[The R.M.C. 803 session was called to order at 0902, 25 February 2020.]

MJ [COL WATKINS]: The commission is called to order. The accused is present.

Commander O'Dowd, good morning. Could you please account for the prosecution team, please.

TC [CDR O'DOWD]: Yes, sir. This commission is convened by Convening Order 12-01 dated 15 February 2012. Copies of this have been previously furnished to the military judge, counsel, and the accused. It will be attached to the record of trial.

For the prosecution today, sir, Commander David O'Dowd and Major Richard Mitchell, Trial Counsel, and Master Sergeant Stacey Taclibon will be in momentarily as a prosecution paralegal. All trial counsel have been detailed to this military commission by the chief prosecutor.

All members of the prosecution are qualified under R.M.C. 502 and have previously been sworn in accordance with R.M.C. 807. No member of the prosecution has acted in any manner that might tend to disqualify us in this proceeding. The detailing document has been marked as Appellate Exhibit 003E.

All members of the prosecution team present have all

1 appropriate security clearances. Also, sir, these proceedings
2 are being transmitted by closed circuit television to CONUS in
3 accordance with the commission's order in Appellate
4 Exhibit 006C.
5 MJ [COL WATKINS]: Thank you, Commander O'Dowd.
6 Good morning, Mr. Dixon.
7 CDC [MR. DIXON]: Good morning, Your Honor.
8 MJ [COL WATKINS]: Would you please account for the
9 defense team and please state legal qualifications and status
10 regarding oath and detailing for any new member who has joined
11 the team since our last session in November of 2019.
12 CDC [MR. DIXON]: Yes, Your Honor. Good morning. I'm
13 Wells Dixon. With me at counsel table are Captain Michael
14 Lyness, Mr. Ian Moss, Ms. Natalie Orpett, Colonel Wayne Aaron,
15 Mr. Khan. Table behind me are Mr. Theodore Lange, our intel
16 analyst, and Mr. Sean Ainsworth, our defense investigator.
17 Also with us is Ms. Aliya Hussein, who is a pro bono
18 paralegal.
19 All defense counsel have been detailed to this
20 commission by the Chief Defense Counsel. All are qualified
21 under Rule 502. All have previously been sworn under
22 R.M.C. 807 with the exception of Colonel Aaron who has not yet
23 been sworn. No member of the defense has acted in any way

1 that would tend to disqualify them. All members are -- of the
2 defense are appropriately security cleared to be here for
3 purposes of this hearing today. And Colonel Aaron's detailing
4 memo is marked as AE 007K.
5 MJ [COL WATKINS]: Thank you.
6 Colonel Aaron, would you please stand and raise your
7 right hand.
8 **[Counsel was sworn.]**
9 MJ [COL WATKINS]: Colonel Aaron, I'm going to summarize
10 some 802 sessions in a few minutes, but for now I'll state a
11 concern that was raised in the 802 yesterday about your
12 previous work on commissions and potential conflicts.
13 Can you briefly summarize your prior work on
14 commissions?
15 DDC [COL AARON]: Yes, Your Honor. During the period from
16 August of 2017 through the end of July 2018, I was the Deputy
17 Chief Defense Counsel for the Military Commissions Defense
18 Organization. Also, during some of that time I was the acting
19 Chief Defense Counsel in the Nashiri case.
20 MJ [COL WATKINS]: Thank you. And have you done a
21 conflict analysis and are you satisfied you have no conflicts
22 of interest in representing Mr. Khan?
23 DDC [COL AARON]: We have done an analysis, Your Honor,

1 and I am confident that there are no conflicts that would
2 interfere with my representation here.
3 MJ [COL WATKINS]: Thank you.
4 Good morning, Mr. Khan.
5 ACC [MR. KHAN]: Good morning, sir.
6 MJ [COL WATKINS]: Mr. Khan, Ms. Katya Jestin filed a
7 request to be excused from this week's sessions. And I have
8 what appears to be a waiver from you consenting to her absence
9 at Attachment B to Appellate Exhibit 044A. Did you sign this
10 waiver?
11 ACC [MR. KHAN]: Yes, sir, I did.
12 MJ [COL WATKINS]: Do you consent to proceeding this week
13 without Ms. Jestin being present?
14 ACC [MR. KHAN]: Yes, sir.
15 MJ [COL WATKINS]: Thank you, Mr. Khan.
16 I'd like to memorialize two R.M.C. 802 sessions
17 conducted before we gathered this morning.
18 The first session occurred via a phone call conducted
19 at my request on 20 February 2020 at approximately 1330 hours
20 between my Senior Attorney Advisor, Mr. Taylor; Mr. [redacted],
21 the Chief Clerk; Captain Lyness representing the defense; and
22 Commander O'Dowd representing the prosecution. The accused
23 was not a party to the phone call.

1 During the call, Mr. Taylor provided administrative
2 guidance on my behalf on filing the notices of exhibits
3 associated with the examination of Mr. Reismeier, and they're
4 providing copies of the actual documents to myself and the
5 witness administratively as the vast majority of the documents
6 are already a part of the record as an Appellate Exhibit.
7 The second R.M.C. 802 session occurred at 1700 hours
8 on 24 February 2020 in the deliberation room in AV-34 at
9 U.S. Naval Station Guantanamo Bay. Members of the defense and
10 the prosecution and I were present. The accused was not
11 present.
12 At that R.M.C. 802 session, the following topics were
13 discussed:
14 I discussed my retirement and post-retirement plans,
15 and I'll go into that more in a few minutes. I detailed my
16 plan for the sessions for this week, which include hearing
17 testimony from Mr. Reismeier this morning and hearing argument
18 on the motion to disqualify him tomorrow morning at 1000.
19 I stated I had only briefly reviewed Appellate
20 Exhibit 045, which the government filed on 22 February 2020.
21 I stated that the requested relief was under review and not
22 yet approved.
23 I informed defense of a course of action for them to

1 consult with the court reporters about the storage and viewing
2 of Appellate Exhibit 030. I'll go into that in further detail
3 in a few minutes.
4 Defense provided an update to the commission and the
5 prosecution on their efforts to interview certain witnesses.
6 We discussed Colonel Aaron's history with the
7 commissions, and we've already addressed any concerns about
8 conflicts with regard to that.
9 Defense raised a discovery issue and stated that the
10 government had recently disclosed a document that should have
11 been included in what became Appellate Exhibit 037F. Because
12 defense wanted to reference that document in argument
13 tomorrow, I directed that it be marked as a supplement to
14 Appellate Exhibit 037F. It has now been marked as Tab 46 to
15 Appellate Exhibit 037F.
16 The remainder of the 802 session dealt with
17 administrative issues such as the handling of exhibits,
18 examination of witnesses, and presentation of argument.
19 Before we continue, do counsel for either side have
20 anything to add or correct based on the commission's
21 R.M.C. 802 conference summaries held on 20 and 24
22 February 2020?
23 TC [CDR O'DOWD]: Nothing from the government, sir.

1 CDC [MR. DIXON]: No, Your Honor.
2 MJ [COL WATKINS]: I'm aware the defense is interested in
3 my post-retirement plans. During our last session, I
4 disclosed that I had submitted a retirement application that
5 was approved, and my effective date of retirement was going to
6 be 30 September 2020. That has since changed.
7 Since our last session in November 2019, I submitted a
8 request to revoke my retirement orders and remain on active
9 duty for another year. I made this independent decision based
10 on my personal circumstances. No one pressured me to do this,
11 and it was my sole decision.
12 Mr. Dixon, do you have any follow-up questions based
13 on this information?
14 CDC [MR. DIXON]: No, Your Honor.
15 MJ [COL WATKINS]: Trial Counsel, any follow-up questions?
16 TC [CDR O'DOWD]: No, sir.
17 MJ [COL WATKINS]: Does either the defense or the
18 prosecution have a challenge concerning my ability to continue
19 to preside over this military commission?
20 TC [CDR O'DOWD]: No, sir.
21 CDC [MR. DIXON]: No, Your Honor.
22 MJ [COL WATKINS]: I also want to address concerns raised
23 about the storage of Appellate Exhibit 030. Appellate

1 Exhibit 030 generally remains stored in an offsite location in
2 a secure container with other similarly sensitive documents
3 from other military commission cases. It is a part of the
4 official record of trial in this military commission.
5 I asked my staff to coordinate with the Office of
6 Court Administration court reporters to retrieve it from the
7 offsite location and bring it here. It is available for
8 counsel's examination if you are interested. You will need to
9 coordinate with the court reporters as it can only be viewed
10 in their spaces here at Naval Station Guantanamo Bay.
11 Are there any questions from either the defense or the
12 government as to the status of Appellate Exhibit 030?
13 TC [CDR O'DOWD]: Not from the government, sir.
14 CDC [MR. DIXON]: Your Honor, the only question that we
15 have is the one we asked previously, which is the location of
16 AE 030 when it's not here at Guantanamo. But aside from that,
17 no, we have no further questions.
18 MJ [COL WATKINS]: Okay. That's noted.
19 Mr. Khan, I understand you've had some time to meet
20 with your counsel this morning to discuss the matters we will
21 be taking up during this session; however, before we address
22 those matters, I need to advise you once again of your right
23 to attend these sessions.

1 You have the right to be present during all open
2 sessions of the commission. If you request to be absent from
3 any session, your absence must be voluntary and of your own
4 free will. Your voluntary absence from any session of the
5 commission is an unequivocal waiver of your right to be
6 present during that session.
7 Your absence from any session may negatively affect
8 the presentation of the defense in your case. Your failure to
9 meet with and cooperate with your defense counsel may also
10 negatively affect the presentation of your case.
11 Under certain circumstances, your attendance at a
12 session can be compelled regardless of your personal desire
13 not to be present. Regardless of your voluntary waiver to
14 attend a particular session of the commission, you have the
15 right at any time to decide to attend any subsequent session.
16 Do you understand what I've just explained to you?
17 ACC [MR. KHAN]: Yes, sir, I do.
18 MJ [COL WATKINS]: Mr. Khan, as we heard earlier,
19 Colonel Aaron has been detailed to your representation. Is it
20 your desire to be represented by your counsel who are present
21 as well as Ms. Jestin, who is not present, and Colonel Aaron,
22 who is present?
23 ACC [MR. KHAN]: Yes, sir, I do.

1 MJ [COL WATKINS]: Appellate Exhibit 044, which is the
2 docketing order for this hearing, lists one motion we would be
3 addressing; that is Appellate Exhibit 040, which is the
4 defense motion to disqualify the convening authority. Once we
5 finish with these preliminary matters, we will take the
6 testimony of Mr. Reismeier, the convening authority.
7 Absent other matters, we will be in recess until
8 Wednesday at -- until tomorrow at 1000, when we will hear
9 argument on Appellate Exhibit 040.
10 Counsel, will that provide you sufficient time to
11 incorporate Mr. Reismeier's testimony into your arguments?
12 CDC [MR. DIXON]: Yes. Thank you, Your Honor.
13 TC [CDR O'DOWD]: Yes, sir.
14 MJ [COL WATKINS]: Mr. Reismeier is scheduled to testify
15 at 1000. We're going to take a comfort break and allow the IT
16 folks to make the VTC connection for Mr. Reismeier.
17 Is there anything else to take up before I recess?
18 TC [CDR O'DOWD]: Nothing from the government, sir.
19 CDC [MR. DIXON]: Nothing from the defense, Your Honor.
20 MJ [COL WATKINS]: The commission is in recess.
21 **[The R.M.C. 803 session recessed at 0915, 25 February 2020.]**
22 **[END OF PAGE]**
23

[The R.M.C. 803 session was called to order at 1001, 25 February 2020.]

MJ [COL WATKINS]: The commission is called to order. All parties present when the commission recessed are again present. The accused is present.

Trial Counsel, are we ready to take the testimony of Mr. Reismeier via VTC?

TC [CDR O'DOWD]: Yes, sir.

MJ [COL WATKINS]: Please swear in the witness.

ATC [Maj MITCHELL]: May I approach the podium, Your Honor?

MJ [COL WATKINS]: Please.

ATC [Maj MITCHELL]: Good morning, sir. Can you stand and be sworn.

MR. CHRISTIAN REISMEIER, civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Assistant Trial Counsel [Maj MITCHELL]:

Q. Will you please state your name, spelling your last name.

A. Yes. My name is Christian Reismeier. Last name is spelled R-E-I-S-M-E-I-E-R.

Q. Are you the convening authority of the Office of the

1 Military Commissions?
2 A. I am.
3 Q. And are you testifying from the Mark Center?
4 A. I am.
5 Q. Is there anyone else in the room with you?
6 A. Just the IT person.
7 Q. Okay. And is there any notes in front of you?
8 A. No. Just a bottle and a glass of water.
9 ATC [Maj MITCHELL]: Thank you, Your Honor.
10 MJ [COL WATKINS]: Thank you.
11 Good morning, Mr. Reismeier.
12 WIT: Good morning, sir.
13 MJ [COL WATKINS]: Mr. Reismeier, it's my understanding
14 that you were provided two binders of documents. Do you have
15 those with you?
16 WIT: I do not.
17 MJ [COL WATKINS]: All right. Are they available for you?
18 WIT: They are in my office. I can see if someone can
19 grab them.
20 MJ [COL WATKINS]: If you could. We anticipate that
21 counsel might ask you to refer to those documents.
22 WIT: Yes, sir. Could you -- okay. Yeah.
23 The IT person is going to see if he can retrieve them

1 or have someone retrieve them.
2 MJ [COL WATKINS]: Okay. Thank you very much. And just
3 for the record, those binders are one from the prosecution and
4 one from the defense; is that correct?
5 WIT: That's my understanding.
6 MJ [COL WATKINS]: And, Mr. Reismeier, during your
7 testimony, you're not to open the notebooks or refer to or
8 read the documents unless directed to a specific document by
9 counsel or myself. Do you understand that?
10 WIT: Yes, sir.
11 MJ [COL WATKINS]: Thank you. I note for the record both
12 the prosecution and the defense provided me a copy of the
13 binders they provided to the witness.
14 Commander O'Dowd and Mr. Dixon, do you certify that
15 the contents of the binders with Mr. Reismeier are the same as
16 the one you have, the one you have provided each other, and
17 the one you provided me?
18 TC [CDR O'DOWD]: Yes, sir.
19 MJ [COL WATKINS]: Very well. When referring to a
20 document, I will remind you to refer to the tab in the
21 notebook for quick reference and to also identify the document
22 by its appellate exhibit number, down to the attachment
23 designation and tab designation, if any. This way it's clear

1 on the record what the document is and where it can be found
2 in the record of trial.
3 Defense, are you ready to examine the witness or do
4 you want to wait until he has those documents available to
5 him?
6 CDC [MR. DIXON]: Thank you, Your Honor. We're happy to
7 begin now.
8 MJ [COL WATKINS]: All right.
9 CDC [MR. DIXON]: And if necessary, we'll request a short
10 break.
11 MJ [COL WATKINS]: All right. You may proceed.
12 CDC [MR. DIXON]: Thank you.
13 **DIRECT EXAMINATION**
14 **Questions by the Civilian Defense Counsel [MR. DIXON]:**
15 Q. Good morning, Mr. Reismeier.
16 A. Good morning, sir.
17 Q. I'm Wells Dixon. I'm one of the pro bono counsel for
18 Mr. Khan. I've represented Mr. Khan since 2006.
19 I want to start by thanking you for appearing to
20 testify today. We do appreciate it. I also want to begin by
21 asking whether you have reviewed previously the documents
22 contained in the two binders that were provided to you.
23 A. Yes, I did. And I -- there -- they've just been

1 delivered to me, so I -- I have reviewed both of the binders.
2 I don't know which one came from which party, but, yes, I
3 reviewed both of them.
4 Q. Understood. And did you review any other documents in
5 preparation for your testimony today?
6 A. Just the filings by the parties and the discovery that
7 was -- that was provided.
8 Q. So you reviewed the thousand pages of discovery that
9 was provided in this case?
10 A. I wouldn't say the thousand pages, because some of
11 those attachments, honestly, were things that I didn't look at
12 at the time they were provided to me. But I'm aware of what
13 they are.
14 Q. Understood. And did you review any other documents in
15 preparation for today?
16 A. No.
17 Q. Did you discuss your anticipated testimony with
18 anyone?
19 A. Just my legal advisors.
20 Q. Okay. Thank you. Sir, when did you first become
21 aware that Mr. Khan had raised concern about your possible
22 conflicts of interest?
23 A. I think it was when the motion was filed.

1 Q. Which motion?
2 A. Whatever the first motion was.
3 Q. The first motion ----
4 A. Whenever that was. Sometime last -- last summer, late
5 last summer.
6 CDC [MR. DIXON]: Okay. For the record, Your Honor, the
7 first motion that Mr. Khan filed in connection with this
8 matter was AE 035A filed on June 21st.
9 Q. Was that the motion that -- that alerted you to this
10 issue?
11 A. Yes, sir. That sounds right.
12 Q. Okay. And did you review that motion at the time?
13 A. I'm sure I did.
14 Q. Okay. And did -- are you aware that Mr. Khan served a
15 request for production of documents relating to the conflict
16 issue?
17 ATC [Maj MITCHELL]: Objection to relevance, Your Honor.
18 MJ [COL WATKINS]: What's the relevance, Defense?
19 CDC [MR. DIXON]: Your Honor, one of our arguments in
20 support of the motion to disqualify concerns discovery, so
21 we'll be asking a series of questions related to discovery.
22 MJ [COL WATKINS]: Discovery requests to the witness?
23 CDC [MR. DIXON]: The -- the prosecution's failure to

1 provide timely discovery. So we intend to -- to inquire as to
2 efforts to locate responsive documents, the timing of those
3 efforts, and to ask the witness, for example, where he
4 searched for responsive materials, where perhaps he didn't
5 search.
6 MJ [COL WATKINS]: All right. And how does this tie into
7 your request for relief?
8 CDC [MR. DIXON]: Because, Your Honor, one of the four
9 arguments that we make in support of the motion for
10 disqualification concerns the discovery violation; that is the
11 failure to produce responsive materials in a timely fashion.
12 The prosecution was on notice that discovery would
13 be -- that we would be requesting discovery as of June.
14 Discovery, as Your Honor knows, was not produced in this case
15 until late November, resulting in the delay in Mr. Reismeier's
16 testimony. And we have included in our motion to disqualify
17 him, as one of our principal arguments, the failure of the
18 prosecution to produce documents in a timely fashion.
19 MJ [COL WATKINS]: All right. Government?
20 ATC [Maj MITCHELL]: Your Honor, the defense's claim is
21 that the prosecution had failed to -- or were late in giving
22 them the discovery has nothing to do with Mr. Reismeier.
23 Mr. Reismeier doesn't have a burden to produce this discovery.

1 So their claim is the prosecution -- that is not
2 Mr. Reismeier -- and whether you search for documents, that is
3 irrelevant in this case.
4 MJ [COL WATKINS]: I disagree. If the government is going
5 to Mr. Reismeier asking for documents that are relevant to the
6 discovery request, he may have information about what the
7 government did or did not do. So your objection is overruled.
8 Mr. Dixon.
9 CDC [MR. DIXON]: Thank you.
10 **DIRECT EXAMINATION CONTINUED**
11 **Questions by the Civilian Defense Counsel [MR. DIXON]:**
12 Q. So are you aware, Mr. Reismeier, that Mr. Khan served
13 a request for production of documents in July of 2019?
14 A. I am aware of it simply because I would have seen that
15 in the materials that were attached to some of the filings,
16 but I can't tell you when I became aware that -- that that was
17 filed. I don't know when that was forwarded to me.
18 Q. Mr. Reismeier, did anyone provide you with a copy of
19 Mr. Khan's discovery requests?
20 A. No, sir. I know that I saw it, but I can't tell you
21 when I saw it. I don't know if that was when -- when the
22 defense filed something and it was -- it was attached or if I
23 saw it at some point, you know, back when it was served. I

1 know that I saw it, but I -- I can't tell you exactly when.
2 I know I was asked to -- to do a search and find
3 responsive documents. I don't recall exactly how that was
4 communicated to me.
5 Q. Sir, who asked you to perform that search?
6 A. It would have come to me through my legal advisor, so
7 I don't -- I mean, I haven't had contact with the parties on
8 this, so I don't -- my assumption is someone from the
9 prosecution would have approached my legal advisor, and my
10 legal advisor would have said there is a discovery request.
11 Q. So did anyone from the Office of the Chief Prosecutor
12 contact you directly with regard to Mr. Khan's discovery
13 request?
14 A. I don't believe that I've had direct contact with --
15 with either party with regard to this case.
16 Q. None whatsoever?
17 A. No, I don't think so.
18 Q. So you became aware of the document request at some
19 point. What did you do in response to that request?
20 A. I went and looked at my -- at my files. Excuse me.
21 The -- for me, the search was actually relatively simple
22 because the only place I had access to would have been my
23 Gmail account where e-mails would have been, along with

1 some -- some attachments. So it was fairly easy for me to --
2 to go and look for the materials.
3 Q. So you searched through your Gmail account yourself?
4 A. I did.
5 Q. And did you search through any of your service
6 e-mails?
7 A. I don't have access to any of that.
8 Q. Do you have any PST e-mail files from ----
9 A. No.
10 Q. ---- your prior ----
11 A. No.
12 Q. You do not?
13 A. No, sir. No, I do not.
14 Q. Okay. And did anyone help you or guide you through
15 the process of searching for responsive materials?
16 A. No.
17 Q. I mean, how did you know what to look for?
18 A. I didn't ask for any help. I mean, I -- I knew what
19 materials I -- I had. I mean, I've got a fairly decent recall
20 of the contacts that I've had, so I know what I was looking
21 for.
22 Q. Well, sir, if no one from the prosecution contacted
23 you directly and no one provided you with a copy of the

1 discovery request, how did you know what to search for?
2 A. I'm not saying no one did. I'm -- I'm saying I know I
3 saw -- the contact came to me through my legal advisor. My
4 legal advisor told me that there was a -- that there was a
5 discovery request. When exactly I saw the -- the discovery
6 request, I don't -- I don't recall that, but I know that I was
7 approached through my legal advisor to go ahead and do a
8 search for responsive documents.
9 Q. How did you know what to search for? Did somebody
10 tell you what to search for?
11 A. I -- I assume that that was probably conveyed, but
12 because this is not the only case where I'm involved in this
13 process, I simply did a search for anything that had to do
14 with military commissions.
15 Q. Sure.
16 A. You know, so that's -- I mean, again, it was fairly
17 easy. I knew what everybody wanted. I went and searched for
18 anything that had anything to do with -- with military
19 commissions.
20 I don't recall ever even hearing the -- this case name
21 until I came to this job, so it's not like there was something
22 in particular for me to focus on in this case. But if there
23 would have been, I would have found it because I went back and

1 searched for anything that had to do with military
2 commissions.
3 Q. Just so I understand, you didn't make any search
4 specifically for documents in response to Mr. Khan's request
5 for production of documents?
6 A. Well, no. I wouldn't say it that way. Yes, I did,
7 but it was coterminous with doing a search for all of the
8 other cases and trying to disclose everything about all of my
9 contacts with regard to anything that had to do with military
10 commissions.
11 Q. And did you locate responsive materials?
12 A. I did.
13 Q. And what did you do with them?
14 A. I turned them over to my legal advisor, who then
15 turned them over to, I assume, to the government, who then
16 turned them over to the parties.
17 Q. So when you went through your Gmail account, you
18 located documents. Did you print them off?
19 A. I believe that I made electronic copies. I believe
20 they all went onto a disc.
21 Q. When was that?
22 A. I -- I don't know what the date is. I would be
23 guessing. It would have been during the summer.

1 Q. It was during the summertime?
2 A. It would have been, yes. But whether that was, you
3 know, June, July, August, I -- I don't recall that.
4 Again, I -- I would say this -- you know, I would ask
5 that you just keep in mind this is not the only case where I
6 was asked for the -- any -- any information that I had with
7 regard to prior contacts. So I may have actually done the --
8 the global search before I ever saw your discovery request. I
9 just -- I -- temporally, I'm not sure which one occurred in --
10 in order.
11 Q. So if I understand correctly, you may have conducted a
12 search for responsive materials before becoming aware of
13 Mr. Khan's specific discovery request; is that right? Is that
14 what you just said?
15 A. It's possible.
16 Q. It's possible?
17 A. It's possible. I just -- again, I just -- I -- I
18 can't say I didn't, but I -- you know, it's possible.
19 Q. You understand, sir, don't you, that Mr. Khan is not
20 similarly situated to any other military commission defendant?
21 A. I'm not sure what you mean.
22 Q. Mr. Khan is a cooperator. You understand that, yes?
23 A. Oh, right. Yes, sir. Yeah.

1 Q. Okay. Sir, are you aware that the prosecution
2 responded to Mr. Khan's request for production of documents at
3 the end of July?
4 ATC [Maj MITCHELL]: Objection, relevance.
5 MJ [COL WATKINS]: Defense?
6 CDC [MR. DIXON]: Your Honor, it's the same issue. This
7 goes to the adequacy of the search for responsive materials,
8 the diligence of the prosecution. Your Honor may recall that
9 the prosecution represented that there were no responsive
10 records located.
11 MJ [COL WATKINS]: I'm aware of that, but you're asking
12 about something the prosecution did that is outside of this
13 witness' personal knowledge, I would think.
14 CDC [MR. DIXON]: Your Honor, I asked if he was aware of
15 it.
16 MJ [COL WATKINS]: And why is that relevant?
17 CDC [MR. DIXON]: Because he just testified that the
18 search that he undertook may have occurred prior to even being
19 aware of Mr. Khan's specific request for production of
20 documents. So if the government responds at the end of July
21 and says we have no responsive materials, that may indicate
22 the failure to search for documents responsive to Mr. Khan's
23 request.

1 MJ [COL WATKINS]: All right. I'll allow this one
2 question on that issue. Overruled.
3 Q. So, sir, are you aware that the prosecution responded
4 to Mr. Khan's request at the end of July?
5 A. As I sit here today, yes, I'm aware of it because I've
6 seen it in your pleadings. I don't know whether I was aware
7 of that when they did it. And I -- again, I would not have
8 been tracking whatever it is that the prosecution was doing.
9 Q. Was the prosecution's assertion that there were no
10 responsive records correct?
11 A. I don't -- I don't know how to answer that. I don't
12 know what thought process they went through trying to
13 determine what is relevant and what is responsive. I simply
14 know that I went through and searched all of my materials and
15 provided everything I have. That's just -- that's all I know.
16 Q. Again, at the time you conducted your search, that may
17 have been prior to even becoming aware of Mr. Khan's document
18 request; is that right? I just want to be clear on this.
19 A. It's possible. I just -- I can't -- I can't tell you
20 whose request came in first, so I don't know when I began
21 doing the search. I just -- I don't know the answer to that.
22 Q. Did the prosecution in this case come back to you at
23 any point in time to ask for your assistance in locating any

1 additional responsive documents?
2 A. I don't -- I don't -- I don't believe so. I know that
3 I don't have any other responsive documents. I don't -- I
4 don't recall being asked to go and search again because I gave
5 them everything I have.
6 Q. And are there other documents that you're aware of
7 that have not been produced, whether those are in your
8 possession or not?
9 ATC [Maj MITCHELL]: Objection, asked and answered, Your
10 Honor.
11 MJ [COL WATKINS]: Overruled.
12 A. Not that I'm aware of.
13 Q. Are there other places, besides your Gmail account,
14 where responsive records might exist?
15 A. It is possible that some of them would have resided in
16 my old navy.mil account. But in looking at what was turned
17 over, it appears that someone looked for those, because there
18 are some responses in there that appear to have come from that
19 account. So I assume the government looked at that.
20 Q. And that assumption is based on what?
21 A. Because I saw the e-mails and the discovery that
22 was -- that was forwarded over by the -- by the parties.
23 Q. And they included a .mil e-mail address for you?

1 A. I think so, yeah. I think a couple of those e-mails
2 were -- were from there.
3 Q. What about records relating to the Detention Policy
4 Task Force?
5 A. What do you mean, what about them?
6 Q. Would the Detention Policy Task Force records include
7 potentially responsive material?
8 A. Again, I -- I don't -- I don't know -- I don't know
9 how to answer that. You'd have to ask the government. There
10 were -- I don't think that we produced a whole lot of
11 material, just because the nature of that -- of that process.
12 Some of it has been produced, the interim report and the
13 attachment to the interim report. But I -- I don't -- I don't
14 know how to answer that. You'd have to ask the government. I
15 don't ----
16 Q. Sir, is it possible that there are responsive records
17 from the Detention Policy Task Force? Is it possible?
18 A. I don't mean to be flippant about this, but anything
19 is possible. I can tell you that I don't recall ever creating
20 or handling something that in any way dealt with the -- this
21 case when I was on the Detention Policy Task Force. Whether
22 there's something from the Task Force that somebody else
23 created, sure, I guess that's possible, but ----

1 Q. During your time on the Task Force, did you have any
2 communications relating to the Guantanamo military
3 commissions?
4 A. Well, I mean, I suppose the answer is yes, but I'm not
5 sure what exactly you're -- you're asking. Yes, there would
6 have -- yeah, I'm sure we would have had some contact with
7 regard to the -- to the commissions, yes.
8 Q. And what about communications relating to specific
9 high-value detainees?
10 A. I -- I don't -- we didn't deal -- you know, on the
11 Task Force we weren't dealing with individual cases. That's
12 just -- that's not -- that's not how any of it went.
13 Q. Sir, that wasn't my question. My question is whether
14 there were communications relating to specific high-value
15 detainees.
16 A. Well, again, I don't -- I'm trying to answer that. I
17 don't -- I don't recall there being references to specific
18 cases, so I'm -- I'm not sure how to answer the question. I'm
19 trying -- I'm ----
20 Q. Do you remember a series of e-mail communications
21 between yourself and Commander Lockhart between November 2008
22 and the beginning of 2010 relating to the Guantanamo
23 commissions and specific high-value detainees?

1 A. I don't remember specific high-value detainees
2 because, honestly, at that point, I'm not sure that that term
3 would have made any sense to me. I'm -- that was not the -- I
4 don't recall -- I don't recall hearing that term.
5 I do recall there being a data call, because somebody
6 had asked what commissions are ongoing or have been completed.
7 I don't remember exactly what the request was. So, yeah, if
8 that's the one you're referring to, yes, it would have been
9 these are the completed cases or these are the ones who are
10 pending charges or whatever it was.
11 Q. Sir, in 2008 and 2009, when you were working on the
12 sub-working group for military commissions as part of the
13 Detention Policy Task Force, are you telling me that you were
14 not aware that certain detainees at Guantanamo were designated
15 as high-value detainees? Is that your testimony?
16 A. I don't -- again, I don't -- I don't recall hearing
17 that term. I don't -- I just -- I don't recall hearing that
18 term. For clarity, the -- the sub-working group was in 2009;
19 it was -- it was after the Obama Administration had taken
20 over.
21 What we were doing on that sub-working group was
22 coming up with -- with options for the administration to
23 consider with regard to how to deal with law of war detainees.

1 We were not focused on individual cases or even individual
2 types of cases. So I -- no, I don't remember talking about
3 high-value detainees, because that designation would have been
4 meaningless to me relative to what we were doing. I just
5 don't recall the term.
6 Q. As a member of the Detention Policy Task Force, the
7 designation "high-value detainee" would be meaningless to you?
8 I mean, I find that incredible.
9 ATC [Maj MITCHELL]: Objection. Asked and answered.
10 A. I don't know how else to say it, Counsel. I just -- I
11 don't recall that term from that time period.
12 Q. Do you recall contacting Commander Lockhart in October
13 of 2009 to ask about the status of Ahmed Ghailani's prior
14 military commission case?
15 A. No, I don't have -- I do not have an independent
16 recollection of that. I've seen the -- I've seen the e-mail.
17 Yeah, I don't -- but ----
18 Q. Do you recall expressing surprise the case had not
19 been charged capitally?
20 A. Not -- again, I don't -- I -- I don't have an
21 independent recollection of that. Yeah, I know what the
22 e-mail says, but no, I don't -- I don't.
23 Q. Do you recall Commander Lockhart reaching out to you,

1 forwarding to you e-mail communications between the Office of
2 the Chief Prosecutor and the convening authority at the time
3 concerning the charging of high-value detainees at Guantanamo?
4 A. No, I -- I don't -- if you can be more specific as to
5 what that was, but, no, I do not.
6 Q. Do you remember Commander Lockhart reaching out to you
7 about the status of detainees held at Guantanamo, whether
8 they're held in the context of international armed conflict or
9 noninternational armed conflict, and what the implications
10 were for bringing charges against those individuals for aiding
11 the enemy?
12 A. Yes.
13 Q. Do you recall her reaching out to you in November of
14 2009, asking you about new proposed elements in the Manual for
15 Military Commissions relating to conspiracy in the context of
16 armed conflict?
17 A. Yes. And for both of those, I -- my recollection is
18 that the -- the discussion had to do with why some of the
19 language was there, in -- in particular, whether there was
20 some attempt to -- to create a different offense or some of
21 that language was just simply jurisdictional in nature. But,
22 yes, I do remember those conversations.
23 Q. Those were e-mail communications relating to the

1 Guantanamo military commissions, were they not?
2 A. Again, that's why I said -- I mean, I -- yes. I mean,
3 that would have been the -- the context, but I had no idea
4 what cases, if any, they actually referred to or if they were
5 just sort of theoretical. I don't ----
6 Q. Except for Ghailani. You asked about him
7 specifically?
8 A. Yes.
9 Q. Yeah. Sir, in the 2008-2009 time frame, did you have
10 similar communications with General Martins about the
11 Guantanamo military commissions or specific detainees?
12 A. I -- I, again, just for clarity, I don't believe that
13 I met him until January -- January of 2009 time frame, so I
14 don't think that I -- I knew who he was prior to that point.
15 Yeah, specific cases, no. I don't -- I don't recall
16 discussing specific cases with him.
17 Q. What about the Guantanamo military commissions in the
18 2009 time period after you met him?
19 A. Well, again, I don't -- you know, the Guantanamo
20 commissions would have been the context for a lot of the
21 things that we were -- that we were working on. So, I mean,
22 yes, I guess there would have been conversations that dealt
23 with the Guantanamo military commissions, but again, that was

1 only in the sense of the context. We weren't talking about
2 individual cases.
3 Q. You became the co-chair of the Task Force in
4 September 2009; is that right?
5 A. That's right.
6 Q. And who was your co-chair?
7 A. Brad Wiegmann.
8 Q. From the Department of Justice?
9 A. Yes, sir.
10 Q. Okay. And did you have communications with
11 Mr. Wiegmann about the Guantanamo military commissions or
12 particular detainees?
13 A. Again, it would be the -- the same response. The
14 context, you know, would -- you know, the answer would be yes
15 in context. Specific cases, I don't -- I don't recall having
16 specific -- any discussions about specific cases.
17 It merits pointing out, also, by -- by the time
18 September rolled around, we really were no longer talking
19 about military commissions. We really had moved on to other
20 aspects of -- of the Task Force. So I just -- I'm not sure
21 that there really would have been occasion to have those sorts
22 of discussions, again, other than it was in the context of
23 Guantanamo, sure.

1 Q. We'll get to that. My question is whether there were
2 communications between you and Mr. Wiegmann about detainees
3 and the Guantanamo -- or the Guantanamo military commissions.
4 A. Again, it was the same -- same answer.
5 Q. What about communications with the Guantanamo Review
6 Task Force during the same time period?
7 A. No. I don't -- my recollection is that I met whoever
8 the -- the person was who was heading up that Task Force very
9 briefly because he passed through our spaces, and I can't -- I
10 don't -- I don't remember what his name is. I think I -- I
11 met him.
12 I think the only -- the only communication was at some
13 point we provided a -- it was a comparative -- I don't know
14 how you would describe it. It wasn't really a spreadsheet,
15 but it would have had a series of columns on it that just
16 simply listed, you know, here are the rules that apply in
17 Article III court; here are the rules that apply in military
18 commissions; here are the rules that apply in international
19 tribunals. Here is the -- I think there was another -- there
20 was another category, but it was just kind of like a fact
21 sheet that said these are the rules that apply. I think that
22 is the only contact that -- that we had with them in just
23 providing that.

1 And I don't recall mechanically how that got to them.
2 I -- my assumption is I probably gave it to -- to General
3 Martins because I think he would have still been there when
4 that was done, and then he would have given it to them.
5 Q. So -- to make sure I understand, so that document is
6 the sole document that was provided to the Guantanamo Review
7 Task Force and -- is that right?
8 A. From -- from me during my -- or from my -- my working
9 group, yeah, that's my recollection, yes.
10 Q. And in terms of other communications with that Task
11 Force, you remember meeting the head of the Task Force; is
12 that right?
13 A. Again, he was walking through the spaces, and I
14 remember meeting him. That was it.
15 Q. Okay.
16 A. But I had no other -- I had no other contact with him.
17 Q. Who was the head of the Task Force?
18 A. Yeah, I don't remember his name.
19 Q. Was it Matt Olsen?
20 A. That's right. That's right. Yes. Yeah.
21 Q. So you don't recall any other communications between
22 yourself and the Guantanamo Review Task Force?
23 A. No, I do not.

1 Q. I believe in your recusal memo in the Nashiri case,
2 and also in the Bahlul case, you said that you weren't a
3 member of the Guantanamo Review Task Force; that's correct?
4 A. That's correct.
5 Q. And that you had played no part in their work; is that
6 correct?
7 A. Yeah, that's correct.
8 Q. Okay. I'd like you to take a look at Tab 6 in the
9 defense binder.
10 A. Again, I'm not sure whose binder is whose.
11 Q. If you open the front cover, the defense binder says
12 "Defense Exhibits for Testimony of the Convening Authority" at
13 the top.
14 A. Oh, okay. I'm sorry. You made it easy for me. Which
15 tab, 6?
16 Q. Tab 6.
17 CDC [MR. DIXON]: Your Honor, for the record, that's
18 AE 003 Attachment F. It's the preliminary report of the
19 Detention Policy Task Force from July 20th, 2009.
20 Q. Sir, would you read to yourself the first line of that
21 report.
22 A. Right.
23 Q. The first line of that report indicates, doesn't it,

1 that the work, your task force, the Detention Policy Task
2 Force, the first year concerns the Guantanamo military
3 commissions; is that right?
4 A. Yes and no. This was not my -- my task force. It --
5 at that point in time, this would have been signed out in July
6 of 2009 when General Martins was still there.
7 Q. You worked on the Task Force?
8 A. My role ----
9 Q. You worked on the Task Force then, right, in July of
10 2009?
11 A. I mean, yes and no. I -- I was part of the
12 sub-working group on -- on military commissions, so we were
13 trying to come up with options.
14 You know, if you recall, the Administration came in
15 and said we don't like the current version of military
16 commissions. We were tasked with -- with coming up with
17 things that the President could do executively to make some
18 changes to make it better in the eyes of the Administration
19 and then come up with lawful options with regard to statutory
20 changes. That's what I was working on.
21 The Task Force, the greater -- so I guess you could
22 say I was a member of the Task Force, but -- but I wasn't -- I
23 was in a -- in a working group that was focused on something

1 much more narrow than what it was that the Task Force was
2 doing.
3 So at that point in time, I can't tell you what it was
4 that the rest of the Task Force was working on. And when it
5 says that the -- "focused most of its work in developing
6 options for the lawful disposition of detainees held in
7 Guantanamo Bay," I'm not even sure that I would have known
8 what that meant at that point.
9 Q. Sir, I want to go back to the question I asked you.
10 Were you employed by the Detention Policy Task Force in July
11 of 2009? Do you not recall whether you were employed by the
12 Task Force?
13 A. No. I -- the words that you're using don't --
14 don't -- it's not the way that I would articulate this. I had
15 a full-time job with the Navy in running the criminal law
16 policy division. A collateral duty of mine was working with
17 the Detention Policy Task Force on the sub-working group that
18 was focused on the -- the military commissions.
19 I just -- I'm not trying to be evasive. I'm trying to
20 be accurate in saying what it is that -- that I'm doing.
21 Saying that I was employed by the Task Force, I think, gives a
22 slightly different nuance than I'm comfortable with.
23 Q. You were part of the sub-working group, is that right,

1 on military commissions?
2 A. That is correct, yes. That is correct.
3 Q. The sub-working group was part of the Detention Policy
4 Task Force; is that right?
5 A. That's right. That's right.
6 Q. Okay. In July of 2009?
7 A. So with the caveat that I have just provided, my
8 answer to the question would be yes, I worked for the Task
9 Force.
10 Q. And for the year prior to that, the Detention Policy
11 Task Force had been focused on the Guantanamo military
12 commissions and the review of disposition of detainees at
13 Guantanamo; is that right? Isn't that what the report says?
14 A. That's what the report says, yes ----
15 Q. Is that right or ----
16 A. ---- but that's not what ----
17 Q. ---- is that wrong?
18 A. Again, Counsel, I'm trying to be clear and responsive.
19 That's not what I was doing. Yes, that's what the Task Force
20 was doing.
21 Q. When you worked for, were employed by, or otherwise
22 connected to the Detention Policy Task Force, did you attend
23 meetings and chair interagency meetings concerning military

1 commissions?
2 A. Yes.
3 Q. And are there records of those meetings?
4 A. I -- I don't have them. Whether somebody at DoJ has
5 them, I don't know.
6 Q. Would DoJ be the agency that has those sorts of
7 records?
8 A. I would assume so, but that's just an assumption on my
9 part. I don't ----
10 Q. What about other agencies? Are there other agencies
11 of the United States Government that might have records from
12 that time period?
13 A. I have no way of answering that. I don't -- I don't
14 know.
15 Q. Would the CIA have ----
16 A. I ----
17 Q. ---- responsive records?
18 A. I don't know. I can tell you that on my -- on -- on
19 the sub-working group, if we're talking about that period of
20 time, there wasn't CIA representation on the sub-working
21 group, so I would assume that they would not have any.
22 Q. What about when you were co-chair of the Task Force?
23 A. The -- so it -- at the meetings, there would have been

1 people from general counsel's office coming from CIA. I -- I
2 couldn't tell you what they have or don't have. I don't know
3 the answer to that.
4 Q. To your knowledge, does the CIA have, or is the CIA
5 likely to have, any responsive records?
6 A. I ----
7 ATC [Maj MITCHELL]: Objection, Your Honor. That's
8 speculation.
9 MJ [COL WATKINS]: He asked him if he has personal
10 knowledge about that. Overruled.
11 A. Again, I have no personal knowledge about it. I
12 don't -- I don't know.
13 Q. To your knowledge, is there anywhere else, beyond the
14 places I have asked you about, where responsive records might
15 reside that have not been turned over?
16 A. Not -- not that I can think of, no.
17 Q. Okay. Sir, I'm going to turn to the timing of your
18 appointment as convening authority and your actions in
19 relation to Mr. Khan's case specifically.
20 A. Yes, sir.
21 Q. When were you formally appointed as convening
22 authority? Do you remember the date?
23 A. No. May -- May something. May 23rd, something like

1 that ----
2 Q. May 23rd?
3 A. ---- 2019.
4 Q. And was that the Thursday before Memorial Day weekend?
5 A. That sounds right, yes.
6 Q. And as I understand, please correct me if I'm wrong,
7 immediately prior to becoming convening authority you were
8 engaged in the private practice of law?
9 A. That's correct.
10 Q. And how much time did you have between wrapping up
11 your private practice and becoming convening authority?
12 A. I finished my final court-martial as a defense counsel
13 the Thursday prior. I needed a couple of days to -- to wrap
14 things up, you know, from -- from the -- the defense work, so
15 it would have been -- I guess that would make it a week. So
16 it would be I finished the Thursday prior, and then the
17 following Thursday, the -- the appointment was signed.
18 Q. Okay. So you were appointed ----
19 A. That's assuming I had that date right, and it sounds
20 right.
21 Q. So it was approximately a week?
22 A. That's correct.
23 Q. Okay. And you were appointed, you said, on Thursday,

1 May 23rd. That's the Thursday before Memorial Day weekend?
2 A. I think -- I think that's the right date, but yes, it
3 was right before Memorial Day.
4 Q. And did you go into work on Thursday, the 23rd? Did
5 you go into the office?
6 A. I think so. I mean, I think so. That's when I --
7 yeah, I think so.
8 Q. And where did you go into work? Was that at the Mark
9 Center?
10 A. The Mark Center, yes.
11 Q. And what about Friday? Did you work a full day on
12 Friday, the 24th?
13 A. Yeah, I -- yes.
14 Q. Okay. And were you off ----
15 A. I think so.
16 Q. Were you off for the long weekend?
17 A. That's correct.
18 Q. Okay. And so you went back to work on Tuesday, the
19 28th?
20 A. That's right. That's right. Yeah, that sounds right.
21 Q. Okay. And that was all at the Mark Center?
22 A. That's right.
23 Q. Okay. Do you recall your testimony in the Hadi case

1 in which you indicated that you showed up for work as
2 convening authority and it didn't really mean that much -- I'm
3 paraphrasing here -- because you didn't have a CAC card and
4 couldn't get on the computer, as an example?
5 A. Yes.
6 Q. Do you recall that testimony?
7 A. Yes. Yes, I do.
8 Q. And do you recall your testimony in which you said it
9 took -- as a consequence of those delays, it took about three
10 weeks from your appointment to write the recusal memos for
11 Nashiri and Bahlul?
12 A. That's right. And my -- my recollection is I -- I
13 don't remember when they actually took me down to get the CAC
14 card. I don't know that that was Thursday. It may have been
15 the Friday. It's actually possible that wasn't until the next
16 week.
17 But I went in to -- to get the CAC card, and as my
18 card was in the machine, the DEERS system went down so that
19 they could not encode it. So I had no CAC card. Then they
20 couldn't get it back up for some period of days. So I had
21 no -- I had no CAC card. I couldn't -- I couldn't get in -- I
22 couldn't get into the building, I couldn't get onto a
23 computer, I couldn't do anything.

1 Q. Understood. And after becoming convening authority,
2 did you take any action in Mr. Khan's case?
3 A. After becoming convening authority -- well, yes, there
4 were some things that would cross my desk. So there would be
5 requests. I believe there was some back-and-forth with regard
6 to modifying the -- the pretrial agreement as well, so yes.
7 Q. Do you recall, sir, a request from Mr. Khan for
8 appointment and funding of Mr. Steven Kleinman as an expert
9 concerning intelligence, interrogation, and torture-related
10 matters?
11 A. I do.
12 Q. Do you remember taking action on that request?
13 A. Yes, quite -- quite well.
14 Q. When did you take action on that request?
15 A. Whenever it came in. I don't -- I might have to look
16 at the document to see what the date was.
17 Q. The document came into the convening authority in
18 February. You didn't take action then, I assume.
19 A. My understanding is there were two separate requests.
20 So there was a -- there was the request for -- I'm sorry, are
21 you talking about Dr. Schouten or Schouten or Mr. Kleinman?
22 Q. I'm talking about Mr. Kleinman.
23 A. No. My understanding was February there was a request

1 for Dr. -- Dr. Schouten, which my predecessor sort of approved
2 in part and disapproved in part. I then got the request for
3 Mr. Kleinman, which my understanding was under the pretrial
4 agreement that would have been the second expert that -- that
5 the defense was entitled to, and I took action on -- on
6 Mr. Kleinman.
7 Q. Do you remember when you took that action? Do you
8 remember what date?
9 A. No. I'd have to look at the document. But ----
10 Q. Okay. Could you turn, Mr. Reismeier, to Tab 9 of the
11 defense binder.
12 CDC [MR. DIXON]: Your Honor, that's Attachment I to
13 AE 040.
14 A. Okay. Okay. May 29th.
15 Q. Do you recognize this document?
16 A. I do.
17 Q. What is it?
18 A. This is the -- my response to the request with regard
19 to Mr. Kleinman.
20 Q. You signed this document out on the ----
21 A. I did.
22 Q. ---- 25th of May?
23 A. I did.

1 Q. That was, what, your third or your fourth day in the
2 office as convening authority?
3 A. Whatever the -- yeah, whatever the -- whatever the --
4 you know, the accounting would be.
5 Q. I'm asking you. It's about four days into the
6 appointment as convening authority?
7 A. Well, let's see. So 23rd, 24th -- yeah. That sounds
8 about right, yeah.
9 Q. Okay. And you signed this out at a time when you
10 didn't have a CAC card, you didn't have access to a computer,
11 fully operational as convening authority?
12 A. I -- I believe so. I can't tell you whether I had
13 the -- I don't think I had a CAC card at that point, but yeah.
14 Q. You didn't have computer access at that point, did
15 you?
16 A. I don't think so, no, not if I didn't have a CAC card.
17 Q. On your fourth day in office as convening authority?
18 A. Yes.
19 Q. Okay.
20 A. Yes.
21 Q. Did you draft this memorandum?
22 A. No. But since you asked, I can tell you how this came
23 about. So this ----

1 Q. I ----
2 A. ---- came into my desk. They had been waiting for me
3 to get here because they needed somebody to take -- take
4 action. What was presented to me was the action that my
5 predecessor took with regard to Dr. -- Dr. Schouten and then a
6 draft of this.
7 I made specific edits to this -- and I did it in hard
8 copy, but I made specific edits to this because I was
9 uncomfortable with the language my predecessor used ----
10 Q. Sir, did you ----
11 A. ---- and I added a paragraph.
12 Q. Did you draft this memorandum?
13 A. Did I ----
14 Q. That was my question. Did you draft it?
15 A. I made specific changes and inserted a specific
16 paragraph. So I -- did I -- did I -- I drafted the one
17 paragraph that's added in -- in here, and I drafted part of
18 the sentence, but the -- but someone else provided me with
19 the -- the thing to start with.
20 Q. Who provided you with the thing to start with?
21 A. My legal advisor.
22 Q. Who is that?
23 A. Mark Toole.

1 Q. So Mr. Toole drafted the majority of this memorandum?
2 A. I -- I can't tell you whether he personally did it or
3 if one of his subordinate assist legal advisors did it, but he
4 was the one who presented it to me.
5 Q. But with the exception of some language that you've
6 referenced, you didn't draft it yourself; is that right? You
7 didn't have a computer and ----
8 A. I didn't draft the original document. Yeah, that's
9 correct.
10 Q. Okay. Thank you. Did you discuss this document with
11 Mr. Toole?
12 A. Yes.
13 Q. Prior to signing it?
14 A. Absolutely.
15 Q. Prior to editing it?
16 A. Yes. And I discussed the edits that I wanted to make
17 and why I wanted to make them.
18 Q. Did you discuss this with anyone else prior to signing
19 it?
20 A. No.
21 Q. And, sir, what was the -- what was the request
22 specifically for, how many hours?
23 A. I believe the original request was -- without reading

1 it, my recall is there was 200 hours, and I approved 150.
2 Q. So you didn't -- excuse me. You didn't approve the
3 full 200 hours?
4 A. No, because I ----
5 Q. Excuse me.
6 A. No, I didn't. I'm not -- I don't know if you want me
7 to get into why it is that I didn't, but no, I didn't.
8 Q. I just wanted to know whether you had approved the
9 request for 200 hours. It sounds like the answer is no.
10 A. No, I approved 150 hours.
11 Q. 150 hours?
12 A. I believe so.
13 Q. Sir, would you turn to page 2 of the document, the
14 last full paragraph. I believe it states ----
15 A. I'm sorry. 175 hours.
16 Q. Thank you. And did you reduce the amount of requested
17 hours because you concluded that Mr. Khan had no right to call
18 Mr. Kleinman to testify in support of a pretrial punishment
19 motion ----
20 A. Okay.
21 Q. ---- why you reduced the number of hours?
22 A. This is going to require a slightly longer -- longer
23 answer.

1 There are two changes that I made to this -- to -- to
2 this document relative -- remember, my predecessor, with
3 regard to Dr. Schouten, used the language that you just used,
4 which said that he is not authorized to testify on the issue
5 of pretrial punishment. And she indicated why, because the
6 position of the convening authority's office was that
7 Article 13 didn't apply and there was a problem with the
8 language of the pretrial agreement.
9 I changed the language to say that he's not authorized
10 to testify, and instead, I said that he's not approved as an
11 expert witness in support of any motion for pretrial
12 punishment credit because my view is the judge gets to decide
13 who gets to testify. I was asked to decide whether to fund.
14 The -- when you asked the question of whether I decided that,
15 you know, Article 13 didn't apply, I wouldn't say it like
16 that.
17 This was a request under 703 for me to approve a
18 witness based on necessity, so all I was doing was having to
19 make an assessment as to whether the defense had shown that
20 this witness was necessary. I couldn't make that decision
21 that he was necessary because, at -- at best, the question of
22 whether Article 13 applies is unsettled.
23 So I was forced to make a decision as to whether -- I

1 was forced to make a decision as to -- as to whether under the
2 law as it existed, my understanding of the law, whether
3 Article 13 applied such that this witness was necessary.
4 My understanding is the judge who is sitting there in
5 the courtroom today has a motion with regard to Article 13
6 pending, so the decision has -- it -- it -- that issue hasn't
7 been decided. All I was doing was ----
8 Q. Sir ----
9 A. ---- having to make the -- the necessity decision.
10 Q. Sir, my question was: Did you reduce the number of
11 hours requested by Mr. Khan based on a conclusion he was not
12 entitled to pretrial punishment credit? That was my question.
13 A. Again, I reduced the number of hours based on a
14 conclusion that the defense had not established necessity
15 required under the 703 analysis.
16 Q. Sir, you testified a moment ago, I believe, that you
17 hadn't made a determination as to whether Article 13 applied;
18 is that right? That's what you said a minute ago; isn't that
19 right?
20 A. No, I -- no. What I would say is, at best, that area
21 of law is unsettled. It's unclear. So I was forced to make a
22 decision as to whether the defense met the standard of
23 necessity, which requires me to say, okay, as the law exists,

1 does Article 13 apply?
2 I'm not making an independent decision as to whether
3 Article 13 applies.
4 Q. You're not making ----
5 A. I'm only making ----
6 Q. You're not making that ----
7 ATC [Maj MITCHELL]: Judge, will you allow the ----
8 MJ [COL WATKINS]: Mr. Dixon, you're talking over the
9 witness. And this is a fact-finding hearing, and I find this
10 relevant, so let him finish his answer.
11 CDC [MR. DIXON]: I understand. Apologies, Your Honor.
12 A. I wasn't asked to make a decision as to whether
13 Article 13 applied. I was asked to make a decision as to
14 whether the defense had established necessity under the law as
15 it existed at the time. I made the decision that based on my
16 understanding of the law, Article 13 didn't apply so that --
17 so that I couldn't find it to be necessary.
18 The moment somebody decides to the contrary, if this
19 judge were to decide, I'm sorry, Article 13 applies, well,
20 then that's the law, and then obviously I would fund it. But
21 it's -- this was not some independent decision of mine to --
22 to say Article 13 doesn't apply. The context was a necessity
23 analysis. That's all I was doing.

1 Q. Sir, I'm going to invite your attention to the third
2 full paragraph of the document, line 6. Beginning with the
3 word "specifically," would you please read that out loud.
4 A. "Specifically, Article 13 of the UCMJ and Rule for
5 Court Martial 305 pertaining to pretrial punishment do not
6 apply to Mr. Khan as he was detained pursuant to the law of
7 war."
8 Q. So you did make a determination that he had no right
9 to pretrial punishment?
10 A. Yes, in the context of a necessity analysis. In other
11 words, you didn't file something with me asking me
12 independently to decide whether Article 13 applies. I was
13 asked to make this assessment -- I had to make an assessment
14 as to whether Article 13 applies in order to do the necessity
15 analysis.
16 Q. And you assessed that it didn't apply; is that right?
17 A. For purposes of funding an expert witness, yes.
18 Q. Okay. And you also made an assessment, did you not,
19 that Mr. Khan had no right to litigate a pretrial punishment
20 motion that would be contrary to his plea agreement; is that
21 right?
22 A. Ask that again. I think the answer is yes but -- I'm
23 sorry -- ask that again.

1 Q. You also made an assessment that Mr. Khan had no right
2 even to litigate a pretrial punishment motion because that
3 would be contrary to his plea agreement; is that right?
4 A. Yes. In the absence of a ruling from the judge
5 otherwise as to what that pretrial agreement meant, yes.
6 Q. In the absence of a ruling from the judge?
7 A. Yes.
8 Q. Sir, you referenced ----
9 A. I'm sorry. Let me -- just a little bit -- yes. But
10 recognize I didn't draft the pretrial agreement. I didn't
11 sign the pretrial agreement, my predecessor did.
12 Q. Okay.
13 A. So all I had to go on was the language of the pretrial
14 agreement and the colloquy with the -- with the judge during
15 the taking of the plea. And so, yes, my understanding of that
16 language was that, yes, the -- he didn't have that right to
17 actually bring it.
18 That -- that is why that paragraph that shows up in
19 the document that's right after the one that you just
20 referenced, where it says, "I note that, while by the terms of
21 the pretrial agreement, Mr. Khan has waived the filing of the
22 claim," that's why I added this paragraph to say but please do
23 recall that in paragraph 4 of appendix A, you do have the

1 right to raise those matters to me and I will consider them
2 when taking an action -- action in this case.
3 Q. You were a military judge for a long time, right?
4 A. I don't know what "long" means, but, yeah, I was --
5 yes, I was a military judge.
6 Q. You understand better than I do, as a civilian pro
7 bono attorney, that pretrial punishment and clemency are not
8 the same thing; is that right?
9 A. Credit for pretrial punishment?
10 Q. Correct, and an award of clemency are not the same
11 thing. They're not mutually exclusive; is that right?
12 A. No, they are not mutually exclusive. And legally they
13 are distinct concepts, yes.
14 Q. Okay. So you made an assessment that -- that he
15 didn't have the right to litigate this motion, it would be
16 contrary to paragraph 11 of the plea agreement; is that right?
17 Just so I understand.
18 A. Yes, but so did my predecessor. That same language is
19 in my predecessor's response with regard to Dr. Schouten.
20 Q. Yes, and I'll ask you about that in a moment.
21 A. Okay.
22 Q. With respect to your comments previously that you
23 were -- you were focused on necessity, right? Necessity of

1 the expert; is that right?
2 A. Yes, sir.
3 Q. Discussion of necessity doesn't feature anywhere in
4 this memorandum, does it?
5 A. If you go back to the first page, you will see the
6 discussion on the last full paragraph. That entire paragraph
7 is laying out what the legal standard is. And then on top of
8 page 2, the next paragraph is on necessity. As a matter of
9 fact, it even starts out with, "To demonstrate necessity, the
10 accused must show something more than a mere possibility of
11 assistance from a requested expert." So yes, I would say two
12 full paragraphs.
13 Q. Apologies. My question -- I misspoke -- was related
14 to the pretrial punishment issue. He had no necessity for an
15 expert in connection with pretrial punishment. That's not
16 part of the pretrial punishment analysis; is that right?
17 Necessity?
18 A. No, that -- again, I'm not -- the request was for an
19 expert. And to get the expert, the defense must establish
20 necessity. So yes, it is part of the analysis. Necessity is
21 part of the analysis as to whether he -- you have demonstrated
22 that a witness on pretrial punishment is necessary. I mean,
23 that's what this whole document is about.

1 Q. And it was unnecessary, in your view, to authorize
2 Mr. Kleinman to testify for purposes of pretrial punishment
3 hearing because Mr. Khan didn't have that right to litigate a
4 motion for pretrial punishment. Is that -- am I understanding
5 that correctly? I just wanted to clarify that.
6 A. Yes. Based on my understanding of the -- of the -- of
7 the law, you know, as it exists, yes.
8 Q. Okay. And I'll ask you another question about the
9 document, and then we'll move on.
10 Again, third full paragraph, middle of the paragraph,
11 the sentence, "Additionally, your motion appears to be
12 contrary to the terms of paragraph 11 of the plea agreement,"
13 and then it continues.
14 A. Yes, sir.
15 Q. Was that a warning to Mr. Khan not to litigate a
16 pretrial punishment motion?
17 A. No. It's just simply -- again, it's the same language
18 my predecessor used. It's just a statement saying, look,
19 based on the understanding of this office, this is
20 inconsistent with the -- with the pretrial agreement. We're
21 just making sure that -- that we're all on the same page as to
22 where we are relative to the -- the right to raise the motion.
23 I -- you know, "warning," that's not a word that I

1 would use with regard to this.
2 Q. Is it a ----
3 A. It very well may be that we were not all -- by virtue
4 of the -- of the motion, I assume we're not all on the same
5 page. You may be right. Maybe he does have the right to
6 bring the motion, and maybe you're right, Article 13 does
7 apply. That's -- that's -- in both instances, that's for the
8 judge to decide.
9 Q. That's not what this says ----
10 A. But recognize, Counsel, I'm -- when I'm asked to sign
11 this document, when I -- I'm sorry, when I'm asked to respond
12 to the defense request, I can only do the necessity analysis
13 based on the world that I understand at that time.
14 So I am forced to make a decision as to what the
15 pretrial agreement says or doesn't say and what the law says
16 with regard to the applicability of the motion. So I --
17 that's all -- that's all I'm doing.
18 Q. Understood.
19 A. And if that turns out to be wrong, okay. Then -- then
20 I'm wrong on the law or the law has changed or I'm wrong on
21 the pretrial agreement, whatever. But again, I -- this is
22 reflective of -- of me doing the necessity analysis at the
23 time that this request crosses my desk.

1 Q. Okay. So let me ask you this, sir: At the time that
2 you signed out this memo, had you read the plea agreement in
3 Mr. Khan's case?
4 A. Yes, which is why that paragraph in there referring to
5 paragraph 4 of the appendix is inserted. I asked for the
6 pretrial agreement, and then I pulled that language in.
7 Q. All right. I'm going to ask you to turn to Tab 1 in
8 the defense binder. That's AE 012.
9 A. Yes, sir.
10 Q. Do you recognize that document?
11 A. I do.
12 Q. What is it?
13 A. This is the pretrial agreement.
14 Q. I'd invite your attention to paragraph 21, page 5.
15 A. I'm sorry, which paragraph?
16 Q. 21.
17 A. Right.
18 Q. On page 5.
19 A. Yes.
20 Q. "Defense may call live witnesses and present evidence
21 regarding matters in aggravation, mitigation." Do you see
22 that?
23 A. Yes.

1 Q. Okay. I'd invite your attention to paragraph 23.
2 A. Yes.
3 Q. That's the provision that authorizes Mr. Khan to have
4 two expert consultants or witnesses at government expense?
5 A. Right.
6 Q. Do you agree that those provisions together permit
7 Mr. Khan to call witnesses, including experts, to testify
8 concerning torture-related matters in this case?
9 A. Absolutely. Yes.
10 Q. But you believe that filing a pretrial punishment
11 motion, you made the assessment that that was inconsistent
12 with the plea agreement?
13 A. Yes. There's a difference between litigating an
14 Article 13 motion and putting on the same evidence for
15 purposes of mitigation.
16 Q. How do you know that? Is that based on your
17 experience as a military law expert?
18 A. It's based on my experience of 25 years in the -- in
19 the courtroom. I mean, yes, there's a difference. There --
20 there's a difference between an Article 13 motion and simply
21 putting on the evidence for purposes of mitigation. They're
22 not mutually exclusive. You could do both.
23 Q. Sir, at the time you took action with respect to

1 Mr. Khan's expert request, had you read Mr. Khan's pretrial
2 punishment motion?
3 A. No.
4 Q. That motion was classified, right?
5 A. I don't know. I -- I have never seen the motion. I
6 don't know.
7 Q. You've never seen the motion?
8 A. No. I don't think so.
9 Q. The motion, you think, potentially is inconsistent
10 with the plea agreement?
11 A. Yes.
12 Q. Sir, at the time you took action with respect to the
13 expert request, had you been read on to the CIA RDI program?
14 ATC [Maj MITCHELL]: Objection, Your Honor. This is not
15 relevant.
16 MJ [COL WATKINS]: That's my decision to make, Counsel.
17 ATC [Maj MITCHELL]: All right.
18 MJ [COL WATKINS]: Defense?
19 CDC [MR. DIXON]: Your Honor, Mr. Reismeier has indicated
20 that he took action concerning a motion he hadn't read. My
21 question is designed to get at the question whether it would
22 even be possible for him to have read that motion at the time
23 he took action, which will lead to further questions about the

1 timing of the action, why it was a priority.
2 MJ [COL WATKINS]: What does being read on to the RDI
3 program have to do with that?
4 CDC [MR. DIXON]: Because that would have been a
5 requirement for him to read the motion to even ----
6 MJ [COL WATKINS]: But he said he hadn't read the motion.
7 CDC [MR. DIXON]: My point is it wasn't possible; he
8 hadn't been read on. He went ahead and took action.
9 MJ [COL WATKINS]: His testimony is clear that he had not
10 read the motion when he took action on the request, so
11 sustained.
12 Q. Sir, had you read the transcript of Mr. Khan's guilty
13 plea proceedings of February 29th, 2012, at the time that you
14 took this action?
15 A. Not the entire portion. I -- I read through the
16 colloquy with the judge where pertinent parts were discussed.
17 Q. Did you read the portion concerning paragraph 11 of
18 the plea agreement?
19 A. I'd have to look at paragraph 11 to know what -- oh,
20 yes. Yes, I did.
21 Q. So you read -- you had reviewed the transcript of the
22 guilty plea proceeding concerning that provision in the plea
23 agreement?

1 A. I did. I did, yes.
2 Q. So you understood then, did you not, that trial
3 counsel had stated her position concerning what that
4 paragraph 11 meant?
5 A. Yes.
6 Q. And she explained, did she not, at page 84 of the
7 transcript, that the provision limited Mr. Khan from suing
8 officials, U.S. Government officials? Do you recall that?
9 A. Yeah, I -- I'm -- in the main, I think that's probably
10 a fairly accurate way of the way that she articulated it.
11 Q. If you read that provision in -- that section of the
12 transcript, you were also aware that Judge Pohl stated his
13 understanding of paragraph 11?
14 A. Yes.
15 Q. And that paragraph 11 only applies to the
16 United States and its agencies as defendants?
17 A. I don't know that he was that specific about the scope
18 of its application, but the discussion -- the discussion with
19 regard to paragraph 11 was not a hallmark of clarity and
20 definitiveness in my mind.
21 Q. Do you not recall exactly what he said?
22 A. Judge Pohl?
23 Q. Judge Pohl.

1 A. No, not word for word, no.
2 Q. Well, perhaps I can refresh your recollection.
3 Page 84 and 85 of the transcript, paragraph 11, quote, only
4 applies to the United States and its agencies as defendants,
5 unquote. Do you recall that? Does that help refresh your
6 recollection what he said?
7 A. Yeah, but I think that that -- that -- but there was
8 something he said before that, that just -- my recollection is
9 that's a partial quotation, but ----
10 Q. What did he say before that?
11 A. I -- I don't -- I don't remember. I remember the
12 language that you're talking about, but I -- that -- my
13 recollection is that was -- that that was a part of what he
14 was saying.
15 Q. Do disagree with what trial counsel said back in 2012
16 or what Judge Pohl said back in 2012 about that provision?
17 A. I -- I would say that, again, it's not a hallmark
18 of -- of clarity. This agreement, though, is an agreement
19 between the convening authority and the -- the accused, not
20 the trial counsel and the accused.
21 I -- this office historically has -- again, has
22 interpreted that pretrial agreement to be as I stated in my --
23 in my -- my memo. I recognize that that lack of clarity is

1 not going to benefit the government if the judge is called
2 upon to make a determination in this regard, and that's fine.
3 That's -- that's the way the process works.
4 Q. Mr. Khan hasn't sued anyone, has he, to your
5 knowledge?
6 A. I -- I don't know. Not to my knowledge, but ----
7 Q. You've referenced a few times the actions of your
8 predecessor. That's Ms. Perritano; is that right?
9 A. That's right.
10 Q. And you referenced her action with regard to the
11 expert request for Dr. Schouten; is that right?
12 A. Yes. Yes.
13 CDC [MR. DIXON]: Your Honor, for the record, that expert
14 request is AE 030 Attachment F.
15 Q. I believe you testified that you modified the language
16 that Ms. Perritano had used in a few respects; is that right?
17 A. Yes, sir.
18 Q. Okay. Are you aware that Ms. Perritano did not reduce
19 the number of requested hours for Dr. Schouten?
20 A. Yes.
21 Q. She authorized all of the requested hours
22 notwithstanding Mr. Khan's request for pretrial ----
23 A. That's my understanding. I don't remember how many

1 hours were requested, but yes, that was my understanding.
2 Q. And are you aware that Ms. Perritano's action with
3 respect to Dr. Schouten precipitated a motion to compel
4 production of witnesses, including the experts for the
5 specific purpose of testifying in support of a pretrial
6 punishment motion? Are you aware of that?
7 A. No. My understanding is that motion was -- I was
8 aware that there was a -- that there was a motion. My
9 understanding of the motion was to compel the production of --
10 of witnesses for purposes of presentencing, not for pretrial
11 punishment.
12 If there was an order from the judge specifying that
13 these witnesses be produced for purposes of an Article 13
14 motion, I was not aware of it. My understanding was that that
15 was with regard to presentencing.
16 Q. So, Mr. Reismeier, at the time you took action with
17 respect to Mr. Khan's request for the appointment of
18 Mr. Kleinman, you hadn't read the motion to compel; is that
19 right?
20 A. I'm sure I didn't read the motion to compel. I
21 believe that I saw a copy of the judge's order or at least an
22 extract portion of the judge's order. My understanding at the
23 time was that the order was to produce these people for

1 sentencing, not -- not for pretrial punishment litigation.
2 Q. If the request were specific to production of the
3 experts for purposes of testifying in support of pretrial
4 punishment proceedings, you would not have known that?
5 A. I don't know whether I would have known it or not.
6 I -- I -- if someone brought it to my attention, I suppose I
7 would know it. What I knew was that there had been a judge's
8 order, and my understanding of that order, excuse me, was that
9 it was produced -- it was to produce these people for purposes
10 of presentencing, not for -- not to litigate an Article 13
11 motion.
12 Q. You were aware, were you not, that Judge Watkins
13 granted the motion to compel with respect to the two experts?
14 A. Again, my understanding was that he ordered them
15 produced for purposes of presentencing, which is what I
16 authorized.
17 Q. My question is simply whether you were aware of his
18 order; that he'd issued an order granting the motion to
19 compel. I believe that's what the order says, "granted," but
20 I'm asking whether you're aware of that.
21 A. Again, I was aware that he issued an order compelling
22 production for purposes of presentencing. If -- if there was
23 something else in the order, then I was unaware of it. If I'm

1 mistaken as to what the order said, then I'm -- I'm mistaken.
2 But that was my understanding of it.
3 CDC [MR. DIXON]: Your Honor, at an appropriate time,
4 we're happy to take a break or continue as Your Honor prefers.
5 MJ [COL WATKINS]: Do you have an estimate on further
6 examination?
7 CDC [MR. DIXON]: I think it's going to take some time,
8 Your Honor.
9 MJ [COL WATKINS]: All right. Mr. Reismeier, I'm going to
10 recess the commission for the benefit of all the participants
11 so that we can take a short comfort break.
12 Is ten minutes sufficient, Mr. Dixon?
13 CDC [MR. DIXON]: Yes, Your Honor.
14 MJ [COL WATKINS]: We're going to recess for ten minutes,
15 sir, and if you could be prepared to testify at the end of
16 that period, I would appreciate it. Is there anything
17 else ----
18 WIT: Yes, sir.
19 MJ [COL WATKINS]: ---- to take up before a recess?
20 The commission is in recess.
21 **[The R.M.C. 803 session recessed at 1114, 25 February 2020.]**
22 **[END OF PAGE]**
23

[The R.M.C. 803 session was called to order at 1128, 25 February 2020.]

MJ [COL WATKINS]: The commission is called to order. All parties present when the commission recessed are again present. The witness is in the -- on the witness stand.

Mr. Reismeier, you're still under oath.

WIT: Yes, sir.

MJ [COL WATKINS]: Mr. Dixon, you may proceed.

CDC [MR. DIXON]: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

Questions by the Civilian Defense Counsel [MR. DIXON]:

Q. Mr. Reismeier, before the break you indicated that you were asked to take action on defense request for appointment and funding of Mr. Kleinman and that you acted based on the world that you understand.

My question for you is: The world you understand, is that the world of Article 13 and R.C.M. 305(k).

CDC [MR. DIXON]: Your Honor, I believe we've lost Mr. Reismeier.

MJ [COL WATKINS]: All right. We'll recess in place.

[The R.M.C. 803 session recessed at 1129, 25 February 2020.]

[The R.M.C. 803 session was called to order at 1130, 25 February 2020.]

1 MJ [COL WATKINS]: The commission is called to order. All
2 parties present when the commission recessed are again
3 present.
4 Mr. Dixon, you may continue.
5 CDC [MR. DIXON]: Thank you. Your Honor, I'll restate the
6 question.
7 **DIRECT EXAMINATION CONTINUED**
8 **Questions by the Civilian Defense Counsel [MR. DIXON]:**
9 Q. Mr. Reismeier, before the break you indicated that you
10 were asked to take action on Mr. Khan's request for
11 appointment and funding of Mr. Kleinman, that you acted based
12 on the world that you understand.
13 My question for you is: Is that the world of
14 Article 13 of the UCMJ and Rule for Courts-Martial 305(k)? Is
15 that what you're referring to?
16 A. No. I meant in the -- I was making a decision on
17 the -- the issue of necessity of funding an expert based on
18 what -- based on what I understood the landscape to be; that
19 is the absence of an order from the judge saying that I shall
20 appoint an expert for that purpose, a pretrial agreement,
21 which at least arguably looked to be waiving the issue, and
22 then my understanding as to based on the law as it existed and
23 the absence of an order from any commission judge, much less

1 this commission judge, as to whether Article 13 applied. So
2 that was my understanding of the world at that point.
3 Q. Okay. And your assessment at that point was that
4 Article 13 didn't apply in the military commissions at
5 Guantanamo?
6 A. Yes. Correct.
7 Q. Did R.C.M. 305(k)?
8 A. Right. There -- there -- yes, correct.
9 Q. And those, correct me if I'm wrong, those are
10 provisions that you are intimately familiar with from the
11 courts-martial world?
12 A. I'm familiar with them, yes.
13 Q. As a lawyer, did you argue for or against pretrial
14 punishment credit based on Article 13?
15 A. Yes. Yes.
16 Q. As a judge, were you asked to grant Article 13 or 305
17 credit ----
18 A. Yes.
19 Q. ---- for unlawful pretrial punishment?
20 A. Yes.
21 Q. And as an appellate judge, were you asked to uphold or
22 to overturn those determinations?
23 A. Yes.

1 Q. And again, it was your assessment that those
2 provisions don't apply or didn't at the time apply in the
3 military commissions at Guantanamo?
4 A. Yes, that's my understanding.
5 Q. Was that understanding informed by the fact that you
6 authored the legislation that became the 2009 Military
7 Commissions Act?
8 A. No, I wouldn't say it that way. In the -- the
9 language of the 2009 Act relative to this question was the
10 same as the language from the 2006 Act. I had nothing to do
11 with the 2006 Act.
12 So my understanding is not -- so, no, I wouldn't say
13 it's really informed by my involvement with the 2009 Act, no.
14 Q. Was it informed by the rules applicable to these
15 commissions by the Manual for Military Commissions?
16 A. I -- the absence of the R.M.C. 305 does inform me. I
17 don't recall there being a discussion on that rule during the
18 rule drafting process back in 2006-2007. I just -- I -- I
19 don't recall there being a discussion on the absence of that
20 rule. I just -- I don't recall that.
21 Q. And, sir, I believe in -- I believe that you have
22 said -- strike that.
23 Were you involved in drafting or amending some of the

1 rules applicable to these commissions?
2 A. You know, yes, but I'm not sure which time we're
3 talking about.
4 Q. I'm talking the time period between 2009 -- I'm sorry,
5 2008 and 2010.
6 A. Oh, yes. So -- yes. So we -- I would have been
7 involved in modifying a series of the rules that the -- the
8 incoming Administration wanted to -- wanted to alter, and then
9 you had a part in the process of sort of codifying some of
10 those and -- and some other changes into the 2009 Act.
11 But -- but post that, though, I didn't have much
12 involvement with the rule drafting that followed 2009, just
13 because I -- I -- I was doing some other things. I had some
14 involvement on some specific rules, but ----
15 Q. Which specific rules did you have some involvement on?
16 A. The -- the 505 rule was where I spent most of my time.
17 I assume that on a, you know, sort of an ad hoc basis, that
18 somebody -- somebody probably approached me with regard to
19 some of the other rules. But I don't -- I don't recall sort
20 of independently working on -- on any of the other rules.
21 My -- my -- that would have been done by the service
22 representative for the Navy.
23 Q. What were the changes to rules -- to Rule 505 that you

1 were asked to -- that you were consulted about?
2 ATC [Maj MITCHELL]: Your Honor, I don't -- relevance.
3 MJ [COL WATKINS]: What's the relevance of that, Defense?
4 CDC [MR. DIXON]: Your Honor, Rule 505 is the rule that's
5 cited all the time in these proceedings when the defendants
6 attempt to use evidence obtained by torture.
7 MJ [COL WATKINS]: All right. I'll overrule.
8 A. Okay. So there were -- there were two -- two
9 different aspects of the -- of the 505 discussions, efforts.
10 The first was -- and this wasn't something that was just, you
11 know, sort of my view or my service's view. But going back to
12 the 2006 time frame, all of the services were very
13 dissatisfied with the way that the -- the rules were -- were
14 constructed in -- in 2006 based on the statute architecture
15 from 2006.
16 It would have allowed hearsay declarants that were
17 never -- the identities were never disclosed to the defense
18 having the -- the defense have to face unknown classified
19 hearsay declarants and then having summaries of whatever those
20 declarations were, and then putting the burden on the defense
21 to have to actually come in and -- and prove that it wasn't
22 trustworthy. So there was a lot of time and effort that went
23 into trying to modify both 505 and the hearsay rule early on

1 in order to -- to alter that construct. I don't think there
2 was anybody in uniform at that time that -- that would have
3 said that that was fair.
4 The -- the later efforts really had to do with trying
5 to make 505 much more like CIPA, its civilian counterpart, and
6 also sort of put into the rule and/or the statute some seminal
7 case holdings that don't appear anywhere in any of the rules,
8 what practitioners all use in order to -- to effect the
9 application of the rules. That really didn't go much of
10 anywhere. But the -- those -- those were the two aspects of
11 505 that I was working on.
12 Q. So you mentioned hearsay. That's a separate rule from
13 M.C.R.E. 505, right?
14 A. Yeah. But the worst part about it, again, was the way
15 that those two rules intersected and, from my perspective, in
16 an untenable way.
17 Q. Sir, are you familiar with Rule for Military
18 Commission 1001?
19 A. Generally, yeah.
20 Q. And what -- what rule is that? What does that do?
21 A. Are you talking about sentencing?
22 Q. Presentencing procedures.
23 A. Presentencing? Yeah.

1 Q. Yes. Were you involved with any amendments to
2 R.M.C. 1001?
3 A. No, I don't -- I don't think so. I don't -- I
4 don't -- I don't -- I don't recall being involved in that at
5 all, no. I don't think so.
6 Q. Were you aware of any amendments to ----
7 A. No. No. That's why I'm sitting here thinking I
8 don't -- I don't -- I -- if there were any amendments, I don't
9 know what they were, and I was not involved in it. Yeah.
10 Q. Thank you. To your knowledge, does Rule for Military
11 Commission 1001 have any relevance to the availability of
12 pretrial punishment credit?
13 A. Honestly, I'd have to look at the -- I'd have to look
14 at the rule. As I sit here right now, I'm -- none that I can
15 think of, but that doesn't mean that, you know -- that there's
16 not something in there that you can grab onto to fashion an
17 argument.
18 Q. In the 2009 time period, do you have any knowledge or
19 were you aware of any discussions within the military
20 commissions system about the availability -- excuse me, the
21 availability of pretrial punishment credit?
22 A. No. The -- the closest that I could get would --
23 would have been actually going back to the 2006 discussions.

1 And my recollection is it was actually the Army representative
2 during one of the meetings just simply said, well, you know,
3 these guys are all law of war detainees. And that was it.
4 That was it. And most people just shook their heads and said,
5 okay, I see the distinction you're drawing, and that was it.
6 I don't -- that is the only discussion I -- I recall
7 that in any way even touched upon the possibility of there
8 being some sort of -- sort of credit.
9 Q. And did you agree with that assessment of the Army
10 representative, that ----
11 A. Yes.
12 Q. You did agree with that?
13 A. Yes. Yes.
14 Q. And are there notes or documents of those
15 conversations and meetings?
16 A. No, I -- I doubt that because I -- I -- that would
17 have just been a, you know, an observation of some sort. I
18 can't tell you what rules were actually under discussion. But
19 I -- I don't know who would have created what out of -- out of
20 that rule drafting process.
21 Q. And I think you indicated there was general agreement
22 that an individual held in law of war detention wasn't
23 entitled to pretrial punishment credit because they're held in

1 law of war detention. Was that essentially the gist of it?
2 A. I -- yes. I think that -- I think that people
3 generally would have drawn -- yeah, I -- yeah, I don't know --
4 yes, I -- yes, that's accurate.
5 Q. Okay. I just have a few more questions about pretrial
6 punishment. So now, in 2020, do you stand by the decision
7 that you made last May to reduce the number of approved hours
8 for Mr. Kleinman based on your assessment that he was not
9 entitled to litigate a motion for pretrial punishment credit?
10 A. Again, yes, but with the caveat of, in the absence
11 of -- of some authority somebody can point me to that would
12 suggest that Article 13 is applicable, yes, I -- I stand by.
13 I'm just -- I'm not aware of anything that -- that actually
14 makes that applicable.
15 But again, there's another -- there's a caveat to
16 that, is that just because Article 13 is -- does not apply,
17 the -- the problem is the way in which you phrased the
18 question. If you were to ask me whether Article 13 applies, I
19 would say my understanding of the law as it exists right now,
20 the answer is no.
21 If you would ask me whether there is a mechanism for
22 someone to get credit for treatment imposed upon them during
23 their time in detention, my answer would probably be

1 different.
2 Q. That wasn't my ----
3 A. Do you see the distinction that I'm drawing? It's one
4 thing to say Article 13 doesn't apply. It's another to say
5 there's not some mechanism in the law to be able to get where
6 it is you want to go, but that's your job as a defense
7 counsel.
8 Q. Sir, are you aware that Mr. Khan's pretrial punishment
9 motion doesn't rely exclusively or solely on Article 13 of the
10 UCMJ?
11 A. No. Again, I don't -- I have not read his motion. I
12 generally don't -- I don't read motions filed by the parties
13 unless they bear on something that I actually have to do. In
14 this case, I never read it because I -- I saw what I believed
15 to have been the judge's ruling, so there's no reason for me
16 to go back and read it. So that ----
17 Q. But you reduced the number ----
18 A. ---- so no.
19 Q. You took adverse action with respect to Mr. Khan based
20 on an assessment that Article 13 credit was not available to
21 him. And my question for you is: Are you aware that his
22 motion didn't rely entirety or exclusively or even principally
23 upon Article 13?

1 A. Again, I would -- I -- I can't answer that the way
2 that you've asked it because I don't agree with the idea that
3 I reduced -- I -- I gave him 175 hours out of his 200 hours.
4 I approved most of what it was that he was asking.
5 I made the assessment that because I don't think
6 Article 13 applies or at least that Article -- that -- that
7 necessity for that funding hasn't been established that some
8 portion of the two -- and I said this in the memo -- some
9 portion of the 200 hours requested, I -- I assume was for the
10 purpose of addressing that motion. So I reduced it by 25
11 hours and gave you 175 hours.
12 Q. So you did reduce the request?
13 A. I approved less than what you asked for. I -- I guess
14 you could say that you reduced that.
15 Q. You reduced it essentially by a week's worth of
16 Mr. Kleinman's time; is that right? Basically, you gave us a
17 week less time with Mr. Kleinman, didn't you?
18 A. My workweek isn't 25 hours. I don't -- I -- you know,
19 that's whatever it is. You know, three days.
20 Q. Here at Guantanamo, you get about five hours with a
21 detainee on a given day, so that would work out to, what,
22 approximately a week?
23 A. That's -- I don't -- what -- whatever your math says.

1 I -- I -- I reduced it by -- I -- I -- I didn't approve the
2 full amount. I approved 175 of 200 hours for the reasons I
3 stated.
4 Q. Now -- at this point, you're now aware, are you not,
5 that Judge Watkins granted Mr. Khan's request to compel his
6 experts for the specific purpose of testifying in support of a
7 pretrial punishment motion? Are you aware that he has already
8 granted that motion?
9 A. No. Again, I go back to my -- my understanding is
10 that he approved these witnesses for the purposes of
11 presentencing. That's my understanding. If that is not
12 correct, then there is an obvious mechanism for you to be able
13 to inform me so that I understand the landscape.
14 Q. If subsequent to this hearing you become aware of the
15 specific request for production of the experts and you
16 subsequently become aware that Judge Watkins granted that
17 request, would you then stand by your prior action?
18 A. Again, Counsel, you keep -- you're anchoring this to
19 your request.
20 Q. Yes.
21 A. If you anchor it to the judge's order -- if -- if --
22 if the judge were to say to me right now, "I order the
23 production of this person for purposes of the Article 13

1 motion," my response would be, "My apologies, Your Honor. I
2 didn't understand that. I, of course, will approve it."
3 But that's not my understanding of where we are.
4 Q. My question is: If you become aware, what will you
5 do?
6 A. Again ----
7 ATC [Maj MITCHELL]: Objection. Asked and answered, Your
8 Honor.
9 MJ [COL WATKINS]: Mr. Dixon, this -- we're going
10 over ----
11 CDC [MR. DIXON]: Okay.
12 MJ [COL WATKINS]: ---- certain things repeatedly, and I
13 think you -- the witness is very clear about what he would do.
14 He would follow my order. Is that correct, Mr. Reismeier?
15 WIT: Absolutely, Your Honor.
16 MJ [COL WATKINS]: All right. Let's move on.
17 CDC [MR. DIXON]: Okay.
18 Q. Mr. Reismeier, if Mr. Khan proceeds, continues to
19 litigate his pretrial punishment motion, is it your intention
20 to withdraw or to move to withdraw from his plea agreement?
21 A. No, it's not.
22 Q. Is it your intention to deem his litigation to try and
23 obtain pretrial punishment credit as noncooperation under his

1 plea agreement?
2 A. No, it's not. But I want to be clear about how I'm
3 responding here. If -- there's a missing portion of this, and
4 that is that if -- if -- if the judge were to say, yeah, I'm
5 sorry, he hasn't waived the motion, or if the judge were to
6 say, look, Article 13 applies, then that obviously is part of
7 a landscape that I would have to consider. At that point, I
8 would have no basis in law to be able to do that.
9 If the judge were to say, look, you waived the motion
10 and Article 13 doesn't apply, then you were to ask me, okay,
11 what is my intention? Is my intention to withdraw? You know,
12 I -- my -- my response would be, I have no idea because it's
13 not in front of me. That issue is not in front of me. I have
14 not made -- I've not made any determination one way or the
15 other.
16 I will say this: The lack of clarity in what exactly
17 it is that pretrial agreement says is something I would have
18 to consider as to how I would respond. I mean, I want to be
19 fair, believe it or not.
20 Q. I appreciate that. And, sir, do you believe that
21 Mr. Khan's litigation of a motion to disqualify you as
22 convening authority constitutes noncooperation or a basis
23 to ----

1 A. No.
2 Q. ---- withdraw?
3 A. No. My understanding of the cooperation really has to
4 do with what it is that he is providing the -- the -- the
5 prosecution with regard to other cases. I'm -- I don't think
6 this has anything to do with it.
7 Q. To your knowledge, he's complied with that cooperation
8 obligation; is that right?
9 A. As far as I know. I -- I -- you know, as far as I
10 know.
11 Q. Sir, you have authority, do you not, under the plea
12 agreement to make the determination as to whether Mr. Khan has
13 cooperated ultimately? That's for the convening authority?
14 A. Yes. And in, you know, consultation with the -- with
15 the prosecution, as they -- obviously, I'd want some input
16 from them as to what it is I'm looking at. But yes, with that
17 understanding that I would have to consult with them, yes.
18 Q. Okay. And you are bound by good faith, obviously, in
19 making that determination?
20 A. Yes, sir.
21 Q. Okay. You understand and appreciate, I think you've
22 testified, that it's Judge Watkins' authority to interpret the
23 plea agreement and ultimately to determine whether Mr. Khan is

1 entitled to pretrial punishment credit. Do we agree on that?
2 A. Yes.
3 Q. Okay.
4 A. I do.
5 Q. Okay. Now, I want to turn to a related topic, and
6 that is the amicus brief in the Bahlul case.
7 A. Okay.
8 Q. Would you please turn your attention to Tab 10 in the
9 defense binder. That's Attachment J to AE 040.
10 A. Yes, sir.
11 Q. Do you recognize this document?
12 A. I do.
13 Q. And what is it?
14 A. That is the amicus brief.
15 Q. And I believe you testified in the Hadi case that you
16 were approached by the Washington Legal Foundation, someone
17 you didn't know, and asked to consider signing on; is that
18 right?
19 A. Yes, sir.
20 Q. And I assume you read the draft that was sent to you?
21 A. I did.
22 Q. And you agreed with the contents of the -- of the
23 brief?

1 A. Yes. Yeah. Yes.
2 Q. Okay. And did anyone in the Office of the Chief
3 Prosecutor have any involvement in your signing onto that
4 brief?
5 A. I assume what you're getting at is the -- the e-mail
6 that I sent back to General Martins, and I would say that,
7 consistent with what I -- what I said when I testified in the
8 other case, my answer would be no, I don't think they had any
9 involvement. But I would like to explain that e-mail, if I
10 may.
11 Q. We'll get to the e-mail. My question ----
12 A. Okay.
13 Q. ---- was simply ----
14 A. I would say no, I -- you know, no, they ----
15 Q. No involvement?
16 A. No.
17 Q. Did you not ask General Martins whether he had any
18 objection to you signing onto the amicus brief?
19 A. Yeah, but here's the context to that. I was -- I was
20 aware -- and I can't tell you who told me this, but I was
21 aware -- I shouldn't say "aware."
22 I understood that General Martins had declined to sign
23 onto the -- the government's brief in that case. I was aware

1 that -- that General Martins, like a lot of my contemporaries
2 in the Department of the Navy, had some longstanding
3 disagreements over the -- the applicability of conspiracy
4 under the law of war or at least the scope of conspiracy under
5 the -- under the law of war. They rejected the idea that the
6 most inchoate versions of conspiracy could actually be
7 incorporated in -- in the law of war.
8 Because I was aware of the fact that -- again, I
9 didn't read the government's pleadings, but I knew generally
10 what the landscape was of the case. So I knew that the
11 conspiracy had been set aside. I knew that General Martins
12 was not signing on.
13 I was content to allow the defense to have their
14 victory and simply walk away and not file something if that's
15 what the -- if the government, for some principled reason,
16 thought that they did not want to appeal the decision relative
17 to conspiracy, I was content to -- to not insert myself in --
18 into that and -- and tip the scales one way or the other.
19 So when I -- when I said, "Look, do you have any
20 objection to me signing," what I was asking was whether he
21 remained opposed to the idea that -- that conspiracy should be
22 triable as a law of war violation. That's what I was trying
23 to ask. And if the answer would have been, yeah, I -- I

1 oppose it, then -- then I -- I'm not sure that I would have
2 signed onto the -- to the pleading.
3 Q. That's not ----
4 A. Because I wasn't looking to -- I wasn't looking to
5 insert myself from the -- from the -- you know, from the
6 sidelines on the -- on the issue.
7 Q. That's not what the e-mail exchange says, though, is
8 it?
9 CDC [MR. DIXON]: Your Honor, I'm referring to 037F,
10 Tab B, Attachment 3, Bates number 10.
11 Q. That's not what the e-mail actually says, is it?
12 A. Well, in my mind, that's what it says, yes.
13 Q. It says, "If you have objections to me signing on, I
14 won't. I don't want to do something that might be
15 counterproductive for the government." That's what it says,
16 correct?
17 A. Yes. In other words, if the government wants to walk
18 away from conspiracy for some -- some reason, policy reasons,
19 otherwise, they -- they don't want conspiracy to still be --
20 be triable, then I'm not looking to -- to upset the
21 government's apple cart in that way and say, okay, that's
22 great, but I as -- you know, in my -- my capacity as a, you
23 know, retired flag officer, think I know -- I know better.

1 That's -- yes, that's what -- that is what that e-mail
2 says. It's -- it's me saying I'm not looking to up -- I'm not
3 looking to undo what it is the government wants to do if what
4 they want to do is walk away from conspiracy as a offense
5 triable under the law of war.
6 Q. You testified that you agreed with the draft brief
7 that was sent to you when you reviewed it. And here it seems
8 that you're giving General Martins veto power over whether you
9 will sign onto it; is that not correct?
10 A. Again, I -- I -- you can editorialize it that way, if
11 you like. Again, I don't know how to say it other than the
12 way I just said it. I was not looking to -- to intercede, you
13 know, as an outsider on the issue, to intercede and try and
14 maintain a charge that the government would rather walk away
15 from.
16 Q. Were you giving General Martins ----
17 A. Recognize where I start out. I knew that General
18 Martins didn't sign the government's pleading. So I was just
19 not -- I wasn't looking to -- you know, I didn't know what the
20 government's position was, honestly. I didn't know.
21 Q. Were you giving General Martins veto power over
22 whether you signed onto an amicus brief that you agreed with?
23 A. No. I -- I -- I wouldn't say it that way. What I

1 would say is that I was interested in what the -- the
2 government's principled view of the applicability of the
3 offense was. And if the government didn't want this to be
4 viable, then -- then I would be thinking long and hard as to
5 whether I would proceed, despite the fact that I think
6 Congress has the authority to -- under the define and punish
7 clause. It's just that simple.
8 Q. It became a moot issue, ultimately, didn't it, because
9 he gave you his non -- he gave you his consent, General
10 Martins?
11 A. He simply said he had no objection. I don't know that
12 that's consent. So far as I know, he may have just been
13 throwing his hands up in the air saying "I want nothing to do
14 with it."
15 Q. That's not actually what happened, right? The e-mail
16 also says that he provided you with case-related materials and
17 background documents; is that incorrect?
18 A. That was prior to that, yeah. No, that's not -- no,
19 it's not incorrect. But again, remember those, you know, the
20 discussions, you know, would have had to do with the
21 historical underpinnings of conspiracy as a triable offense.
22 Again, it goes to the dichotomy that I was just talking about
23 a moment ago; the more inchoate versions not having any

1 applicability; choate versions, you know, having some -- some
2 applicability; the requirement that there actually be an
3 affirmative act on the part of an accused so that it's not a
4 status offense. Those are the sorts of things that -- that,
5 you know, were involved in that discussion.
6 Q. And you didn't want to undermine the government's
7 position on those issues; is that right?
8 A. If -- if the government wanted the -- the conspiracy
9 not to be triable, then I was -- I was satisfied to allow the
10 defense to have that win and leave it alone.
11 Q. But you didn't want to do something contrary to the
12 interests of the government; is that right? That's why you're
13 asking the question, right?
14 A. Yes. But if the interest of the government is -- and
15 for whatever policy reason, was to have conspiracy no longer
16 be triable, then -- then yes. Again, that's what that e-mail
17 was about.
18 Q. You mentioned a moment ago congressional deference.
19 Do you recall writing back to the Washington Legal Foundation
20 attorney who had reached out to you and expressing a view
21 about the breadth of Congress' define and punish authority?
22 A. Yes, sir. Yes.
23 Q. And do you recall writing that Congress' authority

1 demands tremendous deference?
2 A. Yes.
3 CDC [MR. DIXON]: Your Honor, for the record, this is the
4 same document, Bates number 13.
5 Q. And do you recall describing yourself as someone who
6 drafted the initial 2009 Military Commissions Act?
7 A. Yes.
8 Q. Do you recall expressing your view, as one of the
9 drafters, that the Act was intended to provide the broadest
10 grant of authority permissible to prosecute the detainees?
11 A. Again, I think you're missing something out of that --
12 out of that reference. What I -- what I said was from my
13 perspective, that's what I understood the language being, but
14 I couldn't speak for anybody else who was -- who was involved
15 in it, and I think that's what that e-mail actually says.
16 My -- my view was that that was a plenary grant of
17 authority, but I couldn't speak for what anybody else involved
18 in the drafting process thought.
19 Q. I'm only asking -- and if I wasn't clear, I apologize.
20 I'm only asking about your view.
21 You expressed your view, did you not, as someone who
22 drafted the 2009 Act, that it was intended to provide the
23 broadest possible grant of authority to try detainees like

1 Mr. Khan?
2 A. Yes. That was -- that was my understanding.
3 Q. You intended to create and you participated in
4 drafting a system of laws to provide the government with
5 maximum authority to prosecute detainees such as Mr. Khan?
6 A. I would say it a little differently. Drafting, you
7 know, language that would allow the -- the government to
8 exercise its maximum authority.
9 Q. You're aware, are you not, that Mr. Khan is charged
10 with conspiracy?
11 A. I -- since coming to this job, I have -- I have
12 learned that, yes.
13 Q. Okay.
14 A. Before coming to this job, I don't believe I ever
15 heard of him.
16 Q. Okay. I want to refer you back to the amicus brief
17 again. That's at Tab 10.
18 A. Yes, sir.
19 Q. And I want to direct -- invite your attention to
20 page 4, second little paragraph. Let me ask you: Do you
21 stand by the statements in this amicus brief? I'm asking you
22 as a general matter. Do you stand by the statements in the
23 amicus brief?

A. Yeah. Yes.

Q. Okay. Invite your attention to the second full paragraph beginning "Amici." Do you see that sentence?

A. Yes.

Q. "Amici are concerned that the panels" ----

A. Yes, sir.

Q. ---- "in this case would impose unwarranted restrictions on the authority of the elected branches of government." Do you see that sentence?

Can you read the next sentence out loud?

A. "Amici deem it inappropriate for courts to second guess the considered judgments of the political branches regarding how best to conduct an armed conflict."

Q. Do you agree with that statement?

A. I do.

[Alarm in courtroom went off.]

MJ [COL WATKINS]: All right. I'm sorry for the interruption. We had a technical issue with the device that checks for cell phones and like technology. I would just ask everybody, including the gallery, to make sure you do not have a cell phone in this courtroom. With that said, I believe that that might have been a malfunction, so we're just going to drive on for now.

1 Go ahead, Mr. Dixon.
2 CDC [MR. DIXON]: Thank you.
3 Q. I'd like to invite your attention, Mr. Reismeier, to
4 page 31, first full paragraph.
5 A. Yes.
6 Q. It states, "A serious threat to the separation of
7 powers arises when the judiciary seeks to take -- wrest
8 control of the war-making powers from the elected branches of
9 government." Do you agree with that statement?
10 A. Yes.
11 Q. Do you believe that it's appropriate for the federal
12 courts to limit the ability to try and prosecute detainees
13 such as Mr. Khan for offenses such as conspiracy?
14 A. I don't -- I don't know how to answer that. They're
15 not mutually exclusive. Again, this -- this is a narrow issue
16 which has to do with the -- the scope of congressional
17 authority under the define and punishment clause.
18 So saying that that's a near plenary grant of
19 authority for Congress to -- to define what a law of war
20 violation is doesn't exclude the fact that the judiciary, both
21 Article III judiciary and this court, that -- that the judges
22 don't have a role in applying the law to whatever this
23 circumstance is that they're -- that they're facing. They're

1 not mutually exclusive. This is the narrow issue of whether
2 Congress gets to say this is a violation of the law of war.
3 Q. Do you think it's a serious threat for the federal
4 courts to disagree with Congress?
5 A. Again, in -- in that context relative to that clause
6 of the Constitution, yes.
7 Q. It's a serious threat? Okay. That's a pretty severe
8 statement, is it not?
9 A. No, it's just a -- it's a view on separation of
10 powers. And it's a -- you know, relative to one clause in the
11 U.S. Constitution.
12 Q. Sir, I want to -- I want to ask you a question about
13 when you were the Chief Judge of the Navy. Did you
14 participate in February 2015 in a joint services meeting with
15 DoD General Counsel's office about the role of judges at
16 Guantanamo, military judges at Guantanamo?
17 ATC [Maj MITCHELL]: Judge, relevance.
18 MJ [COL WATKINS]: Defense?
19 CDC [MR. DIXON]: Your Honor, there was a change to the
20 Regulation for Trial by Military Commission that would have
21 required military judges like Your Honor to reside at
22 Guantanamo. The change was made, in my understanding, January
23 of 2015, as a dissatisfaction within Department of Defense at

1 the pace of these cases and the lack of results in the
2 military commissions.
3 My question is designed to ask -- to find out from
4 Mr. Reismeier whether he had any involvement or input into
5 that decision, which was, of course, later rescinded.
6 MJ [COL WATKINS]: Overruled. Ask again, please.
7 Q. Sir, did you participate in a meeting in February of
8 2015 with DoD General Counsel's office to address the role of
9 military commission judges at Guantanamo?
10 A. Let me -- let me back -- back into the -- the answer
11 to that. I found out about the convening authority's action
12 relative to the judges when The Judge Advocate General of the
13 Navy called me and said, "Are you aware of this? Was this
14 staffed through you?"
15 And I -- my response was, "First I've heard of it. I
16 know nothing about it. You mean DoD didn't coordinate this
17 with The Judge Advocates General?" And the response was "No,
18 first we heard about it."
19 I had nothing to do with it on the front end. I do
20 recall being involved in discussions afterwards where I and, I
21 believe, some of the other judges were all saying that this is
22 a recipe for disaster; stand by for what the judiciary is
23 going to do.

1 So was I involved in any meetings? Yeah, I probably
2 had some meetings after it happened to proclaim my great
3 dismay at what it was that occurred, but I -- I had no
4 knowledge about this up front, none.
5 Q. Were those meetings -- did those meetings include
6 Mr. Jason Foster?
7 A. No. I -- I don't think -- I don't think so. I --
8 again, I don't -- I don't recall having a conversation with
9 anybody other than the -- The Judge Advocate General of the
10 Navy. That doesn't mean I didn't have a conversation with
11 Mr. Johnson, as DoD General Counsel. I just -- I don't think
12 this is a -- I don't think that I was involved in that
13 discussion because it was -- it was already done by the time I
14 found out about it.
15 But, no, I -- I can't imagine I would have had a
16 discussion with Jason Foster about it.
17 Q. So you don't recall participating in a meeting in
18 February of 2015, a joint services meeting with the general
19 counsel's office to discuss this?
20 A. You're making -- no. There may have been a meeting
21 there. I don't remember it being about -- I don't remember it
22 having anything to do with what the convening authority had
23 done.

1 Q. Do you remember a meeting in that time period with the
2 general counsel's office where there was discussion of,
3 quote/unquote, draining the pool of military commission
4 judges?
5 A. I don't remember it being -- I saw those notes in some
6 of the discovery, you know, somewhere. I don't -- I don't
7 recall being part of that -- I don't recall being part of
8 that -- that meeting. I don't think that I was.
9 Q. Do you recall being part of a meeting in that time
10 period with the general counsel's office to address the
11 mandatory retirement of military commission judges at
12 Guantanamo?
13 A. No. No. My -- the only conversation I recall having
14 about military judges was when I was approached as to whether
15 I would be willing to -- to be a military judge, and I believe
16 those were two separate conversations. One was about being a
17 military commission judge and one was about coming back
18 post-retirement to be a civilian appellate judge.
19 Q. Sir, when were you asked about becoming a military
20 commission trial judge?
21 A. I don't remember the date. I believe that it's
22 somewhere in the discovery. If I had to hazard a guess, I
23 believe it was probably the 2014 time frame. I know I was

1 still on active duty. I could be off by a year.
2 Q. Sir, who approached you about possibly becoming a
3 military commission trial judge?
4 A. That came from DoD General Counsel, but I don't
5 remember who actually -- how that was conveyed to me. I know
6 it led to conversation with my front office, with The Judge
7 Advocate General of the Navy. I don't recall who the vector
8 was. I don't know how that got to my -- got to my ear.
9 Q. Do you recall who the general counsel was at the time?
10 Was it Mr. Jeh Johnson?
11 A. It was. Mr. Johnson, yes.
12 Q. And do you recall that he was general counsel, I
13 believe, between 2009 and 2012? Is that ----
14 A. I don't remember the dates. I know the 2009 date is
15 right. I do -- I don't remember when he -- I don't remember
16 when he left.
17 Q. But are you -- are you confident that he was the
18 general counsel at that time?
19 A. Well, it's funny. Now that you say that, the answer
20 is no because I'm not -- again, I don't -- I don't know how
21 that invitation got to -- got -- got to me. I know that I had
22 a discussion with The Judge Advocate General of the Navy. In
23 my mind, I think that Mr. Johnson was still there, but I

1 suppose it's possible he was -- he was not.
2 Q. Okay. Thank you. I appreciate that.
3 I want to ask you about the role of the convening
4 authority in these military commissions. And I will start
5 with the preface that I am a pro bono counsel. I'm not a
6 military lawyer, and so sometimes I struggle to understand the
7 intricacies, and I'm hoping that you can help me with that.
8 Am I correct that the convening authority is the
9 person who is responsible for overseeing the military
10 commissions system? Is that correct?
11 A. I mean, I guess as a -- as a generalization. I mean,
12 I -- I sort of wear two hats. One is the convening authority
13 and one is -- is the director of the Office of Military
14 Commissions. So there are -- you know, there are logistics,
15 you know, things that are really -- they're not necessarily
16 tethered to the convening authority position. They're
17 tethered to the -- to the director position. So in one hat or
18 the other, the answer would be yes.
19 Q. And the convening authority job, that includes
20 obviously convening military commissions, bringing them
21 together; is that correct?
22 A. Yes, sir.
23 Q. And what about referring of charges? The convening

1 authority refers charges for trial; is that right?
2 A. That's right.
3 Q. So if there are questions about the validity of
4 charges, is that something the convening authority handles?
5 A. Well -- well, yes. I mean, the convening authority as
6 a matter of law would have to conclude that, you know, that
7 the charge states an offense, that it's, you know, trial by
8 military commission and that there's probable cause to believe
9 that the -- the accused committed it. So, yes, that would be
10 part of the ----
11 Q. Okay.
12 A. ---- legal matrix.
13 Q. As the convening authority, you can decide not to
14 refer a charge that's been sworn; is that right?
15 A. That's right.
16 Q. Or you can dismiss a charge; is that right ----
17 A. Right.
18 Q. ---- that has been sworn?
19 A. That's right.
20 Q. Okay. And can you dismiss a charge that's been
21 referred?
22 A. I could.
23 Q. And when you convene a military commission, part of

1 that process is appointing a judge; is that right, a military
2 judge?
3 A. I'm sorry. Say that again. Part of it is?
4 Q. When you convene a military commission, a military
5 judge is assigned to the case; is that right?
6 A. I'm not sure when the judiciary does that. I assume
7 that it occurs shortly -- shortly after a commission is
8 convened.
9 Q. And prior to a military commission judge being
10 appointed, it is the convening authority, is it not, that
11 handles matters that can't be resolved among the parties?
12 A. Some of them, I mean, yes. I mean, things that are --
13 are given to the convening authority under the rules and
14 regulations, yes.
15 Q. So if charges, for example, have been sworn against a
16 detainee and not yet referred and there's no military judge,
17 you, as convening authority, would handle disputed issues ----
18 A. Again, depending what the issue is, yeah, possibly.
19 Yes.
20 Q. Issues, for example, relating to witnesses or -- or
21 funding or something like that?
22 A. Sure, travel -- yeah. Yes.
23 Q. And is it the convening authority -- does the

1 convening authority have the power, the authority to issue
2 protective orders?
3 A. In some situations, yes.
4 Q. What kind of situations?
5 A. Well, if there -- if the -- there isn't a judge
6 assigned, there's an -- there's an issue. I don't -- I don't
7 believe that I have done any, but I know my predecessors
8 have -- have done some to, you know, protect identities,
9 protect information ----
10 Q. Is it ----
11 A. ---- those sorts of things.
12 Q. Is it the convening authority that selects panel
13 members for military commissions?
14 A. Yes. Yes.
15 Q. So you would decide who sits on the panel in
16 Mr. Khan's case; is that right?
17 A. That's correct, yes.
18 Q. And I think, as we know from this case, as convening
19 authority you handle funding requests for expert witnesses?
20 A. Yes, sir.
21 Q. You handle funding requests for detailed defense
22 counsel, defense investigators, is that right? For travel,
23 for example.

1 A. If for travel, yes. I mean, it's the -- the rest of
2 it is a little more complicated. It depends on whether it's a
3 GS employee, whether it's somebody in uniform or -- but --
4 but, yes. At times, yes.
5 Q. Okay. And if a question arises in a case concerning
6 mental responsibility of an accused, is that a matter that you
7 handle, or is that a matter that Judge Watkins handles?
8 A. So it depends on when it comes up.
9 Q. How is the decision made?
10 A. Well, if it's a -- if it's pre-referral, then -- then
11 I may have to do so. If it's post-referral, the matter would
12 be taken up with the judge. The judge may order me to do
13 something. I mean, it may be that he -- he may not do it on
14 his own. He may order the convening authority to appoint a
15 board for, you know, a 706 board for an inquiry, appoint an
16 expert for some preliminary analysis of an accused, those
17 sorts of things -- those sorts of things. Excuse me.
18 Q. If I understand correctly, with respect to certain
19 functions like that, whether it's handling mental
20 responsibility or protective orders or resolving contested
21 issues among the parties, that's a shared responsibility with
22 the military commission judge depending on the timing, pre- or
23 post-referral?

1 A. Yeah. If I understand the dichotomy that you're
2 creating there, yes. It's the judge's authority, once the
3 judge exists and the case has been referred. I'm not -- I'm
4 not sure how much I share at that point. At that point I
5 pretty much just execute whatever it is the judge orders me to
6 execute. Prior to that point, yes. So somewhere on that
7 continuum, yes, we are sharing it.
8 Q. Okay. And it is, however, ultimately the authority of
9 the convening authority to grant or deny clemency?
10 A. Yes.
11 Q. That is solely your responsibility; is that right?
12 A. Yes.
13 Q. And that includes the power to affirm charges?
14 A. Yes.
15 Q. To set aside charges?
16 A. Yes.
17 Q. To reduce punishment?
18 A. Assuming -- assuming you're not talking about what,
19 you know, the CMCR would do. If you're talking about the
20 immediate post-trial thing in my action, yes.
21 Q. Prior to final action?
22 A. Yes.
23 Q. Okay. In Mr. Khan's case, you have additional

1 authorities and responsibilities, do you not?
2 A. I'm not sure what you mean.
3 Q. Well, you have the authority and responsibility to
4 decide whether Mr. Khan has cooperated?
5 A. Oh, that's right. Yeah, pursuant to the pretrial
6 agreement, yes.
7 Q. And that's a decision, I believe you testified
8 earlier, that you make in consultation with the Chief
9 Prosecutor?
10 A. Yes.
11 Q. And currently that Chief Prosecutor is the same
12 Brigadier General Martins that you ----
13 A. Oh, I'm sorry. Let me -- when I say Chief Prosecutor,
14 I don't -- I don't know how the -- it's in consultation with
15 the prosecution. I don't know who that person will -- will
16 be. I -- I -- if it's him, then yes.
17 Q. As of this moment today, that would be General
18 Martins; is that right?
19 A. Well, again, assuming it's the Chief Prosecutor as
20 opposed to whoever is sitting in counsel's chair there today.
21 Q. Okay. And if it is Chief Prosecutor ----
22 A. I don't know who it is that's going to -- yeah, I
23 don't know who it is that's going to represent the

1 government's interest in that.
2 Q. Okay. If it were the Chief Prosecutor today, that
3 would be General Martins, would it not?
4 A. Yes, it would.
5 Q. The same General Martins that you went to for approval
6 to sign onto the Bahlul amicus brief; is that right?
7 A. Again, I wouldn't use the word "approval," but yes,
8 the same person.
9 Q. The same General Martins that you went to and asked
10 whether he had any objection to you signing onto that
11 brief ----
12 A. Yes.
13 Q. ---- because you didn't want to undermine the
14 government's position; is that right?
15 A. Yes.
16 Q. You also -- your cooperation determination is
17 critically important to Mr. Khan, is it not?
18 A. I assume so.
19 Q. Well, it affects his maximum approved sentence, does
20 it not?
21 A. It -- it affects the maximum that would be approved
22 under the pretrial agreement.
23 Q. So by virtue of Mr. Khan's guilty plea, he faces a

1 maximum of 25 years imprisonment from the time of his plea; is
2 that right?
3 A. Yes. Assuming that the pretrial agreement is still in
4 effect, yes.
5 Q. And ----
6 A. That's correct.
7 Q. ---- if he fulfills his cooperation obligation in your
8 sole determination, he faces a maximum not to exceed 19 years;
9 is that right?
10 A. Under the pretrial agreement, yes.
11 Q. Correct. You also have the authority to move to
12 withdraw from the plea agreement if you determine that's
13 appropriate; is that right?
14 A. That's possible. Again, depending on -- on when
15 that -- that comes up, the -- the judge has -- I was going to
16 say a very big say in that. He probably has the say in how
17 that -- how that goes, but ----
18 Q. But it's your decision to file a motion to move to
19 withdraw if you deem it appropriate. You're the counterparty;
20 is that right?
21 A. I think that's fair to say, yes.
22 Q. Okay. Ultimately, at the end of the day, is it not
23 the case that you are the person who will decide Mr. Khan's

1 ultimate fate, that is whether he gets to go home, whether he
2 gets to see his daughter, whether ----
3 A. No, I would disagree with that.
4 Q. Why do you disagree with that?
5 A. The -- the only thing I decide is what it is that
6 happens with regard to the findings and sentence on -- on this
7 case. I do not make a decision as to where he's confined,
8 under what conditions he's confined, or whether he's released.
9 That -- that's not me.
10 Q. You have substantial input into that, do you not, by
11 virtue of your authority to take final action in this case?
12 A. I have substantial authority with regard to approving,
13 disapproving, or modifying findings and sentence. I -- I
14 don't -- I have no authority whatsoever with regard to what
15 the -- the people running the detention operations do with
16 him.
17 Q. So let me ask you a hypothetical. If you were to
18 determine that Mr. Khan were entitled to clemency and you were
19 to reduce his punishment to time served, that would, in all
20 likelihood, would it not, have a significant influence on
21 whether he is released from Guantanamo?
22 A. I -- I -- I know what you're getting at. I don't know
23 how to answer that. The moment he is no longer serving an

1 adjudged sentence, he can avail himself -- himself of a habeas
2 petition. He can then go through the periodic review process
3 in order to have them determine whether he's somehow a
4 continuing threat. But he's still -- I mean, he's left to
5 the -- to whatever processes are in place for people who are
6 simply law of war detainees as opposed to people serving an
7 adjudged sentence.
8 Q. Mr. Reismeier, are you aware of any military
9 commission defendant who has completed his military commission
10 sentence who has been held in law of war detention
11 indefinitely past the completion of that sentence? Are you
12 aware of any case where that's occurred?
13 A. Not -- not that I'm aware of. I can't say that that
14 has -- I don't -- no, not that I'm aware of.
15 Q. All right. And, sir, you -- when you accepted the job
16 to serve as convening authority, you did make a decision to
17 recuse yourself from two military commission cases; is that
18 right?
19 A. Yes, sir.
20 Q. Nashiri and Bahlul?
21 A. That's correct.
22 Q. Did you do that to avoid a conflict of interest based
23 on your prior involvement with military commissions and with

1 the Office of the Chief Prosecutor?
2 A. I -- I don't know that I would use conflict of -- of
3 interest. I -- I had enough contact with those cases that I
4 was uncomfortable continuing on with those -- those cases.
5 The -- look, I realize that there's a -- there may be
6 some disagreement among the parties and the judge will have to
7 sort it out, but I realize there's a difference -- a
8 difference in opinion among the parties as to what the legal
9 standard is.
10 My understanding as the convening authority as to what
11 the legal standard is for partiality was such that, even
12 though I think that I could have remained impartial, even
13 though I think I was impartial in those other cases, I was so
14 uncomfortable with the appearance on those cases that -- that
15 I just found it to be as a prudential matter appropriate for
16 me to recuse myself. I ----
17 Q. So is it fair to say that you didn't believe you had
18 an actual conflict, but you were concerned, as you just said,
19 about an appearance of conflict ----
20 A. No.
21 Q. ---- the appearance of partiality?
22 A. Honestly, I never -- I didn't really over-think it. I
23 never really got to the point of having to decide whether as a

1 legal matter recusal was required. I was uncomfortable enough
2 with it that -- that the -- even though appearance, so far as
3 I know, is not the standard of recusal for the convening
4 authority, I was uncomfortable enough with the appearance on
5 those two cases that I thought it was the appropriate thing to
6 do.
7 I never really -- I never took the analysis any
8 further than that as to whether it was actually required. I
9 thought it was the right thing to do.
10 Q. Do you think that those same considerations apply
11 here? Do you think it's the right thing to do to recuse
12 yourself here in Mr. Khan's case?
13 A. If -- I don't mean to be flippant about this, but if I
14 did, I would have recused myself already. Honestly, I mean, I
15 would have. I know -- I knew nothing about this case before
16 coming to this job. Many of the things that I now know about
17 this case, I only know about because they've been raised in
18 the -- in the -- you know, in the pleadings. I've had no
19 involvement with this case, none.
20 Q. Do you agree with me that it's important for an
21 accused to have confidence in the fairness and the
22 impartiality of these proceedings?
23 A. I do.

1 Q. Do you agree with me that it's important for the
2 public to have confidence in the fairness and the impartiality
3 of these proceedings?
4 A. I do.
5 Q. Doesn't that require this case to be free from any
6 appearance of conflict?
7 A. That's not the legal standard, but I understand what
8 it is that you're asking. In my mind, with the understanding
9 of the explanations that I'm -- I'm giving with regard to my
10 background, with the disclosure that I made on my own up front
11 with my recusal from the other cases, yeah, I honestly think
12 that a member of the public who understood all of this would
13 not view questions of my partiality, due respect, in the same
14 way that the defense has portrayed it in the pleadings.
15 Q. Why would you take that risk in this case given the
16 importance of the case?
17 A. Again, I -- I don't see it as a risk. I -- I have had
18 no prior interaction with this case. None.
19 Q. You had a lot of prior interaction with Brigadier
20 General Martins; is that right?
21 A. I had more interaction with Jared Hernandez, who is a
22 prior defense counsel on your case. He worked directly for
23 me. I wrote fitness reports for him.

1 You know, the fact that I had contact with General
2 Martins, I -- you know -- you know, I don't know how many
3 years ago it would have been. What, 2010? So ten years ago,
4 I -- I worked with -- with him for a period of nine months and
5 then had some intermittent contact with him over the years.
6 My last phone call with him was four years ago.
7 Yeah, I'm not -- I -- I don't -- I don't see the
8 conflict that you're articulating. I don't.
9 Q. You mentioned Lieutenant Commander Hernandez. What
10 was your interaction with him?
11 A. He was a clerk on the court when I was the Chief
12 Judge.
13 Q. Did you have any other involvement with him at any
14 point in your naval career?
15 A. No, I think that was the only time. He was there
16 for -- I -- I think we only had him for nine months or so, and
17 then he went downstairs to, I think, appellate defense. So I
18 knew him as a counsel down there after he worked for me,
19 but ----
20 Q. Do you have any views about Lieutenant Commander
21 Hernandez that might influence your action in this case?
22 A. No. His -- again, I -- I wrote, I think it was only
23 one fitness report on him. I don't want to get into, you

1 know, his personnel record, but I can tell you it was -- it
2 was a good fitness report.
3 Q. Do you agree with me that he's ----
4 A. Above my reporting senior average for the military
5 folks in the room.
6 Q. Do you agree with me that he's a solid, good naval
7 officer?
8 A. He was when I -- when I knew him, but, you know -- you
9 know, it's somewhat dated.
10 Q. Yeah. So, sir, back to the question of appearance.
11 You indicated, when I asked you about whether it's important
12 in this case to avoid an appearance of partiality, you
13 referenced the rule, the standard for recusal. Do you
14 remember that just now?
15 A. Yes. Yes, sir.
16 Q. Okay. When I asked you previously about your decision
17 to recuse in the Nashiri and Bahlul cases, you said you
18 weren't worried about the legal standard; that you felt it was
19 the right thing to do.
20 A. That's right.
21 Q. So my question for you is: Is it not the right thing
22 to do in this case, notwithstanding your view or the
23 prosecution's view of the legal standard, is it not the

1 appropriate thing to do?
2 A. Again, I -- respectfully, if I thought that was true,
3 then I would have recused myself from -- from the case.
4 Again, I -- that decision as to it being the right thing to do
5 in the other cases was -- was because I had contact on those
6 cases.
7 I -- you know, if I thought about it long and hard
8 enough, I might even conclude that recusal on those cases was
9 required. I just didn't get to that point in the analysis
10 because my contact on those cases was enough to make me say
11 it's the right thing to do. As a prudential matter, I'm
12 recusing myself.
13 Q. Sir, let me ask you directly ----
14 A. I've had no -- I've had no contact on this case, none.
15 Q. Let me ask you, sir, directly: Will you agree
16 voluntarily to step aside as convening authority in this case?
17 A. Well, I haven't done so, so I'm not -- I'm not -- I
18 mean, I guess the answer is no. I'm not sure what you're
19 asking.
20 Q. I'm asking if you will agree to do that.
21 A. If I believe that it's the right thing to do, then --
22 then yes, I will.
23 Q. I'm asking you again: Do you think it is the right

1 thing to do here and will you do it ----
2 ATC [Maj MITCHELL]: Objection. Asked and answered, Your
3 Honor.
4 MJ [COL WATKINS]: You're getting argumentative, Counsel.
5 Let's move on. Sustained.
6 CDC [MR. DIXON]: Okay. Your Honor, this would be a
7 natural time for a break if Your Honor were so inclined, but
8 I'm happy to continue if you prefer.
9 MJ [COL WATKINS]: Can you give me an estimate how much
10 longer direct is?
11 CDC [MR. DIXON]: I would say perhaps an hour.
12 MJ [COL WATKINS]: Okay. Mr. Reismeier, I need to get all
13 my support people fed, so I'm going to take a lunch break.
14 And I need to have defense finish their examination and give
15 the government an adequate opportunity to cross, so I'm trying
16 to think through the time periods here.
17 I think I'm going to recess until 1400 Eastern
18 Standard, and that should give you an opportunity to go check
19 on your business. Would that work for you, to come back at
20 1400, sir?
21 WIT: Yes, sir. I'm at your disposal.
22 MJ [COL WATKINS]: I appreciate that.
23 Is there anything else to take up before I recess for

lunch?

ATC [Maj MITCHELL]: No, Your Honor.

CDC [MR. DIXON]: No, Your Honor.

MJ [COL WATKINS]: Commission is in recess.

[The R.M.C. 803 session recessed at 1236, 25 February 2020.]

[The R.M.C. 803 session was called to order at 1401, 25 February 2020.]

MJ [COL WATKINS]: The commission is called to order. All parties present when the commission recessed are again present. The accused is absent.

During the recess I was informed by my staff that Mr. Khan was requesting to be excused from this session. Mr. Dixon, is that correct?

CDC [MR. DIXON]: Yes, Your Honor. He was having some back pain and some numbness in his feet and requested to go back.

MJ [COL WATKINS]: So this request is at -- was voluntary on his part?

CDC [MR. DIXON]: Yes, Your Honor. And he'll be back in the morning.

MJ [COL WATKINS]: Very well. The witness is on the stand via VTC. Mr. Reismeier, you're still under oath.

Mr. Dixon, you may continue.

1 CDC [MR. DIXON]: Thank you, Your Honor.

2 **DIRECT EXAMINATION CONTINUED**

3 **Questions by the Civilian Defense Counsel [MR. DIXON]:**

4 Q. Good afternoon, Mr. Reismeier.

5 A. Good afternoon.

6 Q. Sir, as we've been discussing throughout the day,
7 you've had connections to the military commissions system for
8 more than a decade; is that correct?

9 A. Yes, that's true.

10 Q. And you've been approached on certain occasions about
11 positions within the military commissions system; is that also
12 correct?

13 A. If I understand what you're saying, you mean like
14 assignments?

15 Q. Yes.

16 A. Yes. Yes. That's correct.

17 Q. Sir, has it been personal and professional interest of
18 yours to assume a position in the military commissions system?

19 A. You know, it was at one point just because it was
20 professionally interesting. Once I retired from active duty,
21 sort of got -- well, maybe a year away from it or so, that
22 interest waned significantly, moved on.

23 Q. And, sir, were -- on the opportunities -- strike that.

1 On the occasions when opportunities did arise, did
2 your potential conflicts of interest prevent you from pursuing
3 those positions?
4 A. Yes. Initially, I was approached -- I believe it was
5 about being a trial judge, and I don't remember how -- I was
6 still on active duty at that point. That request came in
7 through my front office, so I was dealing with The Judge
8 Advocate General of the Navy in responding back to wherever
9 that -- wherever that request was originating. And, yes my
10 response at that point was under the judicial canons, I didn't
11 see any way that I could -- I could sit.
12 It then came up again relative to the appellate
13 judiciary, but honestly, that one -- when that request came
14 in, I -- it was sort of the same thing. It was right before I
15 retired. It came in through the front office, but there were
16 a couple of different people from the front office who were in
17 touch with me, and I was unclear as to what position they were
18 actually talking about, because somebody thought it was
19 legal -- legal -- legal advisor or somebody thought it was
20 convening authority, somebody thought that it was the
21 appellate judiciary.
22 I was personally somewhat interested, believe it or
23 not, in General Baker's job. So I -- yes, I was approached

1 and I -- I -- once it was clear that they were asking about
2 the -- the judicial job, again, my response was the same,
3 which was under the judicial canons, I don't think there's any
4 way I can.
5 Q. So this was in May of 2015?
6 A. Sounds right, yeah.
7 Q. And this is in connection with a position as an
8 appellate judge on the Court of Military Commission Review; is
9 that right?
10 A. That -- yeah, ultimately, that was -- that appeared to
11 be what they had in mind, yes.
12 Q. Sir, who approached you about that possible
13 opportunity?
14 A. Again, I don't remember how that was -- because I was
15 approached by a couple of different people. I -- I believe
16 that Jason Foster was involved in -- in raising the -- the
17 issue, but again, at the same time, I was being approached by
18 my front office, asking about availability. But I'm fairly
19 certain it came from both places.
20 Q. And, sir, who is Mr. Jason Foster?
21 A. Works in the general counsel's office.
22 Q. Is he an attorney in the general counsel's office?
23 A. Yes, sir. Yes.

1 Q. Okay. And when he approached you, do you recall what
2 you said to him?
3 A. I believe we exchanged some -- some e-mails about it,
4 and I think my first response was, you know, basically, hey,
5 I've got to -- I've got to -- I have to look at it. I have
6 some concerns about my conflicts. I think I asked him to send
7 me his phone number because I didn't -- no longer had his
8 phone number at that point.
9 I didn't hear anything back from him for a while. He
10 then got back and, you know, just said, "Hey, sorry. I didn't
11 realize you were waiting for my phone number."
12 And at that point, I -- I think I said, "I have had
13 enough time to sort of think about this. I don't think
14 there's any way I can do it."
15 Q. And so he approached you in early May; is that right,
16 of 2015?
17 A. That date sounds right. It was shortly before I
18 retired, so, yeah, I think that would be right.
19 Q. And it was toward the end of the month that you e-mail
20 him and say, "Okay, I regret I have to decline"?
21 A. I think that's right, because there was a passage of
22 time in between -- in between those -- you know, one, two
23 weeks, something like that, yeah.

1 CDC [MR. DIXON]: Your Honor, for the record, we're
2 referring to AE 037F Attachment B, Tab 6. Bates numbers are
3 approximately 24 to 26.
4 MJ [COL WATKINS]: Thank you.
5 Q. And do you recall, sir, what else you said to him
6 about your contact with Brigadier General Martins?
7 A. Yeah. I'm pretty sure it was that I just had too much
8 contact with him, and some of the cases -- you know, some --
9 some of the -- the rules, you know, that -- that I -- just
10 under the judicial canons, I didn't think there was any way I
11 could do it.
12 Q. Do you recall saying to him specifically, "I've had
13 too much contact with Mark Martins and some others discussing
14 some of the provisions we drafted for the MCA, all of which
15 are at issue in the cases"?
16 A. Yes. Yes.
17 Q. Who are the others that you were referring to?
18 A. Primarily Andrea Lockhart, Commander Lockhart. And,
19 you know, I'm sure there were other conversations with -- with
20 other people along the way. Part of the problem is that --
21 that -- not part of the problem.
22 The answer is that I was -- and I think I said this in
23 one of the e-mails -- I was sort of the last man standing from

1 2006. So anytime somebody had some historical question going,
2 "Hey, do you remember where this came from? Hey, do you
3 remember if this was discussed?" I -- I -- you know, I was
4 the person that people would -- would ask.
5 So I -- you know, but the others was just sort of a
6 nondescript way of referring to everybody else that -- you
7 know, I know I had contact with other -- other people about,
8 you know, little nuggets of history.
9 Q. Sir, you just referenced a moment ago conversations.
10 Those were conversations that were rooted in pending
11 litigation; is that right?
12 A. No, not necessarily. I mean, I can't discount that.
13 Again, the problem is that I wouldn't necessarily have known
14 what the -- you know, what the background was if someone
15 approached me and started asking some questions, right? I
16 wouldn't have necessarily known that. So the answer is, well,
17 probably some of them were, sure.
18 Q. Do you recall writing in an e-mail to Mr. Foster that
19 the conversations were, quote, obviously are rooted in pending
20 litigation, unquote?
21 A. Well, yes. I mean, it's -- some of those obviously
22 were, yeah.
23 Q. And you, therefore, concluded that you would not

1 survive a challenge under the judicial canons; is that right?
2 A. Yes. And there was a specific reason for that, and
3 I -- forgive me. I don't remember what the case name is, but
4 there was a specific case, and I -- from CAAF, and I believe
5 it was Judge Effron who wrote the opinion. He had recused
6 himself under the judicial canons because of his efforts
7 involved in the rule drafting.
8 And the distinction that he drew was, you know, it's
9 one thing to -- if you're drafting rules sort of in a -- in a
10 vacuum and you have no idea who the population of people is,
11 that's one thing under the judicial canons. Federal judges
12 are involved in rule drafting all the time for purposes of --
13 of federal rules. But when you're drafting rules with an
14 understanding of who the population of people is, then under
15 the judicial canons, it becomes untenable for you to be able
16 to serve.
17 So that's the case that was in my mind in saying,
18 look, under the canons, that -- that appearance problem would
19 make it impossible for me to serve as a judge. So, yes, that
20 was -- that was how I came down under the judicial canons.
21 Q. Understood. And it was your discussions about the
22 provisions in the MCA with General Martins and others that
23 caused you to take yourself out of the running for that

1 position; is that right?
2 A. Yes. I would have -- I would have been very
3 uncomfortable under the judicial canons attempting to proceed.
4 Q. When you did that, did you not distinguish convening
5 authority position or the chief prosecutor position from being
6 a trial or an appellate judge in military commissions?
7 A. Yeah. Yes. And that's -- that's what I was just
8 saying, that -- you know, the reason that language was in that
9 e-mail is because I had been approached by different people
10 about different positions, and I wasn't entirely sure what I
11 was being considered for. So, yes, I was just saying under
12 the canons.
13 The other reason I was doing that is that, look, as
14 a -- as a former judge, I'm well aware of the judicial canons
15 and I -- I understand where to look in order to find those --
16 those -- those rules. Because I was writing back to Jason
17 Foster who was not a judge and who was not a former judge. My
18 assumption was that because he was sort of looking at the
19 issue as well, he would be looking at things that would be
20 sort of the -- the place where counsel would end up going to
21 look, state ethics, bar rules, those sorts of things.
22 I was trying to make it clear that, look, there's
23 another body of law that you've got to be aware of, and it's

1 the judicial canons, and I can't-- I can't -- I can't see a
2 way that I can do this under the judicial canons. So I was
3 really just trying to make sure that he understood what it was
4 that I was looking at and drawing a distinction between that
5 and any of the other positions.
6 Q. You mentioned a moment ago that people were coming at
7 you from different places with -- concerning different
8 positions. Were you considered for the convening authority
9 position prior to 2016?
10 A. No. I -- I -- to my knowledge, no. I think that was
11 just crossed wires someplace.
12 Q. So prior to your retirement, you were not up for the
13 convening authority ----
14 A. Not to my knowledge. No, not to my knowledge.
15 Q. And, sir, are there any military JAG officers who are
16 convening authorities?
17 A. Sure, yeah. If you were a commanding officer of a
18 region legal service office, for example, or a defense service
19 office, yeah, they would be convening authorities. And I'm
20 sorry, one of our flag officers, too, as commander of a naval
21 service command would be a convening authority as well.
22 Q. So as I understand it, convening authorities can --
23 can in -- in the courts-martial system serve multiple roles;

1 that is, they can act as convening authority but can also
2 have, simultaneously, command responsibility?
3 A. That's right.
4 Q. And that's not the situation with respect to you,
5 though, is it? You have no command responsibility here, do
6 you?
7 A. That's hard for me to answer -- to answer. I -- not
8 in the normative way that somebody in uniform does. I'm not a
9 commanding officer.
10 Q. Understood.
11 A. Yeah.
12 Q. And, sir, when you declined the -- to be considered
13 for the CMCR position, you referenced again, for a second
14 time, your connection to General Martins; is that right?
15 A. You say for a second time. I don't -- I'm not sure
16 that I referenced it the first time, but I know I did that
17 time. It stands to reason I probably mentioned it both times.
18 Q. You said you recall saying -- writing, I should say.
19 Do you recall writing, I've been in direct
20 conversations with litigants about provisions at issue in the
21 cases, and in Mark's case, with the Chief Prosecutor, whose
22 reach goes into all of the cases, end quote? Do you recall
23 saying that, writing that?

1 A. Yes. Yes.
2 Q. By "all of those cases," that would include Mr. Khan's
3 case; is that right?
4 A. I -- I -- I don't know. I wouldn't -- I would not
5 have had any way of knowing at that point in time if
6 Mr. Khan's case was in existence. Again, I -- to my
7 knowledge, I never heard of it until I got to this job.
8 Q. And ultimately you concluded that it would not be
9 acceptable for you to serve as a judge in the military
10 commissions system; is that right?
11 A. Not under the judicial canons, that is correct.
12 Q. Okay. So is it fair to say that by the spring of
13 2015, by May of 2015, that you recognized and understood that
14 you had a conflict problem, at least when it came to serving
15 as -- in a judicial role in the military commissions system?
16 A. Yes. Absolutely.
17 Q. That was not the end of your consideration for
18 opportunities in the military commissions system, was it?
19 A. No. I was approached again -- whenever that was --
20 2016, I guess.
21 Q. And you had indicated, had you not, to Mr. Foster that
22 you would be interested in whatever opportunities might pop
23 up?

1 A. This is where I say, you know, things sort of changed
2 over time. So that's where I was in 2015, before retiring.
3 By 2016 -- and again, my reference to the convening authority
4 job in -- in 2015 was -- was not so much to say I'm interested
5 in these other jobs. It was to draw the distinction in the
6 ethics rules that -- that applied, and trying to make sure
7 that Jason Foster and the folks at OGC understood that
8 distinction, understood that I was -- that I was saying, look,
9 I can't do this under -- under commissions.
10 In other words, I -- I wasn't trying to just simply
11 dodge the -- the assignment. I wanted to make sure they
12 understood, you know, what it was that I thought precluded
13 the -- the assignment.
14 By 2016, yeah, my attitude had kind of changed. And
15 when I was approached, my response was if asked to serve, I'm
16 willing to serve, but I'm not applying for the job.
17 Q. Let me go back to 2015. You distinguished between a
18 judicial position, being a judge on the one hand and, on the
19 other hand, possibly being convening authority or chief
20 prosecutor; is that right? Is that what you explained ----
21 A. Yes.
22 Q. ---- to Mr. Foster?
23 A. Yeah, whatever -- or whatever the other -- yeah.

1 Q. There really was no opportunity to be the Chief
2 Prosecutor, is that right, because that was General Martins?
3 A. I -- I -- at that point, I -- I don't know that I knew
4 how long he was going to be there. I -- you know, whether
5 there was no possibility, I -- I don't know that. I know he
6 was still there.
7 Q. Well, is it fair to say that your interest, really at
8 that point, was in being the convening authority?
9 A. No. No. It was just if -- if something were
10 available within the military commissions system, that, you
11 know, seemed like something suitable for me to do, I would be
12 interested. It really wasn't about convening authority,
13 because at that point no one actually had approached me about
14 it. I didn't realize that, but no one had actually approached
15 me about it. But again, as I said, I was also sort of
16 interested in General Baker's position, so I, you know ---
17 Q. And becoming the convening authority would not have
18 presented, in your mind, the same conflict-related problems
19 that being a judge would have; is that right?
20 A. No. That's -- I'm sorry, I don't know if I'm
21 answering that right. That is correct.
22 Q. Okay. And throughout this time your relationship with
23 with Brigadier General Martins continued and, in fact,

1 deepened; is that right?
2 A. The relationship, such as it was, continued. I
3 wouldn't say that it -- that it deepened, no.
4 Q. Did General Martins reach out to you in September of
5 2015 for substantive advice concerning the Bahlul case?
6 A. Yes, he reached out. I'm not sure -- I -- the -- the
7 issue, whether it was substantive advice, I'm not sure. We
8 had discussion; you know, that's fair to say.
9 Q. And that discussion, did that center around the issue
10 of conspiracy as a law of war violation, as that issue was in
11 the circuit at that time?
12 A. Yes, that's correct.
13 Q. Okay.
14 A. And my recollection -- I'm sorry. My recollection is
15 that when he reached out initially he was -- he thought that I
16 may have been the person who was the author of the position
17 that the -- the service judge advocates took relative to the
18 inclusion of that in the 2006 Military Commissions Act. And
19 I -- I think that's how -- how this exchange started.
20 And my response back to him was that wasn't me, that
21 was done before I got to town. That was somebody else. But
22 I -- I was aware of it.
23 Q. Did you attend a briefing in October at the Office of

1 the Chief Prosecutor ----
2 A. I did.
3 Q. ---- to discuss the conspiracy issue?
4 A. I -- I did, yes. I -- I don't -- the -- well, yes.
5 Yes, I did.
6 Q. You attended that briefing, did you not, as a subject
7 matter expert?
8 A. Yeah. I think that's fair to say.
9 Q. That's how you referred to yourself, is it not ----
10 A. Yep.
11 Q. ---- as a subject matter expert?
12 A. Yeah.
13 Q. For the prosecution?
14 A. I -- it was -- it was with the -- the -- I mean, the
15 meeting was with the prosecution, so I don't, you know ----
16 Q. And did General Martins or anyone in the Office of the
17 Chief Prosecutor send you documents prior to ----
18 A. Yes.
19 Q. ---- the briefing?
20 A. Yes. There was a voluminous amount of material that
21 they -- that they sent, and I -- one of which was some
22 briefing binder of some sort. And I remember looking at the
23 first -- looking at the cover page and a couple pages and just

1 wondering, I don't understand what this is for.
2 I don't -- I don't -- you know, my understanding of
3 the purpose of the discussion was -- was -- was that it was a
4 fairly narrow issue. I don't know what the purpose of that
5 binder was.
6 Q. And when you attended the briefing in October of 2015,
7 did the prosecution share with you case-related documents?
8 A. They provided a lot of documents. My recollection of
9 that whole discussion, though, was that it was really
10 centering around the offense of conspiracy, where it came from
11 under the law of war, what the historical antecedents were,
12 what -- what -- what forms it took. I mean, again, it was a
13 -- you know, it was a -- it was a legal discussion about --
14 about the -- the offense.
15 I don't recall there being a lot of talk that was
16 actually specific to Mr. al Bahlul. I just don't -- that's
17 not my recollection of it. There may have been some
18 discussion that was specific to him, but I don't -- I --
19 that's not my recall of the -- of the discussion. I -- I was
20 focused on the -- on the substantive legal issue.
21 Q. It was a briefing about litigation in his case,
22 though; is that right?
23 A. That's right. That's right. That's why I recused

1 myself from that one.
2 Q. Did -- did the prosecution provide you with documents
3 that were marked as FOUO or as privileged?
4 A. I don't remember seeing things marked as privileged.
5 I'm fairly certain that some of them may have been marked
6 FOUO. But I -- I don't -- I don't have an independent recall
7 of how exactly those things were marked. You have the
8 documents, I presume. You'd have to look at them and see what
9 the markings are.
10 Q. Do you recall the prosecution providing you with a
11 164-page slide presentation concerning the details of the
12 Bahlul case that was marked as privileged?
13 A. No. Again, I don't remember the marking. I do
14 remember that -- that slide briefing was the one that I was
15 saying I don't -- I don't know what the purpose of that --
16 that binder was, because it didn't seem to have a whole lot to
17 do with what -- what I thought was the issue we were there to
18 talk about.
19 So, yes, I -- I'm sure we're talking about the same
20 slide deck. I don't recall what the -- what the markings were
21 on it.
22 CDC [MR. DIXON]: Your Honor, just for the record,
23 we're -- I'm referring to, in my questioning, to AE 037F

1 Attachment C, Tabs 28, 29, 30, through 35.
2 MJ [COL WATKINS]: Thank you.
3 Q. Did General Martins or anyone in his office send you
4 additional materials after the briefing?
5 A. Yeah. I believe that I asked specifically about -- if
6 memory serves me right -- I don't know if this was the one I
7 asked about standard of review. I had some, again, some legal
8 question, and then I believe he sent some other cases that he
9 thought would be of -- of significance.
10 And again, they were -- if I'm recalling the right
11 batch of -- of attachments, these were, again, historical --
12 these were -- were documents that showed historically how
13 conspiracy had been handled over the years.
14 Q. They were also case-related documents, were they not,
15 things like 302s or photographs?
16 A. I don't -- again, I don't recall those. If he sent
17 those, I don't recall ever looking at them.
18 Q. Okay. And it was later that month in October of 2015,
19 is it not, that you were contacted by the Washington Legal
20 Foundation about possibly signing on to the Bahlul amicus
21 brief?
22 A. Yeah, I don't remember the date but that sounds right.
23 Q. It was in response to that that you had the e-mail

1 exchange that we addressed earlier between yourself and
2 General Martins?
3 A. That's right.
4 Q. Whether he had any objection or ----
5 A. That's right.
6 Q. Okay. And, in fact, I think we talked about earlier
7 in November, you did sign onto that amicus brief in support of
8 the government's position; is that right?
9 A. That's right.
10 Q. Okay. We covered that earlier.
11 Did General Martins reach out to you again a few
12 months later for assistance?
13 A. I don't remember exactly what the date was, but, yes,
14 that -- that had to do with the Nashiri case.
15 Q. And what specifically in the Nashiri case?
16 A. I believe that that one was the timing of an offer of
17 proof with regard to jurisdiction.
18 Q. And do you recall General Martins forwarding to you a
19 decision by the Court of Military Commission Review following
20 that discussion?
21 A. Yeah, if that was the -- yes, I know that he forwarded
22 me one after that -- that discussion. I -- if -- are we
23 talking about the one where he -- where -- I'm not sure we're

1 talking about the same document. He had -- we had the
2 discussion about it. There was the moot. Then before the
3 court actually cancelled the oral argument -- there was no
4 oral argument. They issued their decision. So if you're
5 talking about that decision, then yes, he sent that.
6 Absolutely.
7 Q. And you did participate in the moot prior to that; is
8 that right?
9 A. I did, yes.
10 Q. And in connection with that moot, did General Martins
11 or anyone in the Office of the Chief Prosecutor provide you
12 with case-related materials?
13 A. Yes, I'm sure they did.
14 Q. And when General Martins reached out to you and asked
15 for assistance, you were happy to oblige; is that right?
16 A. Yeah. I guess, yes. I don't know if "happy" is the
17 word, but sure, yeah.
18 Q. And it was shortly after that, was it not, on
19 July 3rd, 2016, that General Martins wrote to you to express
20 his thanks for your assistance?
21 A. That sounds right because I know there was a thank-you
22 note in there at some point. I don't remember the date, but
23 that sounds right, yeah.

1 Q. Do you recall what the thank-you note said?
2 A. I'm not sure which one this -- this is. I -- the
3 answer is yes. I'm not sure which -- which one came --
4 because there were -- I think there were two -- two e-mails
5 that I'm sure you want to talk about, but yes. I'm not sure
6 which one this is, but yes, I -- I remember what it said.
7 Q. Do you recall him writing to you saying, quote, You
8 are such a good friend -- you are such a friend, Chris, and
9 when this marathon ends, there will be time and opportunity
10 for me to show you how much you have meant to me, end quote?
11 A. Yes, I remember him saying that.
12 CDC [MR. DIXON]: Your Honor, that's AE 037F Attachment B,
13 Tab 4, Bates 18.
14 Q. And do you recall your response to General Martins?
15 A. Yeah. I think I said -- well, let me back up.
16 There were a couple of these e-mails that -- that, you
17 know, he refers to me as "brother." I referred to him as --
18 as "brother." Understand that that's an Army thing. I -- the
19 judge probably knows that better than I do. I'm a Navy guy.
20 We would call each other shipmate. But apparently the Army,
21 they refer to each other as brothers. I think the infantry is
22 more prone to that than others. General Martins would refer
23 to just anybody as brother, particularly when he was reaching

1 out and soliciting something -- something from you.
2 So yeah, he would call me brother, and, you know, when
3 I was talking to him, I would call him brother. So I think
4 this is one where I said something like, "Yeah, hey, brother,
5 I'm happy for -- I'm glad for our friendship."
6 He had a way of writing in a fairly flowery way, so
7 when I wrote back to him, I wrote him the same way.
8 Q. Do you recall writing to him, quote, Happy to help in
9 any small way I can. I remain a true believer in the
10 commissions as a valuable tool for our forces and feel
11 obligated to do what I can to support them and those trying to
12 make them work, end quote? Do you recall that?
13 A. Yes, I do.
14 Q. And when you refer to "those trying to make them
15 work," you're referring to General Martins; is that not right,
16 and the prosecution?
17 A. No, sir. I would be referring to you, I would be
18 referring to the judge. I'm born in the same system you are.
19 It only works if there is a defense bar that does its job and
20 does its job well.
21 So, yeah, they're part -- you may not see yourself
22 this way, but I see you as somebody who is supporting the
23 system as well.

1 Q. Do you see the military commission defendants the same
2 way? They're not trying to make the system work, are they?
3 A. I can't speak to what they -- what they're doing one
4 way or the other. I would assume that there probably aren't
5 many defendants and/or accused who are active supporters of
6 any system that's prosecuting them. I -- but I don't -- I
7 can't speak to any individual one. I don't know what they're
8 doing.
9 Q. Mr. Khan may be an exception to that, though, however;
10 is that right?
11 A. Well, I guess that's part of what I'm getting at. I
12 mean, he's pled guilty. He's cooperating. I -- you know,
13 I -- I don't know. Maybe -- maybe he is.
14 Q. And, sir, did your name come up as a possible
15 candidate for the convening authority position that same month
16 after that exchange?
17 A. I'm sorry, which month?
18 Q. July of 2016. Subsequent to the e-mail ----
19 A. That sounds right. I know it was 2016. I can't -- I
20 don't have an independent recollection of whether it was July,
21 but it was sometime in that summer, yes.
22 Q. And who contacted you about the convening authority
23 position in 2016?

1 A. I believe that Jason Foster sent me -- sent me a note
2 asking me to contact him.
3 Q. And you interviewed for the convening authority job,
4 did you not, the following month, August?
5 A. Again, I would say that differently. I was
6 interviewed. I -- I don't -- the line that I used with Jason
7 is the same line that I used with Jen O'Connor, who was the
8 general counsel; same line I used with Paul Ney, who is the
9 general counsel now, which is, I'm not applying for the job.
10 If asked to serve, I will serve.
11 But I like retirement, I like where I am in life. I'm
12 not looking for employment. But if I'm asked to serve, I will
13 serve. So, yes, they interviewed me, but ----
14 Q. Who interviewed you?
15 A. ---- I wasn't banging on their door.
16 Q. Who interviewed you?
17 A. The first time around, that would have been with --
18 with the general counsel. At that point, it was Jen O'Connor.
19 The -- there are a number of other people in the room for
20 that -- that meeting. I believe the -- I can't believe I'm
21 forgetting his name. Bob Taylor was -- was in there, who was
22 her number two. I believe there were a couple other people,
23 but I don't -- I -- I don't remember who all was in there that

1 time.
2 Q. And you indicated a moment ago that you were not
3 looking for this position, I think is -- is the way you
4 described it. But you certainly had expressed interest, had
5 you not, in a position in the military commissions system,
6 convening authority being one possibility?
7 A. Yeah. Yes, prior to retiring. But as I said, you
8 know, it was a lot of water under the bridge in the ensuing,
9 you know, year and some -- and some change. I wasn't in the
10 same place in my life.
11 Q. And were you offered the convening authority position
12 in 2016?
13 A. No, I was not.
14 Q. You interviewed for the position in August. Did --
15 and you were not offered the position. Is that because of
16 your conflicts, including your relationship with General
17 Martins?
18 A. I -- I don't know. You'd have to ask them. I
19 disclosed my conflicts. I've been very up front with the --
20 with the -- the contacts I've had with the system over the
21 years. I don't -- I -- I don't know. I wasn't the
22 decision-maker. I don't know why they made the decision they
23 made. I assume because they thought they had a better

1 candidate.
2 Q. Do you recall that you followed up with Mr. Foster in
3 September of 2016 about the status of your candidacy for that
4 position?
5 A. I did, because by that time I had been approached by
6 someone to come out of retirement and begin doing defense
7 cases again. So I was just trying to figure out, okay, if I
8 start taking on cases and encumbrances, I don't know what my
9 timeline is going to be. So, yeah, I just said, "Hey, I
10 haven't heard anything. What's the status?"
11 I think I -- I believe I inquired a couple of times
12 and was, you know, kind of told, "Hey, it's still percolating,
13 still percolating," and finally they went a different
14 direction.
15 Q. When you reached out in September, do you recall what
16 Mr. Foster's response was concerning the status of your
17 candidacy for the convening authority position?
18 A. I -- my recollection is I got the same basic response
19 from him and from the other person at general counsel's
20 office, which was, you know, we -- "We continue to think
21 you're the right candidate, but, you know, they're trying to
22 figure out what to do about the -- about the conflicts."
23 Q. So the general counsel's office in 2016 was worried

1 about potential conflicts of interest in connection with the
2 convening authority position; is that right?
3 A. I presume so. I don't ----
4 Q. They did not offer you the position of convening
5 authority in 2016?
6 A. That is correct.
7 Q. Do you recall in October of 2016, following up with
8 Mr. Paul Lekas about the status of your candidacy for the
9 convening authority position?
10 A. Yes. Yeah, that's what I said. I had -- I had a
11 couple of follow-ups just trying to figure out, okay, what --
12 you know, "Have you guys made a decision or not?"
13 Q. And do you recall his response to you?
14 A. Yeah. Again, it was the same thing. "We think you're
15 the right candidate, but they've got concerns about the
16 conflicts."
17 Q. And did you acknowledge the magnitude of that problem
18 in a reply to him?
19 A. I don't know how to answer that. I have acknowledged
20 the issue with regard to the likelihood of the defense raising
21 this from the time I was first -- first approached and even
22 with the -- the -- the judicial side of things.
23 Q. Do you recall writing to him, acknowledging that it

1 was not a simple thing to resolve?
2 A. Yes.
3 Q. Your conflicts or potential conflicts related to the
4 convening authority position?
5 A. Yeah. I think what I said is I recognize this is not
6 a simple thing to resolve -- for them, it's not a simple thing
7 to resolve.
8 Q. Did you have a further follow-up concerning this issue
9 in November of 2016?
10 A. It sounds right because -- that sounds right, yeah.
11 Q. With Mr. Lekas?
12 A. That sounds right, that I would have gone back again
13 and just said, hey, what -- where are we?
14 Q. And the response from him was essentially the same?
15 There's ----
16 A. Yes.
17 Q. Remains concern about the potential to make hay
18 about ----
19 A. Yes.
20 Q. ---- potential conflict, both at the trial and
21 appellate stage. That's what he said?
22 A. Yes.
23 Q. All right. And do you know what he meant by "hay"?

1 Was he referring to challenges to your ability to serve as
2 convening authority?
3 A. Yeah, I think in his mind it would have been what
4 we're doing right now.
5 Q. And when he referred to that as "hay," did you
6 understand that to be -- to mean that challenges to your
7 ability to serve as convening authority were part of a defense
8 litigation strategy, or would be part of a defense litigation
9 strategy?
10 A. Yeah. I -- I assume that that's what he meant, yeah.
11 Q. Do you believe that Mr. Khan's challenge to your
12 ability to serve as convening authority is a defense
13 litigation strategy on his part?
14 A. I don't know how to answer that. I mean, I would
15 imagine in some respects the answer is probably yes, right? I
16 mean, every -- everything you do in litigation is a choice.
17 Q. Is it?
18 A. Yes. Everything you do in litigation is a choice of
19 some sort. But I'm not -- if -- if what you're suggesting
20 is -- if you're asking whether in my mind I think sort of
21 pejoratively that this is just a strategy as opposed to a
22 legitimate, you know, attempt to have this dialogue and sort
23 things out, I -- I make no judgment on that one way or the

1 other. That's not my lane; that's yours.
2 From my perspective, you have the right to do what it
3 is you're doing. I am happy to submit to this -- to this
4 discussion. You have every right in the world.
5 Q. So you're not going to ----
6 A. It doesn't bother me. It doesn't bother me in the
7 slightest.
8 Q. So you're not going to hold this against Mr. Khan in
9 any way?
10 A. No. No.
11 Q. Sir, do you recall further communication with ----
12 A. If I can -- let me -- I -- one of the reasons why my
13 response when asked about this -- this job, both in 2016 and
14 in two thousand -- whatever it was -- 2018, what -- you know,
15 in saying if asked to serve I will serve, it was because I was
16 clear in my mind that this was going to be one of the costs of
17 serving, and that I was not applying, because I was not
18 looking to affirmatively bring this on anyone, including on
19 myself.
20 But if asked to serve and everyone understood that
21 this was going to be the cost of it, look, I'm -- I'm willing
22 to do it. I'm willing to serve. I'm not going to say no
23 if -- if I think that there's a legal basis for me to serve.

1 But I understand that this -- this goes with the territory,
2 and that I -- I get it. It doesn't bother me. I've been in
3 your shoes before, sir.
4 Q. Well, time and again, you were considered for
5 positions, judicial or convening authority positions, and your
6 potential conflicts stymied those efforts; is that right?
7 A. I -- I -- yeah, I guess you could look at it that way,
8 sure.
9 Q. You, despite that, continued to express interest in a
10 position as convening authority in the military commissions
11 system; is that right?
12 A. Again, I don't -- I don't -- I don't know how to be
13 any more clear -- clear about this. In -- in 2015, there was
14 a snapshot in time before I retired where I said, you know,
15 I -- you know, I would be interested in these other positions.
16 By 2016, I had moved on in my life. There was also
17 the realization of what exactly this position was going to
18 bring upon me, and my attitude had changed significantly to
19 I'm not applying. If -- if asked to serve, I'll serve, but
20 I'm not applying.
21 So when you say time -- time and again I've expressed,
22 I just -- it's the way in which you're phrasing it that I take
23 issue with. I don't know how to say it any more clearly than

1 what I've said.
2 Q. But you did continue to express ----
3 ATC [Maj MITCHELL]: **[Microphone button not pushed; no**
4 **audio.]**
5 CDC [MR. DIXON]: Is there an objection?
6 MJ [COL WATKINS]: Apparently not.
7 Q. You did continue to express ----
8 MJ [COL WATKINS]: I might do it sua sponte pretty soon,
9 though. You've asked the same question about four times in a
10 row.
11 Q. I'm going to ask a different question, Your Honor,
12 which is: You did express concern about not doing anything to
13 complicate things further, didn't you, at the end of November
14 in 2016?
15 A. Yes. And again, that was in the context of, you know,
16 what I was saying. I -- I understand the baggage that I --
17 that I bring to this job. I'm aware of it. And I am not
18 affirm -- I was not affirmatively trying to reach out and sell
19 somebody on the wisdom of hiring me.
20 All I was trying to say was, hey, look, you understand
21 what my background is. If you still want me to serve, I will
22 serve. But I'm trying to be clear about what it is that I'm
23 bringing to the job. That's -- yeah.

1 So that was my way of saying I'm not looking to push
2 this on you.
3 Q. Okay. And your -- in 2018, you were approached again
4 about the convening authority position; is that right?
5 A. Yes, sir.
6 Q. And at that time, your candidacy went forward; is that
7 right?
8 A. Well, yes.
9 Q. At that time, conflict issues did not prevent you from
10 getting the position; is that right?
11 ATC [Maj MITCHELL]: Your Honor, objection to speculation.
12 You don't know why he was not hired the first time.
13 MJ [COL WATKINS]: You can rephrase to ask about his
14 personal knowledge. I'll sustain the objection.
15 Q. Do you know why you were offered the position in 2018?
16 A. I assume they thought I was the, I don't know, the
17 right candidate. Maybe I was the only candidate. I don't --
18 no, I guess I really don't know. No.
19 Q. To your knowledge ----
20 A. I can tell you it was the exact same conversation in
21 2018. Here's my background, here are the potential issues.
22 If asked to serve, I will serve, but I'm -- I'm not applying.
23 I'm not asking for the -- for the job. It's the same

1 conversation.
2 Q. Understood. So if I understand correctly, the bottom
3 line is that there was, in your mind, conflict that prevented
4 you from serving as a judge but not as convening authority and
5 that by 2018, the general counsel's office had reached the
6 same conclusion; is that right, to your knowledge?
7 ATC [Maj MITCHELL]: Your Honor, I'm going to object to
8 compound question. I don't understand what he's trying to
9 ask.
10 MJ [COL WATKINS]: Break your question into two.
11 CDC [MR. DIXON]: Pardon me, Your Honor?
12 MJ [COL WATKINS]: Break your compound question into two
13 single questions. Sustained.
14 Q. Mr. Reismeier, there was no question in your mind, was
15 there, you were conflicted from serving as a judge in the
16 military commissions system?
17 A. I think that's fair to say, yes.
18 Q. And it was perfectly okay in your mind and in the mind
19 of the DoD General Counsel's office, to your knowledge, to
20 serve as convening authority despite those same conflicts?
21 A. Again, I don't know how to answer that. I mean,
22 they -- they hired me. I think they did so with an
23 understanding of -- of what the issue was. The problem is

1 the word choice. I don't know whether it was perfectly okay.
2 I don't know if it was perfectly acceptable. I don't know if
3 it was marginally acceptable. I don't -- I don't know.
4 All I can say is they were aware of it and they hired
5 me.
6 Q. All right. I'm going to ask you one final question
7 and that is: Sir, in your view, did the conflicts that
8 prevented you from accepting a judicial position in the
9 commissions -- a judicial position in the commissions have no
10 bearing or relevance on your service as convening authority?
11 A. It's -- the problem is with the words that you're
12 using. It's -- it's not the -- they're the same conflicts.
13 What's different is the rules that apply. The judicial canons
14 are different than the rules that apply to the accuser concept
15 as a type-three accuser for -- for a convening authority.
16 They're different in the statute. They're different in the
17 rules. The underlying issues, the underlying facts may be the
18 same. Just the -- the legal rules are different.
19 Q. Understood. Thank you.
20 CDC [MR. DIXON]: Thank you, Your Honor.
21 MJ [COL WATKINS]: Government, are you prepared to cross?
22 You'd mentioned something about needing a short recess.
23 ATC [Maj MITCHELL]: I just want a very short recess, Your

Honor, just to cut down my questions.

MJ [COL WATKINS]: All right. We'll take ten minutes for everybody to have a chance to take a comfort break.

Mr. Reismeier, thank you. We'll be back with you in about ten minutes.

WIT: Understood, sir. Thank you.

MJ [COL WATKINS]: The commission is in recess.

[The R.M.C. 803 session recessed at 1448, 25 February 2020.]

[The R.M.C. 803 session was called to order at 1500, 25 February 2020.]

MJ [COL WATKINS]: The commission is called to order. All parties present when the commission recessed are again present. Mr. Khan is absent.

Mr. Dixon, that's still a voluntarily absence, correct?

CDC [MR. DIXON]: Yes, Your Honor.

MJ [COL WATKINS]: The witness is on the stand via VTC and is still under oath.

Major Mitchell, are you crossing?

ATC [Maj MITCHELL]: Yes, Your Honor. May I approach?

MJ [COL WATKINS]: You may proceed.

ATC [Maj MITCHELL]: Thank you.

1 **CROSS-EXAMINATION**

2 **Questions by the Assistant Trial Counsel [Maj MITCHELL]:**

3 Q. Good afternoon, sir. Are you hearing me okay?

4 A. I am, yes. Thank you.

5 Q. Thank you. My name is Major Richard Mitchell. I
6 represent the United States Government in this case. I am the
7 assistant trial counsel. The trial counsel in this case is
8 Commander David O'Dowd, okay?

9 A. Yes, sir.

10 Q. Thank you for being here. I know the defense did a
11 thorough job. I just have a few questions for you, but I may
12 be jumping around a little bit. Okay? So bear with me.

13 A. Okay.

14 Q. To -- to orient you for my first question, you
15 mentioned before you didn't know Majid Khan nor what he was
16 charged with until you became the CA, correct?

17 A. That's correct.

18 Q. Okay. Now, does the knowledge of Majid Khan and the
19 fact that he's been found guilty of various offenses affect
20 your ability to undertake the role of a convening authority in
21 an impartial manner?

22 A. No.

23 Q. You will characterize yourself as having lots of

1 court-martial litigation experience and knowledge?
2 A. Yes. That's fair to say.
3 Q. You have knowledge and understanding of the role of
4 the convening authority in the court-martial and now in the
5 military commission context?
6 A. I do.
7 Q. Now, during the -- during the interviews at the
8 Pentagon -- you said you had a few interviews for the
9 convening authority position, okay? Is that right?
10 A. Yes, two of them.
11 Q. Two of them, right.
12 During those interviews, did anyone in the Pentagon
13 express any opinions about a desired result in this case or
14 any case?
15 A. No, not in this case, not in any case.
16 Q. Now, you also -- you also mentioned that you're also
17 the director of Office of The Military Commissions; is that
18 right?
19 A. That's right.
20 Q. And in that office you make decision -- resource
21 decisions on -- for the prosecution and the defense?
22 A. Right. And for my immediate staff, for, you know,
23 court admin, I mean, you know, a host of people that are

1 affected by those sorts of resourcing decisions.
2 Q. Okay. Now, let me jump to 2008 when you were with the
3 sub-working group. The -- would you agree that the
4 sub-working group, as how explained it on direct, had a narrow
5 focus within the DPTF?
6 A. Yes. That would have been -- 2009 was -- January 2009
7 was when the -- the Task Force was created. So yes, it was
8 a -- it was a very narrow focus of that sub-working group.
9 Q. Okay. And you mentioned that one of the products that
10 came out of that was a comparison between Article III courts,
11 military commissions, and I think you might have mentioned the
12 UCMJ?
13 A. Yeah. The -- the way that the -- the assignment
14 worked under the executive order, you know, the Task Force was
15 supposed to look at all lawful options with regard to law of
16 war detainees, and then it listed a number of -- of things
17 that we were supposed to look at. So it would have been -- I
18 said "we," the Task Force writ large. So, you know, they
19 would have been looking at whether there should be detention
20 at all; if there is going to be detention, where that
21 detention would be; rehabilitation and release.
22 You know, the trials was a small subset of -- of all
23 of that. And with -- within the trial of detainees, that's

1 where it sort of broke down into, okay, some of the options
2 were everything from no trials at all, simple law of war
3 detention, to whatever sort of forum you -- you wanted to --
4 to look at, which is how we ended up saying, okay, these are
5 the options that we know that exist in the world, and that's
6 what ended up on that sheet with the -- you know, whatever it
7 was, four or five different options.
8 Q. Right. And you're saying that's writ large, but you
9 were specifically in -- when you were with the sub-working
10 group, you -- I guess you -- you know, you were part of that
11 mission, but your immediate mission was -- was the -- that
12 comparison between Article III, military commissions, and the
13 UCMJ, or did you have ----
14 A. Well, yes and no. Yeah, the -- what I was trying to
15 articulate is where my little sub-working group fell within
16 the context of the entire, you know, Task Force. So we just
17 had this little slice of it.
18 So it started out with a comparative analysis, and
19 going, look, these are all the options. But at some point,
20 the decision was made to, okay, let's -- let's look at
21 military commissions as the potential vehicle for dealing with
22 people who were going to be -- detainees who are going to be
23 charged, and then, okay, what would those commissions look

1 like. So, yeah, it was -- it was -- it was fairly narrow and
2 then got narrower as, you know, the decision was let's go
3 ahead and try and perfect military commissions.
4 I don't know where that decision came from. I don't
5 know where that -- I assume it came from the White House
6 level, someone said, okay, let's perfect military commissions.
7 All I know is that's -- that was the mission subset that --
8 that I got at my level.
9 Q. Thank you, sir. You -- you talked about -- you
10 discussed a little bit about the 505 rule-making process that
11 you had a part to play in 2009. Do you agree that the 2009
12 rules, especially 505, granted some additional rights or
13 protections, I should say, to an accused as compared to 2006?
14 A. Yes, I do.
15 Q. Would you say the same about the majority of the
16 changes that came from -- that changed from 2006 to 2009?
17 A. Yeah, I would say the majority of them. The whole --
18 the whole reason, you know, for those changes was the -- the
19 Administration came in in 2009 and wanted to -- they wanted to
20 make some changes for the better because they were -- they
21 were not happy with the 2006 Act or the -- or the rules
22 that -- that followed.
23 And we had at the ready -- I mean, you know, everybody

1 knew what the -- what the issues were that the services really
2 disagreed with in 2006, so it really wasn't a heavy lift in,
3 you know -- really started in 2008 by briefing the transition
4 team.
5 But then in 2009, when the new Administration came in,
6 it really wasn't a heavy lift to go, well, here, these are the
7 things that ended up on the cutting room floor back in 2006
8 that the last Administration would not back, and -- and
9 honestly, Congress wouldn't -- wouldn't back. So we just
10 swept those up and started moving forward to go, okay, we need
11 to fix these rules.
12 Q. Now, when you consider your -- your time at the -- I
13 should say when you consider your -- your assignment to the
14 DPTF and its professional work, do you believe you'll be able
15 to make impartial decisions on this case, the Majid Khan case?
16 A. Yes. And I -- I -- and I would say that for -- for a
17 couple reasons.
18 One is that, again, during that time frame, I -- I
19 didn't know about this case. I didn't know about this
20 particular, you know, detainee. I didn't know anything about
21 him. So the work that was done there in -- in no way related
22 to -- to this particular case.
23 The work that I was doing there at that point really

1 didn't relate to any of the cases. I was clear in my mind
2 that what we were looking at in trying to craft rules was to
3 create -- to the extent that we could, try and create -- and
4 consistent with the guidance we were getting from our
5 principals, was to create sort of an enduring commissions
6 process that really -- it didn't matter about these cases one
7 way or the other. That was not the point. The point was to
8 create an enduring system that would -- that would function.
9 Honestly, in some ways, we probably missed that mark,
10 but that's -- I -- you know, that was the -- the decision that
11 was made by people who passed the laws and who -- who gave us
12 direction on the -- on the rules, but it had nothing to do
13 with this particular case.
14 The other is that, you know, the things that came out
15 of the rule drafting and the things that went into the statute
16 drafting, those don't reflect some personal part of me or
17 personal belief on my part one way or the other. The -- I was
18 a staff attorney working on these products and was doing what
19 I understood my department wanted to be done.
20 No one came to me and said would you mind designing a
21 commission process that reflects what it is that you
22 personally believe. Nobody ever asked that. I was just
23 simply executing the -- the mission of my department. And by

1 the time we got to 2009, the guidance was very clear as to
2 what portions of the statute they wanted amended and what
3 portions they wanted left alone.
4 I -- yeah. There's nothing there that reflects my
5 personal views, my personal value system. I -- you know, I
6 was a staff attorney.
7 Q. Yes, sir. Let's go to -- well, let me ask you this:
8 The -- in the future -- let's say the hypothetical, I
9 should -- I should say -- the USCMCR says one of these
10 provisions that you may have worked on is -- was unlawful.
11 Would that bruise your ego at all?
12 A. No, I -- that's their -- that's their job. I have --
13 I have no personal interest in the way any of those provisions
14 are interpreted. Whether any of them survive appellate
15 review, I have no personal interest at all. There's nothing
16 in that act that reflects my personal view -- that was my job
17 as a -- my professional job as a -- as a staff attorney.
18 I presume going -- going into this that judges at both
19 the trial and the appellate level are going to make all sorts
20 of decisions in applying or rejecting rules that's going to
21 significantly alter aspects of the -- the Act or the rules.
22 That's fine. That's what they're paid to do. That's the --
23 that's what makes the system work.

1 So no, I have no interest in it whatsoever.
2 Q. Let's go to your relationship with Brigadier General
3 Mark Martins. You worked with him before. I think you
4 started -- you said started in 2010?
5 A. Yeah, I think I was ----
6 Q. 2009?
7 A. I'm sorry, 2009. I think it was January of 2009, was
8 the first time I met him. It was related to the Task Force,
9 so it was either -- it was either when the Task Force was --
10 was stood up or immediately prior to the -- to the Task Force.
11 But it was somewhere right at the beginning of 2009.
12 Q. Okay. Did Colonel Martins at the time, did he rate
13 you?
14 A. He did not. He -- he never rated me.
15 Q. Throughout -- throughout the time period, he didn't
16 control whether you did or did not get promoted; is that
17 correct?
18 A. No. My -- during the time when he and I overlapped on
19 the Task Force, I was -- I still had a full-time job at the
20 Department of the Navy. The military commissions stuff was a
21 collateral duty. He had -- to my knowledge, he had no input
22 on any of my ratings. He had no input on any of that. You
23 know, this was a one-line, maybe two-line thing.

1 First off, I don't even know if it was in my fitness
2 report. I haven't gone back to look at it. If it was, it
3 would have been a one- or two-line thing just saying, okay,
4 this is what I've been doing. He was not part of my rating
5 chain.
6 Q. Now, during this time at the DPTF where General
7 Martins was the co-chair at the time and you were on the
8 sub-working group, there was no discussion of Majid Khan or
9 his potential prosecution?
10 A. No. Again, I don't -- I don't recall ever hearing his
11 name or anything about this case until I came here last May.
12 Q. In 2014, General Martins -- it could have been a call,
13 but he conferred with you on a jurisdictional matter in the
14 Nashiri case, correct?
15 A. I'm sorry. Which year is this, 2000 ----
16 Q. 2014. 2014.
17 A. 2014. I -- I believe in 2014, that -- yes, that's
18 right. It -- it was a relatively short phone call, five, ten
19 minutes. And, yes, he was calling to ask about whether, from
20 my recollection, the normative way of the timing of
21 establishing jurisdiction somehow was intentionally changed
22 under the Military Commissions Act. But it was -- yeah, it
23 was a fairly short -- short phone call.

1 Q. Now, for you as an experienced practitioner of
2 military law, military criminal law, this wasn't an
3 unreasonable request for advice?
4 A. No, and I should -- I should say that at the time of
5 that phone call, I was the -- let's see, in 2014, I was the
6 Chief Judge, Department of the Navy. I actually wore two
7 different hats -- well, multiple hats, but for purposes of
8 this discussion two different hats. One was as a member of
9 the judiciary, and one was in a purely executive function,
10 sort of other duties as assigned by The Judge Advocate
11 General. And I had some significant executive
12 responsibilities. I was more akin to a part-time judge as
13 opposed to a full-time judge as the chief judge of the
14 department. I was not a sitting judge. I didn't sit on -- on
15 cases.
16 So when I was selected for that job, one of the first
17 things that I did was I had a discussion with The Judge
18 Advocate General, and saying, look, again, you know, my
19 background, you know I've got the military commissions
20 background there. Occasionally people pop up and they may
21 have questions, you know, about the historical handling of
22 some of these things, you know, as we were putting together,
23 you know -- you know, the rules. Am I clear to have

1 discussions?
2 I got the approval from The Judge Advocate General so
3 that -- so that the part of my official responsibility
4 included answering the phone when somebody would call up and
5 go, well, we're looking for some background -- background on
6 something. So this was part of my -- my official function at
7 that point.
8 He reached out for the phone call. It was a fairly
9 simple phone call. I didn't think there was a very
10 complicated issue, but there wasn't much to it.
11 Q. Let's skip to the -- the amicus brief. Let's see.
12 Is it -- and you may have answered this, but just to
13 be clear, neither General Martins nor anyone from the
14 prosecution asked you to sign onto this brief?
15 A. No. I don't even know if they were aware of it until
16 I contacted General Martins about it, just to try and figure
17 out whether he was -- consistent with what I was told, whether
18 he was opposing the government trying to sustain a conviction
19 for -- for conspiracy.
20 So I don't -- were it not for that e-mail I sent, I
21 don't know whether he knew there was an amicus brief at all.
22 Q. And it's not unusual that retired judge advocates sign
23 onto amicus briefs?

1 A. I have seen it happen before, and there are a number
2 of us on that particular amicus brief.
3 Q. Now, during your time as the -- as a trial and
4 appellate judge, did you have a professional relationship with
5 the supervising attorney of the -- of a RLSO?
6 A. A professional relationship? Yeah, absolutely.
7 MJ [COL WATKINS]: I'm sorry, Major Mitchell. I didn't
8 understand the last word or two you said, and I think defense
9 didn't hear it either.
10 ATC [Maj MITCHELL]: Oh, RLSO?
11 Q. Could you explain RLSO for the commission.
12 A. Right. So the RLSO is the acronym R-L-S-O, so it's
13 the Region Legal Service Office. That would be the office
14 that -- the way that they're currently structured, that's the
15 office that has the prosecutors working for them, command
16 services, legal assistants, maybe some other cats and dogs in
17 the -- in the RLSOs, but the -- that's what the RLSO is.
18 The analog for the defense is the DSO, the Defense
19 Service Office.
20 Q. And you -- you had professional relationships with
21 them also, the DSO?
22 A. I did. I did.
23 Q. All right. Did those relationships ever affect your

1 ability to make decisions based on the facts and the law?
2 A. No, never.
3 Q. Even if those decisions went against colleagues who
4 were in ----
5 A. No. One of the realities of being a judge is that
6 anytime you make a decision, there's substantial -- there's a
7 substantial likelihood that 50 percent of the people will
8 disagree with what it is that you did. So I knew going into
9 it that, you know, one side or the other was -- was not going
10 to agree with whatever it was that I did. That's just -- that
11 just goes with the territory.
12 Q. Back to General Martins. Other than what you
13 mentioned in your memorandum, have you spent any time
14 socializing with General Martins?
15 A. No. There was the -- the only socializing, if you can
16 call it that, was his -- you know, I said that it was his
17 promotion dinner. I don't know that it was -- it was his --
18 it may have actually been his farewell dinner, but those
19 happened basically at the same time.
20 But there was the one dinner that was -- I don't know,
21 was 50 people, 30 to 50 people there at a restaurant. But --
22 I mean, that was basically the office. So it's socializing
23 like when the whole office goes out for -- for dinner

1 someplace. That was the only time that I've ever had contact
2 with him outside of sort of the -- the normal workspace.
3 That -- that was it.
4 Q. Okay. And he has -- he hasn't sought any other advice
5 on any other condition -- commission, other than the Nashiri
6 and the Bahlul commissions?
7 A. Yeah, that's correct. What I've disclosed is the --
8 the only contacts that -- that I've had with him. He -- and
9 again, the last -- last contact with him prior to getting into
10 this job was 2016.
11 Q. As an experienced military justice practitioner, you
12 know -- you know well that a convening authority should be
13 able to objectively and impartially weigh all the evidence in
14 the record of trial, correct?
15 A. Yes.
16 Q. Including the PTA and all clemency matters submitted
17 by an accused?
18 A. Yes.
19 Q. And you can do that in the Majid Khan case?
20 A. Absolutely, yes.
21 Q. In your memorandum you said you will remain impartial
22 to all the other cases, which includes this case ----
23 A. Yes.

1 Q. ---- correct?
2 A. Yes.
3 Q. Do you -- now, you wrote that memorandum in -- earlier
4 this year, I think it was June. Do you still feel the same?
5 A. I -- I do. I do.
6 Q. Now, have you made any statements or committed any
7 acts that show you wouldn't consider the facts of this accused
8 in -- the facts of this commission impartially?
9 A. No.
10 Q. In this case in particular, you understand -- and the
11 defense brought this up -- that Mr. Khan can ask for a lowered
12 sentence during clemency; is that correct?
13 A. Absolutely.
14 Q. Okay.
15 A. Absolutely.
16 Q. And you know the decision on whether to lower the
17 sentence cap will be yours to make ----
18 A. Yes.
19 Q. ---- is that correct?
20 A. Yes.
21 Q. And when you look at the PTA, it's with -- in
22 consultation with trial counsel?
23 A. That's right.

1 Q. Sound familiar?
2 A. Yes.
3 Q. I just have a few more, sir.
4 Let's talk about -- you've been a trial and appellate
5 judge?
6 A. Right.
7 Q. You know and understand the law of the judge's
8 recusal?
9 A. I do.
10 Q. You know and understand the law of convening
11 authority's disqualification?
12 A. I do.
13 Q. And you know that the standards are different?
14 A. I do.
15 Q. When you were considering -- when you considered
16 recusing yourself in the Nashiri and al Bahlul, you considered
17 the contacts you had with military commissions and, in
18 particular, those cases; is that right?
19 A. Yes. And it's the -- it's -- it's the latter portion
20 of that statement that really draws it, and that was, again,
21 the contact with those cases, on those cases, yes.
22 Q. Okay. And you did not have any contacts with the Khan
23 prosecution before becoming the convening authority?

1 A. That's -- that's correct.
2 Q. So you can say we did -- you did the same analysis on
3 other current cases; is that correct?
4 A. Yes.
5 Q. And do you believe you can perform your post-trial
6 duties impartially?
7 A. I firmly believe that I can perform my post-trial
8 responsibilities impartially. I'm -- I'm not -- I've spent a
9 career -- you know, I spent probably equal time as a
10 prosecutor and a defense attorney, most of that time on both
11 sides of the aisle, as a -- as a senior person, as the -- the
12 person who was responsible for overseeing the ethical
13 decisions of everybody working for me.
14 I spent four years as a trial judge and had to make my
15 own decisions with regard to recusal; spent three years as an
16 appellate judge and then three years as the Chief Judge where
17 I -- **[VTC transmission interrupted]** -- counsel for all of the
18 judges, active and reserve, Navy and Marine Corps, trial and
19 appellate.
20 I understand what those rules mean. I understand what
21 it means to be impartial. As anybody who has been a judge
22 before understands, you know, when you're required to -- if
23 you have something that you have to put aside, you put it

aside. It's part of the training.

I'm not even burdened with that in this case because I don't know anything about this case. There's nothing for me to put aside. So, yeah, I'm pretty comfortable being able to say, yeah, I'm impartial.

ATC [Maj MITCHELL]: Your Honor, that's all the questions I have.

MJ [COL WATKINS]: Okay. Any redirect?

CDC [MR. DIXON]: No, Your Honor.

MJ [COL WATKINS]: For the purposes of this motion and hearing, temporary or permanent excusal?

CDC [MR. DIXON]: Permanent, Your Honor.

MJ [COL WATKINS]: Any objection?

ATC [Maj MITCHELL]: No, Your Honor.

MJ [COL WATKINS]: Mr. Reismeier, thank you very much for your testimony. I'm going to excuse you from this motions hearing permanently, which means when you break the connection, you're free to go about your business. Thank you again, sir.

WIT: Yes, sir. Thank you, Your Honor.

[The witness was permanently excused, and the VTC was terminated.]

MJ [COL WATKINS]: All right. As I stated earlier, I

1 expect to hear argument on this motion at 10:00 tomorrow
2 morning. Is that still sufficient time, Counsel?
3 ATC [Maj MITCHELL]: Yes, Your Honor, for the government.
4 CDC [MR. DIXON]: Yes, Your Honor.
5 MJ [COL WATKINS]: So is there anything else we can take
6 up in this session before I recess for the day?
7 TC [CDR O'DOWD]: Nothing from the government, sir.
8 CDC [MR. DIXON]: Nor from the defense.
9 MJ [COL WATKINS]: Thank you, everyone.
10 This commission is in recess.
11 **[The R.M.C. 803 session recessed at 1528, 25 February 2020.]**
12 **[END OF PAGE]**
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