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1 [The R.M.C. 803 session was called to order at 1007,  
2 11 January 2019.]

3 MJ [LtCol LIBRETTO]: This military commission will come  
4 back to order. All parties present when the commission  
5 recessed are again present. Mr. Hadi is also present.

6 At a very brief R.M.C. 802 conference held between  
7 trial counsel, defense counsel, and the military judge  
8 immediately prior to coming on the record, the trial counsel  
9 informed the military judge and defense that the senior  
10 medical officer was available and present to be recalled  
11 should the defense counsel desire.

12 In light of the notice to the defense of his  
13 availability and presence coming immediately before these  
14 proceedings, the defense indicated that they did not desire to  
15 recall the senior medical officer today in light of not having  
16 been previously notified and the opportunity to prepare  
17 accordingly. They did express a desire to have that  
18 opportunity again on Monday, and the commission indicated that  
19 if they do desire that at the start of Monday's session, they  
20 will be afforded the opportunity to do so.

21 Both parties concur with my summation of the 802 or  
22 have anything to add?

23 ATC [MR. SPENCER]: Your Honor, just that the defense

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1 specifically cited the 914 issue with respect to the senior  
2 medical officer as part of that rationale.

3 MJ [LtCol LIBRETTO]: The what?

4 ATC [MR. SPENCER]: The 914 issue, the Jencks material as  
5 part of the rationale.

6 MJ [LtCol LIBRETTO]: Okay.

7 ATC [MR. SPENCER]: The Jencks material they previously  
8 requested.

9 MJ [LtCol LIBRETTO]: That issue has not been raised  
10 before the commission to this point.

11 Ms. Hensler?

12 DDC [MS. HENSLER]: Your Honor, that -- upon request, the  
13 government has a responsibility to disclose Jencks material  
14 before the cross-examination. We did so. We again requested  
15 Jencks material by e-mail just yesterday with regards to all  
16 three witnesses, and we request that that material be produced  
17 as soon as possible so that it can be utilized in our  
18 cross-examination of the SMO on Monday.

19 MJ [LtCol LIBRETTO]: And what specifically are you  
20 requesting?

21 DDC [MS. HENSLER]: We're requesting all statements,  
22 reports or memoranda necessitated by R.M.C. 914. Your Honor,  
23 that -- that part of the regulations mirrors the federal

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1 Jencks Act. And so everything that -- everything that's  
2 required to be disclosed under the Jencks Act, we would argue  
3 the government now has an obligation to disclose before  
4 cross-examination upon request.

5 MJ [LtCol LIBRETTO]: Okay. Are there any responsive  
6 materials that the government is working to produce?

7 ATC [MR. SPENCER]: Your Honor, I have two thoughts on  
8 that. First, these witnesses were specifically requested by  
9 the commission. They're not government witnesses. There  
10 wasn't an adversarial proceeding. The government is under no  
11 obligation to turn such material over.

12 However, in the light of goodwill, we are attempting  
13 to retrieve those and review them to see if there's anything  
14 that's remotely critical to the defense that without which  
15 they would -- the accused would have been denied a fair trial.  
16 We don't believe that anything like that exists but we are  
17 doing an extra due diligence, sir.

18 MJ [LtCol LIBRETTO]: Okay. Your point is taken with  
19 respect to the purpose and intent behind the hearings thus far  
20 this week and the nature of the testimony being not  
21 adversarial, but simply a fact-finding session, to inform the  
22 commission's further decisions. But in any event, if there  
23 are responsive materials, the government appears to be in

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1 agreement that they will be turned over, and hopefully that  
2 will take place sooner rather than later so the defense can  
3 have the opportunity to prepare for Monday's sessions should  
4 they desire to proceed with any further questioning.

5           With that, good morning, Mr. Hadi. Before we begin,  
6 I want to explain to you my purpose in conducting the hearings  
7 that we so far have this week.

8           Any accused in a criminal proceeding, and you  
9 specifically in this military commission, has the right and a  
10 significant interest to be present at all sessions during  
11 which your attendance is permitted by law and by regulation.  
12 It is my objective, by taking the testimony of your various  
13 medical providers and other knowledgeable individuals, to make  
14 sure that all reasonable accommodations are being explored and  
15 implemented to the extent practicable to make it possible for  
16 you to attend all future sessions of this commission. It is  
17 not my desire to conduct any open session of this commission  
18 in your absence, and I am pleased to see that you are present  
19 for this morning's session today.

20           It has been repeatedly stated that one of the most  
21 helpful measures that can be taken to minimize your pain,  
22 discomfort, and the likelihood of experiencing spasms is to  
23 not remain in one position for any extended period of time.

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1 Although I do not expect that this morning's open session will  
2 last terribly long, I do urge you to change positions, stand  
3 up, sit down, request to move to your hospital bed, and  
4 stretch as often as you believe necessary to remain as  
5 comfortable as possible. If you need a few moments to stand  
6 up and walk around a bit, please let your counsel know, and we  
7 will take a recess. I want to ensure that you can remain as  
8 comfortable as possible.

9           Also, I intend throughout the proceedings this  
10 morning to take a recess for five to ten minutes every  
11 30 minutes to afford Mr. Hadi the ability to stand up and walk  
12 about as necessary.

13           With that, we are here this morning to take the  
14 testimony of the Joint Detention Group commander as it relates  
15 to AE 131.

16           Trial Counsel, is the JDG commander present at this  
17 time?

18           ATC [Maj RUDY]: He is, Your Honor.

19           MJ [LtCol LIBRETTO]: Please call the witness.

20           ATC [Maj RUDY]: Very well, Your Honor. Your Honor, the  
21 government calls Colonel Yamashita.

22           DDC [MS. HENSLER]: Your Honor, before the colonel enters  
23 the courtroom, may we register an objection with respect to

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1 his testimony? Simply make a record, Your Honor.

2 MJ [LtCol LIBRETTO]: Briefly.

3 DDC [MS. HENSLER]: Your Honor, we simply want to note  
4 that our Jencks objection extends to all three witnesses,  
5 including Colonel Yamashita. And given that the materials  
6 that the government is obligated to provide and that have been  
7 requested have not been provided prior to cross, we ask that  
8 they be -- this witness and the others be available for recall  
9 or that the court considers striking their testimony.

10 MJ [LtCol LIBRETTO]: Are you aware of any specific  
11 materials that exist?

12 DDC [MS. HENSLER]: Well, Your Honor, I suppose I'll find  
13 out during my cross-examination for certain; but with respect  
14 to the other witnesses, yes. For instance, the neurosurgeon  
15 testified that there were multiple e-mails between him and  
16 prior SMOs pertaining to Mr. Al-Tamir's condition, and none of  
17 those have been disclosed despite repeated requests.

18 MJ [LtCol LIBRETTO]: You wanted to raise an objection to  
19 this witness' testimony.

20 DDC [MS. HENSLER]: Yes.

21 MJ [LtCol LIBRETTO]: Are you aware of any specific  
22 materials at this time that are responsive to your request?

23 DDC [MS. HENSLER]: Not at this time.

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1 MJ [LtCol LIBRETTO]: Okay. Trial Counsel?

2 ATC [Maj RUDY]: Your Honor, may we proceed with calling  
3 the witness?

4 MJ [LtCol LIBRETTO]: You may.

5 ATC [Maj RUDY]: Once again, Your Honor, the government  
6 calls Colonel Yamashita to the stand.

7 Good morning, sir. If you please remain standing,  
8 face me and raise your right hand, I'll swear you in.

9 COLONEL STEVEN G. YAMASHITA, U.S. Army, was called as a  
10 witness for the prosecution, was sworn, and testified as  
11 follows:

12 **DIRECT EXAMINATION**

13 Questions by the Assistant Trial Counsel [Maj RUDY]:

14 Q. Please take a seat.

15 All right. Again, good morning, sir. Could you  
16 please state your full name for the record.

17 A. Steven G. Yamashita.

18 Q. And could you spell your last name, please, sir?

19 A. Y-A-M-A-S-H-I-T-A.

20 Q. And what is your current billet with the Joint  
21 Detention Group?

22 A. I'm currently the commander of the Joint Detention  
23 Group.

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1 Q. And that's a subordinate unit of the Joint Task Force  
2 Guantanamo Bay?

3 A. Yes, it is.

4 Q. And what is-- well, before we get into your current  
5 billet, I'd like you to give the commission a little history  
6 of your career. So if you could, just briefly, some of the  
7 wave tops of your military career.

8 A. Absolutely. I'm a commissioned officer in the Army  
9 as an officer of the military police. I have been active duty  
10 for 25 years. I have held various leadership positions from  
11 platoon leader to now brigade commander. Variety of staff  
12 positions, the last one being as the chief of Detainee Affairs  
13 Division for the J3 on the Joint Staff.

14 Q. So it sounds like you've had some -- at least some  
15 experience with detention operations before coming here?

16 A. Correct.

17 Q. How long have you been here, sir, again?

18 A. Six months.

19 Q. And in those past six months, could you give us a  
20 brief overview of what you see as your roles and  
21 responsibility as the JDG commander?

22 A. Essentially I'm responsible for all of the detention  
23 that goes on here on GTMO. I have three subordinate commands,

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1 all of the camps, so detention, facilitating movements for  
2 legal moves, medical moves, ICRC calls, et cetera.

3 Q. Sir, are you comfortable testifying to basically  
4 all -- all facets of detention operations?

5 A. I am.

6 Q. And again, that's because you have direct supervisory  
7 authority over the various subordinate components of the Joint  
8 Detention Group?

9 A. Correct.

10 Q. Thank you.

11 All right, sir, I'd like to start by talking about  
12 the accused's current accommodations where he's normally  
13 detained. Is that okay?

14 A. That's fine.

15 Q. So where exactly is the accused normally detained?

16 A. He's at Camp VII.

17 Q. And it's my understanding that he's been recently  
18 moved back to Camp VII from other locations where he had been  
19 recovering from his surgeries?

20 A. That's correct.

21 Q. And before moving back to Camp VII, were any medical  
22 accommodations made to his holding cell?

23 A. Yes. So ----

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1 Q. And please -- yes, sir. If you just please list out  
2 all of the ones that you're aware of.

3 A. Prior to moving him, our medical personnel obviously  
4 went there, conducted an assessment of the space. And based  
5 on that assessment, they made some recommendations on  
6 modifications to accommodate 26.

7 Q. Are these -- for example, do any of those  
8 modifications include a modified bed?

9 A. It does.

10 Q. Does it include handrails?

11 A. It does.

12 Q. Does the accused have access to a specific accessible  
13 toilet in his cell?

14 A. He does.

15 Q. Does he have access to a walker or wheelchair for  
16 mobility?

17 A. He does.

18 Q. And do either of those walker or wheelchairs, do they  
19 fit inside of his cell?

20 A. It does.

21 Q. Now, is he able to, while in his cell, freely able  
22 to, for example, adjust his position to become comfortable,  
23 stand up, lie down?

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1 A. Yes.

2 Q. Is he able to do stretches on his own?

3 A. Yes.

4 Q. And in his cell, is it one cell or more than one  
5 cell?

6 A. He has more than one. One, we modified the bed, the  
7 shower so that he doesn't have to exert himself, put in  
8 handrails. In the other one, it's totally clear so he has  
9 room to do other things.

10 Q. So that -- sir, backing up, you said the shower was  
11 also modified in some way?

12 A. It was.

13 Q. And could you give us more detail on that, please.

14 A. So the -- I'll try to describe it. The lip of the  
15 shower was lowered so he could get in easier. And the on/off  
16 switch for the shower is modified so that there's almost no  
17 exertion at all to turn on the -- turn on and off the water.

18 Q. And the -- in terms of how long he's actually  
19 confined to either one of those cells, is it all day?

20 A. No.

21 Q. Is there some kind of communal living arrangement at  
22 Camp VII for the detainees housed there?

23 A. There are. They're free to move about most of the

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1 day.

2 Q. So is he ever -- to your knowledge, is he ever  
3 offered any assistance by the other detainees?

4 A. They pay special attention to him and take care of  
5 him also.

6 Q. What's -- that's actually a good point. Let's go  
7 there, sir.

8 So the -- if, for example, there was some kind of  
9 medical emergency or the accused required some medical  
10 attention, is there a way for -- how will the guard force know  
11 that?

12 A. So the detainees are observed at all times. One of  
13 the other -- you know, he could wave. They're watching him.  
14 Another detainee can get the guard force attention. So he's  
15 being watched.

16 Q. And if, for example, it's necessary, are there  
17 medical personnel stationed either at Camp VII or nearby that  
18 could then render medical assistance?

19 A. There are medical personnel on site at all times.

20 Q. Sir, you mentioned earlier in your testimony that  
21 there was -- his cell, his living accommodations at Camp VII,  
22 were reviewed by medical personnel, SMO, whoever. And you're  
23 aware that they made some kind of -- you know, they made

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1 recommendations of accommodations to make. Fair to say, sir?

2 A. Yes.

3 Q. Are you aware of any medical accommodations that were  
4 recommended by a medical provider but, nevertheless, were not  
5 made by yourself or one of your subordinates?

6 A. No.

7 Q. And is it your intention -- say again, for example,  
8 if there's a new medical accommodation recommended by a  
9 medical provider, is it your intention to make that  
10 accommodation?

11 A. It is.

12 Q. And is that subject to any -- any kind of limitations  
13 on your part?

14 A. No. There is a process when you modify stuff that,  
15 you know, engineers got to look at things. There's some  
16 security personnel involved. But, you know, if a  
17 recommendation is made, we will do our best to get to yes.

18 Q. Okay. All right. Sir, I'd like to move on to  
19 another location. So the -- when the accused and his  
20 attorneys meet for their meetings, that does not take place at  
21 Camp VII; is that correct?

22 A. That is correct.

23 Q. And where do those take place, just generally?

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1 A. There's a specific location, not there, where we do  
2 attorney-client meetings.

3 Q. And in that space, I'd like to go over again if  
4 there's -- have there been any medical accommodations made to  
5 that location?

6 A. There have.

7 Q. Could you just please go over the ones that you're  
8 aware of, sir?

9 A. He does have his -- I'll call it a hospital chair,  
10 more comfortable chair. There is a toilet-assist seat, and he  
11 has his comfortable mattress that is suitable for him.

12 Q. And the chair that you're referring to, sir, does it  
13 look very similar to the chair that the accused is currently  
14 seated in?

15 A. It does.

16 Q. Okay. And again, sir, at the attorney-client meeting  
17 location room, is the accused monitored by the guard force in  
18 case there's a medical emergency?

19 A. Yes.

20 Q. And if there is a medical emergency, are there  
21 medical personnel able to respond?

22 A. Yes.

23 Q. And are they -- would you say, would it be fair to

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1 characterize that as they're probably close by and able to  
2 respond quickly?

3 A. They're onsite.

4 Q. And again, sir, in that -- the reason -- and again,  
5 correct me if I'm wrong, the reason that they meet -- the  
6 accused and his attorneys meet in that specific room, is  
7 because that is the room designated for privileged  
8 attorney-client communications?

9 A. That is correct.

10 Q. And to your knowledge, that's where all  
11 attorney-client meetings take place with the accused or other  
12 detainees?

13 A. Right.

14 Q. And that room doesn't have -- or maybe it does. Does  
15 that room have any kind of external communication ability, for  
16 example, a phone or something along those lines?

17 A. I'm drawing a blank, but ----

18 Q. Okay, all right. Fair enough, sir.

19 To get to -- there's some movement required to get  
20 from Camp VII to the room where the accused meets with his  
21 lawyers; is that true?

22 A. Yes.

23 Q. And that movement, that's the same kind of movement

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1 that would occur between, say, for example, Camp VII and this  
2 courtroom?

3 A. Correct.

4 Q. So I'd like to go over that. The transportation  
5 itself, it's my understanding that traditionally, the accused  
6 has been transported in some vehicle where he's sitting up?

7 A. Correct.

8 Q. And are -- is the Joint Detention Group procuring any  
9 kind of new vehicle?

10 A. We are, one that would be able to transport him lying  
11 down, should -- should he need to be transported lying down.

12 Q. So he will be, so either for attorney-client meetings  
13 or a movement to this courtroom, the accused from now on out  
14 will be able to be transported lying down?

15 A. Currently, we can coordinate for a vehicle to move  
16 him that, but we are working on getting our own organic  
17 vehicle to do those moves.

18 Q. And that's -- and say, for example, if you're aware  
19 in one of the commission -- I believe it was maybe two  
20 hearings ago, the accused was required to be moved via  
21 ambulance?

22 A. Yes.

23 Q. Yes. But that -- that was not the Joint Detention

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1 Group's ambulance; is that correct?

2 A. That is correct.

3 Q. So now you're going to have, as you said, an organic  
4 asset that you can move the accused lying down?

5 A. Yes.

6 Q. And are you aware if that's consistent with the  
7 medical providers' recommendations?

8 A. Again, all moves are voluntary. If they recommend  
9 that he be moved lying down, we'll move him lying down.

10 Q. Okay. I'd like to get into some more information  
11 about ----

12 MJ [LtCol LIBRETTO]: Major Rudy, if you would, just slow  
13 down the questions, please.

14 ATC [Maj RUDY]: Aye, sir.

15 Q. The -- sir, I think I'm the one that needs to slow  
16 down, not you.

17 The -- if you could testify to the procedures used to  
18 actually set up the attorney-client meeting, so how does it  
19 start? How does the accused and his attorneys meet up?

20 A. So a request would come in, obviously would go  
21 through the appropriate staff at the JTF, mainly our SJA who  
22 coordinates with our people that synchronize movements,  
23 generally two weeks out, and then based on priorities and

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1 forces available, they're approved or denied. Again, my  
2 intent to my subordinates is to get to yes.

3 Q. Sir, when you say "approve or denied," are you the  
4 approval authority for those requests?

5 A. I am.

6 Q. And again, if you -- let's say, for example, the  
7 defense would like to meet with their client but short, less  
8 than two weeks' notice, you would not -- or would you or would  
9 you not refuse that request outright only because it's less  
10 than two weeks?

11 A. No.

12 Q. And I think you said it, if -- if you have the  
13 resources, your goal is to get to yes?

14 A. Yes.

15 Q. And again, your -- some of your -- as I understand  
16 it, at least, is it true that some of -- some of the reasons  
17 you could not always facilitate a move less than two weeks may  
18 be because transportation issues or a lack of resources ----

19 A. Correct.

20 Q. ---- is that -- okay.

21 And again, just to close that out: If you have the  
22 resources, your intent is to always to be able to facilitate  
23 the attorney-client meeting?

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1 A. That is correct.

2 Q. So, sir, we've talked about -- we've talked about  
3 Camp VII. We've talked about the existing attorney-client  
4 meeting room, how the accused is moved back and forth. I'd  
5 like to move on to the accused's presence when he's actually  
6 at a commission hearing.

7 So currently, are you aware that -- or is it true  
8 that the accused is held at a holding cell that currently  
9 exists close to or within the vicinity of the ELC?

10 A. Yes.

11 Q. Is that holding cell, the one that currently exists,  
12 is that capable of accommodating, for example, a hospital bed?

13 A. That, I'm not sure. I know what we're planning.

14 Q. Sir, I'm sorry. That was a confusing way to ask  
15 that.

16 The existing holding cells, are they big enough to  
17 fit a hospital bed?

18 A. No.

19 Q. Okay. Are you aware if there is a new holding cell  
20 that is going to be installed?

21 A. I am.

22 Q. And is that holding cell going to be installed in the  
23 vicinity of the ELC?

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1 A. Yes.

2 Q. And will that holding cell be better able to  
3 accommodate the accused's medical needs?

4 A. Yes.

5 Q. And -- oh, sorry, sir.

6 And when is it your understanding that that holding  
7 cell will be operational?

8 A. So my understanding is it will get here in March. It  
9 will be -- he will be able to get his wheelchair in there.  
10 His hospital bed will be in there. It will have the toilet in  
11 there with the sink. You know, if it doesn't have the  
12 appropriate handrails or grab rails, we'll have those  
13 installed. So, yes, it should -- it will accommodate him.

14 Q. And for -- so it sounds like all the medical  
15 accommodations that are currently -- that have currently been  
16 made for the accused at Camp VII or any of the other  
17 locations, those will now be -- those same accommodations will  
18 be in the new holding cell?

19 A. Yes.

20 Q. And will the holding cell, the new holding cell, have  
21 sufficient space to allow the accused to do physical therapy  
22 on his own, do stretches and the like?

23 A. Yes.

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1 Q. And you said the new holding cell will have enough  
2 space to be wheelchair accessible?

3 A. Yes.

4 Q. And it will be able to accommodate a hospital bed?

5 A. Yes.

6 Q. A hospital bed that is probably very similar to the  
7 hospital bed that is in the courtroom?

8 A. That's correct.

9 Q. Okay. And will it -- will it have the same kind  
10 of -- I'll phrase it a different way.

11 Will the guards, the guard force who's monitoring the  
12 accused, will they be able to see if, say, for example, the  
13 accused has like a medical emergency that requires medical  
14 intervention?

15 A. Yes.

16 Q. And that -- the medical response, will there be some  
17 medical provider like a corpsman that will be nearby when the  
18 accused is detained in that holding cell?

19 A. Yes, 24/7.

20 Q. What was that again, sir, 24/7?

21 A. Yes.

22 Q. And to your knowledge, will the accused -- will the  
23 defense counsel be able to meet with the accused in that new

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1 holding cell?

2 A. Yes.

3 Q. So that holding cell will be able to accommodate  
4 privileged attorney-client communications?

5 A. Yes.

6 Q. But unlike, say, for example, the attorney-client  
7 meeting room that exists now, are you aware or do you know if  
8 this new holding cell will have something like a secured  
9 telephone between this courtroom and that holding cell?

10 A. Yes, I'm told it will. And potentially a monitor  
11 where he can be ----

12 Q. So there will be some way for the accused and his  
13 attorneys to communicate between the courtroom and that  
14 holding cell?

15 A. Yes.

16 Q. And again, there will be some kind of video way for  
17 the accused to view the military commissions proceedings if  
18 he's in that new holding cell?

19 A. That's correct.

20 Q. Okay. And this is where I'd like to close.

21 Currently, is it the JTF's procedure to move the  
22 accused from his permanent holding cell at Camp VII to and  
23 from commission proceedings every day?

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1 A. Yes.

2 Q. Are you able and willing to accommodate the accused's  
3 being held at the new holding cell overnight?

4 A. Yes.

5 Q. And that would be -- sir, would that be for -- is  
6 that permanently or just for commissions?

7 A. No, based on the length of commissions. Obviously,  
8 we'll have to do some re-task organizing; but based on the  
9 temporary nature of when this place operates 24/7, we can make  
10 that happen.

11 Q. And does that -- does the accused's unique medical  
12 conditions, as compared to other detainees who are before  
13 other military commissions, does that -- does that affect your  
14 decision to support 24/7 operations here?

15 A. No.

16 Q. Let me rephrase it this way: Would -- is it your  
17 intent to have all detainees who are before a military  
18 commission detained here during a commission's hearing ----

19 A. No.

20 Q. ---- or is this limited to just this accused?

21 A. It's limited to the accused because of his medical  
22 condition.

23 Q. And again, to your knowledge, no detainee has ever

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1 been kept -- detained in the vicinity of this courtroom, the  
2 ELC, overnight?

3 A. No.

4 Q. Sir, I think this is my last question. Overall, are  
5 you aware of any medical recommendations that have been made  
6 for any location where the accused is detained that haven't  
7 been made?

8 A. No.

9 Q. Sir, I appreciate your testimony and your time -- oh,  
10 sorry.

11 All right, sir. I guess one last question I'd like  
12 you to clarify for the commission. Could you go into, just  
13 generally, the strain that 24/7 operations will have on the  
14 guard force?

15 A. So when we do that, there are certain people in  
16 certain positions that do have to go to a longer shift, you  
17 know, potentially no days off. So we're constantly -- you  
18 know, managing the guard force strength is constantly a  
19 struggle based on the strength we have on the ground and what  
20 we're given from -- as units rotate in and out.

21 But again, given just the temporary nature, again,  
22 it's the mission, so we can -- we'll make it happen.

23 Q. And your -- I think this really is my last question,

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1 sir. The -- your ability to support detaining the accused  
2 here during commission hearings, that's based on your guard  
3 strength right now?

4 A. Correct.

5 Q. And if, say, for example, that changes your ability  
6 to support that course of action, that may change?

7 A. Yes.

8 ATC [Maj RUDY]: Okay. Sir, again, that was my last  
9 question. I appreciate your time. If you please stay seated,  
10 the defense and the judge will likely have some questions for  
11 you.

12 ATC [MR. SPENCER]: Your Honor.

13 MJ [LtCol LIBRETTO]: Yes.

14 ATC [MR. SPENCER]: Obviously, the government is unclear  
15 on how long the defense would wish to proceed on  
16 cross-examination. Rather than disrupting their cross in the  
17 middle to meet your proposed break schedule, recommend that we  
18 take a brief recess now?

19 MJ [LtCol LIBRETTO]: Good idea. We will take a 10-minute  
20 recess. Commission is in recess.

21 [The R.M.C. 803 session recessed at 1037, 11 January 2019.]

22 [END OF PAGE]

23

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1 [The R.M.C. 803 session was called to order at 1049,  
2 11 January 2019.]

3 MJ [LtCol LIBRETTO]: This commission will come back to  
4 order. All parties present when the commission recessed are  
5 again present. Colonel Yamashita remains on the witness  
6 stand.

7 Ms. Hensler, you may proceed.

8 **CROSS-EXAMINATION**

9 **Questions by the Detailed Defense Counsel [MS. HENSLER]:**

10 Q. Good morning, Colonel.

11 A. Good morning.

12 Q. Colonel, I'd first like to discuss with you  
13 Mr. Al-Tamir's cell at Camp VII. You noted on direct that he  
14 is free to move about most of the day, correct?

15 A. Correct.

16 Q. Meaning that he can go in and out of his cell?

17 A. That's correct.

18 Q. But not all day, correct?

19 A. That's correct.

20 Q. There are extended periods of times where the door is  
21 locked?

22 A. That's correct.

23 Q. And he's confined to one cell?

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1 A. Correct.

2 Q. You also discussed his freedom of movement within the  
3 cell, correct?

4 A. Correct.

5 Q. And you mentioned there's enough space for him to  
6 stretch?

7 A. Yes.

8 Q. And do his exercises?

9 A. Correct.

10 Q. And that there's enough space for him to get around  
11 generally?

12 A. Yes.

13 Q. But you're aware that Mr. Al-Tamir uses a walker to  
14 get around, correct?

15 A. Yes.

16 Q. And when the door is closed, there's a walker in his  
17 cell with him, right?

18 A. Yes.

19 Q. And in the cell there is a passageway which permits  
20 him to use the walker, correct?

21 A. Passageway -- there's the cell.

22 Q. Passageway is a different -- an open area where he  
23 can stand?

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1 A. Yes.

2 Q. But it's -- but it's narrow, correct?

3 A. Yes.

4 Q. It provides enough room for the walker to move up and  
5 down the cell?

6 A. Correct. Yeah.

7 Q. But not enough to do circles in the cell, let's say?

8 A. That's probably fair, yeah.

9 Q. And in some areas, it's tight enough that he can  
10 barely fit the walker through, correct?

11 A. There's -- there is probably, yes, one area.

12 Q. Okay. You noted that Mr. Al-Tamir's bed has a -- I  
13 think you used the term "comfy" mattress?

14 A. A mattress, yes.

15 Q. A mattress. But it's not a hospital bed, correct?

16 A. It is a -- it's a mattress he has been using;  
17 modifications we've made are we adjusted the height.

18 Q. You adjusted the height of the bed itself?

19 A. Right.

20 Q. And is it ADA compliant?

21 A. That I couldn't tell you. It's based on the advice  
22 of our doctors, that's the mattress we went with.

23 Q. What doctors specifically?

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1 A. There's several in the Joint Medical Group.

2 Q. And what are their particular specialties?

3 A. So I talked to the senior military -- medical officer  
4 and the deputy commander of the Joint Medical Group.

5 Q. And is the deputy commander a doctor?

6 A. Yes.

7 Q. And what's his specialty?

8 A. Surgeon.

9 Q. Surgeon. What type of surgeon?

10 A. I couldn't tell you.

11 Q. Okay. You also spoke about other accommodations that  
12 had been recommended for his cell, correct?

13 A. Correct.

14 Q. And you noted that -- you noted that you'd made all  
15 of the accommodations that were recommended, correct?

16 A. Yes, ma'am.

17 Q. And that, I think you said several times, "We do our  
18 best to get to yes"?

19 A. Yes.

20 Q. Meaning you do your best to implement the recommended  
21 solution?

22 A. Yes, ma'am.

23 Q. But it sounds like there were instances where the

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1 initial recommendation of the medical accommodation did not  
2 match up with the end result, correct?

3 A. No, that's not necessarily correct.

4 Q. Okay.

5 A. So, you know, if like we need a handrail here, we  
6 need to raise the bed, we need to modify the shower, all  
7 right, we'll make those things happen.

8 Q. Okay. But when you said, "We do our best to get to  
9 yes," you meant that you will do your best to implement the  
10 solution?

11 A. Correct.

12 Q. But it may not always look exactly as recommended?

13 A. I don't -- it depends, right? It is a physical  
14 structure; and if you alter a structure, I'd rely on an  
15 engineer to tell us whether that was safe.

16 Q. You mentioned there are handrails in Mr. Al-Tamir's  
17 sleeping cell now, correct?

18 A. Yes. Yes, ma'am.

19 Q. And there's one next to his bed, right?

20 A. Right.

21 Q. So that he can sit up?

22 A. Correct.

23 Q. And lie down?

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1 A. Yes.

2 Q. With assistance?

3 A. Yes. It's been a while since I've physically seen  
4 the cells, been a couple of weeks, so -- but yes, I have gone  
5 in there and I have seen handrails in various places.

6 Q. Are you aware of any modifications that have been  
7 made since you last saw Mr. Al-Tamir's cell?

8 A. No.

9 Q. No. Okay. Are you aware that defense counsel  
10 requested the opportunity to visit Camp VII and look at  
11 Mr. Al-Tamir's cell?

12 A. Sure.

13 Q. And you're aware that that request was denied?

14 A. Yes.

15 Q. And are you aware in the past defense teams in other  
16 commissions cases have been permitted to view Camp VII?

17 A. I have, yes, ma'am.

18 Q. But in this instance, you denied the request,  
19 correct?

20 A. Yes, ma'am.

21 Q. You indicated that you're aware of Mr. Al-Tamir's --  
22 I think Major Rudy used the term "unique medical conditions,"  
23 "unique medical circumstances?"

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1 A. Yes, ma'am.

2 Q. Are you aware of generally what happened during the  
3 November military commissions hearing session with respect to  
4 his spasms?

5 A. I've heard he had spasms, yes.

6 Q. And are you aware that on the first day of that  
7 commission session, November 6th, he had a spasm so -- which  
8 was so serious that it caused the court to recess?

9 A. Sure. Yes.

10 Q. And are you aware generally of what the medical  
11 response was -- looked like after his spasm began on  
12 November 6th?

13 A. Generally, medical people here on site responded. As  
14 to what other details, no.

15 Q. Are you aware that it took approximately three to  
16 five minutes for medical personnel to arrive in the courtroom?

17 A. Sure.

18 Q. And that when a corpsman arrived, he didn't have  
19 Mr. Al-Tamir's medication for spasms, Valium, ready to be  
20 administered in a form in which he could take it in the middle  
21 of a spasm, so in a liquid form?

22 A. Sure.

23 Q. And in that instance, his medication took

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1 approximately half an hour to be administered by the medical  
2 personnel in your command, correct?

3 A. Correct.

4 Q. So in the event of an emergency in Mr. Al-Tamir's  
5 cell, you noted that the guard force is aware of the -- of  
6 when an emergency will occur, correct?

7 A. Correct.

8 Q. But he doesn't have anything like a LifeAlert system  
9 or some other device to immediately signal an emergency,  
10 correct?

11 A. Correct.

12 Q. Now, you talked about the evaluation that was done of  
13 Mr. Al-Tamir's cell by the SMO and the -- the surgeon who's  
14 the head of the Joint Medical Group. Were there any written  
15 findings made -- or written recommendations made by those two  
16 doctors?

17 A. Not that I am aware of.

18 Q. How did you receive -- how were you informed of the  
19 findings?

20 A. So we meet regularly, several times a week, to  
21 discuss just general camp operations and any ----

22 Q. And are there briefings, written briefings when you  
23 meet?

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1 A. No. Sit around the table with note -- and talk.

2 Q. Okay. And in one of the SMO declarations, are you  
3 familiar with the -- with the declarations authored by the  
4 senior medical officer on a biweekly basis?

5 A. I have not read them.

6 Q. You have not read them.

7 A. No.

8 Q. Okay. Well, in one of them he mentions that there  
9 was an evaluation done of Mr. Al-Tamir's cell in Camp VII by  
10 occupational therapy on June 24th and June 25th?

11 A. Okay.

12 Q. Now, it's our understanding that there was no written  
13 formal assessment of Mr. Al-Tamir's Camp VII cell that arose  
14 out of that review; is that correct?

15 A. None to my knowledge.

16 Q. Okay. Are you aware that this occupational therapy  
17 assessment occurred?

18 A. I'm aware that medical folks have gone in.

19 Q. Okay. But you aren't aware of the -- the findings of  
20 the occupational therapist who reviewed the quality of his  
21 cell in Camp VII?

22 A. No. I talked to the SMO or the SMO's boss.

23 Q. And if there's an acute incident involving

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1 Mr. Al-Tamir -- and you indicated you discuss him with the SMO  
2 or the SMO's boss. Do you e-mail about that -- about these  
3 incidents or do they call you on the phone?

4 A. So there's like an emergency or something?

5 Q. Uh-huh. Yes. If there's an emergency, how are you  
6 informed?

7 A. How am I informed? It will probably be by phone  
8 or -- yeah, it probably would be by phone or when we meet.  
9 Yeah.

10 Q. When you meet. Okay.

11 So you do not communicate by e-mail?

12 A. Very -- it's rare. We get most of our information  
13 concerning that camp and things that go on when we meet.

14 Q. Okay. But these acute medical emergencies, those are  
15 rare events, right?

16 A. Right, yes.

17 Q. And so those events, are those occasions where you  
18 might receive an e-mail in the middle of the night?

19 A. Very -- very rarely. Most comms, if any, would be in  
20 the classified network. So if I got one in of the middle of  
21 the night, I wouldn't know.

22 Q. You wouldn't know. Okay.

23 Are you aware of the -- Colonel, when did you take

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1 over your command here in Guantanamo Bay?

2 A. In June. Late June.

3 Q. In June. Okay. And so you noted that you were  
4 generally aware of the medical accommodations recommended for  
5 Mr. Al-Tamir's Camp VII cell, correct?

6 A. Yes. Yes, ma'am.

7 Q. What about with respect to his recovery facility,  
8 where he spent much of his time after his surgery in May of  
9 2018, are you familiar with the medical accommodations  
10 assessment there?

11 A. I am.

12 ATC [Maj RUDY]: Your Honor, pardon me. The government  
13 objects on this line of questioning. It's outside of the  
14 scope of moving forward towards trial. This is all  
15 retroactive looking.

16 MJ [LtCol LIBRETTO]: Ms. Hensler?

17 DDC [MS. HENSLER]: Your Honor, in several of the -- it's  
18 all retroactive looking. Your Honor, it all relates to the  
19 quality of care which is provided to Mr. Al-Tamir, and the  
20 government is arguing that the medical accommodations which  
21 have been made are adequate, but it's important to be able to  
22 ask about what accommodations have been made over the past few  
23 months given Mr. Al-Tamir's medical state.

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1 MJ [LtCol LIBRETTO]: I understand your position. The  
2 objection is sustained. For purposes of AE 131, the  
3 commission is concerned about the accommodations that are  
4 currently being afforded to determine their adequacy and to  
5 explore additional accommodations that may be appropriate  
6 moving forward.

7 Q. So it's your position, Colonel, that there have not  
8 been any medical accommodations recommended to you by anyone  
9 that have not been implemented?

10 A. Not to me.

11 Q. Not to you.

12 I'd like to move on to the topic of the medical  
13 accommodations afforded in attorney-client visits.

14 A. Yes, ma'am.

15 Q. You noted that during attorney-client visits  
16 Mr. Al-Tamir has access to a medical chair, correct?

17 A. Yes, ma'am.

18 Q. And that permits him to sit more comfortably than he  
19 otherwise might?

20 A. Yes, ma'am.

21 Q. And you noted, also, that he has access to a bed?

22 A. There's a, yes, standard kind of cell bed with a -- a  
23 mattress.

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1 Q. You said and a cell bed. What does that mean?

2 A. It's the mattress that goes in the -- that are in the  
3 cells.

4 Q. Okay. So it's not the same bed, medical bed which is  
5 available today to him in the courtroom, correct?

6 A. No.

7 Q. And have any adjustments been made to that bed  
8 similar to those that have been made to his bed in Camp VII?

9 A. Not that I'm tracking.

10 Q. No. Okay.

11 And during his meetings with his attorneys, is he  
12 able to access the bed?

13 A. Yes.

14 Q. He is.

15 Without terminating the visit?

16 A. He'd have to be moved.

17 Q. He would have to be moved?

18 A. Yes.

19 Q. By whom?

20 A. Obviously, the guard force would -- if he chose to  
21 lay on the bed, would have to kind of move the restraint that  
22 he would be on so he could get to the bed.

23 Q. Okay. So he can't get up and move to the bed on his

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1 own; he would need to alert the guard force?

2 A. Yes.

3 Q. And he can't transition to a walker or a wheelchair,  
4 which are also available to him on his own; he would have to  
5 alert the guard force, correct?

6 A. That's correct.

7 Q. And he can't just get up and walk around?

8 A. No.

9 Q. In the event of an emergency in the attorney-client  
10 meeting cell, Mr. Al-Tamir doesn't have anything like a  
11 LifeAlert system or another device available to him in the  
12 attorney-client meeting space, correct?

13 A. Correct.

14 Q. And you noted on direct that you couldn't recall if  
15 the attorney-client meeting room even had any way for him to  
16 call out?

17 A. Correct.

18 Q. Okay. And there are sometimes where he is -- he  
19 stays in the attorney-client meeting cell before and after his  
20 attorneys -- his attorney visits, correct?

21 A. Correct.

22 Q. But during that time there's no special -- again,  
23 there's no special device, no secure telephone to reach out to

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1 the guard force if there's an emergency?

2 A. There's the camera that we monitor detainees by.

3 Q. Okay. But there are -- okay.

4 You were asked on direct several questions about the  
5 new holding cell being built in the vicinity of the courtroom,  
6 correct?

7 A. Yes, ma'am.

8 Q. You noted that there's going to be sufficient space  
9 for a full-size hospital bed in that holding cell, correct?

10 A. Yes, ma'am.

11 Q. And other ADA-compliant features like handrails?

12 A. Handrails.

13 Q. Okay. Are you aware of any features of that cell  
14 which are not ADA compliant?

15 A. No, ma'am.

16 Q. And with respect to the new holding cell, have there  
17 been any recommended medical accommodations that will not be  
18 implemented with respect to that cell?

19 A. Not to my knowledge.

20 Q. Not to your knowledge?

21 A. No, ma'am.

22 Q. And if there were accommodations that are recommended  
23 that maybe hadn't filtered up to you yet, who would be in

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1 possession of that knowledge?

2 A. If there are recommendations?

3 Q. Yes, other recommendations.

4 A. So once the building is put in place, I'm sure the  
5 appropriate medical personnel and engineers would take a look  
6 at it and also conduct an assessment and coordinate with the  
7 people that owned the building.

8 Q. Okay. So you anticipate that once the new holding  
9 cell is complete, it will be reviewed by perhaps the senior  
10 medical officer again, correct?

11 A. Yes, ma'am.

12 Q. And the head of the Joint Medical Command, correct?

13 A. Appropriate medical personnel, right.

14 Q. Okay. And does that include occupational therapists?

15 A. I don't know.

16 Q. And as a result of their review of the facility,  
17 their recommendations will be made that may or may not be  
18 implemented, correct?

19 A. Depending on what those are, and who's qualified to  
20 speak on whether or not they can be or cannot be, yes.

21 Q. And you were generally looped in on those  
22 discussions?

23 A. I will be, yes.

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1 Q. There have been certain accommodations made in the  
2 new holding cell for attorney-client visits, correct?

3 A. Yes, ma'am.

4 Q. And JTF-GTMO, for instance, has guaranteed that  
5 attorney-client privileged communications can occur in the new  
6 holding cell free from audio monitoring and video -- and video  
7 recording?

8 A. That is my understanding.

9 Q. You were also asked some questions on direct about  
10 methods of transportation for Mr. Al-Tamir.

11 A. Yes, ma'am.

12 Q. And you noted that -- that you are obtaining a new  
13 vehicle to transport Mr. Al-Tamir specifically?

14 A. Yes, ma'am. That's the plan.

15 Q. And that on some occasions your staff had borrowed an  
16 ambulance to transport Mr. Al-Tamir to and from the  
17 commission?

18 A. We have coordinated, yes, ma'am.

19 Q. Okay. But aside from those few occasions, you don't  
20 use an ambulance to transport Mr. Al-Tamir, correct, or  
21 another vehicle that would permit him to lie down?

22 A. That's correct.

23 Q. Okay. He's transported sitting up?

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1 A. Yes, ma'am.

2 Q. And generally in a wheelchair, correct?

3 A. That's correct.

4 Q. And he can't, during this transportation process,  
5 stand up or sit down or walk around, correct?

6 A. No.

7 Q. Okay. Because he's restrained?

8 A. Yes, ma'am.

9 Q. During his transportation to and from Camp VII, is  
10 there a corpsman or other medical professional present during  
11 the -- during the transportation process?

12 A. A corpsman moves with him.

13 Q. And that person is with him in the vehicle?

14 A. Correct.

15 Q. Sir, what did you do to prepare for your testimony  
16 today?

17 A. I met with Major Rudy ----

18 Q. Okay.

19 A. ---- and just kind of went over some of these  
20 questions.

21 Q. How many times?

22 A. Twice.

23 Q. For how long?

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1 A. 30 minutes, maybe 45 minutes.

2 Q. Okay.

3 A. I wasn't keeping time.

4 Q. And when did those meetings occur?

5 A. Sunday.

6 Q. Sunday, okay. And did you e-mail at all with any  
7 members of the prosecution team to discuss your testimony?

8 A. No, ma'am.

9 Q. Did you discuss your testimony with any other  
10 attorneys before you came in here today?

11 A. No. Just Major [REDACTED] from the JTF was present with  
12 Major Rudy.

13 Q. Was he taking notes?

14 A. No.

15 Q. Before you arrived in June of 2018, are you aware  
16 that a funding request was submitted for 69 million dollars to  
17 improve the current Camp VII facilities?

18 A. Yes.

19 Q. And that that request noted that the facilities were  
20 essentially falling into disrepair?

21 A. Yes.

22 Q. And you'd agree with that assessment, correct?

23 A. I'd agree that the facility is old. And as we're

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1 expected to be here for whatever amount of time, that we do  
2 need a new facility.

3 Q. Okay. And you -- the particularized funding  
4 requests, they were denied, correct? They weren't -- Congress  
5 didn't afford the funding that was requested?

6 A. Whether or not they could afford it, I don't know;  
7 but correct.

8 Q. Okay.

9 ATC [Maj RUDY]: Your Honor, the government objects to  
10 continued questions on this line. Again, the witness has  
11 already testified to the specific accommodations that he and  
12 his staff are able to make for the accused. The general  
13 funding of JTF is outside of the scope of AE 131.

14 MJ [LtCol LIBRETTO]: Ms. Hensler?

15 DDC [MS. HENSLER]: Your Honor, it's certainly relevant to  
16 the general state of Camp VII. And requests for funding to  
17 resolve known issues in the facility where Mr. Al-Tamir is  
18 currently housed is certainly relevant.

19 MJ [LtCol LIBRETTO]: Objection is sustained.

20 Q. You noted on direct that Mr. Al-Tamir -- in Camp VII,  
21 that there is a second cell which is usable by him, correct?

22 A. Yes, ma'am.

23 Q. Okay. But when the -- when the door is closed and

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1 when he's confined to his cell, he can't actually access the  
2 second cell, correct?

3 A. That's correct.

4 Q. You'd noted -- we talked a little bit -- you talked  
5 on direct about accommodations that you afford to attorneys  
6 who request meetings with their clients.

7 A. Yes, ma'am.

8 Q. And you indicated that, for instance, if there's an  
9 occasion where we don't observe the 14-day request rule, that  
10 to the extent you can, you still attempt to honor an  
11 attorney's request to meet with their clients, correct?

12 A. That's correct.

13 Q. And you're aware that following Mr. Al-Tamir's  
14 May 2018 surgery -- we talked about how for long periods of  
15 time he was housed in a recovery facility, right?

16 A. Yes, ma'am.

17 Q. And on those occasions, his -- there were -- there  
18 were long stints of time that he was not cleared for  
19 transportation to the attorney-client meeting facility,  
20 correct?

21 A. Correct.

22 Q. And during that time, you're aware that defense  
23 counsel requested to visit with Mr. Al-Tamir in his cell -- in

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1 his recovery facility, right?

2 A. Correct.

3 Q. But none of those requests were allowed, correct?

4 A. Correct.

5 Q. Okay. And we were never permitted to meet with him  
6 in his recovery facility, right?

7 A. Correct.

8 DDC [MS. HENSLER]: Court's indulgence, Your Honor?

9 MJ [LtCol LIBRETTO]: Go ahead.

10 [Pause.]

11 Q. We spoke about the accommodations which you  
12 implemented with respect to Mr. Al-Tamir's cell in Camp VII,  
13 correct?

14 A. Yes, ma'am.

15 Q. There is a delay time, isn't there, between the time  
16 in which the accommodations are made and the time in which  
17 they're implemented, right?

18 A. I'm not sure I understand.

19 Q. They're not immediate, right? It takes time to  
20 implement these accommodations.

21 A. So at his current place or ----

22 Q. So from the time that -- for instance, from the time  
23 that the first recommendation -- recommended medical

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1 accommodations for his cell in Camp VII were made, there was a  
2 period of months where you had to figure out how to make the  
3 accommodations and you had to actually implement them,  
4 correct?

5 A. Yeah, I'm not sure what span of time, but ----

6 Q. Okay. You're not sure. Are you sure if it's weeks  
7 or months, generally?

8 A. Probably a few months, yes.

9 Q. A few months. You also mentioned that you hadn't  
10 visited Mr. Al-Tamir's cell in Camp VII in the past few weeks.

11 A. Yeah, probably more like three or four weeks. I just  
12 don't have a clear, like, what time and date was.

13 Q. Were you aware that the lights in his cell don't  
14 work?

15 A. No.

16 Q. Okay. And that they didn't work from basically New  
17 Year's Day until this morning?

18 A. No, ma'am.

19 Q. Okay. And so during the period of time where he's in  
20 his -- locked in his cell in the evening or after the sun's  
21 down, the short days here -- then he -- he doesn't have the  
22 ability to turn on and off the overhead light because the  
23 lights weren't working.

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1 A. Okay.

2 Q. We also spoke about the availability of a corpsman in  
3 the vehicle with Mr. Al-Tamir when he's transported off  
4 site ----

5 A. Right.

6 Q. ---- from Camp VII, correct?

7 A. Yes, ma'am.

8 Q. And you noted that it's your policy to have a  
9 corpsman or other medical personnel in the vehicle with him,  
10 correct?

11 A. Yes, ma'am. They travel with him.

12 Q. Okay. But are you aware that there were several  
13 occasions, at least two, where the guards refused to permit  
14 the corpsman to ride in the van with Mr. Al-Tamir?

15 A. No, ma'am.

16 Q. Okay. Do you know whether it was always -- whether  
17 it was always your procedure to have a corpsman ride in the  
18 van with Mr. Al-Tamir?

19 A. I'd have to go back and refer to some SOPs, but yeah,  
20 the corpsman should travel with him.

21 Q. Okay. And as of when, generally, was that the  
22 policy?

23 A. I think for him, there's always a corpsman that's

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1 part of the move, so ----

2 Q. That's the policy ----

3 A. Yeah.

4 Q. ---- but there may be instances where that doesn't  
5 happen?

6 A. Obviously, I guess. Since you're bringing it up,  
7 yes.

8 DDC [MS. HENSLER]: Your Honor, no further questions at  
9 this time.

10 MJ [LtCol LIBRETTO]: Okay. Major Rudy, would you like to  
11 follow up with anything before I ask a few follow-ups?

12 ATC [Maj RUDY]: I would, Your Honor.

13 MJ [LtCol LIBRETTO]: Go ahead.

14 ATC [Maj RUDY]: May I approach the lectern?

15 MJ [LtCol LIBRETTO]: You may.

16 ATC [Maj RUDY]: Thank you.

17 DDC [MS. HENSLER]: Your Honor, excuse me. May we take a  
18 brief health and comfort break for my client?

19 ATC [Maj RUDY]: I'll take five minutes, Your Honor.

20 MJ [LtCol LIBRETTO]: We'll take a break. Is this for  
21 Mr. Hadi? Ten minutes, recess.

22 [The R.M.C. 803 session recessed at 1120, 11 January 2019.]

23 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1147,  
2 11 January 2019.]

3 MJ [LtCol LIBRETTO]: This commission will come back to  
4 order. All the parties present when the commission last  
5 recessed are again present.

6 Major Rudy, you may continue with questioning.

7 ATC [Maj RUDY]: Thank you, Your Honor. May I approach  
8 the lectern?

9 MJ [LtCol LIBRETTO]: You may.

10 **REDIRECT EXAMINATION**

11 **Questions by the Assistant Trial Counsel [Maj RUDY]:**

12 Q. All right, sir. A few final questions from the  
13 government.

14 First, the defense mentioned that at one point the  
15 corpsman did not have, I guess, the appropriate medications or  
16 corpsman bag with him. Do you recall that question?

17 A. Yes.

18 Q. And going forward, is it your intention to ensure  
19 that the corpsman who are present will always have the  
20 appropriate medical equipment, prescriptions, devices with  
21 them?

22 A. Yes.

23 Q. You also mentioned that the bed in the -- or it was

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1 brought up that the bed in the attorney-client meeting room --  
2 I believe on direct examination you said it was modified but  
3 perhaps it's not. Are you able to clarify that at all?

4 A. In which space?

5 Q. In the room that the accused and counsel currently  
6 meet in.

7 A. Standard cell bed.

8 Q. Okay. All right. Fair enough.

9 And the -- you also mentioned that the accused, when  
10 in restraints, would have to request to, for example, have the  
11 restraints removed so that he could move positions to find a  
12 comfortable -- you know, sitting up, laying down. Do you  
13 recall that, sir?

14 A. Yes.

15 Q. Is it fair to say that there's probably a guard  
16 close -- always close by who would be able to do that?

17 A. Yes.

18 Q. Okay. Would you also say it's fair or it would be  
19 fair to say that the accused always is going to have a way to  
20 signal if he needs help?

21 A. Yes, he's being monitored.

22 Q. There was also some discussion of ADA compliance.

23 Are you -- are you -- do you have the knowledge to know what

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1 is and is not compliant with the ADA?

2 A. No.

3 Q. But you did -- it would be fair to say that if  
4 there's a medical accommodation that can be made, your intent  
5 is to make it?

6 A. Yes.

7 Q. And while -- moving on. While the accused is being  
8 transported, it's almost certain that he's restrained; is that  
9 correct?

10 A. Yes.

11 Q. And that's because he's in a moving vehicle?

12 A. Yes.

13 Q. And probably everyone is always restrained when  
14 they're in a moving vehicle?

15 A. The wheelchair is secured so it doesn't move around.

16 Q. All right. Final couple of questions, sir.

17 Do you know if the accused requested to be moved back  
18 to Camp VII?

19 A. Yes.

20 Q. And did he request to be moved back to Camp VII?

21 A. I don't know if he exactly -- remember if he exactly  
22 requested, but when asked if he wanted to move back to VII,  
23 yes.

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1 Q. Okay.

2 A. Also, at the advice of our doctors to get  
3 socialization with the other detainees.

4 Q. Okay. All right. Thank you for that, sir.

5 The -- all these medical accommodations that are  
6 being made for the accused, be they at Camp VII, the  
7 attorney-client meeting room, the new holding cell that's  
8 going in, is the accused at all consulted on what, you know,  
9 what he would prefer be done?

10 A. So before we made -- moved him to VII, he was brought  
11 there to see if it met his needs and get feedback as to  
12 whatever the height of the bed, the location of a grab bar,  
13 et cetera, so yes.

14 Q. So presumably the hand bars that Ms. Hensler was  
15 referring to by his bed was -- I mean, for example, was he  
16 asked, "Mr. Hadi, would you like a grab bar there?"

17 A. Probably.

18 Q. Okay. Last question, sir.

19 The -- in your role as the JDG commander, would you  
20 say a good way to sum it up would be that your job is to  
21 ensure the safe, legal, and humane treatment of all detainees?

22 A. It is.

23 Q. All right, sir.

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1 ATC [Maj RUDY]: Your Honor, one moment. I'd like to  
2 consult with co-counsel.

3 MJ [LtCol LIBRETTO]: Go ahead.

4 ATC [Maj RUDY]: Sir, the government has no further  
5 questions for this witness.

6 MJ [LtCol LIBRETTO]: Okay. Ms. Hensler, do you have any  
7 brief follow-up?

8 DDC [MS. HENSLER]: Yes.

9 **RECROSS-EXAMINATION**

10 **Questions by the Detailed Defense Counsel [MS. HENSLER]:**

11 Q. Colonel, you noted on redirect that you consulted  
12 with Mr. Al-Tamir before accommodations were made, correct?

13 A. I did not.

14 Q. You did not. Okay.

15 So he was not consulted before accommodations were  
16 made?

17 A. So as -- he was transported to VII as the  
18 accommodations were being put in or were in the planning  
19 session, in the assessment phase, shown his place to try  
20 things out or to see where things would better be placed or  
21 whatever modifications.

22 Q. And at that time when he was shown the new Camp VII  
23 cell, he had the opportunity to indicate if further

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1 accommodations were necessary, correct?

2 A. I'm sure he probably did.

3 Q. Who would know?

4 A. The camp people that were there, camp personnel  
5 or ----

6 Q. Would you be surprised to hear that there were  
7 several accommodations requested by him on that visit that  
8 have not been implemented?

9 A. Not necessarily. It's just -- I don't know what was  
10 requested or what wasn't, but ----

11 DDC [MS. HENSLER]: Okay. All right. Thank you. No  
12 further questions.

13 MJ [LtCol LIBRETTO]: Okay.

14 **EXAMINATION BY THE MILITARY COMMISSION**

15 **Questions by the Military Judge [LtCol LIBRETTO]:**

16 Q. Colonel, bear with me as I go through my notes here.  
17 Most of the questions that I had have been already asked and  
18 answered. So the questions I ask are going to be probably  
19 fairly sporadic in the topics.

20 A. Yes, Your Honor.

21 Q. With respect to the questions by counsel related to  
22 the meetings between Mr. Hadi and his defense counsel, have  
23 there been -- and if you -- if there have been, if you can

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1 estimate the percentage of times where the defense has  
2 complied with the two-week requirement where those requests  
3 have been refused?

4 A. I couldn't tell you off the top of my head, Your  
5 Honor, but there is -- it is being -- it is tracked.

6 Q. Are you aware of the number of instances on any given  
7 day over, let's say, the past two months where there has been  
8 a medical emergency involving the accused where medical  
9 personnel have had to immediately respond to render aid?

10 A. Other than the last time he was here, sir, that's  
11 what I was tracking.

12 Q. That was the last time that that has occurred?

13 A. That I'm tracking, yes, Your Honor.

14 Q. How far in advance of a attorney-client meeting or,  
15 for that matter any other meeting where the accused is  
16 transported, is he notified of the movement?

17 A. At least 24 hours. I've got to double-check that  
18 one, Your Honor.

19 Q. Okay.

20 A. Yeah.

21 Q. So you're not certain about that lead time?

22 A. No.

23 Q. Okay. Is it fair to say that guard force members

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1 don't show up at his cell and for the first time he becomes  
2 aware of routine medical or legal meetings?

3 A. Appointments are made, and so he does know in  
4 advance. How far in advance, I don't know off the top of my  
5 head.

6 Q. You mentioned a number of transportations that  
7 Mr. Hadi has made over the last few months, ICRC,  
8 attorney-client meetings, medical appointments, and these  
9 commissions sessions. In general terms, as to not go into  
10 classified matters, is there anything of significance that  
11 differs between those moves or those transports that would  
12 cause one to be more or less comfortable or aggravating to the  
13 accused?

14 A. No, Your Honor.

15 Q. The social visits that have been referenced in some  
16 of the senior medical officer's declarations, those were  
17 social visits from his rehab cell to Camp VII?

18 A. Yes.

19 Q. So he's -- there's no need for those any longer; is  
20 that correct?

21 A. That's correct.

22 Q. Are the logistical steps associated with his  
23 activities the same regardless of where he is being

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1 transported to?

2 That's a fairly broad and vague question and I'm  
3 trying not to get into TTPs or anything of that nature. But  
4 generally speaking, when he is notified of a move that he has  
5 to make, the steps and activities that he has to engage in in  
6 order to accomplish that move, are they fairly uniform  
7 regardless of the purpose of the move?

8 A. Yes, sir.

9 Q. The mode of travel, whether it be in a vehicle that  
10 accommodates Mr. Hadi from -- to sit up or lie down, is that a  
11 choice to this point in time, that is, up until now, has that  
12 been a choice that is left open to him?

13 A. Yes, sir.

14 Q. So he decides whether or not he wants to be  
15 transported in a vehicle that accommodates a wheelchair or one  
16 that accommodates a bed?

17 A. Yes, sir.

18 Q. The new holding cell that's anticipated, in terms of  
19 his ability to move around, stretch, and otherwise comply with  
20 recommended medical measures, stretching, physical therapy,  
21 would you consider that to be more conducive to those  
22 activities or less conducive than the cell that he is  
23 currently in in Camp VII?

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1 A. Probably be more, Your Honor.

2 MJ [LtCol LIBRETTO]: Colonel, that's all the questions I  
3 have for you in this setting. The commission is going to take  
4 a lunch recess and come back into a closed session, so I'd ask  
5 that you remain in the area during this period of time. We  
6 will come back on the record at 1300 to conduct a closed  
7 R.M.C. 803 session.

8 During that period of time, please do not discuss  
9 your testimony with anyone other than the trial counsel or  
10 defense counsel. Do you understand?

11 WIT: Yes, sir.

12 [The witness was excused.]

13 MJ [LtCol LIBRETTO]: With that, anything to take up  
14 before the commission stands in recess?

15 ATC [Maj RUDY]: Nothing from the government, Your Honor.

16 DDC [MS. HENSLER]: No, Your Honor.

17 MJ [LtCol LIBRETTO]: Very well. This commission is in  
18 recess.

19 [The R.M.C. 803 session recessed at 1202, 11 January 2019.]

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