denied. So I'm going
21 to allow the defense as originally requested and granted to
22 call AGC Castle in support of the 555 motion.

23 The commission deferred its ruling with respect to

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1 the other witnesses that were requested that we litigated at
2 the prior session of court.

3 I view that the defense is the proponent of this
4 witness in that they were the ones who originally requested
5 this witness and, as such, I would assume that Mr. Connell's
6 team would begin questioning of Mr. Castle. And the
7 government would have an opportunity to, of course -- of
8 course, all the other parties as well, and then the defense
9 would have an opportunity to cross-examine the witness.

10 LDC [MR. NEVIN]: Okay. That's what I -- that's the
11 guidance I needed. Thank you.

12 MJ [Col PARRELLA]: Sure.

13 LDC [MR. NEVIN]: And just so we are clear, you -- the
14 military commission has not reached a decision on the question
15 whether there is -- whether some evidence, quote/unquote, of
16 unlawful influence has been shown?

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

18 LDC [MR. NEVIN]: All right. Thank you, Your Honor.

19 MJ [Col PARRELLA]: Okay. I have two other housekeeping
20 matters I want to take up before we get to this witness.
21 First is just to give the parties a heads-up about a
22 forthcoming trial management order or trial conduct order.
23 And the essence of it will be that -- requiring the sponsor of

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1 a motion which has previously been argued to advise the
2 commission of the dates and of the transcript pages
3 corresponding with those dates of prior oral arguments, and
4 that would apply to both prior open and prior closed sessions.

5 As everyone knows, I'm the newcomer to this case, so
6 this is just an extra measure to ensure that I am tracking on
7 all prior instances where a particular AE was argued in court.
8 And the details on the mechanism for that will be forthcoming.

9 The second matter is it's come to my attention that
10 the Bin'Attash team has requested to supplement filings in
11 538, 561, 562 with corresponding 505(g) notices. In light of
12 sort of what transpired yesterday, I suspect that that might
13 be related to the recent discovery the government proffered
14 that they provided to the defense. Is that correct,
15 Ms. Bormann?

16 LDC [MS. BORMANN]: Yes, Judge. It's -- actually the
17 supplement is that we received the discovery yesterday in an
18 attachment of the discovery along with 505(g) requests for
19 hearing because we're going to have a closed session on those
20 pleadings, and because we didn't receive the discovery until
21 yesterday, we couldn't file 505s last week when we would have
22 been able to hear that.

23 MJ [Col PARRELLA]: I understand that, and so I assume

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1 your desire is to then argue that material in Friday's closed
2 session?

3 LDC [MS. BORMANN]: That's exactly right.

4 MJ [Col PARRELLA]: Okay. What are the positions of the
5 parties as to whether -- well, first let me ask the government
6 this.

7 Government, is there any objection to the defense
8 arguing the material that was provided yesterday in Friday's
9 closed session?

10 TC [MR. RYAN]: No, sir.

11 MJ [Col PARRELLA]: Okay. Well, with that, I would be
12 interested to know the position of the parties as to whether
13 we have to go through the process of doing a 505(h) hearing
14 before addressing that matter in an 806. It's the
15 commission's position that if the government is willing to --
16 not going to object to the relevance, use, or admissibility of
17 that evidence, that it would not be necessary.

18 Mr. Connell?

19 LDC [MR. CONNELL]: Sir, I'll address that issue
20 specifically first. Our position is yes, it is necessary to
21 have a 505(h) hearing anytime that the -- any party or the
22 military commission sua sponte wishes to close the court,
23 because there have to be written findings and notice to the

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1 public, which the military commission has on several occasions
2 reflected in its rulings, in case the public wishes to object
3 to the closing of a hearing. So unfortunately, or
4 fortunately, depending upon how you look at it, we are not at
5 liberty to proceed directly to closed hearings.

6 Secondly, however, the government and I consulted
7 about the discovery that was produced. And my understanding
8 is that it is part of a rolling production and that more
9 similar material is under consideration by the various
10 mechanisms of the United States Government.

11 So what I'm suggesting is that on this occasion, and
12 I'm not saying that we have to wait forever, but on this
13 occasion, given that production yesterday and expected
14 forthcoming production in the near future, that it would make
15 sense simply to defer argument on those until the next hearing
16 and see if we can get all of the ducks in one place.

17 MJ [Col PARRELLA]: Are you speaking to all four motions,
18 534, 538, 561, and 562?

19 LDC [MR. CONNELL]: It is particularly 538 and 561 which
20 are directly concerned in that discovery. I can see the
21 argument for 534 and 562, but the other two are the most
22 directly concerned.

23 MJ [Col PARRELLA]: Government, what's your position? And

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1 I'll get to you, Ms. Bormann, next. I see you're standing
2 back there.

3 TC [MR. RYAN]: Yes. There was a discussion yesterday,
4 Judge. The discovery we provided yesterday to the parties is
5 part -- I expect more to come, and this is part of an
6 agreement we made two sessions ago. I think that the
7 suggestion made yesterday of let's let the parties wait until
8 the government announces it's completed its discovery makes
9 the most sense, as opposed to arguing now in something of a
10 vacuum. So I agree with counsel's statement.

11 MJ [Col PARRELLA]: And that would be specific to 538 and
12 561, Mr. Ryan?

13 TC [MR. RYAN]: That's the way I see it, yes, sir.

14 MJ [Col PARRELLA]: Okay.

15 TC [MR. RYAN]: The discovery was certainly produced in
16 relationship to those two motions.

17 MJ [Col PARRELLA]: I understand.

18 CP [BG MARTINS]: Your Honor, if I may add something just
19 on the statement of counsel about the -- how 505(h) operates
20 and what it requires. The government's position is, although
21 there is a Rule for Military Commission 806, a lens through
22 which you need to view all of this and certainly have to make
23 findings to close the session, 505(h) doesn't operate that

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1 way. That's to determine use, relevance, admissibility, to
2 protect classified information, ensure appropriate use of the
3 privilege; but it's not -- it doesn't drive an automatic -- if
4 we get a 505(g) notice and that can be handled on the papers,
5 it can be handled by the parties, we're waiving, it doesn't
6 require a full-blown process.

7 MJ [Col PARRELLA]: Thank you.

8 Mr. Connell, Ms. Bormann has been standing, so let me
9 give her an opportunity to be heard.

10 LDC [MR. CONNELL]: I know what it's like to be in the
11 back, sir.

12 LDC [MS. BORMANN]: I agree with Mr. Connell and the
13 prosecution on -- my goodness gracious -- 538 and 6 -- 561.

14 On 562, that deals with personnel who interrogated
15 the defendants, and so the discovery received yesterday,
16 without going into any substance, because it's classified, it
17 deals with that issue as well.

18 And on 534, which deals with the notes of
19 interrogators, the discovery we received yesterday also bears
20 upon that.

21 MJ [Col PARRELLA]: Okay.

22 LDC [MS. BORMANN]: So our position is that it is an
23 update, a supplement to the record on all four of those

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1 motions, and that's why we requested it.

2 If you want to proceed on the other two in closed
3 session this week, I think we should do 505(h) hearings on it.
4 I agree with Mr. Connell with respect to that. There is a
5 provision for allowing the admission or the questioning of a
6 witness, for instance, where something classified might come
7 up where you have a witness on the stand. But when you have
8 time to actually do a 505(h) hearing, I believe Mr. Connell is
9 correct.

10 So that's our position, and subject to any questions.

11 MJ [Col PARRELLA]: No questions. Thank you.

12 Mr. Connell.

13 LDC [MR. CONNELL]: Thank you, sir. I agree with counsel
14 for Mr. Bin'Attash. My counsel -- my colleague pointed me to
15 part of the discovery from yesterday which does directly
16 address the issues in 534 and 562. It's the declaration parts
17 for the benefit of the government.

18 Also, I will need a few minutes to research
19 through the -- through the record, but I believe the military
20 commission has already acted upon this question of whether you
21 can have 505 -- excuse me, 806 closed hearings without a
22 505(h), or at least notice to the government -- excuse me,
23 notice to the public. In 20 seconds of looking through the

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1 record, I think that might be 163A -- no, I'm sorry, 081A,
2 which was issued in response to AE 163, a press objection to
3 closure.

4 As I recall -- and I haven't had time, because this
5 issue just came up on the fly -- in 081A, the military
6 commission advised that it would not hold closed hearings
7 without notice to the public that it was doing so.

8 So I think that the 505(h) process is a critical part
9 of the decision as to whether a closed hearing is necessary.
10 A good deal of our 505(h) proceedings last week were -- the
11 government's simple position was that a closed hearing was
12 necessary. Often we agree, sometimes we disagree, but
13 those -- that is an important part of the process.

14 MJ [Col PARRELLA]: Okay. So the commission will do its
15 own sort of analysis on this and take a look at the citation
16 you gave. But if necessary, and the commission agrees, then I
17 would anticipate we will do a brief 505(h) hearing with
18 respect to at least the two 534, 562 series, because at this
19 point it's still the commission's intent to take those up in
20 the closed session as well as in open session, since we've
21 already addressed 562.

22 With respect to 538 and 561, I'll take that under
23 advisement. I understand the position of both parties on

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1 deferring that in light of continuing discovery, so I will
2 certainly let you know before Friday, before we get to the
3 argument on that.

4 I would also put out there, I know that the
5 government still owes, I think, class guidance with respect to
6 350. So I would encourage the government to get that out as
7 soon as possible, since that may also roll up into potential
8 argument on Friday with respect to the 350 series. So what I
9 don't want to do is then go through this twice. So if we're
10 going to do a 505 hearing, that might be additional
11 information that the defense wants to argue.

12 Okay. With that, any other questions, comments?
13 Mr. Harrington?

14 LDC [MR. HARRINGTON]: Judge, we're in a similar situation
15 with Ms. Bormann, except that based upon what we received
16 yesterday, we really think we need to file a supplement
17 because -- in order to make the record complete. And I would
18 also like to know -- I don't think it's been answered --
19 whether there is further discovery coming or not. I don't
20 know whether that's true or not.

21 MJ [Co1 PARRELLA]: Okay. So if you would,
22 Mr. Harrington, which series are you referring to?

23 LDC [MR. HARRINGTON]: I think -- I believe it's 538 and

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1 561, Judge.

2 MJ [Col PARRELLA]: I believe that the trial counsel did
3 represent that there is more forthcoming, which sort of weighs
4 in favor of perhaps deferring this to the next session.

5 Okay. Absent any other housekeeping matters, we will
6 go ahead and proceed with Mr. Castle's testimony. I would
7 just remind all counsel to please speak slowly since this is
8 going to be broadcast VTC and the normal yellow screen I think
9 is not available when it's a VTC testimony, so it's incumbent
10 upon me, I guess, to police the speed at which we speak. So
11 please speak slowly.

12 Okay. With that, Mr. Connell.

13 CP [BG MARTINS]: Could the technicians please bring up
14 the feed.

15 Sir, could you please stand for the oath.

16 **WILLIAM S. CASTLE, civilian, was called as a witness for the**
17 **defense, was sworn, and testified as follows:**

18 **DIRECT EXAMINATION**

19 **Questions by the Chief Prosecutor [BG MARTINS]:**

20 Q. Can you state your full name and spell your last name
21 for the record?

22 A. William Sherman Castle, C-A-S-T-L-E.

23 Q. Sir, and you are the principal deputy general counsel

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1 of the Department of Defense?

2 A. I am.

3 Q. And your place of duty, sir, and where you are right
4 now is in the Pentagon, Washington, D.C.?

5 A. It is.

6 CP [BG MARTINS]: Thank you, sir. Your witness.

7 WIT: Sir, before we begin, there is a little bit of a
8 technical blowback on my voice. If I could just ask someone
9 to take a look at it very quickly ----

10 MJ [Col PARRELLA]: Of course.

11 WIT: ---- if that's all right with you.

12 [Pause for technical difficulty with VTC.]

13 CP [BG MARTINS]: Your Honor, we understand they are
14 making some adjustments to see if they can help.

15 MJ [Col PARRELLA]: Thank you.

16 WIT: I apologize, Your Honor. We tried this out
17 yesterday and there wasn't any kind of problem.

18 CP [BG MARTINS]: Your Honor and Mr. Castle, the
19 technicians here are saying they can't identify anything on
20 this side that could be causing it.

21 MJ [Col PARRELLA]: Okay. Well, why don't we do this.
22 We'll go ahead and take a five-minute recess to allow the
23 technicians on both sides to get to the bottom of this issue,

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1 so the commission will stand in recess for five minutes. And
2 if the bailiff will just notify the commission when we are
3 ready to proceed.

4 The commission is in recess.

5 [The R.M.C. 803 session recessed at 0936, 13 November 2018.]

6 [The R.M.C. 803 session was called to order at 0948,
7 13 November 2018.]

8 MJ [Col PARRELLA]: This commission is called back to
9 order. All parties who were previously present are again
10 present.

11 And Mr. Connell, you may proceed with your witness.

12 LDC [MR. CONNELL]: Thank you.

13 **DIRECT EXAMINATION CONTINUED**

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

15 Q. Mr. Castle, can you speak and just verify for us that
16 the reverb problem is solved?

17 A. Sure. I am speaking now. My name is William Castle.
18 It seems to be -- it seems to be solved. And we did come in
19 on Sunday to try and make sure that we wouldn't have any
20 problems, so I apologize for taking up the court's time with
21 the technical issue.

22 Q. I'm sure the judge understands.

23 MJ [Col PARRELLA]: No worries, Mr. Castle.

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1 WIT: Thank you, sir.

2 Q. Sir, my name is James Connell. We haven't met
3 before; is that right?

4 A. That's correct.

5 Q. And I understand that you're the principal deputy
6 general counsel of the Department of Defense; is that right?

7 A. That's correct.

8 Q. Okay. And as principal deputy general counsel, what
9 are your duties?

10 A. My duties are to be the principal deputy to the
11 general counsel, who is the chief legal officer of the
12 Department of Defense. As his chief deputy, I am to assist
13 him in his representations of the Department of Defense and to
14 the Secretary of Defense in providing legal advice and
15 expertise to the department and the secretary as necessary.

16 Q. And I understand at the -- from August 2017 until --
17 or fall 2017, let's say, until a time in 2018, you were also
18 acting general counsel; is that correct?

19 A. From the end of August 2017 until August 2018, I was
20 acting general counsel.

21 Q. Okay. And what are the duties of the acting general
22 counsel?

23 A. As such, I was in the acting role to be the chief

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1 legal officer of the Department of Defense, and my
2 responsibilities were to provide legal advice and counsel to
3 the department and to the Secretary of Defense.

4 Q. And in either or both of those roles, what are your
5 supervisory duties? How many people do you have working under
6 you, and what are your responsibilities?

7 A. Under -- as acting, there are approximately -- there
8 are less than 60 attorneys here in the Office of the General
9 Counsel, but at the same time you -- in that role I was also
10 director or acting director of the Defense Legal Services
11 Agency. The Defense Legal Services Agency comprises of all
12 the attorneys that belong to what's called the Fourth Estate,
13 all the defense agencies. All of their attorneys eventually
14 answer to the general counsel as well.

15 Q. And could you give us a little bit of a sense of your
16 background? Obviously, you're a lawyer. Where did you go to
17 law school? What's your prior experience?

18 A. I went to the University of Pennsylvania Law School.
19 Upon graduating there, I worked at a New York firm very
20 briefly. I then came down to Washington, D.C., where I worked
21 for Senator Orrin Hatch for a number of years. I then became
22 minority general counsel on the Senate Armed Services
23 Committee for two years.

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1 When leadership of the committee changed over, I
2 returned to work for Senator Hatch as his chief counsel in his
3 office of the President Pro Tem.

4 Q. Is that the position that you occupied when you were
5 appointed principal deputy general counsel in August of 2017?

6 A. Yes, that was what I did immediately before that.

7 Q. Thank you. So obviously as we have established, you
8 are testifying via video teleconference rather than in person,
9 correct?

10 A. Correct.

11 Q. And you are physically located in the Pentagon in
12 Virginia; is that right?

13 A. That's right.

14 Q. Who else is in the room with you?

15 A. No one else is here with me.

16 Q. Okay. And is there anyone not in the room with you
17 but who is within your line of sight?

18 A. No.

19 Q. Will you agree to notify the military commission if
20 anyone comes into the room or comes into your line of sight?

21 A. Sure.

22 Q. Do you have access to electronic communications
23 during your testimony?

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1 A. Other than the devices that we're using right now,
2 no.

3 Q. Right. So you don't have your phone on you or
4 anything like that?

5 A. I do not have my phone on me.

6 Q. Okay. So one of the several difficulties in video
7 teleconference testimony is when two people speak at the same
8 time. Does that make sense?

9 A. Yes.

10 Q. And I, for one, will agree not to speak over you or
11 cut you off; is that okay?

12 A. I appreciate that. Thank you.

13 Q. And you understand that we have stenographers and
14 linguists who have to repeat or record in some way everything,
15 what I say and you say?

16 A. Yes, I do.

17 Q. And I just want to represent to you that I may be --
18 I may have to speak slower than I would in ordinary
19 conversational pace, and so you might be tempted to speak over
20 what I have to say. Do you understand?

21 A. I understand. I will endeavor not to do so.

22 Q. Thank you. So you'll agree to let me finish my
23 question even if you feel you know what I am going to say?

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1 A. Yes.

2 Q. Thank you. And furthermore, can you agree to give
3 answers of a moderate length, and then let the military
4 commission know if you have more that you want to say?

5 A. I will -- I will try and be as concise and truthful
6 as possible, yes.

7 Q. Thank you. And there are obviously plenty of other
8 people here in the room. If one of the parties states an
9 objection, will you agree to stop speaking until the military
10 judge rules on the objection?

11 A. I will agree to that, sure.

12 Q. And if you invoke a privilege, will you agree to do
13 so clearly and unambiguously and wait for the military judge
14 to rule on the invocation of privilege?

15 A. Absolutely.

16 Q. So I notice, sir, that you have some items on the
17 table in front of you.

18 A. Yes.

19 Q. I'd like to start with the -- I'm trying to figure
20 out which one is my left hand -- to the left-hand right in
21 front of you.

22 A. Right.

23 Q. That appears to be a comb-bound document. What is

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1 that?

2 A. These are all -- all of these four here -- or these
3 three here are all the documents which have been filed or made
4 public during -- during the consideration of this motion.

5 These documents here are -- I understand that there
6 was a FOIA request and that there were some e-mails that were
7 gathered. Those e-mails are here.

8 This is a list of opposing counsel right here. This
9 is a -- is just a piece of paper with written down, if I think
10 that we need to do attorney-client privilege, the correct
11 thing that I am supposed to say, and Mr. Ryan's name at the
12 top.

13 These are just copies of telephone lists of the
14 members of my -- of our staff and other materials which I
15 believe are already included in these documents here.

16 Q. Thank you, sir. And would it be fair to say that you
17 refreshed your recollection prior to testimony using those
18 documents or some of them?

19 A. Yeah. Mr. Ryan has, I believe, a list of all of the
20 documents which I used to refresh my memory.

21 LDC [MR. CONNELL]: All right. Your Honor, under Rule
22 612, may I have a copy of that list from Mr. Ryan?

23 MJ [Col PARRELLA]: Mr. Ryan?

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1 TC [MR. RYAN]: I have provided no written list to the
2 witness.

3 WIT: Okay. I'm sorry. What I should have said is that
4 Mr. Ryan -- the materials which Mr. Ryan has given to me are
5 the ones that I reviewed to prepare for our testimony here.

6 Q. Okay. Are all the documents that Mr. Ryan gave to
7 you to prepare on the table in front of you?

8 A. I think so, yes.

9 Q. Did you review any other material in advance of your
10 testimony to refresh your recollection?

11 A. No. Not after the -- after the judge gave his order,
12 we were only using what people told me to take a look at.

13 Q. Okay. Sir, am I correct that you were appointed
14 principal deputy general counsel effective 27 August 2017?

15 A. That's correct.

16 Q. And is 27 August 2017 the date that you actually
17 started work at DoD as well?

18 A. That's right.

19 Q. And were you appointed acting general counsel on the
20 same day?

21 A. Yes. It all happened on the same day.

22 Q. Sir, in the course of my testimony -- or your
23 testimony, I will tell you the topic area of the questions

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1 that we're about to talk about to orient you. Do you
2 understand?

3 A. Yes.

4 Q. I'd initially like to talk about the organization of
5 your office. Do you understand?

6 A. Uh-huh.

7 Q. The -- when I ask these questions, I would like them
8 to apply to the period between August of 2017 and February of
9 2018. Do you understand?

10 A. Uh-huh.

11 Q. Can you answer with yes or no?

12 A. Yes.

13 Q. In your role as acting general counsel between
14 August 2017 and February 2018, who were your direct reports?
15 Who did you immediately supervise?

16 A. Underneath me?

17 Q. Yes, sir.

18 A. Well, we had all of the attorneys who make up the
19 Office of the General Counsel, the administrative and support
20 staff, and the Defense Legal Services Agency, all their
21 attorneys and support staff as well.

22 Q. Surely all those people were not direct reports. Who
23 were your direct reports?

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1 A. Anyone working -- well, anyone working in the Office
2 of the General Counsel would report to me. If -- there is a
3 buffer, though, between myself and the counsels, that is the
4 deputy general counsels, if that's what you're trying to refer
5 to.

6 Q. Who are the deputy general counsels?

7 A. Well, we have our senior deputy general counsel, who
8 is Mr. Paul Koffsky, our -- and he also handles personnel.
9 Eliana Davidson, who is our deputy general counsel for
10 intelligence; Harry Kelso, who is our deputy for environment
11 and installations; Ryan Newman came on during that period, I
12 believe as our deputy for legal counsel. He succeeded Bob
13 Easton who was deputy general counsel before that. There is
14 Scott Castle -- no relation -- who handles our fiscal law
15 shop. And our international affairs shop is handled by Chuck
16 Allen. And Mike Glennon came on as our deputy for the
17 acquisition shop, and he replaced Susan Raps in that role
18 during that period of time.

19 Q. Thank you. Who is Mr. Hudson?

20 A. Mr. Hudson is our -- is a -- well, he just became an
21 SL, senior leader, and he works in our legislative affairs
22 shop. And I'm sorry, I forgot, I didn't add my legislative
23 affairs shop to that list. It's only been recently that

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1 Michele Pearce has come on to take that role, but he was
2 running that shop during this period.

3 Q. All right. What are the responsibilities of the
4 deputy general counsel legal counsel?

5 A. Well, they are sort of our constitutional lawyers and
6 our litigation specialists. They also handle military
7 commissions. So those are their primary responsibilities.

8 Q. All right. Is one of their -- both Mr. Ryan and
9 Mr. Newman -- excuse me, Mr. Newman and Mr. Easton were male,
10 so I will say "his" in this one example.

11 A. Sure.

12 Q. The -- what was their responsibility with respect to
13 supervision of the Office of the Chief Prosecutor?

14 A. Well, they're -- they are the conduit of information
15 from the chief prosecutor up to us, up to me, and at the same
16 time it's my understanding that they also were the rater of
17 the chief prosecutor.

18 Q. So it would be fair to say that the deputy general
19 counsel legal counsel is the supervisor of the chief
20 prosecutor?

21 A. I don't -- I wouldn't use the term "supervisor"
22 because it's not that -- that kind of relationship. It is
23 more along the lines of this is our rate -- this is the person

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1 who is rating him, yes. But at the same time, you know, we're
2 not giving instructions to the Office of the Chief Prosecutor.

3 Q. Who is Michael Vozzo?

4 A. Michael Vozzo is one of our deputy -- I think it's
5 deputy associate counsels, and he works in the legislative
6 counsel shop -- excuse me, legal counsel shop.

7 Q. During the period August 2017 to February 2018, what
8 were Mr. Vozzo's responsibilities with respect to military
9 commissions?

10 A. I saw him as, you know, our day-to-day liaison with
11 the military commissions and military commission process.

12 Q. And when you say "the military commissions and the
13 military commissions process," who are the persons with whom
14 he would liaise?

15 A. It is my understanding that he would speak to General
16 Martins. I also understand that he would speak with the
17 convening authority. But, of course, the defense would speak
18 with Mr. Koffsky, who is in charge of the defense side of
19 that ----

20 Q. Thank you, sir.

21 A. ---- or responsible.

22 Q. I would now like to ask you some questions about your
23 use of communications. Do you understand?

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1 A. Uh-huh. Yes.

2 Q. I assume you use e-mail, sir?

3 A. I do.

4 Q. And that's the ordinary DoD e-mail system?

5 A. There are -- there are -- yes, I use the normal
6 e-mail systems.

7 Q. Okay. On NIPR, that's a mail.mil address; is that
8 correct?

9 A. I believe that's right.

10 Q. And I take it your e-mails are archived?

11 A. I believe they are, yeah.

12 Q. And that's true for the NIPR system, also the
13 classified systems as well?

14 A. I honestly don't have any firsthand knowledge of
15 that, but I would -- but I assume that's true, yeah.

16 Q. So is it never true that you have to go back and look
17 for an e-mail that you sent some time ago? Or do you have
18 people who do that for you?

19 A. Well, sometimes I have people who do it for me, and
20 I -- and I'll sometimes do it myself. But I have only been
21 here for a little over a year, so I don't know if anything is
22 archived. It's just on the system.

23 Q. Right. Do you use any other e-mail account than your

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1 mail.mil account for DoD business?

2 A. No, I do not.

3 Q. Do you use an instant messenger system for DoD
4 business?

5 A. I do not.

6 Q. Do you use any electronic communication system for
7 DoD business other than e-mail?

8 A. No.

9 Q. Sir, do you recall receiving an e-mail from me -- and
10 again, my name is James Connell -- on 7 May 2018?

11 A. I do.

12 Q. Okay. Do you have a copy of that e-mail in front of
13 you?

14 A. Do we have a tab number?

15 Q. No, sir. I can put it on the -- I can put it on the
16 document camera if that would help refresh your recollection.

17 A. Sure. Sure.

18 LDC [MR. CONNELL]: Your Honor, I'm referring to
19 AE 555CCC (AAA). I previously provided a copy to all of the
20 parties. May I have access to the document camera?

21 MJ [Co1 PARRELLA]: You may.

22 LDC [MR. CONNELL]: My understanding is that this
23 document, because it has not been through the CIS0 review,

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1 will be displayed only to Mr. Castle and the parties, but not
2 to the gallery.

3 MJ [Col PARRELLA]: That is my understanding as well.

4 Q. Sir, can -- just to know that this is working
5 technically, can you see the header and some text of an e-mail
6 on your screen?

7 A. Yes, I can. I can see -- I can see the first two
8 paragraphs.

9 Q. Thank you. The -- this AE 555CCC is an e-mail from
10 me to you; is that correct?

11 A. Yes.

12 Q. Okay. Did you receive this e-mail?

13 A. Yes, I did.

14 Q. Okay. And without reading it all, the e-mail --
15 though you can read it if you want. If ever you want me to
16 show you a document, you just say so and I will show you the
17 document.

18 A. I appreciate that.

19 Q. Without me reading the e-mail to you, it was
20 essentially a request for an interview with you; is that
21 right, sir?

22 A. Yes, it was.

23 Q. Okay.

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1 A. If I remember correctly, yeah.

2 Q. And why didn't you respond?

3 A. I handed it off to others in my office to respond.

4 Q. All right. Sir, I'd like to direct your attention to
5 a document which you don't have in front of you, so I'm going
6 to show it to you ----

7 A. Okay.

8 Q. ---- which has been marked as AE 555BBB (AAA). And
9 because it's an e-mail, we sort of have to read from the
10 bottom. So I'm going to show you the relevant part and then
11 we will work our way up; is that all right, sir?

12 A. Okay. Yes.

13 Q. So when you say you handed off the document to
14 someone else to respond ----

15 A. Uh-huh.

16 Q. ---- was that Mr. Allen?

17 A. Mr. Allen was one of the individuals who it was
18 handed off to, yes.

19 Q. Okay. And I'm showing you at the bottom of AE 555BBB
20 an e-mail message dated 17 May 2018 from Mr. Allen to me. Do
21 you see that?

22 A. I do.

23 Q. I see that you are not in the cc line of this

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1 document. Did you receive a blind carbon copy of this e-mail?

2 A. I have seen it before. I don't know. I don't
3 remember how I have seen it, but I have seen it before.

4 Q. Okay. And just to show you, just so you can have the
5 information, on the same date, 17 May 2018, in the next
6 section of AE 555BBB I responded to Mr. Allen's request --
7 Mr. Allen's response explaining why I thought an interview
8 would be valuable.

9 Were you ever made aware of this e-mail from me to
10 Mr. Allen?

11 A. I might have a vague recollection of it, but nothing
12 very specific.

13 Q. All right. Sir, also in 555BBB, I'm going to show
14 you the next message. And if you want to read the complete
15 message just let me know.

16 On 23 May 2018, I sent Mr. Allen an e-mail with a
17 carbon copy to you advising you of the military commission's
18 ruling that you would be testifying. Do you recall, did you
19 receive that e-mail?

20 A. I believe I did, yes.

21 Q. All right. And why didn't you respond to that
22 e-mail?

23 A. Once again, I handed that off to members of my team

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1 to respond.

2 Q. And was it your understanding that members of your
3 team did respond?

4 A. Yes.

5 Q. Who was that?

6 A. Well, Mr. Allen sent you the e-mail.

7 Q. After 23 May, sir?

8 A. Whenever they sent you the e-mail, I guess they sent
9 you -- my guess is -- my understanding is they responded to
10 you.

11 Q. All right. Well, let me reorient you a bit. We
12 talked about the -- Mr. Allen's 17 May 2018 e-mail to me.

13 A. Uh-huh.

14 Q. Is it your understanding that Mr. Allen or anyone
15 else ever replied to any of my requests after that date?

16 TC [MR. RYAN]: Your Honor, at this point I will object on
17 relevance grounds.

18 LDC [MR. CONNELL]: It goes to bias, Your Honor.

19 MJ [Col PARRELLA]: The objection is overruled, but let's
20 pick it up, please.

21 A. Mr. Connell, I have a -- I remember that you -- that
22 I was told that you were sent an e-mail. I remember that I
23 read -- at some point I read that response. And I have a

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1 vague recollection that you might have sent a follow-up e-mail
2 or something along those lines. But I don't know the
3 sequencing, and I don't remember sequencing at all.

4 Q. Okay.

5 A. Well, I don't -- to the extent that I just said.

6 Q. Sir, do you recall me sending you another e-mail on
7 3 July 2018, advising you of the next military commission
8 ruling and asking for an interview?

9 TC [MR. RYAN]: Same objection, sir.

10 MJ [Col PARRELLA]: The objection is -- go ahead,
11 Mr. Connell.

12 LDC [MR. CONNELL]: I'm sorry, Your Honor, I'm moving
13 quickly through this.

14 MJ [Col PARRELLA]: Okay.

15 LDC [MR. CONNELL]: It's going to be wrapped up -- it's
16 going to be tied up with deferential treatment of the
17 prosecution in just a moment.

18 MJ [Col PARRELLA]: I understand, but all of these e-mails
19 were attached to your pleadings, correct?

20 LDC [MR. CONNELL]: No, sir.

21 MJ [Col PARRELLA]: This one was not?

22 LDC [MR. CONNELL]: No, sir. This one is most recently
23 9 November.

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1 MJ [Col PARRELLA]: Okay. Go ahead and proceed.

2 LDC [MR. CONNELL]: Thank you.

3 Q. Sir, did you receive this e-mail dated July 3 --
4 3 July?

5 A. Yes.

6 Q. Okay.

7 A. Yes.

8 Q. And why didn't you respond to this one?

9 A. I believe I handed that off to members of my staff as
10 well.

11 Q. All right. And, sir, with respect to my e-mail of
12 8 November 2018, advising you that the military commission had
13 ruled that you would be testifying today and requesting
14 another -- making another request for an interview, why didn't
15 you respond to that one?

16 A. Again, I referred that to my team to respond to you.

17 Q. Okay. And did you tell them what response to make on
18 all of these occasions? Did you tell them yes or no?

19 A. I -- I don't have a specific recollection of me
20 saying yes or no. I know that I had a negative reaction to
21 being asked to respond. I probably -- you know, I probably
22 said no on each occasion.

23 Q. Okay. So when you say "negative reaction," you mean

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1 that you would refuse to be -- to have a conversation with me;
2 is that right, sir?

3 A. That's right.

4 Q. Okay. And then on a slightly different topic, on
5 9 November 2018, I sent you two pleadings to make sure that
6 you would have the documents for reference today. Did you
7 receive that?

8 A. I did.

9 Q. Okay. Thank you. Now, when did you first hear from
10 any member of the Office of Chief Prosecution that you would
11 be required to testify?

12 A. This -- the second time I heard from -- about it, I
13 believe that it was Thursday. I can't remember the day. It
14 was the day -- it might have been Thursday, November 1st, the
15 day after Halloween.

16 Q. Okay. And what about the first time, the first time
17 you heard that you would be required to testify?

18 A. You actually, I believe, were the person who informed
19 me of that through your e-mail.

20 Q. Oh. And so when did you first hear from the Office
21 of the Chief Prosecution about your requirement to testify?

22 A. Well, I am not hearing from -- I'm not really hearing
23 from them directly at all. Everything really is passing

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1 through the, you know, the legal counsel's office.

2 Q. All right. So it goes from the Office of the Chief
3 Prosecution to Mr. Vozzo, to Mr. Newman to you; is that fair
4 to say?

5 A. No. I honestly -- I don't know if it goes through
6 Mr. Vozzo on every occasion. Sometimes it goes through
7 Mr. Vozzo. Sometimes it goes through Mr. Newman, I believe.
8 I am speculating here. But it goes through that office, and
9 then the information comes to me.

10 Q. So at some point you did have contact with a member
11 of the Office of the Chief Prosecutor; is that correct?

12 A. I have met with General Martins, yes.

13 Q. With respect to your testimony or on other topics?

14 A. Well, General Martins has visited with us here two or
15 three times that I remember him being here.

16 Q. Okay. And were those two or three meetings in
17 relationship to your -- to this motion?

18 A. The ----

19 Q. Among other topics, I'm sure.

20 A. Right. There were a variety of other topics. If I
21 remember correctly, and I could very well not be, I remember
22 there was -- he did meet with me the first time I was ordered
23 to testify. And he was -- he came in and we just wanted to --

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1 it was honestly just pleasantries, seeing how I was doing
2 and -- and things along those lines.

3 Q. On that first occasion when you met with General
4 Martins, what did he tell you about this unlawful influence
5 issue?

6 A. I don't really recall what he said specifically about
7 it. You know, I -- yeah, I mean other than -- you know, no, I
8 honestly don't remember what he said.

9 Q. All right. On the second occasion that Mr. -- that
10 General Martins met with you, what did he tell you about this
11 unlawful influence issue?

12 A. There wasn't a second time that I met with him to
13 talk about the unlawful influence. There was only the one
14 time.

15 Q. Okay.

16 A. That was after -- I believe that -- I believe it was
17 only one time, and I believe that was after we talked about
18 when I got my first order to come testify.

19 Q. Okay. So you learned about that first order to come
20 testify from me. Did you, through your staff, request a
21 meeting with General Martins?

22 A. No. I don't believe so.

23 Q. Did he, through your staff, request a meeting with

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1 you on that topic?

2 A. On the last question, I don't remember asking to meet
3 with General Martins. I don't think I did. I might have, but
4 I don't think I did.

5 And I'm sorry, your next question was? I missed it.

6 Q. Sure. Actually, I'll just -- you answered my
7 question. I'll move ahead.

8 A. Oh, okay.

9 Q. When you have meetings, do you normally receive
10 read-aheads for those meetings?

11 A. Sometimes, sometimes no.

12 Q. On the occasion of your meetings with General
13 Martins, did you receive any read-aheads?

14 A. Not that I recall, no.

15 Q. Okay.

16 A. But I could have.

17 Q. Does your staff generally prepare documents for you
18 to review prior to meetings or consult during the meetings?

19 A. Sometimes.

20 Q. Okay. On the occasion of your meeting or meetings
21 with General Martins, did your staff do so?

22 TC [MR. RYAN]: Objection, sir. Relevance grounds again.

23 MJ [Col PARRELLA]: Response?

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1 LDC [MR. CONNELL]: Sir, I'm trying to find out what this
2 witness learned from the prosecution about this issue. It
3 goes to his knowledge, it goes to foundation for the questions
4 that I am going to ask later, and it goes to his orientation
5 with respect to the parties.

6 MJ [Col PARRELLA]: Okay. So let's go ahead and just ask
7 what preparation, if any, he received from the office of the
8 military prosecution.

9 LDC [MR. CONNELL]: Well, the witness has already
10 testified that he doesn't get information directly from them;
11 it comes through his staff. So I am just trying to get --
12 that's what I am going at.

13 WIT: Well ----

14 MJ [Col PARRELLA]: Go ahead and ask your question,
15 Mr. Connell.

16 LDC [MR. CONNELL]: All right. Thank you, sir.

17 Q. On the occasion of your meeting or meetings with
18 General Martins, did your staff prepare any documents for you
19 to review ahead of time or consult during the meeting?

20 A. They may have. I'm not aware of that.

21 Q. Okay. Do you generally take your own notes in
22 meetings or does someone else take the notes?

23 A. I -- I do not. I am a very poor note-keeper, and so

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1 I usually like to -- I usually don't take notes.

2 Q. All right. Does someone else on your behalf prepare
3 a memorandum for record or some other way for you to remember
4 your meetings?

5 A. Not that I'm aware of.

6 Q. Okay. All right. So you have told us about ----

7 A. Just to be clear, there was -- during one of the
8 meetings where we were talking -- when I talked to General
9 Martins about things in general, about what was going on with
10 military commissions, after all of this took place in
11 February, I remember taking notes about things that he said
12 about the system of military commissions in general and the
13 challenges that that was facing, but not about anything to do
14 with the UI.

15 Q. And what happens to those notes?

16 A. Unfortunately, after a while they get thrown away.
17 Like I said, I'm not a big note-taker. I usually do not keep
18 my notes if I'm -- you know, if they last for a week or two,
19 just so that I can have that there, and then I usually dispose
20 of them.

21 Q. All right. Sir, it surprises me that a person of
22 such seniority in the Department of Defense is not required to
23 keep your notes when somebody as lowly as me is required by

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1 DoD regulation to keep my notes. Are you saying that you're
2 not required to keep notes?

3 A. I -- if there's a regulation out there, I do not know
4 of it, but I do not routinely keep notes. I don't.

5 Q. All right, sir. You told us about your meetings with
6 General Martins. At any point did you meet with any other
7 member of the Office of the Chief Prosecutor regarding this
8 unlawful influence issue?

9 A. Yes, there were two meetings. There were two
10 instances. The first time with the first go -- with the first
11 go-round I met with an Assistant U.S. Attorney then, whose
12 name escapes me. We had lunch. And then there -- then on
13 another occasion he had another -- asked me a number of
14 questions, I think, to help him prepare for today -- well, for
15 whenever, for that time back then.

16 And then this, for this meeting, for this time when
17 I've been ordered, I met with Mr. Ed Ryan for -- we started --
18 I met him on, I believe it was Tuesday, and had a number of
19 conversations over the last couple of days.

20 Q. All right. With respect to the first meeting that
21 you had with the AUSA, the -- approximately when did that take
22 place? Would that have been in May when the order first came
23 down?

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1 A. No, I think that was a little bit later on.

2 Q. Okay.

3 A. Because if I remember correctly, the order was for a
4 couple of months down -- down the line, so there was -- there
5 was a bit of time.

6 Q. Sir, let me represent to you that the order came out
7 in May and the expected testimony was in July. Does that help
8 you narrow your focus at all?

9 A. It was in between those two periods of time.

10 Q. Sure. The AUSA, was that a person connected in some
11 way with the Office of the Chief Prosecutor?

12 A. Yes.

13 Q. Okay.

14 A. There were two -- there were two AUSAs during that
15 initial -- during that conversation, the first one, and I
16 can't remember their names.

17 Q. All right, sir. How long did that meeting, lunch,
18 conversation last?

19 A. Well, it was -- there was a -- there was a meeting to
20 say hello. There was a lunch that was separate, and then I
21 think it was -- which was the lunch was like a different day,
22 and then there was a conversation later on that was on a
23 different day. So I guess at least three times, but don't --

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1 I can't -- I can't remember all the specifics on things.

2 And then there was this time, which happened -- we
3 were notified on November 1st, and then I met with him, met
4 with Mr. Ryan, for -- for a couple of hours a day for several
5 days after November -- for the November 1st order.

6 Q. All right. So there's a lot there. If you don't
7 mind, I'm going to take a moment and unpack it.

8 A. Sure.

9 Q. The first sort of meet-and-greet that you had with
10 the two AUSAs ----

11 A. Right.

12 Q. ---- how long, approximately, did that last?

13 A. That was ----

14 TC [MR. RYAN]: Judge, I am going to object on relevance
15 grounds.

16 MJ [Col PARRELLA]: Hold on. The objection is sustained,
17 Mr. Connell. Please proceed.

18 LDC [MR. CONNELL]: Sir, can we mute the witness -- mute
19 my voice, please?

20 MJ [Col PARRELLA]: We can. If someone can please let me
21 know when that occurs.

22 WIT: I can still hear you, Judge.

23 [Did as directed.]

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1 MJ [Co1 PARRELLA]: Okay. Okay. Mr. Connell.

2 LDC [MR. CONNELL]: Thank you, sir. I would like to
3 respond to the objection, which I think is relevance.

4 Bias is always relevant. What I am establishing here
5 is that the -- this witness met with the prosecution on at
6 least four occasions, probably seven, for a substantial amount
7 of time. When we get to argument, I will be arguing about the
8 distinction between refusing multiple polite and respectful
9 requests for a 30-minute interview with -- I will contrast
10 that with the behavior of this witness, who chose to meet with
11 the prosecution on between five and seven occasions.

12 I'm -- it is sort of standard fare when it comes to
13 bias cross-examination. And I haven't repeated myself. I am
14 inquiring into the question -- the answers to just probe them
15 just a little bit.

16 MJ [Co1 PARRELLA]: I'm not suggesting that you're doing
17 anything wrong, Mr. Connell. There is legal and logical
18 relevance, as you know. I'm deeming this to be cumulative at
19 this point. This is a pretrial issue. This is not a members
20 trial. So I understand, I think, the point that you're
21 getting at with bias sufficiently, and so I am making the
22 determination that I don't need any more. It's cumulative for
23 me, and I'm asking you to move on.

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1 TC [MR. RYAN]: Your Honor, may I add one thing to the
2 mix, please?

3 MJ [Col PARRELLA]: You may.

4 TC [MR. RYAN]: Just reminding the commission -- this is,
5 of course, with all due respect to the commission and the
6 parties -- he is the principal deputy general counsel for DoD.
7 He has an awful lot of responsibilities. He did ask me on
8 numerous occasions, and I'm just passing this along, that
9 everything we could do to wrap this up today, which he has
10 blocked off, would be very helpful.

11 MJ [Col PARRELLA]: Yeah, and I understand that. But,
12 frankly, that factors less than just in essence what -- the
13 information that the commission needs to actually decide the
14 issue that's before the commission.

15 TC [MR. RYAN]: Completely understand and agree, Judge.

16 MJ [Col PARRELLA]: We have been going for an hour and we
17 haven't gotten to a single substantive question. So let's
18 please get to the substance of the issue here before the
19 commission that was briefed. This thing has been briefed
20 ad nauseam. I have extensively reviewed all of the
21 transcripts and the commission has afforded -- essentially
22 upheld my predecessor's ruling with respect to this witness'
23 testimony.

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1 Nevertheless, given the line of questioning, I'm
2 confident that I understand the bias, and I'm asking you to
3 let's go ahead and move on.

4 LDC [MR. CONNELL]: I understand your ruling, sir. I am
5 not arguing with it. I have one more question in this line,
6 and then I am moving to the declaration.

7 MJ [Col PARRELLA]: Great. Let's go ahead and unmute the
8 witness, please.

9 [Did as directed.]

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

11 Q. Can you hear us again, Mr. Castle?

12 A. I can. And I just -- before you ask -- I just --
13 also, you had asked me about my -- about my e-mail use. You
14 know, I'll double-check it over lunch. I might have received
15 something on my personal e-mail last night, but I don't think
16 so. I think that was on my private -- on my government
17 account, but I'll double-check that over the lunch break ----

18 Q. Thank you, sir.

19 A. ---- to make sure.

20 Q. Thank you, sir. My last question on this topic is
21 that you testified very briefly just a moment ago that you met
22 for a couple of hours over a couple of days with Mr. Ryan.

23 Could you tell us ----

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1 A. I met with him a couple of hours a day for a couple
2 of days is the best way to put that.

3 Q. Okay. And my question is: Could you give us --
4 since it is only last week, could you give us some more detail
5 about that? How many hours and what days?

6 A. Sure. We met a couple hours a day on Tuesday,
7 Wednesday, Thursday, and Friday.

8 Q. All right. Two to three -- so 8 to 12 hours total?

9 A. Honestly, I don't know how many hours altogether, but
10 it was a couple of hours -- it was a couple of hours a day. I
11 don't think there was any -- in any one day probably was not
12 more than four, and I am being generous when I say four, but
13 usually, you know, about, you know, about three hours I think
14 three hours, three, three-and-a-half hours a day.

15 Q. Thank you, sir. I'd like to move on to my next
16 topic, which is the process of the preparation of your
17 declaration. I assume you have a copy of your declaration
18 ahead of you?

19 A. I do.

20 Q. All right. If you need at any point to refresh your
21 recollection using that, you can simply ask the military
22 commission permission to do so.

23 A. Sure.

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1 Q. When did you first learn that you would need to
2 provide a declaration in the military commission?

3 A. We -- I had -- we were following the court's
4 proceedings pretty closely toward the end of -- well, no, I'm
5 sorry. That's not right. I was told shortly after -- I guess
6 Judge Pohl had made a decision during -- during a hearing that
7 he wanted -- that he wanted declarations from myself and
8 from -- from Secretary Mattis, and he invited declarations
9 from Harvey and Gary.

10 Q. And just because it's the first time we mentioned
11 their names, Harvey is Harvey Rishikof and Gary is Gary Brown?

12 A. Correct.

13 Q. And you knew that that declaration that you provided
14 would be relied upon by the military commission in its
15 decision-making; is that fair to say?

16 A. Yes.

17 Q. And you knew that declaration would be under penalty
18 of perjury?

19 A. Yes.

20 Q. You knew it was important for that declaration to be
21 accurate?

22 A. Yes.

23 Q. And you knew it was important for that declaration to

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1 be complete?

2 A. Yes.

3 Q. Upon learning of the requirement for a declaration,
4 what action did you personally take?

5 A. When I wrote -- when I wrote the declaration, it
6 is -- I believe it is -- I tried to make it as complete as
7 possible, yes.

8 Q. Shall I repeat my question?

9 A. If you'd like.

10 Q. Yes. So the question is: Upon learning of the
11 requirement of the declaration, what action did you personally
12 take?

13 A. Upon receiving the declaration, I got my group of --
14 my team together, and we -- and said we're going to --
15 obviously, we're going to have to start writing a declaration.

16 Q. Right. Who was involved in that team?

17 A. Professor Chris Jenks, Ryan Newman, Mike Vozzo. Who
18 else would be part? Jason Foster and Jerry -- and this is why
19 I brought my telephone list. Jerry has a name, a last name
20 that I always can't pronounce, and it's spelled
21 D-Z-I-E-C-I-C-H-O-W-I-C-Z.

22 Q. I think you can be forgiven for that, sir, for not
23 being ----

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1 A. Well, I'm embarrassed that I always have difficulty
2 pronouncing it.

3 Q. All right. And so who is Jason Foster in the
4 organization chart?

5 A. Jason Foster is one of our attorneys here in the
6 Office of Legal Counsel.

7 Q. All right.

8 A. Oh, and Karen Hecker might have also looked at it as
9 well.

10 Q. Right. So Mr. Foster is part of the office of
11 legal -- is under the deputy general counsel legal counsel,
12 Mr. Newman; is that accurate?

13 A. Yes.

14 Q. And Mr. Dziecichowicz is in the same role?

15 A. Jerry D. is how -- Jerry D. is also under that as
16 well.

17 Q. Jerry D., D-E-E?

18 A. No, no, just D. The last name I had trouble
19 pronouncing. We call him "Jerry D."

20 Q. All right. Very good, sir. Jerry D. is also in the
21 Office of Legal Counsel, Office of the General Counsel, legal
22 counsel?

23 A. Yes, sir.

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1 Q. All right. And you mentioned Karen Hecker. What is
2 Karen Hecker's role?

3 A. Karen is part of the Office of Legal Counsel. She
4 sits near them, so I would imagine she was -- she might have
5 seen it or -- but that was not one of her primary things.

6 Q. All right. All right. And whose responsibility was
7 it to prepare the first draft?

8 A. It was Professor Jenks was in charge of preparing the
9 drafts.

10 Q. When you said "drafts," plural, how many drafts were
11 there?

12 A. Well, there were -- it was something that we edited
13 and worked on several, you know, for a while, so there were
14 lots -- there were a number of drafts.

15 Q. All right. And how many is "lots of drafts"? Like a
16 hundred, ten, five?

17 A. As part of -- you know, as any lawyer -- as you know,
18 sir, as any lawyer, there are a lot of drafts when you are
19 coming up with any kind of statement and so that this was, you
20 know, the drafts that were out there.

21 Q. All right. And you have listed Professor Jenks,
22 Mr. Newman, Mr. Vozzo, Mr. Foster, Jerry D., and Karen Hecker
23 and yourself?

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1 A. Right.

2 Q. Were there any other persons who reviewed or
3 commented on drafts?

4 A. Well, my senior military aide, Colonel Tomatz, and my
5 military aide, Colonel Guillen.

6 Q. Could you spell the name of the first colonel you
7 mentioned?

8 A. Tomatz, T-O-M-A-T-Z, and Guillen, and that's spelled
9 G-U-I-L-L-E-N.

10 Q. Okay. After all these edits and comments, I assume,
11 however, sir, that you ultimately based your declaration, your
12 sworn statement on your personal recollections?

13 A. This -- this was -- the information that was in the
14 declarations were things that I believed that were the reasons
15 why I had made the recommendations that I had.

16 Q. And do you personally have a distinct recollection of
17 the events which you described in your declaration?

18 A. Yes, I do.

19 Q. And did you read every word of the final declaration?

20 A. I did.

21 Q. And did it correctly express what you personally
22 wanted to express?

23 A. I think it did, yes.

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1 Q. And you signed it under penalty of perjury; is that
2 correct?

3 A. I did.

4 Q. All right. So I'd like to move on to the vocabulary
5 that you use in your declaration. Do you understand?

6 A. Yes.

7 Q. In three places in your declaration, it's
8 paragraphs 4, 17, and 18, if that's of assistance to you?

9 A. Yes.

10 Q. You state that you did not consider Mr. Rishikof's or
11 Mr. Brown's performance of any, quote, judicial or
12 quasi-judicial acts. Do you recall that?

13 A. That's correct.

14 Q. How do you personally, when you wrote that
15 declaration, how did you define "judicial or quasi-judicial
16 acts"?

17 A. I saw his judicial acts as anything to do with plea
18 agreements. And I also saw it as to do with the referral of
19 charges.

20 Q. Anything else?

21 A. Those were the two major things that I was thinking
22 of.

23 Q. And so when you say that you did not consider

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1 judicial or quasi-judicial acts, do you mean that you did not
2 consider exercise of authority related to plea agreements or
3 referral of charges. Is that fair to say?

4 A. That was primarily what was in my mind, yes.

5 Q. All right, sir. And in some of your memoranda, and
6 we will get there in a moment, you speak of a, quote, cohesive
7 effort with respect to military commissions. Do you recall
8 that language?

9 A. Yes.

10 Q. All right. And do you define "cohesive effort" to
11 mean people and organizations working together toward a common
12 goal?

13 A. Yes. And also what I meant by a "cohesive effort" is
14 that we are properly coordinating our -- you know, all of our
15 activities.

16 Q. Thank you.

17 A. And I meant -- and "coordination," of course, as the
18 Department uses it, is making sure that those entities and
19 individuals that have equities in -- equities in a certain
20 matter are consulted and are able to make comments on and
21 discuss what it is that is trying to be achieved.

22 Q. Sir, I'd now like to move on to the September 2017
23 meeting request that you describe in your declaration. Do you

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1 understand?

2 A. I'm sorry, could you say that again?

3 Q. Yes. The next topic of questions will relate to a
4 September 2017 meeting request that you received from
5 Mr. Rishikof and Mr. Brown and describe in your declaration.
6 Do you understand?

7 A. Yes. Yes.

8 Q. Am I correct that in early September -- excuse me, in
9 early September 2017 you received a meeting request from
10 Mr. Rishikof and Mr. Brown?

11 A. In September, yes.

12 Q. All right. And in your declaration you wrote that at
13 that time you had little specific knowledge about the ongoing
14 military commissions; is that correct?

15 A. That's correct.

16 Q. In what manner did you receive the request?

17 A. I was told by members of my staff that Mr. Rishikof
18 and Mr. Brown wanted to come in and talk with me.

19 Q. And did the meeting that you referred to there ever
20 actually take place?

21 A. Yes.

22 Q. On what date?

23 A. I don't know.

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1 Q. So let's go back to upon your receipt of the meeting
2 request. You -- you wrote in your declaration that prior to
3 the meeting you spoke to attorneys within the Office of
4 General Counsel. Do you recall that?

5 A. Yes, I spoke -- yes.

6 Q. How many attorneys in the Office of General Counsel
7 have duties that involve the military commissions?

8 A. Well, the primary responsibility rests with the legal
9 counsel's office and the staff members that are there. But,
10 you know, there isn't -- with the exception of those who are
11 recused because they are handling the defense, you know, there
12 are -- you know, there aren't any rigid lines saying you can't
13 talk to me because you're in another office, obviously not.
14 But the primary responsibilities is the Office of Legal
15 Counsel and his staff.

16 Q. So when you say that you spoke to attorneys within
17 the Office of General Counsel about Mr. Rishikof and
18 Mr. Brown, who did you speak to?

19 A. The list of individuals who we had just talked about
20 before.

21 Q. So, sir, let me just read that to you to make sure
22 that I have it right.

23 A. Okay.

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1 Q. That's Professor Jenks?

2 A. Right. Well, he isn't part of the Office of Legal
3 Counsel. He was a special assistant that was hired on just
4 for a year's period. We do that every -- we do that every
5 year, try to get a professor. And then it was the team that
6 was on the Office of Legal Counsel whose list that you are
7 about to read to me.

8 Q. All right. Well, so just so I am clear,
9 Professor Jenks was or was not one of the people that you
10 spoke to in September 2017?

11 A. He was -- Professor Jenks, I'm sure he was in on many
12 of these meetings, but he was not playing a primary role in
13 this during that time.

14 Q. Okay. And the next person on the list is Mr. Newman.
15 But in September of 2017 Mr. Newman wasn't there?

16 A. Right, he wasn't there, so it would have been
17 Mr. Easton who would have been -- who would have been in on
18 all these meetings.

19 Q. Right. Mr. Vozzo?

20 A. Yes.

21 Q. Mr. Foster?

22 A. Mr. Foster I don't believe was with our staff at that
23 point.

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1 Q. Was with or was not with?

2 A. I don't believe he was with our staff at that point.

3 Q. Jerry D.?

4 A. Yes.

5 Q. Colonel Tomatz?

6 A. Colonel Tomatz, either Colonel Tomatz or Colonel
7 Guillen always sit in on meetings where I am at, yes.

8 Q. And Ms. Hecker?

9 A. Ms. Hecker probably -- I don't think so. She was
10 only involved in an -- from the periphery.

11 Q. That was a little bit -- I apologize for my
12 confusion. It was not exactly the list from before, so let me
13 just tell you who ----

14 A. My -- I apologize if I wasn't clear.

15 Q. All right. So it's Professor Jenks, Mr. Easton,
16 Mr. Vozzo ----

17 A. Uh-huh.

18 Q. ---- Mr. D. ----

19 A. Uh-huh.

20 Q. ---- and one of the two colonels; is that correct?

21 A. And one of the two colonels or both of the colonels
22 would have been involved in, you know, in -- in meetings on
23 those subjects, yes.

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1 Q. All right. And ----

2 A. Oh, and -- I'm sorry. And Mr. Allen, who was --
3 played a temporary role at the very beginning was -- also sat
4 in on some of these meetings.

5 Q. All right. Was -- so when you say "meetings" -- when
6 you say that you spoke to this list of attorneys within OGC,
7 was that a formal meeting or was that you just walking around
8 the hallway?

9 A. No, this was -- well, it was a meeting in this
10 conference room that we would have and have discussions.

11 Q. All right. And what did you ask them, the assembled
12 group?

13 A. Well, I mean, I -- well, during this meeting they
14 said to me that, you know, "Harvey Rishikof wants to come in
15 and talk to you," and they explained to me that he was the
16 convening authority. They explained to me what the convening
17 authority was, and they explained to me that Mr. Rishikof was
18 actively exploring the possibility of plea agreements and that
19 it was -- and they also explained to me the concept of
20 unlawful influence and how it was absolutely essential that I
21 not discuss with those -- that plea agreements with him at
22 all.

23 Q. All right. So if I -- tell me, do I have this

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1 correct, sir, that -- that you learned of the request for a
2 meeting and learned your staff members' opinions about
3 Mr. Rishikof and Mr. Brown essentially contemporaneously, all
4 in one meeting?

5 A. There was -- yeah, like I said, it's a fuzzy memory,
6 but those are the people who talked to me about Mr. Rishikof
7 and Mr. Brown, and they communicated that information to me
8 when I was -- when I was -- when I was -- during that time
9 frame.

10 Q. And so what else did they tell you during that time
11 frame on this topic of Mr. Rishikof and Mr. Brown?

12 A. During this time with Mr. Rishikof, that was
13 primarily it. They also discussed that they had had a number
14 of problems with Mr. Rishikof. They had told me that there
15 was a problem with him, you know, trying to board an aircraft
16 to go down to Guantanamo Bay and that he was not properly
17 authorized to do that, and that they had to get the chief of
18 staff of the -- for the Secretary to call and speak to him or
19 stop him or do something along those lines. So that was a
20 problem.

21 Then there was the problem regarding the boat or
22 boats. I guess he ordered everybody to go down in one boat
23 and the judges didn't want to go down in one boat, and so, you

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1 know, we -- I guess later on I heard that we lost a week of
2 testimony or something.

3 So those were the things that I was hearing about
4 Harvey and Mr. Brown, Mr. Rishikof and Mr. Brown, when I
5 first -- when I first -- when we first came up.

6 Q. All right. So just so I'm clear, sir, during the
7 meeting at which you heard about the request for a meeting
8 with Mr. Rishikof and Mr. Brown, you heard about the
9 exploration of plea agreements, you heard about the
10 basics ----

11 A. Yes.

12 Q. ---- of unlawful influence and how it was important
13 not to unlawfully influence, you heard about an incident
14 involving trying to board an aircraft ----

15 A. Right.

16 Q. ---- and you heard about the so-called fast boat
17 issue?

18 A. Right. Right. And -- and just to be -- you know,
19 you know, I don't remember if all of that happened during one
20 meeting, but during that period of time all of that
21 information was imparted to me.

22 Q. Okay. And that period of time being September 2017
23 while you were considering this request for a meeting?

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1 A. Yeah. Exactly. Exactly.

2 Q. Okay. I just want to remind you, sir, it's important
3 for us not to talk over each other. And we will both do our
4 best.

5 A. Sure.

6 Q. It's hard when we are having a conversation, but we
7 will both do our best.

8 Sir, that meeting or those meetings, were those
9 memorialized in any way?

10 A. I don't know.

11 Q. Okay. Was there an agenda for those meetings?

12 A. We usually don't have a written agenda.

13 Q. Okay.

14 A. But I don't know.

15 Q. Is that the end of your answer, sir? I don't want to
16 you cut you off.

17 A. Yes. I don't know if there was a written agenda. I
18 don't remember.

19 Q. Did you or any other person present take notes during
20 that meeting?

21 A. I don't know. I'm -- like I said, I might have
22 scratched one or two words down on a sheet of paper, but I
23 don't keep my notes, so I don't know.

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1 Q. At the conclusion of those meetings, did you direct
2 your staff -- either yes or no -- with respect to the request
3 for a meeting?

4 A. I don't remember if I said immediately yes. I mean,
5 I'm -- you know, I was a little wary. I remember being a
6 little bit wary about all of this and, you know, learning for
7 the first time what a UI is. So, you know, my danger antenna
8 was up. And I, you know, wanted to -- but yes, either then or
9 sometime subsequent to that, I -- you know, I agreed to meet
10 with him.

11 Q. Were there any electronic communications such as
12 e-mails either relating to those meetings, your requests to
13 your staff, your staff to you or your staff's responses to
14 Mr. Rishikof and Mr. Brown?

15 TC [MR. RYAN]: Objection, Judge. Relevance.

16 A. I don't ----

17 MJ [Col PARRELLA]: Overruled.

18 Q. You can answer the question, sir.

19 A. I don't know.

20 Q. You don't know?

21 A. I don't know.

22 Q. Did you personally -- I'm sorry, go ahead.

23 A. I don't know. I don't know.

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1 Q. Sir, regarding that series of those meetings and the
2 information you received, you wrote in your declaration that
3 those comments, and I quote here, caused you -- that's
4 actually not a quote; it was -- but you, the second person --
5 "to question whether Mr. Rishikof and Mr. Brown were the right
6 individuals to manage the OMC and advise on that management."

7 Do you remember writing that?

8 A. I remember that that was part of my declaration, yes.

9 Q. All right. And is that -- the information that you
10 received is what you just told us about from that meeting or
11 meetings, correct?

12 A. Yes. For that time period I received a lot of
13 information about Mr. Rishikof and Mr. Brown, and so that --
14 those concerns were from that period of time learning that
15 information.

16 Q. So in fairness to you, sir, I just want to ask: Was
17 there any other specific instant [sic] or problem that was
18 described to you during that period of time?

19 A. There might have been. Those are the two things that
20 I think stand out in my mind most.

21 Q. Sir, I apologize if I asked you this already. When
22 did the meeting that they requested take place?

23 A. It took place after that. It might have been

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1 September -- September-October time frame. I don't know.

2 Q. And just so it's completely clear, was that, the
3 meeting that was requested, did it take place before the
4 meeting at which you discussed the call between
5 Attorney General Sessions and Secretary Mattis?

6 A. Right. There was a meeting where I met with -- I
7 don't remember if it was Harvey and Gary, but it was
8 essentially Harvey, before the phone call with -- before the
9 phone call.

10 Q. Thank you, sir. All right.

11 LDC [MR. CONNELL]: I'm moving to a new area. I'm happy
12 to keep going or I am happy to take the morning break,
13 whichever you prefer, sir.

14 MJ [Col PARRELLA]: Let's continue to push, please.

15 LDC [MR. CONNELL]: Thank you.

16 WIT: And just before moving there, I just want to say you
17 had asked me about, you know, whether or not the declaration
18 is complete. The declaration is definitely -- is definitely
19 accurate, and the information in there is definitely what was
20 on my mind when I was making the decisions that I have. But I
21 would say, you know, that those were the primary things that
22 were going through my head are what is in -- are in the -- are
23 in the declaration, and I was trying to fixate on those

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1 different -- different parts.

2 So I just wanted to make sure that, you know, that
3 everyone understands, you know, that this is what I was
4 thinking about when I -- when I -- this is what I remember
5 what I was thinking about when we did that.

6 Q. All right. But you began with referring back to an
7 earlier question about completeness of the declaration?

8 A. Right.

9 Q. What you were saying is, although those were primary
10 considerations to you, the declaration might not be
11 100 percent complete, correct?

12 A. I mean, no, I'm saying -- I'm trying to be, you know,
13 I'm trying to be 100 percent accurate here in the sense that I
14 had -- there were three things -- there were three subject
15 matters that I was very concerned about when I was thinking
16 about writing this declaration, and there was something else
17 that, as I'm sure we'll discuss, that I was -- that I had kept
18 out of my mind, was doing everything to keep out of my mind.

19 But these were the three major things that I was
20 thinking about. Was there other stuff in the ether? Yes.
21 But this -- but these are the three things -- these are the
22 three major things that I was thinking about while -- while we
23 were making that decision. I just want to make sure that's

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1 clear.

2 Q. The judge has heard you, sir.

3 The next topic that I'd like to talk to you about are
4 other contacts between the Office of General Counsel and
5 Mr. Rishikof and Mr. Brown during the time period
6 September-October 2017. Do you understand?

7 A. I'm sorry, could you repeat that again?

8 Q. Certainly. The next topic is contacts between your
9 staff, not you personally, your staff ----

10 A. Right.

11 Q. ---- and Mr. Rishikof and Mr. Brown during the period
12 September to October 2017. Do you understand?

13 A. Okay. Yes.

14 Q. And principally my questions will be whether you
15 learned about the substance of those contacts. Do you
16 understand?

17 A. Yes.

18 Q. Okay. So I'll represent to you that there was a
19 6 September video teleconference between Mr. Easton and the
20 convening authority. Were you ever briefed on the substance
21 of that call?

22 A. I don't know what call you're referring to.

23 Mr. Easton, I'm sure, was making many calls to the Office of

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1 the Chief Prosecutor.

2 Q. And he didn't necessarily brief you on those calls
3 that he made with the -- I'm not talking about the chief
4 prosecutor. I am talking about the convening authority. He
5 didn't necessarily brief you on those calls; is that right?

6 A. No, I would -- I would -- you know, they were dealing
7 with the day-to-day, you know, the day-to-day liaison
8 material. I was -- you know, things that they thought were
9 important would bubble up to my level.

10 Q. All right. I will short circuit my questions then
11 and ask it more generally.

12 Were you briefed on any phone calls or contacts,
13 teleconferences, between members of your staff, specifically
14 Mr. Easton, and Mr. Rishikof during the period after you began
15 and before the phone call between Attorney General Sessions
16 and Secretary of Defense Mattis?

17 A. I -- I -- I -- I don't recall ever being specifically
18 briefed on anything or such matters, but there was -- I mean,
19 there was a constant flow of communication. And so if someone
20 had said something to me during that period of time, then
21 yeah, I mean, I would be surprised if there wasn't some sort
22 of communication.

23 Q. All right.

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1 A. But I don't know the specifics. I don't know any
2 specifics.

3 Q. When you received that constant flow of information,
4 is it typically by e-mail?

5 A. No. A lot of times people come up and just talk to
6 me. I try and keep an open-door policy in my office where
7 people feel free to make sure that they come in. I think
8 that's the best way to develop relationships.

9 Q. All right. And I'm sure that you do have an
10 open-door policy. Are you saying that there were no e-mails
11 that were exchanged relating to the military commissions
12 during that time?

13 A. No, I'm not. That's the reason why I'm trying to be
14 very careful. I'm sure that there were e-mails. I'm sure
15 that there were communications. I just don't know of anything
16 specific, or I don't recall anything specific.

17 Q. So as of middle of October 2017, you were aware of
18 issues with Mr. Rishikof and Mr. Brown, the fast boat, the
19 trying to get on the plane, the pretrial agreement issue.
20 Were you aware at that time of their desire to realign DoD
21 organizations with respect to the convening authority?

22 A. They had -- they had mentioned that. The first
23 meeting that I had with -- with Harvey, he did go over -- he

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1 outlined a very basic concept where he would be put in charge
2 of additional -- additional things and resources.

3 Q. Okay. And in that first meeting where he talked
4 about the concept of being put in charge of additional
5 resources, those were things like the Office of Special
6 Security, the security function for the military commissions.
7 Does that sound right?

8 A. That's -- things along those lines. I don't remember
9 specifically -- I don't remember specifically from back then
10 exactly what, but it was very clear that he wanted to
11 consolidate things under himself.

12 Q. Okay. And so, for example, he felt that the Office
13 of the Chief Prosecutor should be brought under the convening
14 authority, correct?

15 A. There were -- there was mention of that, yes.

16 Q. So other than Office of Special Security and Office
17 of the Chief Prosecutor, any other organizations that you
18 recall from that time period, October 2017?

19 A. At that time, like I said, it was a very -- it was --
20 I knew that Mr. Rishikof was looking to consolidate control
21 under -- underneath himself, and he was thinking about it,
22 yes.

23 Q. Okay. My specific question is: Other than OCP and

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1 OSS, were there any other organizations that were mentioned?

2 A. I don't remember anything specific. There could very
3 well have been though.

4 Q. Thank you. Sir, I'd like to move on to the
5 October 2017 call between Attorney General Sessions and
6 Mr. Mattis -- and Secretary of Defense Mattis. Do you
7 understand that?

8 A. Right. Yes.

9 Q. So am I correct, sir, that in early October 2017, you
10 were contacted by the Secretary of Defense on this topic?

11 A. I'm sorry, could you say that again?

12 Q. Certainly, sir. Is it correct that in early 2017 --
13 October of 2017, you were contacted by the Secretary of
14 Defense on the topic of a phone call from
15 Attorney General Sessions?

16 A. Right. There was a -- there was a meeting, a very
17 important meeting where the Secretary of Defense had convened
18 the combatant commanders, the secretaries of the military
19 departments, and the senior leadership of the department for a
20 meeting for a discussion that he wanted to have with us on --
21 on issues.

22 And during that meeting -- and I remember the
23 Secretary was called out of that -- called out of that

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1 meeting, and -- and I later was then asked to join him. And
2 that's how I -- I heard that the Attorney General was on the
3 phone.

4 Q. I see. So let me make sure that I have that, sir.
5 There's an important meeting going on, and you personally were
6 present at that meeting, correct?

7 A. Yeah. This was -- and I can't -- you know, I
8 don't -- this -- I mean, this, this was -- you know, I'm on
9 the job now for about six weeks, eight weeks. This was the
10 biggest meeting that I -- that I had been part of. And --
11 and -- you know, and during the course of the meeting the
12 Secretary was pulled out of the meeting. I learned that that
13 was because the Attorney General wanted to speak with him.

14 Q. All right. So my specific question is: You
15 physically were present at that important meeting; is that
16 correct?

17 A. Yes, I was there.

18 Q. At some point during the meeting Secretary of Defense
19 Mattis is pulled out of the meeting, correct?

20 A. Right. Correct.

21 Q. And at that moment you didn't know why?

22 A. No idea.

23 Q. And then how much -- how much later after

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1 Secretary Mattis was pulled out were you asked to join the
2 Secretary?

3 A. It was a couple of minutes later.

4 Q. And what did you do in response to that request?

5 A. I went into the Secretary's office.

6 Q. And what happened then?

7 A. They -- if I remember correctly -- I very well might
8 not -- they connect -- there was -- you know, the Secretary
9 was looking -- might have -- might have looked at me and said,
10 you know, "What's going on?"

11 And I said, "Sir, I -- I don't know" or something
12 like that, that happened.

13 And then if I remember it -- and once again, this
14 is -- I'm not saying I have the best memory on this -- is that
15 they then connected the Attorney General to the Secretary.

16 Q. All right. On speakerphone, sir?

17 A. On speakerphone.

18 Q. And what conversation was then had?

19 A. I don't remember what -- the specifics about it. I
20 do remember the Attorney General, then-Attorney General,
21 saying "No deal," but -- and I remember the Secretary looking
22 at me like, "Well, what is he talking about?" And to be frank
23 with you, I didn't know what he was talking about there -- and

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1 it was a very surprising moment.

2 Q. So it sounds like a surprising moment. So I
3 understand that the Attorney General gets connected. I mean,
4 two cabinet officers are on the phone.

5 A. Uh-huh.

6 Q. And Attorney General Sessions comes on the phone and
7 right away says, "No deal"?

8 A. All I remember the Attorney General saying is "No
9 deal."

10 Q. All right. What was the Attorney General's demeanor?
11 Was he calm? Was he agitated?

12 A. He -- I don't -- you know, I can't -- it was a
13 speakerphone, so the voice is echoing, so I don't know what
14 his demeanor was.

15 Q. Okay. Were there pleasantries? "Good afternoon,
16 Mr. Secretary"?

17 A. There might have been. Like I said, I really don't
18 remember all the things. You know -- you know, here I am.
19 You know, I'm in probably the most important meeting that I
20 had been in in the Department of Defense. Pulled out of that
21 meeting, walked -- walked into the Secretary's office, and
22 honestly, you know, was trying to figure out what was going
23 on.

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1 Q. Sure. And so the only specific conversation you
2 remember are the words "No deal"; is that fair to say?

3 A. That's the only thing specifically I remember then.

4 Q. Right. Thank you.

5 A. And the Secretary -- I do remember the Secretary
6 looking at me and going, "What is he" -- you know, "What is he
7 talking about?" And I believe that I -- I believe that I -- I
8 answered that I -- you know, that I wasn't -- you know, that I
9 didn't entirely understand what was going on.

10 Q. All right. And ----

11 A. Or at least that was my impression. That's what I
12 remember thinking to myself. Whether or not I said that, I
13 probably said it, but that's what I remember thinking to
14 myself.

15 Q. I understand. And that was despite having been
16 briefed by your staff that Mr. Rishikof was exploring plea
17 agreements in the United States v. Khalid Shaikh Mohammad
18 case?

19 A. Right. But you have to remember this is not --
20 though, you know, military commissions is an important
21 subject, there are -- at that point I am the chief legal
22 officer for the Department of Defense.

23 Q. Right.

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1 A. So that means everything from a legal standpoint,
2 from intelligence to environmental law, to national security
3 law, to whatever else is out -- you know, whatever else is out
4 there. And at the same time, I'm also brand-new on the job,
5 and I am sitting in the most important meeting of the thing.
6 And, you know, it's like, you know, being called up and
7 saying, "Here you go." And so things were not -- you know, I
8 probably was not as crisp in my thoughts as I -- as I would
9 like to be. So that -- yeah.

10 Q. Yes, sir. But at some point you figured out that
11 this was a reference to the military commissions?

12 A. I only figured it out once I came back to my office.

13 Q. All right.

14 A. I -- I mean, I -- you know, I remember standing
15 around, and I asked my staff, you know, "Was he talking
16 about," you know -- you know, "Was he talking about, you know,
17 Harvey Rishikof" -- you know, "Harvey and plea deals?"

18 And I remember being in the office with the Secretary
19 and he said, you know -- you know, the Attorney General said
20 "No deal," and I think I also probably said "No deal," but not
21 because I knew what deal we were talking about, I was talking
22 about -- I think I said "No deal" because, you know, I didn't
23 make any deal. I haven't made any deals and there is no deals

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1 here. So that's -- that's what I remember of that situation.

2 Q. I see. So that sheds a little bit more light, sir.
3 How long did the conversation with Attorney General Sessions
4 last?

5 A. It was a brief phone call. It might have been three
6 or four minutes.

7 Q. Okay. And during the course of that, if I understand
8 what you just said, Secretary Mattis turned to you and, you
9 know, really was asking what was going on, and you said "No
10 deals"?

11 A. Yes. I said -- I said -- you know, I said -- I don't
12 remember exactly what I said. I probably said "No deal," but
13 it wasn't because I was thinking about pretrial agreements. I
14 had no idea what -- I didn't have a good idea about what the
15 Attorney General was saying. I knew that I hadn't agreed to
16 anything on any subject in the last, you know, couple of
17 hours -- or couple of -- you know, days or something that
18 would rise to the AG's -- or I didn't think would rise to the
19 AG's thing. So I literally was sitting there stumped, you
20 know, trying to figure out what was going on.

21 Q. So it's fair to say we have Attorney General Sessions
22 on the phone. Clearly, you know, something is very important
23 to him?

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1 A. Right.

2 Q. And you just went along with it. You said, "Okay.
3 No deals"?

4 A. I -- I -- I said -- I said "No deal" because I didn't
5 know -- in my mind I said, "Okay. You can say no deal because
6 you haven't signed off on any -- on anything or anything that
7 has to do with that."

8 Only once that I got back to my office that we
9 started, you know, I started putting this together and saying
10 well, you know, he might have been talking about -- he might
11 have been talking about plea deals, but I don't remember --
12 you know, but -- and I asked my staff about that, you know,
13 was -- "Do you think he might have been talking about plea
14 deals?" And then later on in the day that was the conclusion,
15 that he probably was talking about plea deals.

16 Q. I see. And who did you speak with about -- in trying
17 to figure out the question of whether
18 Attorney General Sessions was talking about plea deals?

19 A. It would have been -- it would have been anybody --
20 it would have been my military aides. It might have been --
21 you know, and I probably said, you know, "Find out what's
22 going" -- you know, I'm sure I said "Find out what's going on"
23 or something along those lines.

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1 I remember speaking to somebody in legal counsel
2 trying to figure out what was going on. But that was -- but
3 that was that.

4 Q. All right. And so at that time you considered
5 revoking Mr. Rishikof's designation, correct?

6 A. Well, the reason why that we started thinking about
7 that was because of the things that had happened before. And
8 frankly, right then and there he was not coordinating once
9 again. I did not know that he was going to go over to the
10 department -- I did not know that he was going over to the
11 Department of Justice to talk to them about any kind of plea
12 deal.

13 I was completely blindsided by this -- you know, by
14 this conversation, and had -- you know, and as I said, I was
15 stumped. I did not -- you know, I didn't know really what was
16 going on. And I was -- you know, I started to, you know, say,
17 well, look, you know, we have these problems over here and
18 that we learned about, and, you know, he is not coordinating
19 with us telling us what's going on, you know, when he is
20 communicating with the Department of Justice -- that he is
21 communicating in-depthly with the Department of Justice,
22 appeared to be at a high level.

23 So yes, I was -- I was upset about that, and we

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1 were -- we were looking to make a change.

2 Q. What in -- in being upset about the learning, you
3 know, essentially from the Attorney General about these plea
4 negotiations, what did -- did you believe that Mr. Rishikof,
5 acting under his pretrial agreement authority, should have
6 consulted you personally about pretrial agreements?

7 A. I -- I believe that we should know about important
8 things that he is thinking about doing and being a part of it.
9 He has absolute authority as convening authority to enter into
10 plea -- into plea agreements.

11 I need to know, right, that -- you know, what's going
12 on on these issues. Why? Because it's my responsibility to
13 advise the Secretary as to what is going on and to ensuring
14 that he understands what is happening inside of the
15 department. Obviously, I had -- I didn't, you know, I was
16 completely taken by surprise by this occurrence.

17 Q. Okay. And at what point did you remember that your
18 staff had briefed you that Mr. Rishikof was exploring plea
19 deals?

20 A. It was -- when I got back to my office, I started
21 asking questions, "Well, do you think he was talking about
22 plea deals?" And it was only -- over time, we, you know, we
23 basically said, "Ah, he probably was. You know, that's

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1 probably what he was talking about." And -- and I remember --
2 and that's what I remember.

3 Q. Right. And what you were about to say was you
4 remembered the conversation with your staff about the plea
5 deals?

6 A. No. I mean, I don't remember -- I remember asking
7 what's going on, what is happening. And that was -- and
8 eventually someone said that Mr. Rishikof had gone over to the
9 Department of Justice and had discussions with them about plea
10 deals.

11 Q. Okay. And who told you that, sir?

12 A. I don't remember. It might have been Mr. Easton, but
13 it could have been anybody on the legislative -- excuse me, on
14 the legal counsel team.

15 Q. All right. So your staff knew that Mr. Rishikof had
16 gone to the Department of Justice and had discussions about
17 plea deals?

18 A. Not that they -- not that they told me, no. I
19 assumed that he had -- that they had called and talked to him.
20 I don't know. That's what they just told me.

21 Q. All right. So when you say "not that they told you,"
22 you mean not that they told you in advance of this event with
23 Sessions?

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1 A. No, I -- I -- I don't know. They -- when I first
2 asked the question, they -- I got the sense that they were as
3 befuddled as I was. So I -- so how they came to know that
4 that was about that, I don't know.

5 Q. Is it your testimony, sir, that no one -- that none
6 of your staff recalled having briefed you about Mr. Rishikof
7 exploring plea deals?

8 A. I'm sorry?

9 Q. Is it your testimony that no one on your staff that
10 you spoke to recalled having briefed you in the September
11 meeting about plea deals?

12 A. I don't -- I don't -- I can only speak to what I
13 remember.

14 Q. All right, sir. That's fine.

15 So at that time or shortly after that event you had a
16 meeting with Mr. Rishikof and Mr. Brown on 16 October 2017; is
17 that accurate?

18 A. I had a meeting after the -- after that. Yes, I did.

19 Q. Okay. Do you remember when the important meeting
20 was? Was it on the 15th?

21 A. I don't -- I don't remember the dates, no.

22 Q. All right, sir.

23 A. There was -- there was a -- there was a meeting

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1 with -- at least there was a meeting with Mr. Rishikof, and
2 there was the Attorney General's call, and then I had another
3 meeting with Mr. Rishikof.

4 Q. Yes, sir. And the Attorney General's call, was that
5 on October 14th or 15th, or you don't remember? I'm just
6 trying to make sure.

7 A. I don't remember. I don't remember.

8 Q. Do you recall that the meeting after the
9 Attorney General's call with Mr. Rishikof was on the 16th of
10 October of 2017?

11 A. That seems pretty -- I don't remember the date, but
12 that seems pretty tight. I don't know if it -- if it happened
13 that quickly.

14 Q. All right. Would it be fair to say ----

15 A. If those dates are accurate.

16 Q. Okay. Would it be fair to say mid-October 2017?

17 A. Sometime around that, yes.

18 Q. Yes.

19 A. Shortly thereafter the phone call with the
20 Attorney General I met with Harvey again.

21 Q. Was it the next day or how long after?

22 A. I don't know.

23 Q. How did that -- how did that call -- how did that

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1 meeting come to pass? Did you request that meeting?

2 A. I requested the meeting, yes.

3 Q. All right. How did you do so?

4 A. I had our -- I told my legal counsel staff to -- to
5 take a meeting, to set up a meeting.

6 Q. And so would there be e-mail communication relating
7 to that meeting?

8 A. I don't -- I don't know. There very well could be.

9 Q. Where did that meeting take place?

10 A. That meeting took place here in this, in this office.

11 Q. What happened during that meeting?

12 A. I said to Mr. Rishikof that -- you know, I said, you
13 know, "Who authorized you to go over and speak to the
14 Department of Justice?" And I asked him that question five or
15 six times.

16 He told me that he was authorized to do so by the
17 Deputy Secretary of Defense, Mr. Shanahan. I asked him
18 several times, because I was concerned that I wasn't hearing
19 the truth. But he -- but he -- he responded that he had --
20 that he had received authorization from Secretary Shanahan.

21 I also told him, reminded him that, "Look, we have to
22 be -- you know, all of our ships have to be heading in the
23 same place at the same time." I repeated that numerous times.

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1 Obviously what I meant by that was that we need to be properly
2 coordinating what's going on. So that's what happened.

3 Q. Who else was present at that meeting?

4 A. That one with Harvey, I don't recall. I think it was
5 a smaller meeting, but there might -- there might have been
6 other people there as well.

7 Q. Was Mr. Easton present?

8 A. Might have been.

9 Q. All right. Do you recall Mr. Easton telling
10 Mr. Rishikof, "We own commissions"?

11 A. I -- I've heard that so many times now, I don't -- I
12 don't really recall that, at that meeting, him saying that at
13 that meeting. I remember that was a topic of discussion
14 around that time, but I don't remember that being said during
15 that meeting.

16 Q. Okay. What do you mean it was a "topic of
17 discussion" during that time?

18 A. Well, everyone, everyone is trying to figure out, you
19 know, what -- you know, you know, what is the law, what is --
20 how are things supposed to be -- are being reported, and we're
21 double-checking things to make sure that we are doing what we
22 are supposed to be doing.

23 Mr. -- and there was a question that Mr. Easton, I

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1 guess, had raised about -- about, you know, who controls who.
2 It really didn't matter to me at all. What mattered to me was
3 was that there was proper coordination.

4 Q. Right. But to Mr. Easton it mattered who owned
5 commissions, correct? That's why he raised the question?

6 A. I have no idea what Mr. Easton was saying. I mean,
7 it was his call -- I mean, it was his comment.

8 Q. It's Mr. Easton's comment, "We own commissions"?

9 A. Correct. Yes.

10 Q. And you recall him saying that, but you don't recall
11 whether he said it during the meeting with Mr. Rishikof; is
12 that fair to say?

13 A. I think that's -- that's -- yes. That's how I
14 remember it or not remember it, yes.

15 Q. All right. So was there another meeting shortly
16 after that meeting that you just described that included you
17 and Deputy Secretary of Defense Shanahan and Mr. Rishikof?

18 A. Yes.

19 Q. Does it sound accurate that ----

20 A. No, I'm sorry. Excuse me. Then there was a
21 meeting -- after the meeting with Mr. Rishikof, I then met
22 with the deputy at -- the Deputy Secretary of Defense. And I
23 asked him, sir -- words to the effect of, sir, does -- does --

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1 did you give Harvey authorization to meet with the Department
2 of Justice?

3 And the deputy's response was, "Yes, I did give him
4 authority to meet with them."

5 And at that point any question of -- at least in my
6 mind, any question of Mr. Rishikof's termination because of
7 improper coordination because of the phone call was over.
8 That was done. We were not going to look at that anymore.
9 The Secretary had said that he could make his -- you know,
10 that he could do it. The Secretary made that decision, and so
11 that was not something that we were going to look at again.

12 Q. After the meeting between you and Deputy Secretary of
13 Defense Shanahan, there was a meeting between you and Deputy
14 Secretary of Defense and Mr. Rishikof; is that fair to say?

15 A. Yes, there was. Once I heard the Deputy Secretary
16 say that the meeting was authorized, I said, "Okay. Harvey
17 wants -- Mr. Rishikof wants to meet with the deputy to outline
18 a few ideas that he had, his three COAs."

19 So I authorized that meeting. And I authorized that
20 meeting because, as I said, once I had heard that the -- once
21 I had heard the contact was properly authorized, I dropped,
22 you know, any thought of -- of eliminating -- you know,
23 terminating Mr. Rishikof because of what had happened with the

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1 AG call.

2 Q. The meeting between Mr. Shanahan, you, and
3 Mr. Rishikof, would the 18th of October sound correct?

4 A. Like I said, those -- that -- those are really tight
5 times. But is that possible? Yes.

6 Q. Okay. And at that meeting Mr. Rishikof briefed the
7 Deputy Secretary of Defense and yourself on his proposed
8 courses of action; is that right?

9 A. That's correct.

10 Q. And those proposed courses of action involved, number
11 one, resolving this case by plea agreement or pretrial
12 agreement, correct?

13 A. Correct.

14 Q. Number two, reorganizing the convening authority's
15 office to increase the amount of control that the convening
16 authority had, correct?

17 A. Yes. Well, not reorganizing. Bringing things into,
18 I think is a better way of putting it, bringing other equities
19 and other organizations into under -- under Mr. Rishikof's
20 control, yes.

21 Q. And then the third COA was business as usual,
22 correct?

23 A. I think that's right.

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1 Q. Did anything else of significance happen at that
2 meeting?

3 A. No. I advised the deputy secretary to be in what I
4 called receive mode, to not indicate approval or disapproval
5 of anything that Harvey had to say, especially when it came
6 to -- for plea agreements. He was only supposed to hear what
7 Mr. Rishikof had to say. And I remember the deputy not saying
8 really anything during the course of that meeting.

9 Q. All right. So were you aware of another meeting on
10 27 October -- excuse me, a video teleconference on
11 27 October 2017, in which Mr. Easton was briefed on the COAs?

12 A. I -- I don't -- you know, I -- once again, I mean, he
13 was -- people in the legal counsel staff were constantly in
14 communication with the convening authority, so I -- that's --
15 you know, I -- you know, is it possible? Is it -- you know,
16 yeah, I think that probably there, there might have been
17 communication.

18 Q. All right, sir. And do you recall a meeting on
19 5 November 2017 between you and Mr. Rishikof?

20 A. On what day?

21 Q. 5 November 2017.

22 A. I -- I don't know. I don't -- I don't think so. Was
23 there a subject matter that you had on that? That might ----

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1 Q. Yes, sir. Let me orient you a bit. That would be
2 the meeting at which Mr. Rishikof told you that he was putting
3 those three COAs into a memorandum that he was going to
4 propose to the Deputy Secretary of Defense.

5 A. He had -- he met -- there was another time that he
6 had -- that it's possible there was another time that he met
7 with me. I don't -- he was -- he was always talking about his
8 COAs, but -- and it's very possible that there was another
9 meeting, but I honestly -- I might have a vague recollection
10 of it, but not -- nothing specific.

11 Q. Okay. So in his always talking about his COAs, at
12 some point he made known to you that he was going to reduce
13 those COAs to writing; is that fair to say?

14 A. No, he was always advocating for his COAs.

15 Q. And at some point he let you know that he was going
16 to put those COAs into some sort of written document?

17 A. I -- I -- he might have.

18 Q. Thank you, sir. The -- were you aware of further
19 communications between Mr. Rishikof and Mr. Easton throughout
20 November of 2017? Were you briefed on that?

21 A. Like I said, I mean, there was constant
22 communication. I don't know the specifics of the constant
23 communication.

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1 Q. Thank you, sir. I'd like to move forward to December
2 of 2017. At what point in 2017 did you return to the question
3 of replacing Mr. Rishikof?

4 A. We started -- after we -- after I had said no on --
5 on the issue of -- of termination because of the AGC call, you
6 know, we're -- we were constantly looking at this issue as to
7 what was going on in military commissions.

8 And I -- you know, and I -- you know, all of these
9 different, you know, concerns, you know, were still out there,
10 you know, dealing with fast boat, dealing with -- dealing with
11 other issues. And, you know, I'm really starting to be
12 concerned here that -- you know, that this is not working out
13 and things are not going well. So we then spun up again the
14 possibility of -- of terminating Harvey.

15 Q. All right. You mentioned the fast boat. What was
16 your concern around the fast boat?

17 A. Well, I mean, I understand that we lost a week's
18 worth of court time because -- because of that, and there was
19 a whole kerfuffle that was going on there. And at the same
20 time there, you know, I'm also hearing about the plane trip
21 that was out there. So these were -- these were things that
22 were continuing to permeate and still were of a lot of
23 concern.

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1 Q. Sir, you mentioned the plane trip before. When did
2 this plane trip take place, the one that the chief of staff
3 had to make the call about?

4 A. That happened before my tenure.

5 Q. Okay. Would that have been in February of 2017, or
6 you don't know?

7 A. I don't know.

8 Q. But it was before August of 2017, because it was
9 before your time; is that fair?

10 A. I -- yeah. I believe it was -- yes, it was before my
11 time.

12 Q. All right. And so when -- when in December of 2017,
13 or before that, November or December of 2017, did you spin up
14 again on the question of replacing Mr. Rishikof?

15 A. We were, you know -- you know, we during that period,
16 we had started to consider terminating Mr. Rishikof.

17 Q. Okay. And when did that -- when did that begin, that
18 consideration?

19 A. I don't know a date certain, but we definitely -- it
20 was occurring there in that period.

21 Q. Okay. Who's responsibility was it to look at the
22 question of terminating Mr. Rishikof?

23 A. That is my responsibility.

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1 Q. And so when did you personally begin to look at that
2 question again?

3 A. I began looking at that question during that period
4 of time.

5 Q. Okay. Was it before or after Thanksgiving?

6 A. Oh, I -- I'm sure that I was thinking about it before
7 Thanksgiving.

8 Q. Did you ask someone to prepare memoranda or look into
9 the legal questions?

10 A. I don't -- I -- we were -- we were looking at -- we
11 were -- there was a whole bunch of things that we were looking
12 at when it came to military commissions, so I think I had --
13 you know, I had asked the legal counsel team to see what they
14 were thinking on these issues again.

15 Q. Okay. And excuse me. Specifically related to the
16 one that we are discussing today, you asked legal counsel to
17 look at the question of replacing or terminating Mr. Rishikof,
18 correct?

19 A. Yes. Yes.

20 Q. All right, how did you ask them to do that? Was that
21 in a meeting, an e-mail?

22 A. I don't remember. I'm sure that I verbally said it.
23 That's usually how I handle things, verbally.

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1 Q. Okay. And was that at a staff meeting that you
2 regularly have?

3 A. No. We -- there were -- there were a number of
4 meetings that were going on about -- about this issue.

5 Q. Okay. How many meetings would you say?

6 A. Oh, I honestly couldn't say. I mean, there were a
7 number of meetings.

8 Q. Okay. And who was involved in these meetings?

9 A. The members of the legal counsel team, the -- myself,
10 my military aides and -- and others.

11 Q. Okay. And would it be fair to say that those
12 meetings took place from, say, the middle of November 2017 to
13 the middle of December 2017?

14 A. There were a number of meetings. I don't -- I
15 honestly -- when they took place, I don't -- I don't
16 absolutely recall.

17 Q. Okay. Were there any agendas or read-aheads for
18 these meetings?

19 A. I don't know if there were any agendas. We were --
20 like I said, we were looking at different options about --
21 about this and other subject matters, so I'm sure there were
22 that.

23 Q. When you say "that," what do you mean "that"?

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1 A. Well, I mean that there were -- I'm sure that people
2 were -- there were documents that people were working on
3 because we were looking at the -- at this issue very
4 generally ----

5 Q. I see.

6 A. ---- generally and concisely.

7 Q. So people were writing memoranda or taking notes or
8 doing legal research, is that what you mean?

9 A. Yes. Absolutely.

10 Q. Right. And when you say "We were looking at it
11 generally and concisely," you mean generally you were looking
12 at the problem of military commissions and concisely how to
13 terminate Mr. Rishikof?

14 A. Not -- we were looking at the issue of -- of military
15 commissions as a whole. And we were also, you know, looking
16 at whether or not we -- we should continue with Harvey.

17 Q. And the people who prepared those documents were the
18 same people who were in the meetings; is that right? The
19 legal counsel team?

20 A. That's right. And I also opened up the aperture
21 wider on some of the issues for military commissions because I
22 wanted, you know, more of an office kind of thought as to
23 what, you know, what it is that we should be doing with

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1 military commissions.

2 Q. Okay. And what does that mean, you opened the
3 aperture wider?

4 A. I meant that we were consulting with others in the
5 office, I mean, made it into -- I wanted to hear ideas. I
6 wanted to hear people -- what people had as concepts.

7 Q. Okay. On what topic?

8 A. On military commissions.

9 Q. Just generally? Just everything about the military
10 commissions?

11 A. Just generally.

12 Q. Okay.

13 A. Just generally.

14 Q. Okay. And so who -- other than the legal counsel
15 team that you talked about, who else participated in that sort
16 of brainstorming?

17 A. Like I said, I opened it up to the office, and there
18 was a discussion as to, you know, about military commissions.

19 Q. Okay. And how did that discussion take place? Was
20 it solely verbal or was it ever written?

21 A. No, there were -- there were -- there were drafts
22 which were written and there were thoughts that were given.
23 It was -- there were discussions.

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1 Q. Okay. E-mails?

2 A. I'm sure there were e-mails.

3 Q. And when you say "drafts," drafts of what?

4 A. Well, I mean, we -- eventually we came up with the
5 memorandum which -- which we produced. That's whose name
6 is -- I'm having difficulty finding it right off the top of my
7 head, but it was the heavily redacted memo that we disclosed.

8 Q. Sir, can I orient you a bit. I don't know how your
9 materials are organized.

10 A. Right.

11 Q. But if you have the AE 555DD Attachment L. It's
12 entitled "Plan for the Disposition of Future Unprivileged
13 Enemy Belligerent Cases."

14 A. That would be I'm sure -- did you have a tab number
15 on that?

16 Q. Sir, I don't have the same organization that you
17 have, I'm afraid.

18 A. All right. Sorry.

19 Q. I only have the military commission's organization.
20 Maybe the prosecution, who organized your documents, has a tab
21 number.

22 Okay. I'm advised by the prosecution it should be in
23 the same order, which means if you can find AE 555DD, which

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1 has a whole bunch of memoranda attached, the ones that you
2 previously mentioned. It's attached as Attachment L.

3 A. LL?

4 Q. LL?

5 A. No, that's not it.

6 LDC [MR. CONNELL]: Sir, might I ask for a five-minute
7 break and let the witness orient himself?

8 MJ [Col PARRELLA]: What is it you are trying to call his
9 attention to Attachment ----

10 LDC [MR. CONNELL]: No, sir, he was testifying about it.
11 He was testifying that this document is the result of those
12 consultations. I do have questions about it, but it's the
13 witness who actually raised this issue.

14 MJ [Col PARRELLA]: Right, but I thought it was your --
15 you were directing him to what you thought it was, which was
16 at LL; is that correct ----

17 [Audio feed terminated.]

18 [The R.M.C. 803 session recessed at 1140, 13 November 2018.]

19 [The R.M.C. 803 session was called to order at 1303,
20 13 November 2018.]

21 MJ [Col PARRELLA]: This commission is called back to
22 order. All parties present when the commission last recessed
23 are again present. If we can please bring up the VTC.

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1 Mr. Castle, this is the military judge. Can you hear
2 me okay?

3 WIT: Yes, sir.

4 MJ [Col PARRELLA]: Thank you.

5 Mr. Connell, you may resume with your questions.

6 LDC [MR. CONNELL]: Thank you.

7 **DIRECT EXAMINATION CONTINUED**

8 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

9 Q. Good afternoon, Mr. Castle.

10 A. One small little matter. I did check my e-mail and
11 it was on the -- on the DoD system, so that was on it.

12 Q. Okay. Great. I know that you just spoke. Is your
13 audio functioning properly or are you getting reverb?

14 A. No, I think I'm hearing you pretty well.

15 Q. Okay. I just wanted to make sure you weren't hearing
16 yourself as well.

17 A. No, there's no blowback.

18 Q. Okay. Very good. And I'll remind you, sir, that you
19 are still under oath. Understood?

20 A. Yes.

21 Q. Yes.

22 A. Understood.

23 Q. Over the lunch break, did anyone have ----

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1 LDC [MS. BORMANN]: I'm sorry, but we are having a hard
2 time hearing back here. I don't know if the volume can be
3 adjusted a little bit.

4 MJ [Col PARRELLA]: Mr. Connell -- are you referring to
5 Mr. Connell?

6 LDC [MS. BORMANN]: To Mr. Castle, the VTC.

7 MJ [Col PARRELLA]: Okay. If we can please increase the
8 audio on Mr. Castle's microphone. Thank you.

9 Please proceed.

10 LDC [MR. CONNELL]: Thank you.

11 WIT: Did that help?

12 Q. Sir, over the lunch break did you have any
13 conversation or did anyone have a conversation with you about
14 any topic related to your testimony?

15 A. One person asked me how I thought it was going. I
16 said it was going fine.

17 Q. Okay. Very good. Is there anyone in the room with
18 you?

19 A. Nope.

20 Q. Is there anyone within your field of vision?

21 A. No.

22 Q. Thank you. This, I think, is related to what you
23 opened with. Over the lunch break did you use any materials

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1 to refresh your recollection?

2 A. No.

3 Q. All right, sir.

4 A. Other than finding -- other than finding the document
5 that we were discussing.

6 Q. Very good. And so you began with a comment about you
7 checked something about your DoD e-mail. Could you explain?
8 I just didn't ----

9 A. Remember we -- I'm sorry. Remember we had -- during
10 our earlier discussion I had said there might have been one
11 e-mail that I was thinking about from last night. And I
12 checked on my e-mail, my personal -- you know, on my e-mail,
13 and it appears it was on my business -- my DoD e-mail, so that
14 was -- I think we're okay.

15 Q. And that matter was in respect to the question of
16 whether you used any other e-mail system for DoD business; is
17 that right?

18 A. That's basically -- yes.

19 Q. Very good, sir. So when we broke we were talking
20 about a memorandum which bears the date 15 December 2017,
21 which is entitled "Plan for the Disposition of Future
22 Unprivileged Enemy Belligerents."

23 A. Yes.

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1 Q. That is found in the record at AE 555DD Attachment L.

2 And for ----

3 A. Right.

4 Q. And for the -- here in the courtroom, for the court
5 information security officer, it is Exhibit -- Defense
6 Exhibit 37.

7 LDC [MR. CONNELL]: May I have access to the document
8 camera?

9 MJ [Col PARRELLA]: You may.

10 Q. Sorry. I know that was kind of a lot, Mr. Castle.
11 Sorry about that. I just had to orient everybody.

12 A. No problem.

13 Q. Can you see a document on your screen, the top of it?

14 A. Yes.

15 Q. Is that the document that you were referring to in
16 your earlier testimony?

17 A. Yes.

18 Q. The -- and just to summarize, this is a document
19 which is the result of sort of expanded thinking within both
20 the legal counsel's office and the Office of General Counsel
21 as a whole on paths forward for military commissions; is that
22 fair to say?

23 A. That's a fair characterization.

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1 Q. Okay. The -- is this the first document that you
2 sent to the Secretary of Defense about the military
3 commissions?

4 A. I don't know.

5 Q. All right. Sir, I see that there is a stamped
6 December 15 -- DEC 15, 2017. How does that stamp get on this
7 memoranda or this memorandum?

8 A. It's my understanding that either we stamp it here in
9 our office or it's stamped by -- over at the office of the
10 Secretary of Defense, but I -- I'm not an expert on how they
11 get stamped.

12 Q. Okay. But when the info -- so just under the stamp
13 there's a signature that appears to be yours. Is that your
14 signature, sir?

15 A. That's my signature, yes.

16 Q. And when you signed it, it did not bear a date stamp;
17 is that correct?

18 A. I don't -- I don't know.

19 Q. Okay. All right.

20 LDC [MR. CONNELL]: I'm done with the document camera.

21 Q. So, sir, this memorandum sets forth a four-part plan
22 for current and future legal actions involving unprivileged
23 enemy belligerents; is that fair to say?

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1 A. Yes.

2 Q. And you told us earlier ----

3 A. I shouldn't say plan, but more of a proposal. These
4 are proposals.

5 Q. Okay. I'll direct your attention to the first
6 paragraph under "Introduction."

7 A. Uh-huh.

8 Q. Regarding a proposed four-part plan for current and
9 future legal actions; do you see that?

10 A. Yes, I see it.

11 Q. Okay. The -- you have already told us about the
12 process of developing the plan. The first course of action
13 that you recommend is the replacement of the convening
14 authority and legal advisor; is that accurate?

15 A. That was the first proposal, yes.

16 Q. Okay. And is it fair to say that you did not
17 coordinate this document with the convening authority in
18 advance of submitting it to the Secretary of Defense?

19 A. No.

20 Q. And, in fact, you never provided them a copy of this
21 document, the convening authority?

22 A. No.

23 Q. In this document you do not provide any basis for

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1 your recommendation for replacing the convening authority; is
2 that correct?

3 A. No, I think -- well, I'd have to read it.

4 Q. Sure.

5 A. I do say -- it does say, I should say, "This will
6 enhance the prospect of cohesive effort for the disposition of
7 pending cases."

8 Q. Right. Is -- so I have not seen this unredacted
9 document. To your recollection, is there any information
10 under these redactions which relates to the military
11 commissions in any way?

12 A. I'm sorry, can you say that again?

13 Q. Sure.

14 A. Ask that again.

15 Q. Can you -- I can that -- I can see on the screen that
16 your document also has redactions in the way that mine does.
17 To your recollection, is there any information under those
18 redactions other than the names of the replacements which
19 relates to the military commissions?

20 A. Yes, there are -- there are other discussions about
21 other proposals on military commissions.

22 Q. So your statement, "This will enhance the prospect
23 for a cohesive effort for the disposition of legal cases --

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1 pending cases," excuse me, you included that because you felt
2 that Mr. Rishikof was not cohesive with the other efforts of
3 the DoD; fair to say?

4 A. I -- I thought that he was not coordinating and that
5 he was not -- and that there were lots of problems, so yes.

6 Q. All right. And ----

7 A. And I had always said to him that we need to make
8 sure that our -- you know, that our ships are heading in the
9 same direction. I needed to know what he was doing.

10 Q. And so you added a little piece to the ships heading
11 in the same direction, that you needed to know what he was
12 doing. Was that your statement?

13 A. Yep. Yes.

14 Q. And the specific examples that you gave were the fast
15 boat and his attempt to board a plane, correct?

16 A. At the time those are the things that I was aware of,
17 yes.

18 Q. And when you say "at the time," you mean at the time
19 of proffering this memorandum to the Secretary of Defense?

20 A. Well, I -- right around this time we also received
21 what I believe is referred to as the "King Me" memo, so that
22 was that. But this, this document was prepared, you know,
23 largely independent of the "King Me" memo.

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1 Q. Thank you. The -- now, I would like to direct your
2 attention to page 2.

3 LDC [MR. CONNELL]: May I have access to the document
4 camera, the same DISO Exhibit 37?

5 MJ [Col PARRELLA]: You may.

6 Q. Page 2 of your December 15, 2017 memorandum.

7 A. Uh-huh.

8 Q. So at the bottom of page 2 you recommended both
9 interim and permanent convening authority replacements. Do
10 you recall that?

11 A. Yes.

12 Q. All right. Who did you recommend as interim?

13 TC [MR. RYAN]: Objection, sir.

14 MJ [Col PARRELLA]: Basis?

15 TC [MR. RYAN]: This information has been redacted and
16 it's being protected by the witness. There is no need for
17 that information to be provided.

18 MJ [Col PARRELLA]: Response?

19 LDC [MR. CONNELL]: Sir, these are not redactions which
20 have ever been subjected to judicial review, nor has the
21 government invoked the process under Rule 505 or 506. Nor is
22 it invoked -- excuse me, invoked the protected information
23 element of the Regulation for Trial by Military Commission.

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1 These were unilateral decisions made by the
2 prosecution, which are actually quite relevant -- we are going
3 to get substantially into this area -- are relevant for the
4 question of replacement and termination of Mr. Rishikof, which
5 is exactly the issue which is before the military commission
6 today.

7 These are not 505 or 506 or R.T.M.C. redactions.
8 These are unilateral redactions by the prosecution.

9 MJ [Col PARRELLA]: So why does the specific identity
10 relate to the relevance of the termination of Mr. Rishikof?

11 LDC [MR. CONNELL]: Because I believe that this person --
12 can we mute me?

13 MJ [Col PARRELLA]: Yes.

14 LDC [MR. CONNELL]: Because I'm about to proffer.

15 MJ [Col PARRELLA]: Let's go ahead and mute, if we could,
16 please.

17 **[Did as directed.]**

18 MJ [Col PARRELLA]: Mr. Castle, can you hear me?

19 You may proceed.

20 LDC [MR. CONNELL]: Thank you, sir. I think that this
21 information is going to link up with the 26 January 2017 --
22 2018 memorandum of Professor Jenks that directly related to
23 the firing which talks about the attempts of Mr. Castle to

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1 shop around looking for a convening authority who -- and
2 telling that first convening authority, probably the person
3 whose name is under "Interim," that the issue was the attempt
4 to get pretrial agreements by Mr. Rishikof.

5 That's going to -- that proffer is supported by the
6 26 -- excuse me, 29 -- no. I just have to check my notes here
7 for a second. 26 -- I was right the first time --
8 January 2018 memorandum, which is DISO Exhibit 34. I can show
9 it to the military commission if we need to.

10 But this is not fishing. This is linking this
11 memorandum with another memorandum that directly led to the
12 firing and implicates the issue of pretrial agreements
13 directly.

14 Separately ----

15 MJ [Col PARRELLA]: Is this DISO Exhibit 34 already part
16 of the record, Mr. Connell?

17 LDC [MR. CONNELL]: It is. Just one moment and I will
18 give you the record number.

19 Sir, it's AE 555DD Attachment E. It was already
20 proffered -- I mean it was attached, put in the record by the
21 record in AE 555DD.

22 MJ [Col PARRELLA]: You said 555DD Attachment E?

23 LDC [MR. CONNELL]: Yes, sir.

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1 MJ [Col PARRELLA]: Okay. At this stage, Mr. Connell, I'm
2 not convinced that the name of the specific individual is
3 relevant. So at this stage the government's objection is
4 sustained on relevance. If later on, through the course of
5 your questioning, answers with this witness, you can convince
6 me other otherwise, then we will address it again at that
7 time.

8 LDC [MR. CONNELL]: I don't have anything -- you have
9 ruled, sir. I don't have anything else to say.

10 MJ [Col PARRELLA]: Okay. Let's go ahead, please, and
11 unmute.

12 [Did as directed.]

13 MJ [Col PARRELLA]: Can you hear me, Mr. Castle?

14 TC [MR. RYAN]: Your Honor, I would ask that you instruct
15 the witness regarding your ruling.

16 LDC [MR. CONNELL]: I'm just going to ask a new question.

17 MJ [Col PARRELLA]: Mr. Castle, can you hear me?

18 WIT: Yes, sir, I can.

19 MJ [Col PARRELLA]: Mr. Connell, you can ask your next
20 question.

21 LDC [MR. CONNELL]: Thank you.

22 Questions by the Learned Defense Counsel [MR. CONNELL]:

23 Q. Are you personally aware of what lies under the

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1 redaction on the bottom of page 2 under the word "Interim"?

2 Don't tell me what it is, just are you personally aware?

3 A. Of what's underneath?

4 Q. Yes, sir.

5 A. I'm sorry. I have an idea.

6 Q. Right. You are the original signer of this document,
7 correct?

8 A. I signed this document, yes.

9 Q. Okay. Is it the name of an individual or is it a
10 name of a position? Don't tell me which -- don't tell me
11 what. Just I'm asking which it is.

12 A. If I remember correctly, it -- I believe there was a
13 name of a person.

14 Q. Thank you. So in your declaration at AE 555E
15 Attachment C -- do you have that declaration in front of you?

16 A. Yes.

17 LDC [MR. CONNELL]: I'm done with the document camera.

18 A. Yes. I have it right here.

19 Q. Thank you. You state -- I'd like to direct your
20 attention to paragraph 2, the second sentence.

21 A. Yes.

22 Q. You state that, "During the week of 29 January 2018,
23 I recommended that the" director -- "that the Secretary of

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1 Defense (SecDef) rescind Mr. Rishikof's designations as the
2 convening authority and as the Director." Do you see that?

3 A. Where is -- is that number -- is that paragraph 3 of
4 my declaration?

5 Q. Yes, your declaration.

6 A. My declaration of March 19, I have that.

7 LDC [MR. CONNELL]: Court's indulgence just a moment and I
8 will have that. May I have access to the document camera,
9 please?

10 MJ [Col PARRELLA]: You may.

11 LDC [MR. CONNELL]: This is DISO Exhibit 2. It is also
12 AE 555E Attachment C.

13 Q. Sir, in paragraph 3, second sentence, "During the
14 week of January 29, 2018," do you see what I am referring to?

15 A. Yes.

16 Q. All right. In that sentence you refer specifically
17 to the 29 January 2018 recommendation to the Secretary of
18 Defense. Do you agree?

19 A. During -- during the week of the 29th I did recommend
20 to the Secretary of Defense to rescind Mr. Rishikof's -- yes.

21 Q. Right. In that paragraph you omitted to mention that
22 you had -- that you had also recommended to the Secretary of
23 Defense to rescind Mr. Rishikof's designation on

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1 15 December 2017. Would you agree?

2 A. Well, that -- the reason why I omitted it was because
3 we -- I had -- I had made a determination that I was not happy
4 with some of the -- that I didn't think the information that I
5 was getting on the law regarding UIs was complete.

6 Therefore, I created the panel, which was the
7 document you have also seen which was part of this release.
8 And in that panel we had a group of experts get together and
9 go over, you know, what the law is, what we are trying -- what
10 is the appropriate things that we can do under the law. And
11 that is where I based my recommendation on for this
12 January 29th, 2018.

13 Q. Right.

14 A. We -- we -- before, you know, the -- any thoughts --
15 you know, any really thoughts the -- about what you saw in the
16 recommendation in the previous memo, we -- I completely
17 disregarded that and went with the -- went with the
18 information which was contained in the -- which was contained
19 in the -- what I called the "Group of Experts" memo.

20 Q. Okay. Sir, there was a lot there and I need a moment
21 to unpack it. So first, you would agree that in your
22 declaration you did omit to mention the 15 December
23 recommendation of yours, correct?

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1 A. Well, because that was not what we were basing it
2 upon -- we were not basing it upon, the information that we
3 had at that -- on that declaration. What I was doing was
4 basing it upon the information that was in the -- which was in
5 the "Group of Experts" memorandum. We -- we released that to
6 you.

7 And that is the important -- very important
8 distinction, is that, you know, it was the information which
9 we gave -- which I recommended to the Secretary was based
10 upon, you know, it was based upon three factors which were
11 listed in the declaration, which -- which we -- which were
12 there -- which I was using as my decision points after the
13 "Group of Experts" memorandum had come out.

14 Q. So I'm going to try this relatively simple question a
15 third time. Would you agree that you did not include the
16 December 15th recommendation in your declaration?

17 A. Because it wasn't part of the -- it wasn't part of
18 the things that I was using to make a decision.

19 Q. Sir, I'm going to give you ----

20 A. Recommend ----

21 Q. ---- an opportunity to explain the reasons. We are
22 just trying to get historical facts first. Would you agree
23 that you omitted that?

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1 A. I -- because it wasn't part of -- the judge asked me
2 to find -- to tell him why we had done what we -- you know, we
3 had done. And that was exactly what we -- the reason why we
4 had done that, was because of the three things that were in
5 the dec -- in the declaration. Everything else that was
6 there, you know, I disregarded -- I did absolute -- my very
7 best to disregard anything else that was thought of, or any
8 other theories beforehand. That was in the past.

9 Once, you know, the group of experts had given me
10 their expert opinions as to what the law is, to make sure that
11 we were doing absolutely the right thing, I then based my
12 decision and recommendation on that. And those were the
13 things that were forefront in my mind when I was doing it.

14 Q. The December 15th recommendation that Secretary of
15 Defense Mattis terminate Mr. Rishikof, you later decided -- I
16 just want to make sure I understand what you're saying. You
17 later decided that that information was not good?

18 A. Yeah. I believed -- the information -- the reason
19 why I was -- there was -- there were -- there were other
20 theories as to why we -- why we could terminate Mr. Rishikof,
21 I then -- I -- and those are intertwined with the reason why I
22 made this proposal.

23 Then upon -- I kept on -- I kept on asking people

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1 questions about this. Because, once again, this is -- this is
2 a new area of law for me. UI is not something that is found,
3 as you know, in civilian criminal law. So it's a new area.

4 And so I kept on -- you know, I asked people
5 questions. And I realized -- I said, "Look, there very well
6 might be, this -- you know, the thoughts that we were having
7 beforehand might not be correct."

8 Therefore, I created a group of experts to go out and
9 advise me on exactly what the law is, because we wanted to
10 make -- I wanted to make absolutely certain -- absolutely
11 certain that we were within the confines of the law and that
12 we were -- that we were doing -- what we were doing was legal
13 and ethical. And that's the reason why I created the group of
14 experts and put that into the memo.

15 LDC [MR. CONNELL]: I'm done with the document camera.

16 Q. Sir, how long after you sent the December 15th memo
17 to Secretary Mattis did you rethink its underpinnings?

18 A. Well, we were constantly evaluating what was going
19 on. What we -- and I was asking questions, and I thought that
20 we were in a good place legally, and we even sent in, you
21 know, other documents based on that. But once I realized,
22 once I asked -- started asking even more questions, right,
23 that, you know, that we might not be right, I stopped the

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1 process, stopped it cold, and asked this group of experts,
2 which included senior military judges, right, to advise me on
3 what the law is and how we should be doing things in order to
4 make sure that we were -- that we were in accordance with the
5 law. That was absolutely paramount on my mind.

6 Q. Sir, you just testified that based on your questions
7 you sent in other documents. What other documents did you
8 send in?

9 A. There was the other document which we had sent in
10 was -- was also part of the recommendation that which we
11 pulled -- which we pulled down. And I believe it is on the
12 first -- it was dated January 12, '18, and that was one of the
13 documents which we had -- we had disclosed.

14 Q. All right, sir. And you just testified that at some
15 point you put an absolute stop to the process.

16 A. That's right.

17 Q. By "the process," you mean the process of the
18 termination of Mr. Rishikof?

19 A. Right, exactly. That we were considering it. We
20 were actively considering it. We were -- and then I
21 started -- I asked more questions to more people, realized
22 that there was substantial questions as to what is the
23 right -- the right area of the law, that is what the law said.

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1 And I put it -- I put a stop to everything. I pulled
2 down this -- this memo, and I convened a group of experts to
3 make sure that everything we did was well within the basis of
4 the law.

5 Q. When did that stop? When did you put a stop to that
6 process, sir?

7 A. Shortly -- very shortly thereafter we sent this memo
8 in.

9 Q. So shortly after 15 December?

10 A. January 12 -- very shortly -- it might have even been
11 the same day, but January 12, '18, right around there, I
12 pulled it down.

13 Q. All right. So when you say "pulled it down," you're
14 not referring to the December 15 memorandum. You're referring
15 to the January 14 memorandum; is that correct?

16 A. I -- I -- I mean that I pulled -- mean I pulled that
17 I pulled -- I stopped any -- I pulled any kind of action or
18 any kind of consideration of -- about -- about terminating
19 Mr. Rishikof and Mr. Brown. I was concerned that we did not
20 have the right law in place. I would not move forward unless
21 I was certain or as close to certain as possible that we were
22 going to be always on the right side of the law. And that's
23 why I convened the group of experts, which included senior

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1 military judges, to make sure that I did this right.

2 Q. Right.

3 A. This was not an area that I had expertise in and I
4 wanted to make -- and I am -- I am emphatic that we were going
5 to -- we were going to be legal and thoughtful about what we
6 were doing.

7 Q. How did you communicate that decision to the Office
8 of General Counsel?

9 A. I told -- I told my -- I told my front office staff
10 here, I said pull -- you know, I remember this. You know, I
11 pulled the memo, and that's what we did. We pulled the memo.
12 I said -- I pulled the memo, and I started conversations, and
13 I started -- I had conversations with individuals, one
14 individual outside of the office and another individual who
15 was a senior JAG, former senior JAG inside the office. They
16 raised concerns when I asked those questions. The moment I
17 heard that those questions -- those concerns, I pulled it down
18 and informed the group to make sure that I was right.

19 Q. Did any of that conversation take place by electronic
20 communications, e-mail?

21 A. This was -- this was verbally done, but there was a
22 whole bunch -- I'm sure there was traffic -- you know, there
23 was electronic traffic on it.

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1 Q. What does it mean to pull down a memo?

2 A. Well, for me it means is that we're retracting it,
3 we're withdrawing it. You know, we -- you know, it says that
4 we don't -- you know, that we don't agree with the conclusions
5 to it. And, you know, that's -- that's a little bit
6 embarrassing, a little bit of egg on one's face, but I don't
7 care.

8 We want to make sure that we do the right thing. We
9 want to make sure that we are in compliance with the law. And
10 that's why I was -- I was very -- that's why I insisted that
11 it be pulled down and directed it to be pulled down, and I
12 believe it was. It was.

13 Q. Did you also pull down or disavow the
14 15 December 2017 memo?

15 A. Well, that was -- I don't remember. If anybody asked
16 me, I would have, if it would have come to regarding the
17 convening authority. I don't have any specific recollection
18 of somebody saying that, but I would also -- but you know, I
19 would -- this is all part of that, and that was an information
20 memo anyway. It wasn't an action memo.

21 So anyone who -- I mean, if -- you know, I made sure
22 I was absolutely clear to my entire chain of command and up
23 the chain of command that we were pulling the memo and we are

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1 not moving forward.

2 Q. All right. I would like to ask you -- the next set
3 of questions that I'm going to ask you is about the search for
4 a replacement convening authority. And I would like to limit
5 this question up to the time that you pulled down the
6 January 14 memo, okay? Do you understand the time frame?

7 A. Yes.

8 Q. So it could be anytime --

9 A. January ----

10 Q. It could be anytime before that, it could be
11 November, December, January, but up to your pulling down of
12 the memo. Do you understand?

13 A. Right. Yes.

14 Q. Okay. Did you directly speak to anyone about serving
15 as the convening authority to replace Mr. Rishikof?

16 A. Yes.

17 Q. Okay. Who did you speak to?

18 TC [MR. RYAN]: Objection, sir. Same objection.

19 MJ [Co] PARRELLA]: Response?

20 LDC [MR. CONNELL]: Yes, sir. Could you mute the -- could
21 you mute me?

22 MJ [Co] PARRELLA]: Let's go ahead and mute the
23 microphone, please.

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1 [Did as directed.]

2 LDC [MR. CONNELL]: I see the microphone is off. The --
3 this information is relevant to the unfolding information
4 about the effort to replace and terminate Mr. Rishikof.
5 The -- what I'm proffering -- what I expect the witness to say
6 is that yes, he did, and that he specifically had a
7 conversation with that person about we need to get rid of
8 Mr. Rishikof because -- Mr. Rishikof because he's been
9 involved in a search for pretrial agreements.

10 And then I think what happened is Mr. -- when the
11 witness had this, you know, sort of revelation that maybe they
12 weren't doing things right, he cut off communication with his
13 first person that he had talked to and then started in with
14 another person to try to cover his tracks.

15 So I think it's directly relevant to both his motive
16 for seeking to replace Mr. Rishikof as well as describing the
17 conduct that he just said, you know, he wanted to make sure
18 that he did everything exactly right.

19 MJ [Co] PARRELLA]: Response?

20 TC [MR. RYAN]: Your Honor, this individual ultimately did
21 not serve. His identity, therefore, does not have to be
22 disclosed. I believe this is a person referred to in other
23 documents as "Candidate A," and I have no objection if counsel

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1 wants to refer to it that way, assuming the witness can
2 identify the same way.

3 MJ [Col PARRELLA]: Well, I guess what I'm interested in
4 hearing from the government is I have heard the proffer about
5 the relevance, and if -- and based on the proffer -- and I'm
6 not sure if there is evidence to back up the proffer, but
7 based on the proffer, it would seem to the commission to be
8 relevant because it would indicate that at least initially
9 this witness was motivated by a desire to terminate pretrial
10 negotiations.

11 So based on that aspect of it, without getting into
12 whether we identify them by name or "Candidate A," what's the
13 government's response?

14 TC [MR. RYAN]: I have no qualms. I understand what -- I
15 believe I understand where counsel is going with the analysis,
16 and I have no objection to that content. I'm just trying to
17 protect somebody's name who doesn't have to be out there and
18 who has been otherwise protected throughout the documents with
19 the title of "Candidate A."

20 MJ [Col PARRELLA]: Okay. So -- and on that note, then,
21 what's the legal authority for the commission to protect their
22 identity?

23 TC [MR. RYAN]: Relevance, sir. That being the name

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1 itself is not relevant.

2 MJ [Col PARRELLA]: All right. I disagree, so I'm going
3 to allow you to ask the question. Let's go ahead and unmute.
4 [Did as directed.]

5 Questions by the Learned Defense Counsel [MR. CONNELL]:

6 Q. Can you hear me, Mr. Castle? Can you hear me,
7 Mr. Castle?

8 A. Yes, sir.

9 Q. All right. The question is: Who did you speak to
10 first about serving as CA to replace Mr. Rishikof?

11 A. I'm sorry, is the judge instructing me to provide
12 that information?

13 MJ [Col PARRELLA]: I am, Mr. Castle. You can answer the
14 question.

15 WIT: Thank you, sir.

16 A. The first person -- the person who we first
17 considered was the current -- and I apologize, my mind is just
18 kind of wandering for his last name, the current Army general
19 counsel.

20 Q. Do you know his first name?

21 A. James. And I'm sorry, I can't remember. If someone
22 would say it I would remember right off the top of my head,
23 but I can't.

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1 Q. Sir, does the name James McPherson sound familiar?

2 A. That's it. I'm sorry. Excuse me. That's correct.
3 Absolutely correct.

4 Q. Right. I know that you later spoken to Mr. Coyne.
5 From your statement there it sounded like there might have
6 been a second person before Mr. Coyne. Is that accurate or
7 was it just Mr. McPherson?

8 A. No, it was -- it was -- it was Mr. McPherson. We
9 were considering Mr. McPherson. We -- and then I made the
10 decision not to consider him anymore and I went to -- we went
11 with Mr. Coyne.

12 Q. All right. I would like to ask you some questions
13 about your conversation with Mr. McPherson. Could you
14 describe that conversation?

15 A. Well, if I remember correctly -- and it's a big if --
16 it was a Thursday. We had already -- I think we might have
17 already asked him if he could do this, and I think he might
18 have said yes. I don't remember the sequence.

19 I felt like I owed him some sort of explanation as
20 to -- as to why we were asking him to make that change. I
21 had -- I explained to him that.

22 I also -- you know, I said that, you know, we're
23 thinking about making this change; that we think that we're

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1 able to do so under the law, and that we also were -- but at
2 the same time I also talked to him about the AG call.

3 Now, I found immediately after I got done with that
4 conversation, and I think I was coming down with the flu when
5 I did, because the rest of the weekend I was completely out of
6 it, right? But as soon -- you know, but on Monday morning --
7 but on -- during the weekend time I said to myself, look, we
8 need to be always in compliance with the law to make sure that
9 there isn't any problem, any problem at all or any discussion
10 about -- about, you know, any even question about pretrial
11 agreements.

12 I said to my staff, "We are no longer considering
13 Mr. -- Admiral McPherson" -- who was an admiral and became
14 Army general counsel. We are not going to do that because I
15 do not want to raise any kind of -- I don't want there to be
16 any question whatsoever that we are, you know, that we are --
17 you know, that we are doing anything improper as part of this
18 process.

19 And so then staff went out and they went through some
20 resumes, and we were able to ask Mr. Coyne to do so. And we
21 absolutely, positively certain that Mr. Coyne -- we didn't say
22 anything to Mr. Coyne about anything, and I think that's
23 reflected in his declaration.

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1 Q. What did you say to Mr. McPherson -- or
2 Admiral McPherson about the AG call?

3 A. Like I said, it's fuzzy. I really believe that I
4 was -- I think I had the flu or was coming down with the flu.
5 I remember going over the phone call with him and saying that
6 I was concerned about proper coordination and that. But like
7 I said, very fuzzy -- very fuzzy on my part on exactly what I
8 was saying. I was not feeling well.

9 But, you know, over the weekend, as I was, frankly,
10 in my sick bed, you know, I started saying to myself, well,
11 look, you know, that might not have been the smartest thing to
12 do, so we're going to take -- we're not going to consider him
13 for any position -- this position anymore, and we're going to
14 go with somebody new.

15 Q. I just want to ask this question one more time to
16 give you the opportunity to clarify.

17 In your second answer there you didn't mention the AG
18 call. What did you say to Mr. McPherson about the AG call?

19 A. Like I said, very fuzzy about what I said to him
20 about the AG call. I wasn't feeling great. And -- and --
21 but, you know, as soon as I had said -- you know, talked about
22 the AG call, I brought -- you know, I made sure that we
23 discarded the consideration of Admiral McPherson from -- for

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1 the position.

2 Q. Was there any electronic communication between you
3 and Mr. McPherson?

4 A. I -- it's possible. I don't know if -- but I can't
5 remember right off the top of my head ----

6 Q. Okay.

7 A. ---- anything specific.

8 Q. So I'd like to ask you now about a few other contacts
9 between the convening authority office and the office -- and
10 your office.

11 Are you aware that on the -- on the 14th of December
12 there was a video teleconference between Mr. Easton and
13 Mr. Rishikof regarding the management memo?

14 A. I was -- I was aware there was constant
15 communication. There was -- well, there was -- when I say
16 "constant communication," I mean that there was weekly
17 meetings that they were having, yes. But we -- we did -- but
18 I was not told that, you know, that we were going to get a
19 65-page memorandum from -- from Harvey anytime soon.

20 Q. All right. So why do you say 65 pages? To me it
21 looks like a two-page memorandum with attachments.

22 A. Well, it's a 65-page memorandum. There is a -- the
23 two pages on top are, in my opinion, were cover sheets. The

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1 first page was a cover sheet. The second page asks, you
2 know -- you know, the second page, and then there are 65 pages
3 behind it. And that was how it was presented to me, as a
4 65-page document.

5 Q. So here in our military commission, and you see them
6 there before you, 65 pages is a light filing. Is that unusual
7 in the Department of Defense, to have attachments?

8 A. Well, 65 -- well, it was a 65-page -- it was a
9 65-page document. And yes, 65-page documents outlining a
10 whole series of changes to an org -- that fundamentally would
11 reorganize something, absolutely. That is something that
12 is -- that does not happen every day.

13 Q. So you told us earlier that there was constant
14 communication, weekly meetings, et cetera, and
15 essentially ----

16 A. Right.

17 Q. ---- Mr. Rishikof went on about his COAs all the
18 time.

19 A. Right.

20 Q. Those three COAs that we discussed earlier that he
21 had briefed you on personally, those are the three COAs
22 outlined in the memo, right?

23 A. Exactly. But once again, the reason for my concern

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1 about this is yes, I knew that Harvey was going to be, you
2 know, coming up with a proposal.

3 The problem with the document is that it wasn't
4 coordinated. He didn't tell us that it was coming. He sent
5 it -- it -- it went to the Deputy Secretary. We didn't have a
6 chance to go over it and read it and coordinate with it.
7 There were lots of other equities, from organizations not in
8 OGC, that were directly impacted by it.

9 So we have this document that, you know, that -- you
10 know, that absorbs all of these different organizations and
11 entities and responsibilities. We didn't know that it was --
12 you know, that it was coming. We knew that -- he had said in
13 the past that, you know, I'm working on these ideas and
14 proposals, but I don't know of anybody thinking that we were
15 going to get -- you know, that a 65-page thing was coming.

16 And that -- especially didn't know that he was going
17 to send it directly to the DEPSEC while we, I guess, I found
18 out later, received it simultaneously. So to me that was a --
19 you know, that's a huge process foul.

20 Q. Did you just say you received it simultaneously?

21 A. I think I did, yes. It was -- it came to me at -- on
22 my -- at my -- on my e-mail. And, you know, as you've
23 probably gathered from our conversation we've had today, I'm

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1 not all that big about checking in my e-mail.

2 But once again, it wasn't properly coordinated. No
3 one has seen the document before it shows up on -- you know,
4 to the address to the Deputy Secretary. No one has talked
5 to -- you know, all the organizations which are being swept up
6 haven't been consulted with -- or their thoughts on this.
7 There's just -- I mean, it is a huge process foul.

8 Q. Sir, when you say that the other organizations
9 weren't consulted, you don't mean that Mr. Rishikof hadn't
10 been in constant communication with them and basically going
11 on about his COAs? You mean he ----

12 A. He -- I'm sorry, I interrupted you. I apologize.

13 Q. Is what you mean that they did not receive advance
14 copies before it went to the Deputy Secretary?

15 A. They did not receive -- they did not -- as far as I
16 know, they did not receive advance copies. I know I didn't
17 receive an advance copy before it went off.

18 And remember, coordination is -- it is a standard
19 procedure in the Department of Defense, and we spend so much
20 of our time here in the OGC, all right, making sure that
21 things are properly coordinated.

22 What does that mean? It means that entities that
23 are -- that are -- that are being -- that are being affected

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1 by something are consulted and asked about it and asked to
2 comment on what is going on. There are literally packets that
3 we send out where the leaders from those organizations that
4 are being consulted will sign off on. And that did not appear
5 to be anywhere here, you know, in these documents.

6 He said in his, in his -- I believe he said in his
7 opening page to that, you know, "Deputy Secretary, this is for
8 your signature," which in my mind tells me he wants to execute
9 on this. Harvey wants to execute on this; that this is --
10 that this is -- you know, he is saying, you know, that he is
11 saying we're -- you know, if you like the proposal, sign here
12 and we will -- and it will be -- and we will execute upon.

13 Q. So you were just explaining coordination to me. Why
14 is it that Mr. Rishikof has to send you advance copies of his
15 proposals? And you are allowed to advance proposals without
16 sending him any copy at all? What is the process? How does
17 that work?

18 A. Well, I would refer you to the -- the instruction --
19 the memo which was sent around by the Deputy Secretary Work,
20 when he was deputy secretary, that discussed how -- you know,
21 how, you know, that everything was supposed to be properly
22 coordinated with OGC.

23 There had been another issue in the past. There had

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1 been a problem. It's my understanding that
2 Deputy Secretary Work believed that the reason why that issue
3 occurred was because things weren't properly coordinated.
4 It's my understanding then that he had written all of this.

5 I mean, it's -- I think it's very, very important for
6 people to understand who may not be familiar with the
7 department and how it operates, that coordination is the crux
8 of what we do, is one of the most important things that we do
9 here. And it is something that -- you know, there are files
10 that are waiting for my coordination as soon as I leave this,
11 you know, leave this office for me to work on. It is a
12 fundamental part of what we do here.

13 Q. All right. So with respect to that fundamental part
14 of what you do there, I understand why Mr. Rishikof perhaps
15 should have sent an advance copy to you. Why do you not have
16 to coordinate your restructuring of the convening authority
17 with him, with the convening authority's office?

18 A. Well, I -- my job is to make recommendations to the
19 Secretary; that is what I was supposed to do. And the
20 deputy -- and, as I understand it, the -- the construct in
21 which we were supposed to be operating on is that Mr. Rishikof
22 was supposed to provide -- he was supposed to send information
23 to our office. If I thought that there was information that

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1 needed to get to the Deputy Secretary or to the Secretary,
2 then I would be passing it along up the chain to them.

3 Q. So the real reason why you didn't have to coordinate
4 your memoranda is that you are the general counsel, you are
5 exercising independent legal judgment in advising your client;
6 isn't that right?

7 A. I am the person who is supposed to be advising -- to
8 be giving advice to the department's leadership as to -- as to
9 what is going on with military commissions.

10 Q. All right. Based on your independent legal judgment?

11 A. Based upon my -- based upon my -- based upon the best
12 reading, yes, of -- you know, my best judgment, I would say
13 that.

14 Q. Yeah, best legal judgment?

15 A. Yes, best legal judgment and judgment as a whole,
16 especially when it comes to administrative sorts of endeavors.
17 You know, this is not -- you know, this isn't -- there are
18 many things that the convening authority is supposed to be
19 doing. There are many things that are going on with the
20 military commissions.

21 There's only some of it which are -- you know, some
22 of which are judicial. As I've told you we did not look
23 into -- use those to make our -- you know, our recommendation

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1 that went up in February, and there are many other
2 administrative functions as well. And I -- I'm supposed to
3 opine on all of it.

4 Q. Sir, I would like to direct your attention to the
5 4 January 2018 action memo. I think you may have touched on
6 it briefly. It's from Mr. Newman. It's found at the record
7 AE 555DD ----

8 A. Right.

9 Q. Attachment C. Do you have that in front of you?

10 A. I do.

11 Q. And the subject of that memorandum was the
12 termination of Mr. Gary Brown as legal advisor to the
13 convening authority for the military commissions, correct?

14 A. Correct.

15 Q. How did Mr. Ryan know to prepare that memo?

16 A. Because we were working on these issues. As I said,
17 we were working on -- we were -- we were working on, you know,
18 ideas, concepts about how to move things forward. That's the
19 reason why you had the four-part memo that was before. You
20 know, he sent this, this up to me. That became one of the
21 bases of why we sent the -- the first memo up to the Secretary
22 recommending termination.

23 Once I realized I had significant questions about it,

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1 I pulled all of that down. But this is all part of that, of
2 the things that we -- I discarded from consideration when I
3 made my decision after the body of experts had come back.

4 Q. Why did it take you a month, between 15 December 2017
5 until 14 December -- 14 January 2018 to have questions about
6 the quality of the work that you were putting forward?

7 A. Well, I apologize, but, you know, there is a lot of
8 stuff that goes on in this office. There were a lot of things
9 that were -- that were going on at that time, things that --
10 and it is, you know, Christmas and New Year's, so there -- you
11 know, that probably takes two weeks off right there.

12 Q. All right. So separate from Christmas and New
13 Year's, which I can relate to, why did it take ten days,
14 between January -- well, let's actually move to the next
15 document for a moment.

16 There is a 12 January 2018 action memo found in the
17 record at AE 555DD Attachment D from you personally, correct?

18 A. Right. Yes. That's correct. And this is the one --
19 and this is the one that we pulled down, because I -- I
20 started -- I asked -- I continued to ask people questions
21 about this, and I was -- and I wanted to make sure that we
22 were absolutely in compliance with the law, that we had taken
23 a look -- I had asked more questions. I had concerns. And

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1 that's when I pulled this down. I pulled it down.

2 Q. Okay. All right. What were your additional
3 questions?

4 A. Well, it goes to what is it -- you know, is what
5 we're doing and what we are thinking about correct in the
6 sense of, you know, is this a UI? Is this the proper way in
7 order that we should proceed? There are, you know, any number
8 of questions that come up around this issue.

9 And once again, you know, this was not an area
10 that -- you know, that I have -- that I have any background
11 in, and so I was constantly -- I was trying to ask questions.
12 I was asking questions primarily within the -- within part of
13 our office. But then I started asking questions once this
14 came up around. And then I said to myself, you know, there
15 are still significant questions here, so I'm going to pull
16 this down.

17 Q. Why didn't you ask those questions before you sent
18 your action memo to the Secretary of Defense?

19 A. There were -- one thing is is that -- is that -- you
20 know, I didn't want it getting around that we were -- that we
21 were -- outside of our office that we were making these sorts
22 of considerations.

23 But frankly, as I said, I mean, we have a tremendous

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1 amount of stuff to do here every day, and, you know, we cover
2 the full range of law which is going on. And just this -- as
3 I said, you know, there is a whole ton of packages which are
4 waiting for my review to go over and for me to think about and
5 for me to make sure that there's legal sufficiency in -- in
6 these areas. That's all going on during this -- during this
7 time.

8 You know, this, military commissions, important,
9 very, very important. But at the same time there are lots of
10 other things that are very, very important which are going on
11 too.

12 Q. How much before your pulling back of the memo did you
13 talk to Admiral McPherson?

14 A. I talked to Admiral McPherson when we told him that
15 he was going to have -- you know, told him that we wanted him
16 to do the job. Then there was the time when I was sick, when
17 I had spoken to him. Those are the two times that I remember.
18 There might have been something -- there might have been other
19 things that we -- that we talked about, but those are the two
20 recollections that I have of speaking to him about military
21 commissions.

22 There was -- and -- and I also -- and the day that
23 I -- and the day that I told him that we were considering him,

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1 I told -- I talked to him then. So I can remember at least
2 three times. There might have been other times. I don't
3 know.

4 Q. In -- did you decide to go full stop on the process
5 of terminating Mr. Rishikof before, after, or
6 contemporaneously with informing Admiral McPherson that he was
7 no longer under consideration?

8 A. I made the decision to -- to -- not to go with
9 Admiral McPherson. Now, once again, there is a whole bunch of
10 moving parts here, so sequencing -- you know, so I'm not
11 exactly sure about sequencing.

12 But I believe that I had made -- I had made the
13 decision to not go with -- with Mr. McPherson,
14 Admiral McPherson, because he -- because before we had made --
15 yes, before we had made the decision to -- to pull down the
16 January 12th memo.

17 Q. So the -- at the time ----

18 A. And it does say ----

19 Q. Is there something else you wanted to say, sir?

20 A. Yes. And it does say in the January 12 memo that
21 Colonel Coyne was our -- was our choice. So then yes, I made
22 the decision to -- not to consider Admiral McPherson anymore.

23 Q. Do you still have the 4 January memo in front of you?

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1 I have one more question about it.

2 A. Sure. Absolutely.

3 Q. There is an attachment to the 4 January 2018 memo,
4 which is the termination memorandum for Mr. Brown. Do you see
5 that?

6 A. I have Attachment -- is that -- no, I don't think I
7 do. I have -- I don't think I do. If you could ----

8 Q. Yeah. Sure. I could ----

9 A. Might we use the screen?

10 Q. I can help you. Sure.

11 LDC [MR. CONNELL]: May I have permission to use the
12 document camera?

13 MJ [Col PARRELLA]: You may.

14 LDC [MR. CONNELL]: This is DISO Exhibit 32. It is
15 also -- and I'm sorry, I have this in two different places --
16 AE 555DD Attachment C.

17 Q. Sir, do you see a document on your screen?

18 A. I do not.

19 LDC [MR. CONNELL]: Okay. May I have access to the
20 document camera, please?

21 MJ [Col PARRELLA]: You may.

22 Q. Mr. Castle, do you see a document on your screen?

23 A. I do not.

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1 Q. Okay.

2 MJ [Col PARRELLA]: Let's give it one second. Just hold
3 on one second, Mr. Connell.

4 [The military judge conferred with courtroom personnel.]

5 A. There it is. I see the action member memo dated
6 January 4.

7 Q. Thank you very much, sir. Do you see -- and I am
8 just going to show here. There is a reference to tabs in the
9 bulleted paragraphs.

10 A. Uh-huh.

11 Q. In the third bulleted paragraph, "To effectuate a
12 more cohesive effort I recommend you rescind Mr. Brown's
13 appointment" and then it says "Tab 1A." Do you see that?

14 A. Uh-huh. Yeah, I see that.

15 Q. Okay. Now, I was not provided the tab sheets, but I
16 will show you one of the tabs dated 5 February 2018. Do you
17 have that in front of you or do you see it on the screen?

18 A. Yeah, but that's -- that's -- that's not -- yeah, but
19 that -- the -- the tab which you're looking at on
20 February 5th, 2018 was when we made the -- it was part of the
21 final -- it was part of the final decision that was made on
22 February 3rd. Remember, that I had disregarded the
23 information which, you know, which had been -- been offered

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1 in -- in the January 4th memo, or I should say I put it aside
2 and was concentrating on the three things that were in the --
3 that were in my declaration.

4 Q. That's related to my question, sir. How does it come
5 that when you signed the memorandum terminating Mr. Brown that
6 you signed the version -- that that signed version was
7 attached to the 4 January 2018 ----

8 A. It's not. I don't believe it is. I believe that
9 those are -- those are separate and distinct documents. I
10 mean, there's this one from 1/4/18, and this is February 5th.
11 I don't -- there -- I believe that they are two separate
12 occurrences.

13 Q. I see. So those should not be -- those two documents
14 should not be conflated?

15 A. I don't believe so, no.

16 LDC [MR. CONNELL]: I am done with the document camera.

17 A. Because there was -- yeah. I mean, there was a whole
18 slew of things that we put together for February 5th. And you
19 should look at -- oh, I see. Let's see if there's confusion.

20 Q. I understand your answer, sir. It's okay.

21 A. Okay. Yeah. Okay. Different -- two different
22 occurrences, as far as I can tell.

23 Q. Okay. Sir, are you aware of a video teleconference

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1 between Mr. Newman and Mr. Rishikof on 24 January 2018?

2 A. Like I said, people were in contact with each other.

3 Q. Okay.

4 A. So I don't know the specifics.

5 Q. All right. Now, you told us earlier about advice
6 that you received from special counsel.

7 A. Right.

8 Q. And I'll direct your attention to AE 555DD
9 Attachment E.

10 A. Okay. And which one is that, sir? I just -- I'm
11 sort of running off of ----

12 Q. It's the memorandum from Professor Jenks.

13 A. Right. Okay. Yes. January 26.

14 Q. Dated January 2018?

15 A. Right.

16 Q. Okay. And so you told us earlier that Mr. Jenks was
17 a professor who was basically doing a stint at the DoD.

18 A. Correct.

19 Q. That's right?

20 A. He was special counsel to the Department of Defense
21 General Counsel.

22 Q. And you told us earlier that you had asked Mr. Jenks
23 to form what he describes as a group of nontestifying expert

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1 consultants?

2 A. Right, the expert group.

3 Q. Right, the expert group. When did you make the
4 request to Mr. Jenks to convene an expert group?

5 A. When I pulled down the -- when I pulled down the
6 action on January 12. Right around there, if not the same
7 day, if not the same action, you know, or the next day, I
8 asked Professor Jenks to -- to form a group of experts to make
9 sure that we were on the right side of the law.

10 Q. What information did you or someone on your behalf
11 provide to Mr. Jenks about the issue that he was supposed to
12 opine about?

13 A. Professor Jenks was given carte blanche. He was --
14 you know, he was in charge of doing -- of doing this. I made
15 sure that everyone -- I mean, I believe it was very well
16 understood that I wanted the professor to be able to look at
17 anything and everything that -- about this to make sure that
18 we were doing the right thing.

19 Q. And if I understood correctly, he had been involved
20 in meetings on this military commissions/Rishikof topic from
21 -- more or less from the beginning?

22 A. He had -- there were times where he was involved in
23 it, yes.

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1 Q. So when he writes in the first paragraph, "There are
2 indications that he," Mr. Rishikof, "may entertain a pretrial
3 agreement of some sort if offered by an accused," he was
4 basing that on his independent understanding, not necessarily
5 what came from you; is that right?

6 A. No, he was base -- yes, correct. Well, I guess that
7 he was -- he knew about the -- he definitely knew about the,
8 the possibility of plea deals and -- and he -- and you know,
9 he also knew that I was very concerned that we not do anything
10 inappropriate; that we always do -- you know, that we do the
11 right thing; and that I want to make sure that what we are --
12 whatever we did was going to be in compliance with the law.

13 Q. All right, sir. And what did you tell him about the
14 Attorney General call?

15 A. He had -- I believe he had known about the
16 Attorney General call.

17 Q. From someone other than you?

18 A. Well, I mean, everyone in the office, people in the
19 office knew about the Attorney General call. As you remember,
20 I -- you know, it was -- I was -- you know, I was -- went
21 around asking people, you know, "What do you think this call
22 was all about?"

23 Q. And he was part of those conversations?

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1 A. He might have been. He was around here a lot.
2 It's -- the front office people gather.

3 Q. Sure. Am I -- do I understand your testimony
4 correctly that you did not, for example, provide him a set of
5 facts to work from, he just ----

6 A. No.

7 Q. ---- he looked around and figured out stuff for
8 himself?

9 A. I told him, look, I want you to form a group of
10 experts, I want you to go out, and I want you to, you know,
11 figure out, you know -- you know, what the law is, you know,
12 how do we stay in compliance with the law, what are, you
13 know -- you know, make sure that we are following the law.

14 Q. Right. This is a minor point, but as Mr. Jenks
15 writes in paragraph 3.j.(2) as an example of poor
16 coordination, "revoking a GS-15 OGC attorney's workspace
17 access." Do you see that?

18 A. Right. I do.

19 Q. What would that have been about?

20 A. That was a -- there was -- from what I understand is
21 that Mike Vozzo had come down to -- down to the military
22 commissions down at Guantanamo, and then when he got there,
23 you know, the normal place where he stayed or the normal place

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1 where he worked had been reassigned to someone else. You
2 know, he was -- but, you know, in my mind that was just, you
3 know, things happen. So it really wasn't that big of an
4 incident as far as I was concerned.

5 Q. Why would Mr. Vozzo have had access to convening
6 authority spaces in the first place?

7 A. Well, because he would come down and he would be our
8 liaison and tell us what was going on on the trials.

9 Q. And he worked in convening authority workspace?

10 A. I have no idea where he was working.

11 Q. Okay. So Mr. Jenks writes this 26 January
12 memorandum, and he gives his advice on minimizing litigation
13 risk, the risk of losing an unlawful influence motion; is that
14 fair to say?

15 A. I'm sorry, could you say that again?

16 Q. Sure. In the 26 January 2018 memorandum,
17 Professor Jenks gives his advice for minimizing the risk of
18 losing an unlawful influence motion?

19 A. Well, he -- right. I mean, I wanted to make sure
20 that we were well within the boundaries of the law, and that's
21 what he was tasked to do. And he went out, and he had a
22 long -- as far as from what I have been told, he had long
23 discussions with two senior military judges.

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1 Those military -- I was told that at least one of
2 those was an expert in UI, and so I wanted to make sure -- you
3 know, like I said, I wanted to make sure that we were within
4 the boundaries of the law.

5 Q. And so he advised you to state in writing that you
6 did not consider Mr. Rishikof's judicial or quasi-judicial
7 acts, right?

8 A. That -- I believe that that was his -- that that was
9 his writing. But, you know, as I -- as I said, I mean, we --
10 you know, do not -- you know, they wanted me -- I wanted to
11 make sure that we were within the boundaries of the law, and
12 so I asked -- you know, so I was asking them, you know -- you
13 know, what is the law? What -- is there anything or is there
14 nothing that's going on? What should I consider? What should
15 I not consider? And, you know, they were given every
16 opportunity to make sure that I was doing things
17 appropriately.

18 Q. He also advised you to stress the at-will employee
19 status of Mr. Rishikof and Mr. Brown, correct?

20 A. There was -- there was -- there was a lot of talk
21 about "at will" and, you know, but the more important -- you
22 know and "at will" was something that came up a lot. But in
23 my mind what was the most important was, you know, making sure

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1 that, you know, things that we were going to -- if -- you
2 know, in moving forward, if we were going to terminate Harvey,
3 that we were only considering those things which would be
4 within the boundaries of the law.

5 Q. All right.

6 LDC [MR. CONNELL]: Sir, may I have access to the document
7 camera with respect to AE 555DD Attachment E, which the
8 document, Mr. Castle, that we are speaking of is DISO
9 Exhibit 34.

10 MJ [Col PARRELLA]: You may.

11 A. I'm sorry, sir. What's the title?

12 Q. Its the -- its title is -- I will show it to you --
13 "Legal Considerations on Potential Military Commissions
14 Personnel Actions"?

15 A. The Jenks memo?

16 Q. Yes, the Jenks memo. And I apologize, mine is a bit
17 marked up.

18 A. That's quite all right. I have it here. What page
19 are we on?

20 Q. We are on page 7 of 8, sir.

21 A. 7 of 8. Okay.

22 Q. All right. And paragraph 8.

23 A. Yes.

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1 Q. The -- in paragraph 8.b., Mr. Jenks gives you
2 specific advice on what you should put in writing to minimize
3 litigation risk; correct?

4 A. Right. Right.

5 Q. And one of those is that you did not consider
6 Mr. Rishikof's performance of any judicial or quasi-judicial
7 actions, right?

8 A. Right. Right.

9 Q. And then in paragraph 8.c., Mr. Jenks recommends
10 talking points to you for the Secretary, correct?

11 A. Absolutely. Once again, you know, this isn't, you
12 know, this is not a question of say this and you will be okay,
13 right? That's not how I took that at all. I took this
14 extremely seriously, that, you know, that this is -- that what
15 we are doing is we were looking at the three things which I
16 had gone over in my -- in the -- in my declaration.

17 I remember sitting there, you know, for a good part
18 of a day, day and a half, right, saying to myself, okay, you
19 know, here are the three things that I think -- you know, are
20 the reasons why I don't think that this is working out, and I
21 think that we need to make a change.

22 And I concentrated on those, and I said to myself,
23 could I, you know, in all -- in all, you know, disregard

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1 anything to do with pretrial agreements or anything else along
2 those lines. And I -- you know, and I remember sitting there
3 in my office saying, "Okay, can you do this? Can you say that
4 these are the reasons why we are coming up with this?"

5 And the answer that I was able to come to myself was
6 absolutely yes, that this -- you know, that I am -- that these
7 are the reasons why I made the decision that I did, and I did
8 not take into consideration anything else that was a -- you
9 know, had to do with pretrial consideration.

10 Q. So it didn't bother you that you had already made --
11 come to the same recommendation on 15 December 2017?

12 A. As I said, it bothered me greatly because, you know,
13 I had -- you know, I had a little bit of egg on my face. But
14 at the same time I'm not interested in -- you know, I'm
15 interested in doing a good job. I'm interested in doing the
16 right thing. I am not interested in, you know, in doing
17 something just because -- because -- I don't know, I might
18 look bad.

19 It would look far worse if I had gotten, you know,
20 these, you know, these things wrong. That's what I was
21 concerned about. I wanted to do the right thing.

22 Q. Sir, moving to page 8. One of the talking points,
23 excuse me, that Mr. Jenks recommended to you is the -- that

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1 the Secretary of Defense could have withheld pretrial
2 agreement authority but did not?

3 A. The MCA provides the Secretary ----

4 Q. Before you answer the question, I'm sorry, did
5 someone come into the room?

6 A. No. No.

7 Q. Okay. I saw you look at -- it looked like somebody
8 else. I apologize for interrupting.

9 A. No. No. Ghost of general counsels past, I guess.

10 Q. Okay.

11 A. All right. So, I'm sorry, I'm looking at paragraph 3
12 here?

13 Q. Yes. One of the talking points that Mr. -- Professor
14 Jenks provided for you was that Mr. Rishikof's PTA authority
15 could have been lawfully withheld; is that correct?

16 A. Yes.

17 Q. And you followed his advice on those topics?

18 A. Yes, I did.

19 Q. All right. Now I'd like to talk to you about the
20 document which is entitled "Information Memo to Deputy
21 Secretary of Defense." It is AE 555DD Attachment F. Do you
22 have that in front of you?

23 A. Yes, it's the one that says "Military Commissions

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1 Convening Authority" on it? It is not dated?

2 Q. Correct, the undated one.

3 A. Correct. Yes, I have ----

4 WIT: Your Honor, I apologize. I was just wondering if,
5 -- I mean literally if I could have a two-minute comfort
6 break.

7 LDC [MR. CONNELL]: Right. We believe in comfort breaks.

8 MJ [Co] PARRELLA]: This commission is in recess. Let's
9 go ahead and take ten minutes. The commission is in recess.

10 [The R.M.C. 803 session recessed at 1418, 13 November 2018.]

11 [The R.M.C. 803 session was called to order at 1433,
12 13 November 2018.]

13 MJ [Co] PARRELLA]: The commission is called back to
14 order. All parties present when the commission last recessed
15 are again present. If we can please bring up the VTC. Okay.

16 Mr. Castle, can you hear me okay?

17 WIT: Yes, Judge.

18 MJ [Co] PARRELLA]: Thank you.

19 WIT: Thank you for the -- thank you for the opportunity.

20 MJ [Co] PARRELLA]: Mr. Connell, you may resume with your
21 questions.

22 LDC [MR. CONNELL]: Thank you, sir.

23 [END OF PAGE]

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1 **DIRECT EXAMINATION CONTINUED**

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

3 Q. Do you understand you are still under oath,
4 Mr. Castle?

5 A. Yes.

6 MJ [Col PARRELLA]: Mr. Connell, I will take care of
7 reminding the witness of that. I am confident he knows that
8 during the five-minute recess he is still under oath, so let's
9 please resume the questions.

10 LDC [MR. CONNELL]: Sure. All right, sir.

11 Q. Is anyone else in the room with you?

12 A. Nope.

13 Q. Okay. No one in your field of vision?

14 A. Nope.

15 Q. Did you have any conversations over the break
16 relating to your testimony?

17 A. Nope.

18 Q. Thank you. All right, sir. I have one -- I
19 apologize, but I skipped one of my questions with respect to
20 the previous document, the 26 January 2018. Do you have that
21 in front of you?

22 A. Yes. 26 January, yes.

23 Q. All right, sir. I am referring to paragraph 3.h. in

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1 which Mr. Jenks wrote, "In early October 2017, the Secretary
2 contacted you to ask why the Attorney General had just
3 contacted the Secretary to inquire why the CA was seeking to
4 discuss the possibility of a PTA in the 9/11 military
5 commissions." Do you see that?

6 A. Yes.

7 Q. All right. And so it was clear generally in your
8 office that the subject of the AG call was PTAs in the 9/11
9 military commissions as opposed to some other military
10 commission; is that correct?

11 A. That would be correct.

12 Q. All right. Thank you, sir. Now let's move back to
13 555DD Attachment F.

14 A. Right, okay. Yes. I'm sorry.

15 Q. Yeah, that's all right.

16 A. Could you repeat your -- I'm sorry. Could you repeat
17 your last question again?

18 Q. Sure.

19 A. I don't know if I ----

20 Q. I was directing you to the undated document, the
21 memorandum to the Deputy Secretary of Defense, AE ----

22 A. I know, but before that you had asked me -- you said
23 one last question on January 26 ----

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1 Q. Sure.

2 A. ---- and ----

3 Q. You want me to repeat that question?

4 A. Please.

5 Q. Yeah. That question was: It was generally clear in
6 your office that the AG call was relating to the 9/11 military
7 commission as opposed to some other military commission; is
8 that correct?

9 A. Yes, that's correct.

10 Q. Okay. Thank you. That's all there is there. Now
11 I'd like to move to the next document.

12 A. Sure.

13 Q. And you have that undated document in front of you,
14 AE 555DD Attachment F?

15 A. The one that says "Deputy Secretary" -- it says
16 "Military Commissions/Convening Authority" and then it goes --
17 and then there is an attachment of two pages, correct?

18 Q. That's the one, sir.

19 A. All right. Thank you. Yes, I have that.

20 Q. So was this document ever sent?

21 A. Yes. This -- this document was sent, and the reason
22 for your -- on the attachment on the back was that the chief
23 of staff to the Secretary wanted a -- well, he wanted a full

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1 list of -- or at least a fuller list of things that -- that --
2 you know, that we -- that had come to our attention.

3 But when I made -- but when I -- when I briefed the
4 Deputy Secretary, when I briefed the chief of staff, I
5 absolutely -- you know, I had told them that the primary
6 reasons why we are doing this are based upon the three areas
7 which are outlined in -- in the declarations.

8 Q. All right, sir. When did you brief the Deputy
9 Secretary of Defense and the chief of staff?

10 A. This was the -- that was the Friday -- I believe it
11 was the Friday right before the Secretary signed the
12 termination document, which was that Saturday.

13 Q. All right. Saturday being the 3rd of February and
14 the Friday being the 2nd of February 2018?

15 A. I think so. I think those are the right dates, but
16 I'd defer to others.

17 Q. When did you send the info memo, which is AE 555DD
18 Attachment F?

19 A. This info memo, I think we might have walked in with
20 it, and I think that might be the reason why it doesn't have a
21 stamp on it. But that's speculation on my part.

22 Q. Walked in on the Friday, the 2nd?

23 A. Might have been, yeah. But again, I'm saying I'm

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1 speculating.

2 Q. All right. Had you had -- you told us just a moment
3 ago that the reason why it has a list of objectionable actions
4 by Mr. Rishikof is that the Deputy Secretary of Defense wanted
5 more. Did you have a ----

6 A. No ----

7 Q. ---- did you have a conversation with him?

8 A. I'm sorry. What I said was, is that the chief of
9 staff ----

10 Q. Okay.

11 A. ---- to the Secretary of Defense wanted to make --
12 wanted us to provide -- I believe he wanted us to provide a
13 more full list. However, as I said, I was -- I was very clear
14 that the reasons for the decisions that I did were the three
15 that were based on the declaration.

16 Q. When -- when did the chief of staff ask you for that
17 additional information?

18 A. It was during that period of time.

19 Q. So my question is: If you briefed the chief of staff
20 on Friday, February 2, and you walked in with this memo ----

21 A. Right.

22 Q. ---- when did the chief of staff have the opportunity
23 to ask you for more information?

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1 A. If I -- I think that there were probable -- I think
2 that there might have been -- and once again, a little fuzzy,
3 but there might have been two -- two briefings and/or I had
4 spoken to him and, you know, he just wanted, you know, a list.
5 And he said -- you know, he told me he wanted a list, so we
6 gave him a list.

7 Q. All right. My question is: When did he tell you
8 that he wanted a list?

9 A. Right around the time that we briefed him and the
10 Deputy Secretary together.

11 Q. And you had time after his request to add a list to
12 this memo?

13 A. I don't remember -- like I said, I don't remember
14 sequencing. Was it -- could it have been all in the same day?
15 Yes. Could it have been over one or two days? Possibly. I
16 don't recall.

17 Q. Okay. And ----

18 A. When we got -- when I got to the -- when we got to
19 the Deputy Secretary, I told him, "Here are the three things."

20 Q. So I'd like to draw your attention to the third
21 bullet point on that info memo. Do you see that?

22 A. Yes.

23 Q. You wrote, "If we don't replace Harvey Rishikof as

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1 convening authority, it's not a question of if he will do
2 something that jeopardizes the conduct of the military
3 commission, but when." Do you see that?

4 A. "If we don't replace Harvey Rishikof...it's not a
5 question of if he will do something to jeopardize the
6 conduct...but when." Yeah, I signed that document.

7 Q. What did you mean by that?

8 A. Or I didn't sign that document, but I believe that
9 what we meant was that he was a loose cannon and that we did
10 not know what he was going to do, and that there were -- you
11 know, there -- you know, he was not properly coordinating, and
12 there were -- you know, we had lots of, you know, evidence
13 about that.

14 Q. All right. And so the evidence that you list, let's
15 go through some of that. You say that "The CA insists on
16 joining the House Armed Services Committee Congressional
17 Delegation to GTMO," correct?

18 A. That's on the list. But once again, as I said, when
19 I briefed it to the DEPSEC, that, you know, I talked about the
20 three things on the declaration. This is only -- we were --
21 we had -- we were keeping -- the reason why we were able to --
22 if I remember correctly, the reason why we were able to get
23 this so -- so quickly was because we had been keeping a list

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1 of things that, you know, might be problematic.

2 Q. Right. A list of things from before your stopping of
3 the process on January 14, 2018?

4 A. It was just the whole thing. But like I said, that
5 wasn't why I -- that isn't what I had briefed and talked to
6 them about. The only reason why this is here is because the
7 chief of staff asked for a more fulsome list.

8 Q. Okay. Well, let's talk about one of your three. You
9 said, "Without coordinating with DoD OGC or military
10 commission security, he planned a military commissions
11 conference to take place at GTMO." Was that one ----

12 A. A military -- no, sir.

13 Q. That's not one. Okay. Let's try the next one.

14 A. No, sir. No. There were -- I'll give you the three.
15 The three -- the three things that I talked about with him
16 was, one, the -- the -- what you referred to as the "King
17 Me" memo; the second was, you know, the events surrounding the
18 telephone call with Admiral Tidd; and the third was, you know,
19 the fact that he went around Admiral Tidd and ordered an
20 aircraft to take a picture of the facility anyway. I believe
21 that those were the three.

22 Q. So you didn't consider the congressional delegation
23 issue?

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1 A. Well, the ----

2 Q. Did you block that out of your mind like ----

3 A. That was not -- that was not. Right. The
4 congressional delegation issue was not part of my
5 consideration when I made those three. There was something --
6 I remember having, you know, an argument with one of the
7 members of my staff after we had finished all of this because
8 the person who has been confirmed to be the general counsel,
9 Mr. Ney was -- his nomination hearing was that week while all
10 of this was going on.

11 And, you know, he was concerned about the negative
12 effects that that would have on -- on the confirmation. And
13 the thing that came out of my head was is that yes -- I said,
14 "Well, you know, he's going to be meeting with this
15 congressional delegation at the end of the week, and I have no
16 idea what he is going to say."

17 But I did not -- I did not have that as one of the
18 three reasons as to why we took the action when we did. And
19 they were not part of the brief that I had -- that I briefed
20 -- the brief that I gave to the deputy chief of staff and the
21 chief of staff.

22 Q. You mean the verbal brief, because it was clearly in
23 your written brief, right?

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1 A. No. I mean, it was a verbal -- I mean, this was the
2 document that we handed to him, in addition to the -- to a --
3 in addition to other material, which is signed here, and this
4 material below.

5 Q. The -- you also list in your info memorandum, "He
6 refuses to validate a resource request of several hundred
7 dollars relating to transporting military judges to GTMO."
8 That's the fast boat issue, right?

9 A. I guess it is. Like I said, you know, this was just
10 a list that people have been putting together as time went on.
11 I was concerned about those three things, and that's what I
12 briefed.

13 And like I said, I'm speculating -- speculating as
14 to, you know, how this -- you know, this info memo and if it
15 was tied with this or not. It's one of the -- you know, I
16 think that's right.

17 Q. Sir, what do you mean you're speculating? You just
18 testified that you handed that info memo to the Deputy
19 Secretary of Defense.

20 A. No, I said -- what I said was is that -- remember
21 when I said there is no date on this, on this memo?

22 Q. Yes, sir. I remember it.

23 A. I said I believe that we walked in with it and that

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1 we didn't go through the process, the process, and that's why
2 I believe that it's not -- it doesn't have a stamp on it.

3 Q. Okay. So how is that different from -- how is
4 walking in with it different from giving it to the Deputy
5 Secretary of Defense?

6 A. Because there is -- well, because there is a process
7 by which information has to be sent through to get to the
8 Secretary of Defense. That's to go through the Executive
9 Secretariat. And the Executive Secretariat has -- has --
10 there are a number of individuals who are there, that take
11 documents, punch them in and put them into a system that then,
12 if the chief of staff agrees, gets to the Secretary.

13 Q. Is it your testimony the Deputy Secretary of Defense
14 didn't see your memo?

15 A. No. I'm saying that I believe that that's what this
16 memo is. I believe that this is the memo that I walked in
17 with -- walked in with when we talked to the Deputy Secretary.
18 That's what I -- that's what I said. I think that this is the
19 memo that was there.

20 The reason why, you know, is I'm having any kind of a
21 question is because it wasn't stamped. If it goes through the
22 process, it's supposed to have a stamp.

23 Q. So are you saying that maybe you didn't give it to

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1 the Deputy Secretary? I am trying to understand what the
2 significance of this is.

3 A. Listen, I'm not trying to hedge on what I said during
4 the meeting -- the meeting. I am not trying to hedge on what
5 this is, because I think this is the memo -- the memo that we
6 gave to the Deputy Secretary. All I'm saying is that --
7 because this looks exactly like what I was -- this looks
8 exactly like what I remember it to be, but I can't be
9 100 percent certain.

10 Q. All right, sir.

11 A. Ninety-seven percent certain.

12 Q. Ninety-seven percent certain. Okay.

13 And so let's move on to the 29 January 2018 action
14 memo.

15 A. Right.

16 Q. So I may have had these out of chronological order,
17 but you're telling me that this January 29, 2018 action
18 memo ----

19 A. Right.

20 Q. ---- is earlier in time than the info memo; is that
21 right?

22 A. The 29th -- they would have been -- they would have
23 been done around the same time. I think -- I believe the

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1 reason why this -- and I'm speculating again -- the reason why
2 this was stamped on January 29, right, was because that was --
3 that was the time that we had entered into -- into the
4 Executive Secretariat system, and then we would have scheduled
5 a meeting to brief the chief of staff and brief the Deputy
6 Secretary.

7 Q. Okay. And so the 29 January 2018 action memo is to
8 the Secretary of Defense, not to the Deputy Secretary of
9 Defense; is that correct?

10 A. Correct. That's correct.

11 Q. Was there a verbal briefing of this 29 January action
12 memo to the Secretary of Defense? Not to the Deputy
13 Secretary, to the Secretary.

14 A. No. I do not believe -- I did not verbally brief
15 the -- I did not verbally brief the Secretary on the -- as I
16 did the Deputy Secretary and the chief of staff. It's their
17 job, once I brief them, to then go and talk to the Secretary
18 and find out what it is that he wants to do.

19 Q. Okay. And you never got any feedback through that
20 process, right? They never asked you for more questions,
21 other than a more complete list of his activities?

22 A. At some point someone asked me for a more -- a more
23 complete list, but the next thing -- you know, but -- I'm

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1 sorry, your question is again?

2 Q. Other than the request from the chief of staff ----

3 A. Right.

4 Q. ---- for a more complete list of Mr. Rishikof's
5 activities ----

6 A. Right.

7 Q. ---- you never got any feedback, any additional
8 questions from the Secretary of Defense?

9 A. From the Secretary? Around that time I don't recall
10 receiving any additional feedback.

11 Q. Thank you. And so ----

12 A. There might have been, you know, something, but I
13 don't recall anything of any kind of -- anything of any kind
14 of import.

15 Q. In your action memo, you return to the language of "a
16 more cohesive effort by the Department of Defense in military
17 commissions." Do you recall that?

18 A. Yes.

19 Q. And in that memo, you didn't provide any reason for
20 the termination other than cohesion, correct?

21 A. Well, that is -- that's what's in the memo. But once
22 again, the briefing on why I -- I spoke -- you know, a
23 briefing of what I said to the Secretary -- excuse me, to the

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1 Deputy Secretary and the chief of staff, they are then
2 supposed to have a conversation with the Secretary of Defense
3 and -- for a decision to be made.

4 Q. All right. But as far as you know, the only
5 information you know that the Secretary knows about the
6 situation is what's in your action memo of 29 January and that
7 Attorney General Sessions had called him up to complain about
8 Mr. Rishikof and said "No deals"; is that correct?

9 A. Sir, could you repeat? I'm sorry, could you repeat
10 that?

11 Q. Sure. The -- as far as you know personally, the only
12 thing that Secretary -- the only information that Secretary of
13 Defense Mattis had about the situation was your action memo of
14 29 January 2018 and the fact that Attorney General Sessions
15 had called up Secretary Mattis to complain and say "No deals";
16 is that right?

17 A. I -- well, first of all, I think it goes -- you know,
18 we're starting to get involved in, you know, attorney-client
19 privileged conversations and, therefore, I am -- I am
20 reluctant to answer that.

21 Q. All right. Are you invoking attorney-client
22 privilege, sir?

23 A. I think so.

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1 Q. Okay. Can you provide a privilege log or can you
2 tell us the -- without revealing the privilege, can you tell
3 us the subject of the invocation?

4 A. Well, the subject of the invocation is that, you
5 know, the Secretary has received legal advice from me on
6 military commissions for this entire period of time and, you
7 know, any conversations that I have had with the Secretary
8 about the military commissions and the future of military
9 commissions I believe is privileged.

10 Q. Why is the -- what is the difference between the
11 subject matter over which you are invoking privilege and all
12 the other legal advice that we've talked about today?

13 A. Well, I am waiting for the judge, I guess, to -- to
14 see if he needs more information about what my -- my -- about
15 my inquiry.

16 MJ [Col PARRELLA]: So, Mr. Castle, if I understood your
17 answer to the question, you were asked whether you ever
18 verbally briefed the Secretary about the termination of
19 Mr. Rishikof, and the answer was no.

20 WIT: Right. Well, I -- I don't -- I don't -- there
21 was -- there -- there were -- there were conversations that
22 were happening on the -- a better answer would be there were
23 conversations that were happening on the sidelines throughout

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1 this -- throughout this entire week.

2 And did I go through, you know, each of these three
3 points with him? I don't remember doing that. I don't
4 recall, but it's possible that I might have.

5 MJ [Col PARRELLA]: Okay. So in light of that answer I
6 guess ----

7 WIT: You're right, Your Honor. I apologize. Not being a
8 litigator, I am a little rusty.

9 MJ [Col PARRELLA]: Okay. So I don't necessarily see
10 where the privilege is being invoked here, so let's go ahead
11 and ask the next your question. Let's proceed.

12 LDC [MR. CONNELL]: Sure. May I re-ask the question that
13 elicited the partial invocation?

14 MJ [Col PARRELLA]: I think if I understood your last
15 question -- and I think it has already been asked, but allow
16 me to try to clarify this real quick, because just so I am
17 sure I understand it.

18 You asked Mr. Castle that other than the info
19 memo ----

20 LDC [MR. CONNELL]: No, sir, the action memo.

21 MJ [Col PARRELLA]: I'm sorry, the action memo, as well as
22 information that may have come indirectly through the chief of
23 staff, him briefing the chief of staff and the Dep Secretary,

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1 was there any other contact with the Secretary about this
2 topic; is that correct?

3 LDC [MR. CONNELL]: No, sir. Let me rephrase it.
4 Obviously I was unclear.

5 WIT: I would like to -- you know, Your Honor, I would
6 just like to say that the answer that I gave was for that --
7 you know, I would say, for that week. I think January 29
8 might have been a Monday, and what I'm talking about with
9 the -- with the -- would be anything for that week.

10 LDC [MR. CONNELL]: All right. Let me back up and try to
11 clarify my answer for the military commission -- my question,
12 rather.

13 Q. So you have told us that you did not brief
14 Secretary Mattis about the termination of Mr. Rishikof,
15 correct?

16 A. I don't have a -- I don't have a specific memory of
17 doing that. But as I said, there is -- you know, is it
18 possible that I had talked to him briefly about it on the
19 sidelines of some meeting somewhere during that week that we
20 were -- that, you know, I had signed the document moving
21 forward? Yes, that is possible.

22 Q. Okay. If you had a conversation with
23 Secretary Mattis, what did you say?

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1 A. Well, I -- it -- as I said, I don't remember having
2 a -- I don't remember having a conversation with
3 Secretary Mattis. If I ----

4 Q. That's fine, sir.

5 A. Okay. I don't.

6 Q. So Secretary Mattis, when he's making his decision,
7 has your action memo, correct?

8 A. Uh-huh.

9 Q. You'll have to answer ----

10 A. I guess so, yes. I assume so.

11 Q. And he has his personal experience of the "No deals"
12 conversation with Attorney General Sessions, correct?

13 A. Yes. Possibly. If he remembered that, yeah.

14 Q. And as far as you know, you do not know any other
15 information that was provided directly to him regarding the
16 firing of Mr. Rishikof?

17 A. I knew that -- I knew that he had -- I did not know
18 that he had been provided with a memo, but I believe that he
19 was well informed that I had pulled the initial recommendation
20 because I was still very concerned about the law.

21 Q. I'd like to move on to another topic, which is the
22 teleconference -- your understanding -- your personal
23 understanding of the teleconference between Admiral Tidd and

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1 Mr. Rishikof.

2 A. And I should say there are meetings -- you know, we
3 had meetings with the Secretary during that week but, once
4 again, I don't have any specific recollection of me going over
5 anything. I don't.

6 Q. All right. So you told us earlier that near your
7 right hand are some e-mails which have been released. Am I
8 correct about that?

9 A. Yes, the great FOIA request. I understand.

10 Q. Okay. Is that the e-mail involving SOUTHCOM?

11 A. Oh. Yes.

12 Q. Yes, okay. And so ----

13 A. Yes.

14 Q. Now, you are -- so do -- separate from what you may
15 have believed in January or in March of 2018, do you now
16 believe that the -- that there had been no coordination before
17 the phone call between Admiral Tidd and Mr. Rishikof? Do you
18 still believe that?

19 A. I heard -- I have only heard recently that these
20 e-mails -- and by the way, you know, these e-mails, I didn't
21 know anything about these e-mails or what was in these e-mails
22 or anything to do with them until that FOIA request had -- had
23 been filled. So this is sort of a black -- you know, an area

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1 where I don't have any kind of information.

2 I remember -- I think I heard during our -- you know,
3 during the preparation, as I was preparing for this, that
4 they -- that -- you know, that he had once -- you know, that
5 he had talked -- there might have been some talk with
6 Admiral Tidd beforehand, but really I don't know anything
7 about it.

8 Q. Okay. So as you sit here today, you do not have
9 current information regarding whether there was coordination
10 between the staffs of Mr. Rishikof and Admiral Tidd in advance
11 of their phone call?

12 A. In advance of the phone call, I -- I -- I don't
13 believe that I did. I -- what I did hear was, is that
14 Admiral Tidd had told Harvey no; that Harvey had been
15 insulting to the admiral during the phone call; and that
16 Harvey then went around and went directly to the Coast Guard
17 and got an aircraft to take a picture; and that there was a
18 security kerfuffle -- I'll call it that -- on -- because of
19 it.

20 Q. Let's break those into two separate things, if you
21 don't mind, one with Admiral Tidd and one with the Coast
22 Guard.

23 With respect to Admiral Tidd, who gave you the

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1 information that there had been -- that there had been no
2 coordination between them or the staffs of Admiral Tidd or
3 Mr. Rishikof?

4 A. I was told -- I was told that Harvey had been -- had
5 been rude to -- to Admiral Tidd, and I was told that Harvey
6 had asked him for -- to be able to take a picture using an
7 aircraft, and that he said -- and that Admiral Tidd said no,
8 and I heard that -- I had heard that from my staff.

9 Q. All right. And who on your staff had told you that?

10 A. There -- I think that there were -- I think a number
11 of people came into my office to tell me that. The first one
12 probably was Michael Vozzo.

13 Q. All right. And did you ever speak to
14 Admiral Tidd ----

15 A. No.

16 Q. ---- on this topic?

17 A. I have spoken -- I have spoken to Admiral Tidd about
18 other matters in the past, and I have sat in on meetings with
19 him about other things, but I don't believe I have ever spoken
20 to him about this, no.

21 Q. Okay. And so now I would like to move on to the
22 Coast Guard question. Who told you that the January 2018
23 request for imagery from the Coast Guard was uncoordinated?

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1 A. It was told -- I was told that he -- that it -- that
2 Harvey had been told no, and that -- that he went ahead and
3 did it anyway. And I heard that from my staff right around --
4 that was all part of the -- all part of that -- all part of
5 that time frame.

6 Q. Were you told, sir, that Admiral Tidd told
7 Mr. Rishikof that he could not have aerial imagery, or that
8 SOUTHCOM was not going to do it?

9 A. I was -- I was -- I heard from -- that the admiral
10 had been asked if they could have imagery -- you know, that he
11 could approve of a picture and that he would get -- that he
12 would get an aircraft to take the picture, and that
13 Admiral Tidd had said no.

14 Q. Had said he could not have a picture altogether?

15 A. He -- that he said -- he said that he -- he -- I --
16 you know, when I heard it, I heard that Admiral Tidd had said
17 no. And for me that was -- you know, Admiral Tidd had said no
18 picture, and, therefore, so far as I was concerned, no
19 picture. That's how I took it.

20 Q. Okay. And that was Mr. Vozzo who gave you that
21 information as well?

22 A. Among -- among others that were in and out of my
23 office during that period of time.

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1 Q. Okay. And so who told you that there was no
2 coordination between SOUTHCOM, JTF, and Coast Guard regarding
3 the actual aerial photography?

4 A. That was all part of the same conversation. Once
5 again, it was -- it was -- he had asked -- he had asked the
6 admiral. The admiral, he -- he then -- the admiral had said
7 no. Harvey then went around the admiral -- I mean SOUTHCOM --
8 it is, you know, Guantanamo Bay is part of his AOR; and that
9 he had then -- and that he had then gone to the Coast Guard
10 anyway and got the picture taken.

11 Q. All right.

12 A. Or tried to get the picture taken.

13 Q. Is it fair to say, as you sit here today, that you
14 don't know what actually happened, only what you were told?

15 A. I -- I -- that's what I have been told, and I
16 don't -- I haven't heard anyone say that that's incorrect.

17 Q. All right.

18 A. The only thing -- excuse me. The only thing that was
19 incorrect is that I heard initially that there might have been
20 a fixed-wing aircraft, and then it turns out it was a
21 helicopter, and so -- and -- but we learned more details as
22 time went on.

23 Q. So when you wrote in your memorandum that, "The CA

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1 without proper," and then in parenthesis, "(any) coordination
2 with SOUTHCOM or GTMO, coordinates with US Coast Guard to have
3 aerial photo taken 26 January 2018," you don't know today
4 whether that statement is still true?

5 A. I'm sorry, where is that?

6 Q. Sure. It's in AE 555DD Attachment F.

7 A. Okay. And we are talking about the action memo of
8 January 29?

9 Q. I believe it's the -- just one moment and I'll answer
10 that question. It is the undated memo ----

11 A. To the deputy.

12 Q. ---- that you told us maybe was February 2.

13 A. Right. And what paragraph?

14 Q. Actually, it's the info memo.

15 A. The info memo. Okay. And where?

16 Q. Page 2. In fact, I can show you if you give me just
17 one second.

18 A. Oh, okay. Oh, it's on the list of things that -- the
19 add-ons paper.

20 Q. Sir, I don't know how it was originally organized,
21 but it's on the second page of the document.

22 A. Right. Where it says "Military Commissions Convening
23 Authority."

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1 LDC [MR. CONNELL]: So if I may have access to the
2 document camera, I am going to show the witness AE 555DD
3 Attachment F, DISO Exhibit 35.

4 MJ [Col PARRELLA]: You may.

5 A. Ah, February 2018, okay. Is that -- January, okay.

6 Q. Yes, sir. I've done a poor job, but I am trying to
7 underline the line that I just ----

8 A. No, it's all right. "The CA without proper (any)
9 coordination with SOUTHCOM or GTMO coordinates" -- okay -- "to
10 have aerial...taken on" -- well, I ----

11 Q. Let me give you the actual question, sir.

12 A. Go ahead.

13 Q. The first question is: Did you write that?

14 A. No.

15 Q. No. Someone else wrote it?

16 A. Yes.

17 Q. Okay. And as you sit here today, do you know whether
18 that's true, whether there was any coordination with SOUTHCOM
19 or GTMO in advance of an aerial photo?

20 A. It appears that the answer was no. So maybe instead
21 of proper coordination, the coordination was no. But I
22 don't -- like I said, it might be -- it might be a better way
23 of putting it. I don't know.

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1 Q. Okay. And ----

2 A. Still -- I mean the fact of the matter is, you know,
3 it wasn't without proper coordination because when it was --
4 you know, because if you get -- I mean as part of the
5 coordination process, if you get a hard no as part of the
6 coordination process, you know, that's supposed to be
7 discussed, you know, and you're not supposed to -- frankly,
8 you're not supposed to do anything until, you know, you're --
9 you know, people have -- until that's all worked out.

10 Q. Okay. And my -- my actual question about that is:
11 Do you know whether it is true whether there was any
12 cooperation -- any coordination with SOUTHCOM and GTMO and the
13 Coast Guard? Or do you only know what you were told? And I
14 mean that as you sit here today.

15 A. Right. As I sit here today, at the time that I made
16 the recommendation, it was what I was told.

17 LDC [MR. CONNELL]: All right. Thank you, sir. I don't
18 have any further questions.

19 MJ [Col PARRELLA]: Mr. Nevin?

20 LDC [MR. NEVIN]: Your Honor, we are right at prayer time.
21 Would this be a time when we could take a break for that
22 purpose?

23 MJ [Col PARRELLA]: About how much time do you anticipate

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1 needing, Mr. Nevin?

2 LDC [MR. NEVIN]: I would say 15 minutes.

3 MJ [Col PARRELLA]: Mr. Castle, at this time the
4 commission is going to take a recess, but I want to, before we
5 do so, discuss with you sort of your schedule.

6 And as you're aware, we have four other defense
7 counsel who have an opportunity to ask you questions, as well
8 as I'm sure the government will want to ask you questions. So
9 I anticipate about a 10- to 15-minute recess, probably a
10 15-minute recess, to about 3:30.

11 The commission will then again need to recess at
12 about 5:00 p.m. It is possible that we could reconvene at
13 1900 or 7:00 p.m. I'm told that that's possible, the guard
14 force could accommodate that, or in the alternative we could
15 simply come back on the record tomorrow morning at as early as
16 0-8.

17 So I'm going to leave you with the -- we would like
18 to get your input on your schedule and what would be most
19 convenient.

20 WIT: Your Honor, thank you very much for that. I very
21 much appreciate that. Until, you know, until my testimony is
22 done, I'm sort of sidelined here, so -- and, you know, there
23 are things that I'd really like to get back to.

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1 So I am more than happy to sit here all night if
2 necessary in order to make sure that everyone, you know, that
3 everyone gets a question.

4 MJ [Co] PARRELLA]: Okay. I can't promise we're going to
5 get finished tonight. We will probably terminate no later
6 than 2100, but we do have an opportunity to get at least a
7 couple of more hours in.

8 So at this time the commission is going to recess.
9 We will reconvene at 1530. The commission is in recess.

10 [The R.M.C. 803 session recessed at 1512, 13 November 2018.]

11 [The R.M.C. 803 session was called to order at 1545,
12 13 November 2018.]

13 MJ [Co] PARRELLA]: This commission is called back to
14 order. All parties present when the court recessed are again
15 present with the following exceptions: It appears that
16 Mr. Mohammad, Mr. Bin'Attash, Mr. Binalshibh have departed the
17 courtroom.

18 Would their respective counsels confirm that that was
19 done knowingly and voluntarily?

20 LDC [MR. NEVIN]: I confirm that.

21 MJ [Co] PARRELLA]: Ms. Bormann?

22 LDC [MS. BORMANN]: That's correct, Judge.

23 LDC [MR. HARRINGTON]: Yes, for Mr. Binalshibh, Judge.

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1 MJ [Col PARRELLA]: Okay. Let's go ahead and get the VTC
2 feed back up, please.

3 Mr. Castle, can you hear me okay?

4 WIT: Yes, Your Honor.

5 MJ [Col PARRELLA]: Okay. Mr. Nevin.

6 LDC [MR. NEVIN]: Thanks, Your Honor.

7 **DIRECT EXAMINATION CONTINUED**

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

9 Q. Mr. Castle, David Nevin, one of the lawyers for
10 Khalid Shaikh Mohammad. Do you hear me okay?

11 A. I do, sir.

12 Q. Thank you. I have listened to the testimony that you
13 have given already today, and so I am not going to go over all
14 of that again, but just a few questions around the edges of
15 what you have said before.

16 You talked a little about your background. I take it
17 you have never been a JAG lawyer; is that true?

18 A. That is correct.

19 Q. And you've never participated in a court-martial
20 before?

21 A. That's correct.

22 Q. All right. And have you had occasion to study
23 court-martial or military commission procedural rules?

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1 A. Not to a very deep degree, no.

2 Q. And I take it you've read the Regulation for Trial by
3 Military Commission?

4 A. I've read parts of it, yes.

5 Q. Okay. And have you -- would those be the parts that
6 you cited in your declaration?

7 A. Yes.

8 Q. So I understood you to say that you became the acting
9 general counsel on the August 27th, 2017, and it's in early
10 September that you get the request for a meeting from
11 Mr. Rishikof and Mr. Brown, so something on the order of ten
12 days or two weeks after you have been on the job?

13 A. I learned about -- I learned about Harvey and --
14 Mr. Rishikof and Mr. Brown sometime early in my tenure, yes.

15 Q. And that's when they asked to have a meeting with
16 you, right?

17 A. Well, I -- I don't know when they asked to have a
18 meeting with me. I know that my people came to me and told me
19 that they would like to come in.

20 Q. And at that point you really didn't have much
21 information available to you about the military commissions;
22 is that correct?

23 A. That's correct.

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1 Q. And I think you testified previously that you sat
2 down with your staff on maybe more than one occasion and you
3 had some things explained to you about the military
4 commissions, correct?

5 A. Absolutely. Absolutely.

6 Q. And one of the things they explained to you was what
7 is a convening authority and what does a convening authority
8 do, right?

9 A. Correct.

10 Q. Okay.

11 A. Correct.

12 Q. So you then testified that when that meeting actually
13 occurred with Mr. Rishikof and Mr. Brown, that your -- you
14 testified that you were wary, that your danger antenna was up,
15 I think, was the phrase you used?

16 A. That's right.

17 Q. I take it you were just concerned about how that
18 meeting went?

19 A. I wasn't concerned about how the meeting went. I was
20 more concerned about what I was hearing in the meeting itself
21 about -- about -- about Mr. Rishikof and Mr. Brown.

22 Q. No, I'm talking about the meeting with Mr. Rishikof
23 and Mr. Brown that you had in early September.

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1 A. Oh. Oh, in early September, yes. I mean, I -- the
2 thing that I remember most about that meeting is is that my
3 staff was very concerned -- you know, was concerned about me
4 saying anything or doing anything that would have to do with a
5 UI.

6 So anytime Harvey would try and bring up anything to
7 do with -- with -- anytime he would try and bring up anything
8 to do with plea agreements, I just -- I literally would
9 physically wave him off. I mean, I was literally moving my
10 arms back and forth saying, "That is not my business. That is
11 not my -- that's all -- that's what you -- that's what you do.
12 I don't have any role in that."

13 Q. Hmm. And did your staff tell you that you weren't
14 allowed to even know anything about what was happening with
15 pretrial agreements?

16 A. They told me that I -- I was not supposed to make any
17 kind of indication one way or the other as to what about --
18 about what -- about Mr. Rishikof's exploration about UI. So I
19 was not supposed -- to him, I was not supposed to say anything
20 that could be construed one way or the other as supporting or
21 not supporting.

22 Q. Yes, I understand you weren't supposed to support or
23 not support, but did they tell you you weren't even allowed to

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1 acquire any information?

2 A. I don't remember them saying that.

3 Q. When you testified previously that one of your jobs
4 is not to tell him what to do, but to be able to keep the
5 Secretary of Defense informed about the situation ----

6 A. Right.

7 Q. ---- so wouldn't you need to know what he was --
8 wouldn't you need to have that information from him?

9 A. Well, I was told -- I was told by my staff about --
10 about -- about what -- you know, that Harvey had -- was
11 considering making plea agreements; that I was told that he
12 had gone quite far along with those plea agreements, but he --
13 but you all had said -- the defense had said not -- that they
14 would not be involved in plea agreements until -- until --
15 until there was some kind of -- you know, that DoJ had said
16 okay to all of that and -- but I learned all of that from my
17 staff. I did not learn it from Harvey Rishikof or Gary Brown.

18 Q. Well, and I don't need you to read from it unless
19 it's necessary for you to refresh your recollection, but I'll
20 just represent to you that the January 26 memo of your expert
21 group -- do you know what I am referring to?

22 A. Yes.

23 Q. Okay. So that memorandum early on says that there

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1 are indications that Mr. Rishikof may entertain a pretrial
2 agreement of some sort if offered by an accused.

3 A. Uh-huh. Yes.

4 Q. Do you see that language?

5 A. I see paragraph h.

6 Q. Yeah. I'm sorry, let me just direct you to page ----

7 A. I don't know what you are referring to. I apologize.

8 Q. Sure. Just let me just direct you to page 1 of the
9 memorandum.

10 A. Okay.

11 Q. And ----

12 MJ [Co] PARRELLA]: Mr. Nevin, just for the record, can
13 you state again what appellate exhibit and what attachment
14 that is?

15 LDC [MR. NEVIN]: Yes, Your Honor. That's 555DD
16 Attachment E.

17 MJ [Co] PARRELLA]: Thank you.

18 Q. So at the -- in paragraph 1 of the memorandum there
19 is a full paragraph that begins, "Arguably the most
20 politically and legally volatile issue." Do you see that?

21 A. Yes.

22 Q. Okay. And then later in that paragraph there's a
23 sentence that begins, "To our knowledge, the CA has not and is

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1 not planning to refer." Still with me?

2 A. Yes.

3 Q. It says, "but there are indications he may entertain
4 a pretrial agreement of some sort if offered by an accused."

5 A. Uh-huh.

6 Q. Okay.

7 A. Right.

8 Q. So were you advised that on behalf of Mr. Mohammad we
9 had actually offered -- we had proposed a pretrial agreement
10 on August 15?

11 TC [MR. RYAN]: Excuse me, Your Honor. I object at this
12 time to any testimony or evidence regarding pretrial
13 agreements. We have asked for them in discovery, and they
14 have not been provided.

15 MJ [Col PARRELLA]: Mr. Nevin, response?

16 LDC [MR. NEVIN]: Well, this has been the subject of some
17 discussion in the memoranda. I represent that a pretrial
18 agreement was proposed on August the 15th. It obviously
19 contains attorney-client privileged and proprietary
20 information. It's not so much the contents of it here, it's
21 the fact of it that I'm asking him about.

22 TC [MR. RYAN]: Your Honor, I'd ask you to direct
23 Mr. Mohammad's team to provide it. How he can claim

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1 attorney-client privilege when it was submitted to the
2 convening authority's office seems outlandish.

3 LDC [MR. NEVIN]: Yeah, I -- do you want me to address
4 that, Your Honor?

5 MJ [Col PARRELLA]: You may.

6 LDC [MR. NEVIN]: Yeah. Well, it's a confidential
7 communication between Mr. Mohammad and the convening authority
8 as, I think, the rules contemplate. But I will say, counsel
9 has -- or trial counsel have made a request for discovery.
10 The time has still not run for response to that, and we will
11 be responding to it appropriately.

12 MJ [Col PARRELLA]: So if you could, Mr. Nevin, could you
13 please repeat your question for me?

14 LDC [MR. NEVIN]: Sure.

15 Q. Did your staff advise you, sir, that on behalf of
16 Mr. Mohammad, his defense counsel had actually tendered a
17 proposed pretrial agreement on August the 15th of 2017?

18 TC [MR. RYAN]: The same objection.

19 MJ [Col PARRELLA]: Understood. The objection is
20 overruled.

21 You can answer the question, Mr. Castle.

22 A. Yeah, I -- you're asking a question with a lot of
23 specifics in it. All I heard was -- was that, you know,

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1 Harvey had discussed with the defense pretrial agreements.
2 And I heard the defense had told Harvey that you weren't going
3 to enter into any pretrial agreements until you -- the
4 Department of Justice had -- had also agreed to be part of any
5 plea agreement.

6 Q. So your answer would be no?

7 A. That's all I know.

8 Q. So your answer would be no?

9 A. Well, my answer is what I just said. That's all I
10 knew.

11 Q. Okay. So have you learned that information since the
12 time of this memorandum?

13 A. I have heard -- you know, in defense's filings
14 sometimes there's been talk back and forth about this, but I
15 don't know really anything about the sequencing. All I knew
16 was what I had just said.

17 Q. Okay. Now, you mentioned that you were being briefed
18 by a group of people, and you listed those names previously.

19 A. Uh-huh.

20 Q. And you also indicated that you felt that the people
21 in your shop who were providing you briefing on the military
22 commissions were going out and acquiring information from
23 other people, correct?

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1 A. No. What I -- what I said was is that legal
2 counsel -- our legal counsel office was having discussions
3 with the convening authority and having conversations -- and
4 when I say "legal counsel," yeah -- I'm referring to, you
5 know, those who were responsible for dealing with the
6 prosecution, not dealing with the -- with the defense.

7 So I knew that they were just having discussions with
8 the prosecution. I knew that they were having conversations
9 with the -- with the convening authority. Only when -- you
10 know, but we were trying to maintain some compartmentalization
11 here and, you know, only having discussions at that point,
12 hopefully within the group.

13 Q. So this would be -- I think you would be referring to
14 Mr. Easton previously and then Mr. Newman?

15 A. Yes, Mr. Easton. Mr. Newman didn't come along
16 until -- until later. At this time, at the very beginning,
17 that would have been Mr. Easton who was in charge.

18 Q. And he's the deputy general counsel for legal
19 counsel?

20 A. He was the acting deputy general counsel for legal
21 counsel. He is -- I don't know the formal title, but he is in
22 charge of our litigation shop.

23 Q. Right. And then there's also Mr. Vozzo, a deputy

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1 assistant general counsel, you think?

2 A. Yeah, I believe that's his title.

3 Q. And you saw him as a liaison to the ----

4 A. Not deputy assistant, deputy associate. I think it's
5 deputy associate. It might be deputy associate.

6 Q. Okay. But you saw him as a liaison to the military
7 commissions and the military commission process, I believe you
8 said?

9 A. He -- I viewed -- yes, I viewed him as being one of
10 the people who was communicating to the commissions and to the
11 prosecution, yes.

12 Q. And is it true that all of these people were
13 providing you information about each of these issues that
14 you've described coming up?

15 A. That's true.

16 Q. And I'm really referring primarily to the three
17 issues that motivated your decision or that you have
18 identified today as motivating your decision to terminate
19 Mr. Rishikof and Mr. Brown.

20 A. They were all -- everyone was -- everyone was
21 providing me with information and -- but when I made a
22 decision that I thought we were having a -- you know, that I
23 had concerns about whether or not we were getting the law

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1 correctly, then I -- and I had Professor Jenks then start up
2 his -- his process. And he was -- he wasn't -- there were --
3 everyone -- there were a lot of people that were involved, but
4 he had special -- I had placed special emphasis on what he was
5 doing.

6 Q. So let me just take, for example, this 2015
7 memorandum that you referred to that you felt required
8 coordination within the Office of General Counsel.

9 A. Uh-huh.

10 Q. And that was a memorandum that was written by
11 Mr. Work ----

12 A. Right.

13 Q. ---- who was the deputy at the time, correct?

14 A. Correct.

15 Q. And did you read that memorandum?

16 A. I don't know if I had read it, but I was aware that
17 that was -- around that period of time when I started, I --
18 but I was aware that we were supposed to coordinate. We were
19 supposed to coordinate on everything.

20 Q. Have you read it now?

21 A. I have read it now.

22 Q. And have you talked to Mr. Work about it?

23 A. No, I have -- I think I shook Deputy Secretary Work's

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1 hand once maybe, but I have never really had any discussions
2 with him at all.

3 Q. Okay. And so the information you had about
4 coordination came to you as a result of others telling you --
5 some of the people we referred to previously on your staff and
6 so on ----

7 A. Sure.

8 Q. ---- they are the ones who provided you the
9 information about that memorandum, correct?

10 A. They were the ones -- they were the ones who were
11 explaining to me, you know, how UIs work, how the commission
12 authority works, everything along those lines.

13 Q. Yes, but my question was about Mr. Work's,
14 Deputy Secretary Work's, memorandum.

15 A. I would ----

16 Q. Those are the people who provided you the information
17 about the contents of that memorandum, correct?

18 A. They were the ones who provided me information about
19 the effect of that -- of that memorandum, that ----

20 Q. So they didn't give you information about the
21 contents?

22 MJ [Co] PARRELLA]: Hold on one second. If I could just
23 remind both counsel and the witness to please ensure you don't

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1 talk over each other, because we do have to get this
2 transcribed.

3 LDC [MR. NEVIN]: I understand, Your Honor. Thank you.

4 WIT: I apologize.

5 LDC [MR. NEVIN]: Me, too.

6 Q. So the question was: Do I understand you correctly
7 to be saying that he did -- you were not briefed about the
8 content of it; you were briefed about the effect of it?

9 A. That's right, the effect that everything that we were
10 supposed to do is supposed to be coordinated.

11 Q. Okay. And ----

12 A. And I learned -- and I apologize. And I learned --
13 and over periods of time, I might have learned that it was
14 Secretary Work that said that. But, you know, for everything
15 we do here, everything has to be coordinated.

16 Q. And so ----

17 A. For something not to be coordinated would be a --
18 would be a -- would be a very large anomaly.

19 Q. So the same would be true, for example, with respect
20 to the -- the issue of the conversation with Admiral Tidd and
21 the overflight, or the aerial photo of the ELC. Other people
22 gave you information about that, right?

23 A. That's correct.

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1 Q. And you, I believe, already said you didn't speak to
2 Admiral Tidd about it. Would it also ----

3 A. I did not.

4 Q. Would it also be correct that you -- that you did not
5 call up people in the Coast Guard, Admiral Lunday,
6 Admiral Brown and so on, you didn't make an effort to
7 investigate this yourself, correct?

8 A. I -- I had no reason to. The numerous people came to
9 me and told me, from the group, told me the same thing.

10 Q. Okay. And so -- and do you remember specifically who
11 was briefing you from the group about the issue of the aerial
12 photo?

13 A. As I said, I think Mr. Vozzo was the first person to
14 tell me about it, but there -- if I remember correctly, I
15 believe that there were others that came in to talk to me
16 about it as well.

17 Q. So -- and does that remain true today as you sit here
18 today, that you have still not conducted that kind of
19 investigation -- investigation on your own?

20 A. I -- I have not conducted an investigation on my own
21 because nothing that they have said has appeared to be untrue.

22 Q. Have you read the pleadings in -- all the pleadings
23 in this case, sir?

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1 A. I have read -- I have read the -- the information on
2 the motions and -- well, actually, that's not true. There are
3 one or two -- well, I have -- I have -- when it comes to -- if
4 you're talking about plea agreements, no, I have not read
5 anything there that you all have done on plea agreements.

6 When it comes to the actual, you know, the filings
7 that you have on the motion, I believe that I have read most,
8 if not all, at least once, the materials which you -- which
9 you filed, but a lot -- but I have not read a lot of the
10 attachments.

11 Q. Okay. Thank you. So just a slightly different, sort
12 of stepping back a moment. I heard you testify previously
13 that you didn't do -- that you didn't use any kind of instant
14 message service in your work at Department of Defense. And I
15 just wanted to clarify: No text messages? No work-related
16 text messages at all?

17 A. I -- I -- I don't believe that there is a text
18 message system. All we have is -- is our e-mail systems.

19 Q. And so you don't have a cell phone that handles text
20 messaging?

21 A. I have my own personal cell phone that handles text
22 messaging ----

23 Q. Not work related?

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1 A. ---- but I don't recall -- I don't recall anyone ever
2 sending me a -- a work-related text.

3 Q. Do you keep a calendar?

4 A. I do not. But our personal assistants, I believe
5 they do.

6 Q. So there is someone who manages your calendar for
7 you?

8 A. Yes.

9 Q. And I take it there's some mechanism for showing you
10 the calendar every morning or each evening so you know what's
11 happening in the next day or ----

12 A. I get a card and a piece of paper.

13 Q. So just to direct your attention to the meeting at
14 the Secretary of Defense's office when the Attorney General
15 called, I understand you are -- you are actually in the
16 meeting with the Attorney -- with the Secretary of Defense?

17 A. Right.

18 Q. He leaves for -- without any reason being given and
19 then shortly after that you are called out for him -- to join
20 him, and you do join him. Is all of that correct?

21 A. I believe so, yes.

22 Q. Okay. And so do you know why you were called out as
23 opposed to the other people who were in the meeting?

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1 A. Well, it was -- it was because I was the acting GC.

2 Q. Right. And so at that point the Secretary of Defense
3 or someone on his staff has some kind of information that
4 there's a legal question that's coming up, right?

5 A. I would -- I would speculate that that was the reason
6 why, yes.

7 Q. So if -- did I also understand you to say that you --
8 you went to -- did you go to the Secretary of Defense's office
9 then?

10 A. I did.

11 Q. And ----

12 A. From the meeting room to the Secretary of Defense's
13 office.

14 Q. I'm sorry?

15 A. From the meeting room where we were having the
16 meeting to the Secretary of Defense's office.

17 Q. Okay. And so it's you and the Secretary of Defense
18 are present in the room. Who else is in the room?

19 A. I -- I don't know for certain. The chief of staff
20 might have been there. Might have been there.

21 Q. All right. So as you come in, the Attorney General
22 is not on the speakerphone, but at some point after that he,
23 the Attorney General, comes up on the speakerphone, correct?

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1 A. That's -- that's how I remember it. Could -- could
2 it have been different? Yes. But that's how I remember it.

3 Q. Yeah. And ----

4 A. And I apologize. The meeting that we were in was --
5 I mean, you know, this -- it was -- it was -- you know, it
6 was -- you know, it was a very important meeting with some --
7 you know, with the senior leadership of the department, so I
8 was -- you know, my mind is concentrating -- at least I
9 remember my mind is concentrating on the meeting and what --
10 and what's going on there. So I was very surprised when I was
11 called out of the meeting -- of that meeting.

12 Q. Right. And we are also, if I remember the numbers
13 correctly, we're about six weeks into your service?

14 A. It was very early -- it was very early on, yes.

15 Q. Right. So understanding all of that, did it appear
16 to you that the Secretary of Defense had had some conversation
17 with the Attorney General before you entered the room?

18 A. I honestly don't know what took place before I
19 entered.

20 Q. But there was some conversation with you and the
21 Secretary of Defense before the Attorney General is put on to
22 the speakerphone in which -- let me just ask what your
23 recollection is, because I believe you said before that there

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1 was some conversation between you and the Secretary about what
2 is up with this call from the Attorney General, why is the
3 Attorney General calling, that you and the Secretary
4 discussed; is that correct?

5 A. I remember walking in. I remember that -- that there
6 was something to do with the Attorney General and I remember
7 the -- and then I think the -- the call was placed, and I
8 think -- you know, and I remember it being on speakerphone.
9 But like I said, I'm -- this -- it -- you know, it's a
10 fuzzy -- as I think I've said before, it is a fuzzy -- it's
11 not a very crisp memory.

12 Q. Right. But in any event, at some point in the
13 conversation, the Attorney General said the words "No deals"?

14 A. Yes, I remember him saying "No deal."

15 Q. And that was ----

16 A. No, I remember him saying "No deal," not "No deals."

17 Q. I see.

18 A. I believe he said "No deal." If I remember
19 correctly, he said "No deal."

20 Q. And is it your testimony that he didn't say what he
21 was referring to?

22 A. There might have been some comment about, you know,
23 about terrorists or terrorism, but I honestly don't remember

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1 that. I mean, I honestly don't have a good memory of that.

2 Q. Yeah. Was there any other subject besides "No deal"
3 discussed during the call ----

4 A. No.

5 Q. ---- with the Attorney General?

6 A. No. No. No.

7 Q. And did the Attorney General then hang up the phone
8 or say, "Nice talking to you," or anything like that?

9 A. It was a very brief phone call, and I -- like I said,
10 I don't remember all that much about it.

11 Q. Was it ----

12 A. I remember being -- I was -- and I apologize. I
13 remember being more shocked, you know, as, All right. You are
14 in the Secretary of Defense's office for a one-on-one meeting.
15 You don't know what the phone call -- you know, you really
16 don't know what's going on and, you know, and people -- and,
17 you know, you are -- you know, and I'm looking around trying
18 to figure out what is going on.

19 Q. And I take it that the Attorney General's comments
20 were directed to the Secretary, not to you?

21 A. No, I was not -- I was just listening in. I was not
22 a part -- I was not a participant in speaking to the
23 Attorney General.

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1 Q. And -- and you nonetheless made the remark; you said
2 "No deal" as well?

3 A. Yeah. I remember -- I think -- I think the Secretary
4 might have looked up to me like looking at me like, "Well,
5 what's going on?" And not knowing what he was saying, but at
6 the same time, I believe, not knowing what, you know, the --
7 not knowing what the -- you know, not having -- not being --
8 not knowing, or not really knowing what the Attorney General
9 was talking about, I remember saying "No deal" because I
10 hadn't made any -- I hadn't made any deals with anybody, "No
11 deal." And only afterwards did I, you know, did I start
12 putting this together that -- that he was -- he was probably
13 talking about pretrial agreements.

14 Q. But, sir, why would you be making a deal with
15 anybody?

16 TC [MR. RYAN]: Your Honor, objection. At this point it
17 has been covered quite a bit.

18 MJ [Col PARRELLA]: The objection is overruled.

19 You can go ahead and answer the question.

20 A. As I said, sir, I don't -- I remember -- I remember
21 not knowing exactly what was going on. I did know that I
22 hadn't agreed to anything in the form of a deal or, you
23 know -- and when I say "not in the form a deal," you know, the

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1 whole plethora of law which is in the Department of Defense.

2 So I felt fairly confident in saying "No deal," but
3 -- because I hadn't made any deal on any -- I don't believe I
4 had made a deal on anything. But I -- like I said, only later
5 did I start to put together that they were talking about plea
6 agreements.

7 Q. So just to turn your attention to the -- what is
8 sometimes called the fast boat issue.

9 A. Uh-huh.

10 Q. You said that you understood that the commissions had
11 lost a week's worth of court time. There was a whole
12 kerfuffle because the convening authority had canceled this
13 fast boat transportation ----

14 A. Uh-huh.

15 Q. ---- and that you were -- that you were advised of
16 this by your staff again, correct?

17 A. That's right. And I sort of learned a little bit
18 more over a period of time.

19 Q. Right. And this would again be like the other
20 situations we discussed, this would be one where you didn't
21 conduct an independent investigation, your staff is out doing
22 whatever they are doing to acquire this information and then
23 reporting it to you, correct?

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1 A. That would be correct, sir.

2 Q. And are you directing your staff in how to conduct
3 those inquiries or investigations?

4 A. I -- they -- all of them are experienced attorneys,
5 and they -- I -- I trust that, you know, that they believe the
6 information which they are providing to me.

7 Q. So the answer would be no?

8 A. Well, I -- I'm sorry, if you could state the question
9 again.

10 Q. Sure. Are you directing the investigations or
11 inquiries that your staff is making? Are you telling them I
12 want you to talk to this person, I want you to talk to that
13 person ----

14 A. No.

15 Q. ---- that kind of thing?

16 A. No, I am not.

17 Q. All right. Sir, when you were -- when your staff was
18 reporting to you about these matters, did you consider
19 advising them that the Rule for Trial by Military Commission
20 requires the CA, the convening authority, to communicate with
21 other government officials in carrying out his assigned
22 functions? Did you consider that?

23 A. I -- there -- you know, what -- is he supposed -- can

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1 he communicate with other government officials? Yes. Are we
2 supposed to know about it, especially something as monumental
3 [sic] as, you know, talking to the Department of Justice about
4 things? I would think that that would be something that he
5 would want to have communicated directly with us to make sure
6 we knew.

7 Q. And similarly it says that he's -- that "The
8 convening authority shall coordinate and exchange data and
9 information with other federal officials having collateral or
10 related functions." You're aware of that?

11 A. Yes. I ----

12 Q. And your staff was aware of that as well?

13 A. Right. But as I said, it was supposed to coordinate
14 things with us. And I had told Harvey after -- you know,
15 after this incident that we -- you know, all of our ships need
16 to be heading in the same direction at the same time.

17 Q. Right.

18 A. And I said that to him repeatedly.

19 Q. Right.

20 LDC [MR. NEVIN]: Thank you, sir.

21 That's all the questions I have, Your Honor.

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

23 Ms. Bormann.

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

2 Q. Good afternoon, Mr. Castle. My name is Cheryl
3 Bormann. I represent Mr. Bin'Attash. We've never met, have
4 we?

5 A. I don't believe we have, ma'am, no.

6 Q. But Mr. Ryan gave you my name, and it's on the piece
7 of paper in front of you, right?

8 A. Yes. It's right there.

9 Q. Good. I'm going to keep this fairly brief because it
10 has been a long day for everybody. I want to talk a little
11 bit about your experience with death penalty cases. Do you
12 have any?

13 A. Uh-huh. Yes, I do.

14 Q. In what regard?

15 A. I worked in my final -- at my final year in law
16 school, I worked for an organization called LEDA that
17 represents all death row inmates in the State of Pennsylvania,
18 or at least did at that time.

19 Q. So in law school you did some work with an NGO, a
20 nongovernmental agency -- organization?

21 A. Yes. That represented all death row inmates in
22 Pennsylvania.

23 Q. Right. Anything as a practicing lawyer?

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1 A. No. No, ma'am.

2 Q. So it's fair to say that this is the first experience
3 you have had with the concept of pretrial agreements in a
4 death penalty case; is that fair to say?

5 A. Absolutely.

6 Q. Okay.

7 A. Absolutely.

8 Q. Now I want to move on to -- I think you said you met
9 with General Martins a few times during your time period as
10 either acting general counsel or now.

11 A. Uh-huh.

12 Q. I'm not clear on the dates ----

13 A. I don't -- I don't believe -- I met with him when I
14 was acting general counsel, or performing the duties of the
15 general counsel. I'm not so certain that I met with him since
16 then ----

17 Q. Okay.

18 A. ---- since I became -- I reverted back to being my
19 position of principal deputy.

20 Q. Great.

21 A. I'm not so certain.

22 Q. And do you remember the first time that you met with
23 General Martins?

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1 A. I -- I think I do, but it's not a -- it's -- it's not
2 a very crisp memory.

3 Q. Do you remember what season it was?

4 A. It probably -- and once again, probably -- I don't
5 know for sure -- was in that, that fall, you know, kind of
6 fall time period of 2017.

7 Q. So sometime in September, October, November of 2017?

8 A. Yes, something -- I believe that's true, but I could
9 be very wrong on the dates.

10 Q. Sure, of course.

11 And you started as acting general counsel in August
12 of 2017, right?

13 A. That's correct.

14 Q. So within a fairly short time you were introduced to
15 General Martins?

16 A. I was -- I was introduced to him, yes. Yeah. I
17 believe -- yeah, during those first five months, yeah, I
18 believe we were.

19 Q. Did the meeting take place -- the first meeting now
20 we are talking about -- take place in your office?

21 A. Yes.

22 Q. And do you remember who scheduled the meeting for
23 you, or did you schedule it yourself?

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1 A. That was all taken care of by my staff.

2 Q. Okay. Do you know which member of your staff
3 arranged the meeting?

4 A. No, but my administrative staff would, of course,
5 would be the ones entering it into my calendar and arranging
6 for it.

7 Q. And when you were introduced to General Martins, who
8 made the introduction?

9 A. I honestly -- I don't remember. I'm sure -- if it
10 was in the fall, it -- it possibly could have been Bob Easton,
11 but I'm not -- I'm not -- I mean, I honestly don't remember.
12 I'm embarrassed. I don't remember all that much.

13 Q. Okay. Well, there are two people on your staff or
14 that you work with who would have made the -- who work with
15 General Martins, right? Mr. Vozzo, right?

16 A. Uh-huh. Yes.

17 Q. And also Mr. Easton?

18 A. Yes.

19 Q. Okay.

20 A. At least one of those two, yes.

21 Q. So it would have been one of them, right; fair to
22 say?

23 A. It could very well be, yes.

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1 Q. Okay. I want to move ahead now to the filing of
2 AE 555 and how it is that you came to provide documents to the
3 commission. Do you understand what I am getting at?

4 A. Yes. The documents that you're referring to ----

5 Q. I can ask you questions about them. I meant the
6 documents writ large, all of the documents in front of you.

7 A. Yes.

8 Q. Great. Who contacted you to request the documents
9 that you provided to the commission?

10 A. They wouldn't have contacted me. That -- all of that
11 would have gone through the office of legal counsel and
12 Professor Jenks.

13 Q. So the request would have gone through Mr. Easton or
14 his successor, Mr. Newman?

15 A. Mr. Newman, right.

16 Q. Mr. Vozzo?

17 A. He would have been -- I'm sure he would have been
18 informed, and then -- and Professor Jenks as time went on.

19 Q. Professor Jenks, who was the special counsel, but it
20 appears was working pretty closely with Mr. Vozzo and
21 Mr. Easton?

22 A. They -- they -- Professor Jenks sits separately. He
23 sits in the office adjacent to my office. Legal counsel

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1 office is further down. Yes, there were -- I understood that
2 they had a number of conversations, but there was a physical
3 separation.

4 Q. I say that because you indicated that it would have
5 been -- the documents would have been provided through
6 liaisons, Mr. Easton, Mr. Vozzo, and Professor Jenks?

7 A. Right.

8 Q. So I'm wondering if the three of them would have been
9 working on the same project.

10 A. They would have -- I -- I left it to them to discuss
11 things and work things out.

12 Q. Great. And do you know to whom the documents were
13 provided?

14 A. I'm still a little -- I mean, are we -- are we
15 talking about the documents which we provided as part of our
16 filing in August or are we just -- or are we talking about
17 documents in general?

18 Q. I'm talking about the documents including the
19 Management Memo, in the record at AE 555P, Papa, Attachment D;
20 I am talking about your memorandum to the Secretary of
21 Defense, beginning December of 2017.

22 A. Right.

23 Q. I'm talking about Mr. Newman's memo to you

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1 recommending the termination of Mr. Brown ----

2 A. Right.

3 TC [MR. RYAN]: Judge, I object on the grounds of
4 relevance, please.

5 MJ [Col PARRELLA]: Let's hold on one second. So,
6 Ms. Bormann, let's kind of go back and just ask one question
7 because you've asked now about several documents and you are
8 asking who they were provided to. So let's just start with
9 one and then ask ----

10 LDC [MS. BORMANN]: I will.

11 MJ [Col PARRELLA]: Thank you.

12 Q. Maybe I made the wrong assumption, so let me start
13 over. Were the documents that were provided by your office to
14 the prosecution done in one big group or were they given
15 separately?

16 TC [MR. RYAN]: Objection, relevance.

17 MJ [Col PARRELLA]: Defense?

18 LDC [MS. BORMANN]: Judge, I'm trying to get to the
19 question about -- you asked me to define it by document and if
20 it's one big group, it makes the question much easier. I want
21 to clarify with the witness how this was done, and then I can
22 go over it more specifically if it's just one document at a
23 time.

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1 MJ [Col PARRELLA]: Okay. Objection at this point in time
2 is overruled. You can go ahead and ask the question.

3 LDC [MS. BORMANN]: Sure.

4 Q. Do you remember the question, sir?

5 A. You were asking how the documents that -- I'm sorry,
6 could you ask it again?

7 Q. Sure. Of course.

8 A. I apologize, Ms. Bormann. I'm not trying to be
9 difficult. It's just been -- it's been a long day.

10 Q. I understand completely.

11 I'm asking you whether or not your office provided
12 the documents to the prosecution, which I'm talking about now
13 the documents that were in the possession of your office. So
14 the things that you provided. Were they provided in one dump
15 or were they provided separately over time?

16 A. I -- honestly, I don't know.

17 Q. Okay.

18 A. There were -- you know, we didn't -- we -- I don't
19 remember us sharing documents or having any kind of
20 discussions until -- or sharing, you know, documents until the
21 first time I was called to testify.

22 Q. Great. Thank you for that answer.

23 So I want to now direct your attention to, briefly,

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1 the call that you overheard between Secretary of Defense
2 Mattis and AG Sessions. It's clear that you don't remember,
3 you are not clear on the date as we sit here today, right?

4 A. I'm not -- I'm not clear on most of what happened.

5 Q. Okay. But one of the things that you are clear on is
6 that Secretary Mattis indicated to you in some way, "What is
7 AG Sessions talking about," right?

8 A. I sort of remember that, yeah.

9 Q. And did ----

10 A. I'm not quite ----

11 Q. I'm sorry?

12 A. Not crisp. I'm not crisp at all.

13 Q. Do you remember how he communicated that to you?

14 TC [MR. RYAN]: Objection, Your Honor. Asked and answered
15 twice now.

16 MJ [Col PARRELLA]: Overruled.

17 A. I -- you know, he might have looked at me, he might
18 have asked me something. I -- like I said, it is not a crisp
19 memory.

20 Q. Now, after he communicated that to you, did you
21 provide him an answer?

22 A. I said, you know -- and the only time that I -- the
23 only thing I remember saying is "No deal" after the

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1 Attorney General had said "No deal." And like I said again,
2 it was -- it -- you know, I basically said that because I sort
3 of didn't remember making any deals with anybody during that
4 period of time.

5 Q. Do you know what conversations were had between
6 Secretary Mattis and AG Sessions prior to your being invited
7 to the office that day?

8 A. I don't know that they -- I don't know that they had
9 one on that day. Like I said, they -- I think he -- Secretary
10 might have even dialed the number or he was told to pick up.
11 I don't remember.

12 Q. Certainly. So it's possible that there was a
13 conversation that occurred before you arrived, which would
14 explain why there was a little confusion?

15 A. I -- I don't know if I -- if I came away with that
16 impression, but I don't know.

17 Q. Certainly. After the conversation with
18 Attorney General Sessions ended, where did you go?

19 A. I went -- I believe I went back into the meeting.

20 Q. And where did Secretary Mattis go?

21 A. I think he rejoined the meeting.

22 Q. Did you rejoin the meeting at the same time or
23 separately?

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1 A. I -- I don't remember.

2 Q. Did you have a conversation with Secretary Mattis
3 after the phone call with Attorney General Sessions ended but
4 before rejoining the meeting?

5 A. I -- I might have said -- now, I honestly -- I really
6 don't remember what I said, if I said any -- I definitely said
7 something because you just don't leave the Secretary's side
8 without saying goodbye, you know, but I really don't remember
9 what I said.

10 Q. Didn't the Secretary express a little concern and
11 surprise about a phone call from AG Sessions asking about a
12 deal on a terrorist case?

13 A. As I said, I wasn't entirely sure -- 100 percent sure
14 what the telephone call was about. I was -- and I -- I
15 honestly don't -- I don't remember what he -- what he said.

16 Q. After you rejoined the meeting, at any point that day
17 did you and Secretary Mattis have a sideline conversation, or
18 any other conversation, regarding the Sessions phone call?

19 A. Not that I recall.

20 Q. After the meeting ended, you said you went back to
21 your office, right?

22 A. Yeah, I believe so.

23 Q. And when you arrived at your office, who were the

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1 first people you told about the strange phone call with
2 Sessions, with Attorney General Sessions?

3 A. It might have been somebody -- people who were in the
4 front office here.

5 Q. Do you -- at some point, I think you testified to
6 Mr. Connell, everyone in your office knew about the
7 Attorney General Sessions phone call later on.

8 A. Yes, because I was -- right, because I'm trying to
9 figure out exactly what had happened.

10 Q. Okay. Did you have that discussion with your
11 subordinates, your direct reports?

12 A. There -- I remember there being a lot of people
13 around and like saying -- you know, I remember saying, you
14 know, he might have been talking about pretrial agreements.

15 But once again, you know, I -- and I -- you know,
16 once again, I was literally brand-new on the job. This was
17 the biggest meeting around, and I'm being asked about
18 something during a meeting, and I -- and I, frankly, don't
19 remember -- you know, all -- you know, I don't really have a
20 good memory of it.

21 I remember being, being shocked -- not shocked, but,
22 you know -- you know, wow, what's going on?

23 Q. Sure.

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1 A. It was definitely -- I mean, that was my -- that was
2 what I remember most about it.

3 Q. Sir, the pretrial agreements that we're discussing
4 involved removal of the death penalty on the 9/11 attacks.
5 That's what we're talking about here, right?

6 A. That's what -- that was my understanding, is that
7 the -- is that there would be -- that Harvey was working on
8 plea agreements to take the death penalty off the table in
9 exchange for a guilty plea and life in prison.

10 Q. Now, that is a position that is -- has some
11 opposition in your own office, right?

12 A. You know, I -- I'm sure -- I am sure that there are
13 people who have a wide variety of opinions on that. But what
14 I was most taken with during this period was, you know -- you
15 know, people were trying to be professional about how they
16 would handle -- you know, how they handled all of these
17 things.

18 Q. Certainly. Did people express to you their
19 dissatisfaction, the people in your office, your direct
20 reports?

21 TC [MR. RYAN]: Objection, sir.

22 MJ [Co1 PARRELLA]: Basis?

23 TC [MR. RYAN]: Relevance.

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1 MJ [Col PARRELLA]: Sustained.

2 Q. Sir, I want to now move on to the conversation that
3 you had -- two conversations, actually, you had with
4 Admiral McPherson. You actually had three. I'm not
5 interested in the last one, the third one.

6 A. Right.

7 Q. But just the first two.

8 A. Uh-huh.

9 Q. The first time that you talked to Admiral McPherson
10 you explained to him that you wanted to replace the current
11 convening authority, Mr. Rishikof, and the legal advisor.

12 A. Uh-huh.

13 Q. And you mentioned to Admiral McPherson that it was
14 because they were socializing or shopping around pretrial
15 agreements; is that right?

16 A. No. What I -- what I had said -- what I said the
17 first time I spoke to the admiral, it was, "Congratulations on
18 your confirmation. And by the way, we would like you to take
19 over the convening authority."

20 And -- and he said, "Well, you know, he'd have to
21 check with his client." He then heard back that his client
22 said it was okay, so he was in.

23 Then later on I remember, you know, thinking that I

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1 needed to, you know, tell him why I have -- had been so nice
2 to him in -- in -- you know, in selecting, you know, or
3 recommending him, that he would be the person who would be
4 selected to this.

5 As I said, during the time I had what I think was the
6 flu. I had said to him that -- you know, I talked about the
7 AG call, and -- and then, you know, literally, you know, the
8 next day or the next two days, you know, I'm literally sitting
9 in my sickbed and saying, you know something? That might not
10 have been the smartest thing I've ever done. I want to make
11 sure that there's no question about, you know, the new
12 convening authority thinking that we are coming down on these
13 issues one way or the other. And that's the reason why I
14 dropped it.

15 Q. Sir, I'm going to direct your attention to the 26th
16 of January memorandum from Chris Jenks, Professor Jenks. Do
17 you have that in front of you?

18 A. I do. Hold on. Let me just get it.

19 Q. It's found at AE 555DD Attachment E.

20 A. Right. Here we are, yep.

21 Q. All right. I want to direct your attention to page 5
22 of 8, paragraph k. Let me know when you have that in front of
23 you.

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1 A. Okay.

2 Q. Page 5, paragraph k.

3 A. Okay.

4 Q. Do you see k.?

5 A. I do.

6 Q. The last sentence reads -- and this talks about your
7 conversation with Candidate A, right?

8 A. Uh-huh. Yes.

9 Q. Candidate A is Admiral McPherson?

10 A. Is Admiral McPherson, correct.

11 Q. And this -- the paragraph k. reads that you --
12 because it's talking about you. It's directed to you.

13 A. Uh-huh.

14 Q. "...expressed your intention to recommend that the
15 Secretary rescind Mr. Rishikof's designation as CA because of
16 the process foul regarding inadequate coordination prior to
17 Mr. Rishikof talking to DoJ about pretrial agreements."

18 A. Uh-huh.

19 Q. It says that, right?

20 A. I think so. Yes, it does. It talks about PTAs.

21 Q. PTAs. So not only did you discuss with

22 Admiral McPherson the phone call with

23 Attorney General Sessions, but also the fact that the current

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1 convening authority, Mr. Rishikof, was socializing or somehow
2 coordinating with the Department of Justice about pretrial
3 agreements?

4 A. Yeah, I -- yes. I mean, that was the -- you know, I
5 told him, you know, that he went over to -- I had to say why
6 he was going over to -- you know, talking to the Department of
7 Justice. So I -- you know -- so yes, I did.

8 But once again, shortly thereafter I realized, wait a
9 second, that could be misinterpreted as saying that I am
10 coming down or trying to push the scales here one way or the
11 other on PTAs. And so I said no, we are not going to do that,
12 and we are going to -- to find somebody else.

13 Q. Thank you. Now, I want to direct you to the
14 15th of December 2017 memo to the Secretary of Defense. It's
15 found at AE 555DD Attachment L, like Lima; and also found at
16 DISO 37.

17 A. Ma'am, I apologize. I'm -- I have ----

18 Q. That's okay.

19 A. My staff has provided me with a wonderful tab system
20 here which I have discarded and I'm just going with the papers
21 which are in front of me. So if you could just give me the
22 title, name, and the date.

23 Q. Sure. It is titled "For Secretary of Defense from

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1 William Castle." It says, "Plan for the Disposition of Future
2 Unprivileged Enemy Belligerent Cases," dated December 15,
3 2017.

4 A. All right. Hold on.

5 Q. It's a heavily redacted ----

6 A. Yes.

7 Q. ---- document.

8 A. Here we go.

9 Q. When you were discussing with Mr. Connell the
10 chronology of things, you ----

11 A. Uh-huh.

12 Q. ---- on more than a few occasions said you pulled
13 certain documents. You used the word "pulling."

14 A. Yes.

15 Q. And it was unclear to me what documents you pulled,
16 so ----

17 A. I ----

18 Q. Let me ask a question.

19 A. Sure. I'm sorry.

20 Q. You stated that you pulled the documents in January
21 of 2017, and it would have been the January 12th document;
22 that was the original one you identified, the one recommending
23 the termination of Mr. Rishikof in January.

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1 A. Uh-huh. Correct.

2 Q. Did you ever pull the December 15th, 2017 memo, the
3 heavily redacted one we're looking at right now?

4 A. Did I formally pull it ----

5 Q. Yes.

6 A. ---- or, you know, say remove this from the system?
7 I don't -- I don't believe that I did, but I think that my
8 intent -- you know, I think that everyone understood from my
9 office to -- you know, to the front office that when I pulled
10 the -- and brought down the initial January document, that I
11 was pulling that recommendation. I don't think anyone could
12 be -- I don't think anyone could be any more clearer than
13 that.

14 Q. With respect to the content of this document in front
15 of you ----

16 A. Uh-huh.

17 Q. ---- I'm going to direct your attention to pages 3
18 through 9.

19 A. Uh-huh.

20 Q. Without telling me what's under the redactions, does
21 any of it pertain to the proposed course in terminating
22 Mr. Rishikof and the legal advisor, Mr. Brown?

23 A. I'd have to review the document, but I don't believe

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1 so, no.

2 Q. Okay. Did you discuss the content of the document
3 with Mr. Ryan while you were preparing your testimony last
4 week?

5 A. This document? Yes.

6 Q. Okay. And when you were discussing it with Mr. Ryan,
7 were you discussing an unredacted version?

8 A. No, I was discussing a redacted version. And,
9 frankly, I brought it to his attention.

10 Q. When was the last time you looked at what was under
11 those redactions?

12 A. Months ago.

13 Q. You didn't make those redactions?

14 A. They were as part of the process. We had --
15 Professor Jenks and the other members of the legal counsel
16 team went through these documents and made those -- those
17 redactions, and I went along with -- I agreed to -- with those
18 redactions.

19 Q. So the redactions were made by your office?

20 A. Correct.

21 Q. Not by the prosecution?

22 A. Not -- I believe we made the redactions.

23 Q. So that no privilege would be waived or any other

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1 concerns by tendering them to the prosecutor?

2 A. That would -- that would be correct. But once again,
3 this was -- this was done by others, not by me.

4 Q. Great. Thank you.

5 Lastly, sir, when you met with Mr. Ryan last year --
6 last week, rather, not last year, was that the first time that
7 you met Mr. Ryan?

8 A. I think I might have met Mr. Ryan once before, the
9 first time that I had been asked to testify, but that was a
10 little hazy.

11 Q. Who made -- who made the introduction of Mr. Ryan to
12 you?

13 TC [MR. RYAN]: Objection, Your Honor. Relevance.

14 MJ [Col PARRELLA]: Counsel, what's the relevance?

15 LDC [MS. BORMANN]: Judge, if I may be muted for just a
16 moment with the witness so that he can't hear.

17 MJ [Col PARRELLA]: Okay.

18 LDC [MS. BORMANN]: I have a proffer to make.

19 MJ [Col PARRELLA]: Please mute the witness.

20 [Did as directed.]

21 MJ [Col PARRELLA]: Okay.

22 LDC [MS. BORMANN]: Judge, there is an issue in the
23 general counsel's office with the information -- it's clear --

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1 being fed to Mr. Castle. It is our position that Mr. Vozzo
2 and maybe Mr. Easton, who were working with the prosecution,
3 were providing incorrect information to influence this
4 gentleman's decision. And so the tie-in between Mr. Vozzo
5 constantly being involved in the allegations surrounding UI
6 connects the prosecution to the process.

7 MJ [Col PARRELLA]: Okay. I'm going to sustain the
8 objection, but I will say that I did already gather the fact
9 that Mr. Castle has articulated that the primary individuals
10 who he dealt with in the legal counsel office were Mr. Vozzo
11 and Mr. Easton and then becoming Mr. Newman. So I think for
12 that reason I think it's cumulative. So we will go ahead and
13 move on.

14 If we can un-mike Mr. Castle, please -- unmute him,
15 please.

16 [Did as directed.]

17 MJ [Col PARRELLA]: Mr. Castle, can you hear us again?

18 WIT: I can, Judge.

19 MJ [Col PARRELLA]: All right. Ms. Bormann, any other
20 questions?

21 LDC [MS. BORMANN]: Actually I do have one more.

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

23 Q. You said earlier when Mr. Nevin was asking the

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1 question that you had been told that none of the 9/11
2 defendants would plead guilty in exchange for no death penalty
3 unless there was coordination with Department of Justice. Did
4 I hear you right?

5 A. I -- I -- what I said was is that it was my
6 understanding that -- that Harvey had put that -- had put plea
7 deals on the table, but the defense would not go along with it
8 unless the Department of Justice also went along with it; the
9 idea being obviously that what good is getting a plea deal
10 with no -- with -- under military commissions if you could
11 still be subject to the death penalty under Department of
12 Justice, or at least that's what I was thinking.

13 Q. Who told you that?

14 A. It was one of the members of my staff. I don't -- it
15 might have been Bob Easton, but it could very well have been
16 somebody else. I don't know.

17 Q. Did you verify that information with either any of
18 the defense counsel involved, myself ----

19 TC [MR. RYAN]: Objection, Judge. Relevance.

20 MJ [Co1 PARRELLA]: Sustained.

21 LDC [MS. BORMANN]: I have nothing further.

22 MJ [Co1 PARRELLA]: Just to get an idea, Mr. Harrington,
23 do you have questions for this witness?

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1 LDC [MR. HARRINGTON]: I do, Judge.

2 MJ [Col PARRELLA]: Okay. Mr. Castle, are you okay to
3 keep pushing on or would you like to take a recess?

4 WIT: Sir, I'm at your disposal.

5 MJ [Col PARRELLA]: Okay. So if at any time you need a
6 comfort break, please just let the commission know.
7 Otherwise, Mr. Harrington, you may proceed.

8 **Questions by the Learned Defense Counsel [MR. HARRINGTON]:**

9 Q. Good afternoon, Mr. Castle. My name is Jim
10 Harrington. I represent Ramzi Binalshibh. We have never met
11 before, have we?

12 A. I don't believe so, no.

13 Q. Just a matter of curiosity, why do you call
14 Mr. Rishikof "Harvey"?

15 A. That's his name, his first name. Everyone referred
16 to him as "Harvey."

17 Q. Okay. But you don't refer to other people by their
18 first names. Were you personal friends with him?

19 A. No. No. Everyone -- everyone referred to
20 Mr. Rishikof as "Harvey" and "Gary." That's just -- for
21 whatever reason, that's what he was called. And I guess I
22 should say Mr. Rishikof and Mr. Brown more. That's not meant
23 to be disrespectful.

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1 Q. And can you tell me at any point in time have you
2 read the declarations that were filed in this proceeding by
3 Mr. Rishikof and by Gary Brown?

4 A. Yes, I have.

5 Q. Okay. And in those declarations, they provide some
6 alternative information regarding some of the complaints that
7 you had about the conduct of Mr. Rishikof; isn't that true?

8 A. I -- what struck me most about it was Harvey said
9 that he had no idea why he had been terminated.

10 Q. That wasn't my question. My question was: Did they
11 provide some information regarding, for example, the aerial
12 photo event that happened down in Guantanamo that is contrary
13 to the information that you had? Do you recall reading that?

14 TC [MR. RYAN]: I'm going to object, Judge.

15 MJ [Col PARRELLA]: Overruled.

16 A. Honestly, I don't remember the specifics about
17 what -- about that point in the statements, no.

18 Q. Okay. Can you tell me -- you listed a number of
19 complaints that you heard from your staff regarding Harvey.

20 A. Right.

21 Q. Some of them happened before you took over as the
22 acting general counsel ----

23 A. Right.

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1 Q. ---- and some after. Did you ever call Harvey in and
2 sit him down and say, Harvey, here's what -- here's what the
3 allegation is against you of what you're not doing and ask for
4 an explanation from him?

5 A. I was very concerned, as my staff was very concerned,
6 at any time -- that any kind of interaction between myself and
7 him could be misinterpreted and used as grounds for UI. And
8 so we were very careful to make sure that my time with him was
9 very limited.

10 Q. Well, you made a recommendation to the Secretary of
11 Defense for Mr. Rishikof to be removed; is that correct?

12 A. Uh-huh, that's correct.

13 Q. And you itemized some complaints that you had about
14 him. Whether accurate or not, those were the complaints that
15 you made against him; is that right?

16 A. There were three subject matters, yes.

17 Q. And those did not involve unlawful influence, did
18 they, those subject matters?

19 A. No, they did not.

20 Q. So my question again is: Did you ask Mr. Rishikof to
21 come in and give an explanation about those subject matters
22 that you ultimately went to the Secretary of Defense about?

23 A. Right. As I said, we were -- we were very reticent

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1 to have much contact, or if any contact between myself and him
2 because we were worried about any possibility that it might
3 be -- you know, that there might be some misinterpretation and
4 a UI would come of it.

5 Q. All right. Now, you did ask Mr. Rishikof about why
6 he went to the Department of Justice and didn't tell you about
7 it; is that correct?

8 A. I asked -- I asked him who authorized -- if I
9 remember correctly, I asked him who -- you know, "Who did you
10 get permission from?" Or "Who did you --" or "Who authorized
11 you to go over to the Department of Justice?"

12 Q. And the underlying subject matter of him going to the
13 Department of Justice, as you have just acknowledged, involved
14 a judicial or quasi-judicial decision that he was making
15 regarding this case; isn't that right?

16 A. I asked him who authorized him going over to talk to
17 the Department of Justice, because I believed that any kind of
18 conversation with outside -- especially with outside
19 departments, would need to be properly coordinated beforehand,
20 that we would need to know about it beforehand. I did not
21 speak to him about -- about pretrial agreements.

22 As I've said, I literally -- anytime Harvey would try
23 and talk about pretrial agreements, I would immediately raise

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1 my hands and say, "That is his business. That is his affair.
2 It is not mine, and, you know, I am -- you know, that is, you
3 know, he should -- you know, he is -- you know, he is
4 independent to do what he thinks right."

5 Q. The subject matter of him going to the Department of
6 Justice was about plea agreements; isn't that true?

7 TC [MR. RYAN]: Objection, Judge. Asked and answered.

8 LDC [MR. HARRINGTON]: He hasn't answered it, Judge.

9 TC [MR. RYAN]: Excuse me, he has, sir. Counsel ----

10 MJ [Col PARRELLA]: Okay. Stop. Objection sustained.

11 Let's move on.

12 Q. You indicated that he told you that Shanahan told him
13 that that was all right; is that right?

14 A. That's correct. The Deputy Secretary -- when I asked
15 the Deputy Secretary, the Deputy Secretary said that he had
16 authorized that contact, and -- and to me that was the end of
17 the matter.

18 Q. And in the hierarchy of the Department of Justice, is
19 the Deputy Secretary above you when you were acting general
20 counsel?

21 A. Well, I think what you're asking me is if I am -- if
22 the Deputy Secretary of Defense is higher than I am in the
23 Department of Defense, then absolutely, very much so.

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1 Q. So he certainly had the authority to authorize
2 Mr. Rishikof to do this; is that correct?

3 A. Absolutely.

4 Q. Okay. And you indicated that after he told you that,
5 you dropped that; is that right? You dropped that issue of
6 your complaints against ----

7 A. That's right. I was -- we were still concerned, very
8 concerned about things. But as a reason for termination, I
9 dropped that right there.

10 Q. Did you ask the Deputy Secretary if he knew why
11 Mr. Rishikof went to him and did not tell you?

12 A. The -- I had been informed that the reason was, is
13 that the Deputy Secretary had met with Harvey and
14 Deputy Secretary Work during the transition, and where the
15 Deputy Secretary had been confirmed -- Deputy Secretary Work
16 had agreed to stay on for a little bit to help the Secretary
17 with his -- with his new -- with his new responsibilities, and
18 that that meeting had occurred then.

19 Q. You also asked -- you also said that you were not
20 happy when Mr. Rishikof submitted his big memorandum about his
21 plan for the convening authority, and he sent it to the
22 Secretary of Defense and the Deputy Secretary and a copy to
23 you at the same time; is that right?

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1 A. That's correct.

2 Q. Okay. Did you ask Deputy Secretary Shanahan about
3 that and whether he had authorized Mr. Rishikof to do that?

4 A. No. Deputy Secretary Shanahan's office called my
5 office, from what I understand -- this is what I was told --
6 asked, "Well, what is this all about?" And we informed the
7 Deputy Secretary's office that -- you know, that this appeared
8 to be an uncoordinated memorandum. And I believe, though I
9 could be wrong, that even though it was electronic, the Deputy
10 Secretary's office then walked down a copy of the -- of the
11 memorandum to my office.

12 Q. And it's not unusual for the Secretary of Defense or
13 the Deputy Secretary to ask for opinions from your office as
14 counsel, right, about things that are submitted to them; is
15 that right?

16 A. No, they had given -- they -- the reason, what I was
17 told, they sent it back, or the reason why I believe it was
18 sent back was because they -- they were told that it was an
19 uncoordinated memorandum, and, therefore, it was not ripe for
20 consideration.

21 Q. Okay. And this was the -- you had had a number of
22 meetings with Mr. Rishikof where he had talked to you about
23 the items that were in that memorandum; is that right?

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1 A. He -- yes, he had often mentioned his three COAs.

2 Q. And ----

3 A. Once again, every time that he -- once again, anytime
4 he said anything about plea agreements or anything else along
5 those lines, I literally told him that, you know, that it's
6 his business, you know, wave off, you know, those are his
7 decisions to make.

8 Q. You filed a declaration on March 19th of 2018; is
9 that correct?

10 A. Yes, sir.

11 Q. All right. And you indicated that that was drafted
12 by a number of your staff together with you; is that right?

13 A. It was drafted by a number of members of my staff. I
14 was involved in that, yes.

15 Q. Okay. And in that declaration, you swore to tell the
16 truth; is that right?

17 A. Yes, sir.

18 Q. And the declaration does not distinguish things that
19 were of your personal knowledge from things that were told to
20 you; is that right?

21 A. Yes, I think that's right, yeah.

22 Q. Okay. And you don't identify what the sources of the
23 information were where it was not of your own personal

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1 knowledge, do you?

2 A. No, sir, I don't -- I don't believe that I do, no.

3 Q. Okay. And who was ----

4 A. At least not in ----

5 Q. Who was the principal drafter of that particular
6 memorandum -- declaration? I'm sorry.

7 A. This declaration was, I believe it was
8 Professor Jenks.

9 Q. And a declaration was also signed by Secretary of
10 Defense Mattis the same day; is that right?

11 A. Yes, sir.

12 Q. And who drafted that?

13 A. Professor Jenks did as well.

14 Q. The language in both of them is very similar; is that
15 right?

16 A. Well, it -- I don't know if it was similar. It -- I
17 thought mine was far more thorough than the Secretary's.

18 Q. Were they signed the same day, same place?

19 A. I -- they were not signed at the same -- they were
20 not signed at the same time. They might have been signed on
21 the same day, but I can't -- but I don't know for sure.

22 Q. They were both witnessed by your assistant; isn't
23 that right?

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1 A. Yes.

2 Q. Lieutenant Colonel Guillen, is that his name? I'm
3 sorry, maybe I'm mispronouncing his name.

4 A. Lieutenant Colonel Robert Guillen.

5 Q. Guillen, I'm sorry. Okay.

6 He witnessed both of them; is that right?

7 A. On mine, let me just make sure. Yes.

8 Q. And he witnessed the Secretary of Defense, also?

9 A. Yes.

10 Q. Were you with him when he did it?

11 A. Yes, I was.

12 Q. Is that the first time that the Secretary of Defense
13 saw that document, when he signed it?

14 A. No. The Secretary -- we had made sure that the
15 Secretary had time to review it beforehand.

16 Q. Right. Now, when Mr. Rishikof first called you -- or
17 contacted your office and said that he wanted to meet with
18 you, you said that you asked for some investigation about him;
19 is that right?

20 A. I'm sorry, sir. I didn't hear that question.

21 Q. When Mr. Rishikof called and asked to meet with you,
22 right? Before you set up a meeting with him, you had your
23 staff do some investigation about him; isn't that right?

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1 A. I don't think that they did any kind of
2 investigation. They -- I don't know if "investigation" is the
3 right word. They told me what their impressions were and
4 their background with him was.

5 Q. So was your staff already in place when you came?

6 A. Yes, sir.

7 Q. The men that you mentioned that worked in your
8 office?

9 A. Yes. Mr. Newman, Mr. Ryan Newman, did not come on
10 until later, but the -- and Mr. Foster didn't come on until
11 later, but most people were -- were already in place.

12 Q. And did they give you some sort of memorandum about
13 Mr. Rishikof or what the complaints that they had about him
14 was?

15 A. I don't remember a memorandum. I remember an
16 audio -- I mean, a verbal conversation. Is it possible that
17 they might have given me something in writing? Yes. But I
18 remember the discussion.

19 Q. Now, you indicated that you met with General Martins
20 on several occasions; is that right?

21 A. I met with General Martins on a couple of occasions,
22 yes.

23 Q. Had you known him before you assumed this particular

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1 position?

2 A. No.

3 Q. Did you ask for any information about him before you
4 met with him?

5 A. I believe I was given -- someone explained to me his
6 background.

7 Q. All right. And you said that he talked to you about
8 the commissions when you met with him; is that right?

9 A. The first time that we met, yes, we talked about
10 commissions.

11 Q. What did he tell you about the commissions?

12 A. I honestly don't really remember all that much.

13 Q. Was it flattering ----

14 A. I honestly don't remember.

15 Q. Was it flattering or unflattering?

16 A. I honestly can't remember.

17 Q. How long did you meet with him with?

18 A. It might have been -- I usually meet people for about
19 30, 45 minutes. The General might have been a little bit
20 longer.

21 Q. Did you have any conversation about the pace of the
22 cases, especially the 9/11?

23 A. I honestly don't remember what we talked about.

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1 Q. And you met with him a second time; is that right?

2 A. I met with him a second time. That was after the --
3 if I remember correctly. Once again, you know, there's a lot
4 of working parts here and sequencing, so I'm going off of my
5 best recollection. But we had met after the -- after
6 Harvey -- Mr. Rishikof, and Mr. Brown had been terminated
7 and -- to discuss military commissions that way.

8 Q. Do you remember what was discussed in the second
9 meeting?

10 A. Yes. There was a number -- he had articulated his
11 concerns about what was going on in the COLE case and the --
12 you know, what -- and his thoughts on that.

13 Q. And can you tell me, why is it that you were meeting
14 with him?

15 TC [MR. RYAN]: Objection, Your Honor. Relevance.

16 MJ [Col PARRELLA]: Defense?

17 LDC [MR. HARRINGTON]: It's leading to something, Judge.

18 MJ [Col PARRELLA]: Okay. I'll let you go for a little
19 bit here.

20 So you can answer the question, Mr. Castle.

21 WIT: Sure.

22 A. The general was concerned about what was going on
23 with the COLE case and had -- and made -- and was -- had some

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1 suggestions about ways ahead.

2 Q. And did he discuss Mr. Rishikof when he had concerns
3 about the COLE case?

4 TC [MR. RYAN]: Objection, sir.

5 MJ [Co] PARRELLA]: One moment, Mr. Castle.
6 Defense Counsel?

7 LDC [MR. HARRINGTON]: Judge, it's a question of what the
8 involvement of the prosecution may be in the decision-making
9 here and the influence of it. He's got to answer the question
10 of why it is that he is meeting with him and why
11 Mr. Martins -- or General Martins isn't going someplace else
12 rather than him.

13 MJ [Co] PARRELLA]: I understand where you're going, and
14 the objection is sustained. Let's move on.

15 Q. Did General Martins say anything to you in the second
16 meeting about the 9/11 case?

17 A. In the second meeting -- in the second meeting, I
18 don't recall him saying anything about the 9/11 case. I
19 honestly don't. I mean, I apologize.

20 That -- I remember -- the only thing I really
21 remember from that conversation was that General Martins was
22 concerned about what was going on in the COLE case, and I
23 remember that that was -- that was the subject of the meeting.

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1 I don't remember any kind of conversation from -- about the
2 9/11 case. Could he have said something about that? Yes, but
3 I don't remember it.

4 Q. Did you ever meet with Brigadier General John Baker?

5 TC [MR. RYAN]: Objection, Judge.

6 A. No, sir, I have never ----

7 MJ [Col PARRELLA]: The objection is overruled.

8 You can go ahead and finish your answer, Mr. Castle.

9 A. I apologize. No, I don't believe I ever met
10 General Baker.

11 Q. Mr. Castle, when you took over as the acting general
12 counsel, did you learn that this potential plea agreement
13 process was well under way before you took over?

14 A. Yes, that was my understanding, that the plea
15 agreement process was well under way.

16 Q. And you testified a little bit earlier to one of the
17 other counsel that you had an understanding that the defense
18 had come back to Mr. Rishikof and said that they wanted some
19 assurance that the Department of Justice would be on board
20 with a plea agreement and not be -- not be a double
21 prosecution; is that right?

22 A. That would -- that was my understanding, that the
23 defense was -- wasn't willing to go along unless there was

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1 some sort of Department of -- you know, the Department of
2 Justice was part of any kind of plea agreement.

3 Q. Do you recall whom you learned that from?

4 A. I think -- like I said, I think it was Mr. Easton,
5 but it could have been -- it could have been a number of
6 people.

7 Q. And that was -- that was learned by you, I assume,
8 relatively early in your tenure as the acting general counsel?

9 A. Yes.

10 Q. Okay.

11 A. It was.

12 Q. And you knew about that when you were at the meeting
13 with the Secretary of Defense that you were called out for the
14 Attorney General Sessions call?

15 A. I don't -- I don't remember when -- I do not remember
16 when -- I don't remember the sequence. I do remember, though,
17 saying to -- I remember saying -- not knowing really what was
18 going on during the conversation and being a bit confused
19 about what was happening.

20 Q. You described the meeting that you were with the
21 Secretary of Defense as a very important meeting, that there
22 were many, many high officials or military people there; is
23 that right?

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1 A. That's correct.

2 Q. And when you were called by Secretary Mattis into his
3 office and the Attorney General was on the phone, those ----

4 A. Like I said -- like I said, I don't -- I don't really
5 have a good remember -- memory. I sort of -- I think I
6 remember the Secretary placing a call or something along those
7 lines or someone placing the call, but I don't have a good --
8 I don't have a good memory.

9 Q. Regardless of who placed the call, you knew that it
10 was Attorney General Sessions on one end of the phone, right?

11 A. I did ----

12 TC [MR. RYAN]: Objection, Your Honor. Asked and
13 answered.

14 LDC [MR. HARRINGTON]: I am just trying to lay the
15 foundation for a couple of questions.

16 MJ [Col PARRELLA]: Let's just pick it up. I just don't
17 want to repeat questions.

18 LDC [MR. HARRINGTON]: I understand. I understand. I'm
19 just trying to clarify what he is talking about. That's all.

20 Q. You knew Attorney General Sessions was on one end,
21 didn't you?

22 A. Yes.

23 Q. And you knew that Secretary Mattis was on the other

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1 end because you were right there; is that right?

2 A. Because I was standing -- I was standing about six
3 feet away from him, yes.

4 Q. And those are two of the most important and powerful
5 officeholders in the country; is that right?

6 A. That is correct.

7 Q. And a very unusual ----

8 A. At the time, yes.

9 Q. A very unusual situation; is that right?

10 A. Yes.

11 Q. And the only words in those -- in that conversation
12 that you can recall, "No deal"?

13 A. Yeah. Those are the only specific things. As I
14 said, six weeks on the job, not expecting to be called into --
15 into the meeting. I wasn't -- I -- I -- it was -- it was a
16 new experience.

17 Q. And when the words "No deal" came from
18 Attorney General Sessions, did Secretary Mattis say anything
19 in response that you recall?

20 A. I don't -- I honestly don't -- I honestly don't
21 remember him saying anything. I remember saying myself "No
22 deal," but that's just because I didn't -- you know, I didn't
23 remember making any deal.

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1 Q. So this phone call took approximately four or five
2 seconds, is what you are saying, right?

3 A. I'm saying that the phone call was very -- in my
4 opinion, was short. My memory is it was short.

5 Q. And the Secretary of Defense didn't say anything to
6 you afterwards?

7 A. I'm sure that he said something to me, but I really
8 don't remember.

9 Q. You made the comment very early today in this
10 discussion that you said, "I haven't signed off on anything to
11 Secretary Mattis." Did I understand that correctly? When you
12 heard the word ----

13 A. I'm sorry. All I remember saying -- I remember
14 saying "No deal" while I was in the room, and I was thinking
15 to myself, "Well, I don't remember signing off on anything
16 that was in my memory." That's what I was saying -- that's
17 what I believe I was remembering at the time, yeah.

18 Q. After that event happened, did you or anybody in your
19 staff contact the Attorney General's office to find out what
20 was -- what was meant by the conversation?

21 A. That could have happened. I remember coming back to
22 the office trying to figure out what had happened, and the --
23 and I don't know if someone called over to the Department of

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1 Justice. I don't know.

2 Q. At any point in time did you reach a firm conclusion,
3 after talking to your staff about this, that
4 Attorney General Sessions was talking about the 9/11 plea
5 agreement?

6 TC [MR. RYAN]: Objection. Asked and answered.

7 MJ [Col PARRELLA]: Overruled. You can answer the
8 question.

9 A. Once again, I mean, this -- I started, you know,
10 putting things together in my head, and I just -- but I
11 remember saying, you know, he really might have been talking
12 about -- might have been talking about plea agreements. But
13 that was -- you know, that was when I was back in my office.

14 Q. When you drafted your December 15, 2017 memorandum
15 for the Secretary of Defense, one of the provisions in there
16 was that the Secretary had the authority to take away the plea
17 agreement power of the convening authority; is that right?

18 A. Right. I'm sorry, if you could -- which document are
19 we talking about?

20 Q. That would be AE 555DD Attachment L.

21 A. And the subject matter, sir, and the date?

22 Q. December 15 of 2017, and it was ----

23 A. Okay.

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1 Q. --- from you to the Secretary of Defense.

2 A. Right. I know of what you are speaking. It's the
3 December 15th memo.

4 LDC [MR. HARRINGTON]: One moment, Judge. I can't
5 identify it in my notes here.

6 Q. You indicated that Michael Vozzo from your office
7 worked with the prosecution on behalf of your office; is that
8 right?

9 A. Yes, he was -- he spoke with -- it's my understanding
10 he spoke with the prosecutors.

11 Q. Okay. Did Mr. Vozzo ever express an opinion to you
12 about removing Mr. Rishikof?

13 A. I think -- I think the fear was -- yeah, I think
14 Mr. Vozzo did not have a very high opinion, and it was -- and
15 thought that removal was probably the best course of action.

16 Q. Did Mr. Vozzo ever pass any information on to you
17 about General Martins or any member of the prosecution
18 expressing an opinion about Mr. Rishikof?

19 TC [MR. RYAN]: Objection, Judge.

20 MJ [Col PARRELLA]: Basis?

21 TC [MR. RYAN]: Relevance.

22 MJ [Col PARRELLA]: Sustained.

23 Q. In these meetings that you had with your staff

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1 regarding different aspects of Mr. Rishikof's behavior or what
2 you came to believe was his behavior, I take it Mr. Vozzo
3 expressed opinions with respect to those; is that right?

4 TC [MR. RYAN]: Objection, Judge.

5 LDC [MR. HARRINGTON]: It's a preliminary question, Judge.

6 MJ [Col PARRELLA]: Overruled. I'll let you go with this
7 question, Mr. Harrington. Go ahead.

8 A. In general people did not have a very high opinion
9 of -- of Mr. Rishikof's -- and during the, throughout this
10 entire period.

11 Q. Okay. And that was expressed to you when you first
12 came into your job and learned of Mr. Rishikof; is that right?

13 A. That's correct, there was people were very concerned
14 about -- about Mr. Rishikof.

15 Q. Okay, and at that point in time, as you said earlier,
16 these plea negotiations were already underway; is that right?

17 A. We knew about that. Yes, we knew about that. The
18 interesting thing is when most of the -- I remember around
19 that time that most, when people were talking about
20 Mr. Rishikof, they were -- they were discussing his management
21 style and his coordination and things along those lines.
22 That, you know, that was the primary thing that people had
23 come to talk to -- come to talk to me about.

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1 Q. Right. But at the time that you're hearing these
2 complaints about him, the plea negotiations are well underway;
3 isn't that right, as far as you knew?

4 A. I don't -- I -- I don't know. I mean, I knew -- I
5 knew that the defense had said that they weren't willing to
6 make a deal unless the Department of Justice did something,
7 and that was the only thing that I knew about -- about what
8 the status was.

9 Q. But that implied to you that there were plea
10 negotiations going on, correct?

11 A. Yeah, we knew that Mr. Rishikof was actively trying
12 to engage in plea negotiations, absolutely.

13 Q. Right, and you learned that at the same time that you
14 learned that there was dissatisfaction among your staff about
15 him, correct?

16 A. Around that time, yes.

17 LDC [MR. HARRINGTON]: That's all I have, Judge.

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

19 Mr. Ruiz, do you have any questions for this witness?

20 LDC [MR. RUIZ]: I don't.

21 MJ [Col PARRELLA]: Does the government intend to ask any
22 questions?

23 TC [MR. RYAN]: Could we have a moment, Your Honor?

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1 MJ [Co1 PARRELLA]: You may.

2 WIT: Your Honor, as individuals are having a
3 conversation, would it be all right if I had a three-minute
4 comfort break?

5 MJ [Co1 PARRELLA]: Any objection to -- why don't we do
6 this. Why don't we go ahead and take just a five-minute
7 recess. So the commission is in recess and, Mr. Castle, you
8 may go ahead and take your five-minute comfort break.

9 WIT: Thank you.

10 MJ [Co1 PARRELLA]: Everyone, please carry on. I would
11 ask that you just please remain close so that it's a true
12 five-minute break. Thank you.

13 [The R.M.C. 803 session recessed at 1724, 13 November 2018.]

14 [The R.M.C. 803 session was called to order at 1731,
15 13 November 2018.]

16 MJ [Co1 PARRELLA]: Mr. Ryan?

17 TC [MR. RYAN]: Your Honor, I do have some questions.

18 MJ [Co1 PARRELLA]: Okay. How long do you anticipate?

19 TC [MR. RYAN]: Short.

20 MJ [Co1 PARRELLA]: Okay. You may proceed.

21 TC [MR. RYAN]: Thank you, sir.

22 [END OF PAGE]

23

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1 **CROSS-EXAMINATION**

2 **Questions by the Trial Counsel [MR. RYAN]:**

3 Q. Mr. Castle, good afternoon -- good evening.

4 A. Hello, Mr. Ryan. How are you?

5 Q. Good, sir.

6 MJ [Col PARRELLA]: Before you do, let me just call us
7 back to order. This commission is called back to order. All
8 parties present when the commission last recessed are again
9 present. And before we came on the record, Mr. Ryan indicated
10 he did have some questions for Mr. Castle.

11 And Mr. Ryan, you may proceed.

12 Q. Mr. Castle, are you aware of a Regulation for Trial
13 by Military Commissions that requires the convening authority
14 to coordinate with the Office of the General Counsel before
15 speaking to a combatant commander?

16 A. Yes, I am. I -- let me get it. I am.

17 Q. It's all right, sir. I don't need you to read it.
18 I'll just ask you, sir: Does it exist?

19 A. Yes, sir, it does.

20 Q. Are you aware of any coordination that occurred with
21 your office before the aerial flight that we have talked
22 about?

23 A. No.

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1 Q. Mr. Castle, you have discussed several times with us
2 today the issue of discussing any potential plea agreements
3 with Mr. Rishikof while he was convening authority, correct?

4 A. Yes.

5 Q. And I believe you demonstrated for us several times
6 the emphatic waving of your arms whenever it was brought up.

7 A. I -- I -- absolutely. I mean, I -- you know, what I
8 said, my body movements, everything, I did -- I made sure that
9 he understood that I did not want to discuss it with him.

10 Q. Did you let him get any words out at all about the
11 subject of plea agreements?

12 A. He would try, and I would do everything I could to
13 cut him off.

14 Q. Did he try more than once?

15 A. Yes.

16 Q. And did -- was there any ever -- was there ever any
17 occasion, sir, where you did anything, verbal, nonverbal, to
18 communicate any position you might have as to potential plea
19 agreements for the 9/11 defendants?

20 A. I -- I don't believe that I did. The only memories
21 that I have are of me literally waving my arms like a chicken,
22 telling him that I'm -- you know, I don't want -- you know,
23 this is not -- this is not my area.

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1 Q. Mr. Castle, the meeting that's been discussed several
2 times today that you had with Mr. Rishikof following what's
3 been referred to as the AG phone call, do you recall that?

4 A. Yes. Yes.

5 Q. And I believe you told us about a line you used about
6 ships in the same direction?

7 A. Correct.

8 Q. During that meeting, do you recall if Mr. Rishikof
9 tried to bring up the subject of plea agreements?

10 A. I think he probably -- I don't remember a meeting
11 where I met with Harvey where he didn't try to bring up plea
12 agreements.

13 Q. Did your behavior -- was your behavior different
14 during that meeting than all the other times you've told us
15 about?

16 A. No, absolutely not. Arms waving, "This is not my
17 area."

18 Q. Sir, I'd like to ----

19 TC [MR. RYAN]: Your Honor ----

20 A. At least that's what I -- I apologize -- or at least
21 that's what -- you know, this is what I was doing all the
22 time.

23 TC [MR. RYAN]: Your Honor, could I ask for the feed to

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1 Table 3, please?

2 MJ [Col PARRELLA]: Yes, you may. Bring up the feed,
3 please.

4 TC [MR. RYAN]: And I'll ask, Top, if you could bring up
5 555DD Attachment G, the action memo for the Secretary of
6 Defense.

7 Q. Mr. Castle, do you see the document?

8 A. No, sir, I don't.

9 Q. Wait a moment.

10 A. Here we are.

11 Q. There?

12 A. Yes.

13 Q. All right. You have seen this several times today;
14 am I correct?

15 A. Right. Just remind me, what's the date on that one?
16 It's just easier for me to see it as a piece of paper.

17 Q. If you want to find it on paper, that's fine, but the
18 date reads January 29th, 2018.

19 A. Right.

20 Q. And at the top it reads "Action Memo."

21 A. Right. Right. 29th. Right. Yes, got it.

22 Q. All right. Mr. Castle, up until this time, had you
23 ever fired anybody in your life?

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1 A. No. Never. It's not a great experience at all.

2 Q. Especially when you spend a day testifying about it
3 afterwards, correct, sir?

4 A. Right. Exactly. But, you know, we knew that people
5 would probably file a UI; that if that happened, there is
6 always a possibility of testimony. That is not something that
7 I -- that I -- you know, that I thought was something that I
8 wanted to do at all.

9 Q. All right. So having never fired anybody in your
10 life, in this memorandum you're seeking for the Secretary of
11 Defense to fire a significant government official in the
12 United States Government; is that correct?

13 A. I'm making that recommendation, yes.

14 Q. And your recommendation is to the Secretary of
15 Defense, a cabinet-level position, correct?

16 A. Correct.

17 Q. And this specific Secretary of Defense is one James
18 Mattis; is that correct?

19 A. Correct.

20 Q. Now, I have never met Secretary Mattis ----

21 MJ [Co1 PARRELLA]: Hold on one second, Mr. Ryan.

22 LDC [MR. CONNELL]: Your Honor, objection as to leading.

23 There is an awful lot of leading here. This is a declarant

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1 under Rule 807 who was offered against the defense. Typically
2 under Rule 806 under the Rules of Military -- Military Rules
3 of Evidence or Federal Rules, the proponent of the declarant
4 then cross-examines by way of direct examination because the
5 person who calls the witness is a -- proceeds by matter of
6 cross-examination. That rule made it into the Military
7 Commission Rules of Evidence as 807.

8 It is silent on the mode of examination by the
9 original person who proposed a declaration. I know that there
10 are schools of thought on this question, but since it was
11 multiple, you know, fairly specific leading questions in a
12 row, I wanted to bring this to the military commission's
13 attention.

14 TC [MR. RYAN]: We were not the proponent of this
15 declaration, Judge.

16 MJ [Col PARRELLA]: The objection is overruled.

17 Go ahead and continue.

18 Q. Now, I have never met Secretary Mattis, Mr. Castle,
19 but would you describe him as an imposing figure?

20 A. Yes, I would.

21 Q. Would you take lightly the idea of misrepresenting
22 facts to him?

23 A. Absolutely not.

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1 Q. He is not a novice at the Department of Defense, is
2 he, sir?

3 A. No, sir, he is not. He is most definitely an expert
4 on how -- on how this place works.

5 Q. Mr. Castle, would you go down to the fifth bullet on
6 this -- on this memo, beginning with "In forming the
7 recommendation"?

8 A. Uh-huh.

9 Q. Would you read that out loud for me, please, sir?

10 A. "In forming the recommendation that you rescind
11 Mr. Rishikof's designation as Director and Convening
12 Authority, I considered Mr. Rishikof's professional judgment,
13 temperament, and decision-making. I do not -- I did not
14 consider his performance of any judicial or quasi-judicial
15 actions."

16 Q. This was a statement you were making to
17 Secretary Mattis at that time, correct?

18 A. That was what we had written down to send in to the
19 Secretary, yes, so that he would read it.

20 Q. And it was your memorandum under your name, correct?

21 A. It is -- it is -- it's under my signature. It was
22 written -- it was drafted by others, but I -- but it was my --
23 my signature, yes.

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1 Q. You adopted it as your own; is that correct?

2 A. Yes, I adopted it as my own.

3 Q. And today you are sitting here under oath, so let me
4 ask you, sir: Are those words true?

5 A. Yes, I believe every word of those words are true.

6 Q. Mr. Castle, I appreciate your patience.

7 TC [MR. RYAN]: Your Honor, that's all I have.

8 MJ [Co] PARRELLA]: Thank you, Mr. Ryan. Okay.

9 Just for some planning here, Counsel, Mr. Connell, I
10 assume you anticipate redirect?

11 LDC [MR. CONNELL]: No, thank you, sir.

12 MJ [Co] PARRELLA]: Mr. Nevin? Okay.

13 How about any counsel have any questions for
14 Mr. Castle?

15 Okay. That's a negative response.

16 So with that, Mr. Castle, I thank you for your
17 testimony. I do not have any questions for this witness. I
18 appreciate it. I know it's been a long day, and we are going
19 to go ahead and disconnect the VTC at this time.

20 WIT: Okay. Any -- very good, sir. Thank you.

21 MJ [Co] PARRELLA]: Before we recess ----

22 WIT: I can still hear you, Your Honor. I'll hit the mute
23 button.

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1 [The VTC terminated.]

2 MJ [Col PARRELLA]: Okay. It appears it's now off.

3 Before we recess for tonight, let's just talk about
4 the way forward tomorrow. I intend to follow through with
5 what I had originally planned, which was to give counsel for
6 both sides an opportunity to digest that testimony before we
7 get to the 555 argument. So what I would like to do is to
8 take up what remains, so I believe that would have us starting
9 off with 551.

10 And then I'd ask you, Ms. Bormann, are you
11 prepared -- I know you made efforts to divide up some of your
12 motions. Are we prepared to get to either anything in the 300
13 series or 528, 588?

14 LDC [MS. BORMANN]: So with respect to -- we're in an 802,
15 Judge, I'm assuming?

16 MJ [Col PARRELLA]: No, we're still on the record.

17 LDC [MS. BORMANN]: Oh, we're on the record?

18 With respect to 528, we are ready to go. With
19 respect to 588, we filed a supplement which informs Your Honor
20 that we received discovery, which I cannot discuss in an
21 unclassified session, but other than to tell you we're in the
22 process of reviewing it. So we're not ready -- we won't be
23 ready to argue it until we review it because it's -- informs

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1 the argument of 588.

2 So you have a supplement. We can talk about the
3 supplement in a closed session because it -- it involves
4 classified information. It was the subject of a spill,
5 unfortunately. We didn't have the proper guidance, and so
6 it's kind of a difficult, convoluted story to do here in an
7 unclassified session.

8 With respect to the 300 series, bear with me. We'll
9 be ready to go on AE 360, that series. On AE 399, which
10 involves the underlying material, we are not because we need
11 to finish reviewing the underlying material which is the basis
12 of 360 because we received that late as well.

13 So that's where we are with all of those.

14 MJ [Col PARRELLA]: With respect to 399, have you
15 received -- I mean, I understand sort of -- I've read the
16 pleading, and I have read them in conjunction, so I understand
17 what you're waiting on, but is there -- that's not somehow
18 related to some discovery you've received since we've arrived
19 down here?

20 LDC [MS. BORMANN]: No. So in 360 we had to file a motion
21 to compel the government to comply with Judge Pohl's order,
22 which took like a year and a half.

23 MJ [Col PARRELLA]: Like I said, I've read that. I

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1 understand that part. But I'm wondering if there is something
2 new that transpired this week that I'm not aware of.

3 LDC [MS. BORMANN]: No. So what's happened is in order to
4 get the material -- to introduce the material into evidence,
5 we have to have it -- a classification level, because
6 otherwise we don't know how to -- what -- so we can't treat it
7 classified if it's not and vice versa. So that's where we
8 are, and that's the evidence that would rebut the government's
9 arguments on 399.

10 So on 360 we are ready; on 399 we are not.

11 On 528 we are ready, and on 588 we're not.

12 MJ [Col PARRELLA]: And with respect to 350 -- and I
13 understand you're not the initial proponent of 350, but you
14 did file a supplement. Are you prepared to argue that?

15 LDC [MS. BORMANN]: We will be ready to argue it in an
16 unclassified session; however, on the closed session, the
17 government provided us discovery which we filed a 505 notice
18 on, and it's -- and we're going to just simply enter it into
19 evidence in a closed session. So if we're going to do -- and
20 that's 350.

21 So on a closed session we need to either have an
22 agreement or do a -- some sort of a -- 350, it's a short
23 document provided by the government.

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1 MJ [Col PARRELLA]: Okay.

2 LDC [MS. BORMANN]: But we're ready on the open.

3 MJ [Col PARRELLA]: Okay. Great. So -- and for the
4 parties, what we'll do -- just to ensure everybody is clear on
5 the order of march, we'll pick up with 551, and we'll go ahead
6 and do 528, 360C, and then we'll take up the 350C and 0. And
7 then we'll sort of see where we're at.

8 If we're at the point now that where -- Mr. Connell,
9 I know you said at some point you'll be ready for 604. If
10 we're at that point, we'll take up 604; if we're not, you need
11 more time, we can continue to push that.

12 LDC [MR. CONNELL]: We don't need more time, sir. We'll
13 be ready tomorrow.

14 MJ [Col PARRELLA]: So we'll take up 604. And then we
15 will come back to 555, because I want to make sure that we get
16 that in this week, and then we'll -- we'll get to 524.

17 Any questions about the order of march for tomorrow?

18 LDC [MR. CONNELL]: Sir, I have a suggestion. If it's
19 possible to do 524 before 555, I'm sure that all the parties
20 would profit from being able to review the transcript, which
21 usually takes about 24 hours.

22 MJ [Col PARRELLA]: Okay. Why don't we get through all
23 the other ones first and sort of see how much time we have,

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1 and then I'm happy to revisit it at that point in time.

2 LDC [MR. CONNELL]: Thank you.

3 MJ [Col PARRELLA]: Okay. I appreciate everybody hanging
4 in there today. I know it's been a long day. We will --
5 Mr. Ryan, did you have anything else? Okay.

6 So court will reconvene at 0-9 tomorrow morning. The
7 commission is in recess.

8 [The R.M.C. 803 session recessed at 1748, 13 November 2018.]

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