[The R.M.C. 803 session was called to order at 0958, 9 January 2019.]

MJ [LtCol LIBRETTO]: This commission will come back to order. All parties present when the commission last recessed are again present with the exception of Mr. Hadi. Mr. Hadi is absent.

Earlier this morning the commission was notified that the accused was not present for the hearing this morning, as he chose not to be transported for that -- for the hearing today. Whether that was because he was unable to attend or simply chose not to attend is unknown to the commission at this time.

The staff judge advocate and senior medical officer, it is my understanding, are present to testify to their interactions with and observers -- observations of Mr. Hadi this morning after being informed that the accused was not being transported to the session today.

Trial Counsel, is the SJA present to testify?

DTC [CDR FLYNN]: Yes, Your Honor.

MJ [LtCol LIBRETTO]: If you would, please call him.

ATC [MR. SPENCER]: Your Honor, the government calls the assistant SJA to the stand.

[END OF PAGE]

ASSISTANT STAFF JUDGE ADVOCATE, U.S. NAVY, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Assistant Trial Counsel [MR. SPENCER]:

ATC [MR. SPENCER]: Your Honor, I failed to mention, in accordance with Appellate Exhibit 014, this witness is testifying under a pseudonym. I will refer to him as the assistant SJA. His name, consist with the commission's order, will be provided to the defense counsel to remain classified NOT RELEASABLE TO THE ACCUSED.

MJ [LtCol LIBRETTO]: Okay. Please proceed.

Q. Good morning, sir.

A. Good morning.

Q. Sir, can you describe the duties that you executed this morning as part of your normal ASJA duties?

A. At approximately 0630 today, I went to camp to find out if 26 was going to participate in today's commission hearing.

Q. Sir, and by "26," you mean the accused in this case, Abd al Hadi al Iraqi?

A. Correct. And when I spoke with him, he indicated that he would not attend today's hearing because he did not

feel well enough to do so.

Q. Sir, where did you meet with him?

A. I met with him at the tier of the camp that he is currently at.

Q. So was that in his cell?

A. Negative. There's a sally port, and I speak to him through the sally port.

Q. And how does he get to the sally port from his cell?

A. At that time, when I first walked in there, I know the detainee seeing me there, asked if I was here to see 26. I said I was and then he went over to 26's cell and called him to come to the sally port, which is the length of the passageway.

Q. So the accused then, presumably with the assistance of a walker ----

A. That's correct.

Q. ---- came over to your location?

A. Correct.

Q. What exactly did he say to you?

A. He said that he would like to attend, but he cannot attend because he did not feel well enough to attend.

Q. Did he say anything with respect to any medication he had taken?

A. Yes. So throughout that discussion, we spoke for roughly ten minutes or so. He had indicated he had taken a Valium the previous evening at 8:00 in the evening, which is supposed to last 12 hours. But when he woke up this morning, he was still in great pain, so he took yet another Valium, but the pain was still escalating throughout that morning.

Q. Did he say anything with respect to why he desired to be at the commission today?

A. As the best I can recall, he said he really wanted to be at -- because he knew that the SMO would be testifying today.

Q. And do you know when he became aware of that?

A. I'm not sure when he became aware of the SMO.

Q. Did he say anything specific to the SMO's testimony, having thought about that the night before, anything of that nature?

A. Well, so to go back a little bit, I did have an opportunity to speak with him the night before, because I -- not the night before, around between 12 and 1300 the day before since I deliver the legal mail.

And when I delivered the legal mail, I explained to him how we needed to try to push back the departure time from Monday so that he can get there and -- with more time to speak

to his attorneys, and he indicated he understood that. So at that time he -- it seemed to me that he was prepared to come to the commissions today.

Q. When you spoke to him this morning, did he mention anything about thinking about the SMO's testimony or the commission session this morning during the even -- during the night?

A. Yes.

Q. What did he say?

A. So he was worried. He had been thinking about it all night, and, you know, when he took the Valium, he said then it basically put him out. But then when he woke up this morning around -- I don't want to misspeak, but I think he said around 4:00, he was anxious about the event, but his pain again was not allowing him to participate.

Q. So he expressed to you that he was feeling anxious about coming to the commission this morning?

A. Yes.

Q. Did he seem anxious to you?

A. He seemed concerned that he would not be able to participate, but again he said he did not feel that he was well enough to do so. So that, I guess, could be interpreted as being anxious because he is conflicted with wanting to go

and feeling he could not go.

Q. Did he appear to be in pain?

A. I'm not a doctor. I guess from his gestures he indicated that he was in pain, and I had no reason to disbelieve that he was in pain. He did not do -- you know, he wasn't groaning or anything like that.

Q. Was he able to communicate with you freely?

A. Yes.

Q. Did he seem to be impacted from a mental standpoint from any medication?

A. Not to me.

ATC [MR. SPENCER]: Sir, Your Honor, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

Q. Sir, I've just handed you what's been marked as Appellate Exhibit 132G. Do you recognize that document?

A. I do.

Q. Can you explain to -- for the commission what that document is?

A. These are the Statement of Understanding Right to be Present at Commission Proceedings that we read out to the detainees prior to commission hearings to inform them of their rights to be present.

Q. Very well. And the commission is in possession of a copy of that, and copies were provided to the defense as well.

Is that the standard form that you use to inquire -- to advise the accused of his rights?

A. It is.

Q. And did he sign that document?

A. No, he did not.

Q. Okay. Can you explain why he did not sign that document?

A. Right. So typically we'll read these out and the accused will either sign to indicate he has waived his rights or attend.

With 26, and this was the case the last commission hearing, he feels that his health prevents him from coming, although he says that he is not waiving his rights at all. So that's the best I can summarize it. He affirmatively states he is not waiving his rights, but his health condition prevents him from participating.

Q. And you explained the rights contained on that form to the accused?

A. Yes, I read them verbatim.

Q. In English?

A. Yes.

Q. Was there a translator present?

A. There was. And as well as the translated version as shown as page 3.

Q. Page 3.

ATC [MR. SPENCER]: Sir, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

ATC [MR. SPENCER]: I've retrieved Appellate Exhibit 132G from the witness.

Q. So as a result of that, he refused to sign this document?

A. Yes.

Q. And you annotated that he refused to sign in the place where he would normally, below the signature block?

A. Yes, he refused to sign.

ATC [MR. SPENCER]: Okay. Thank you, sir. I have no further questions. Defense will have some questions for you as well as the military judge.

MJ [LtCol LIBRETTO]: Counsel.

CROSS-EXAMINATION

Questions by the Defense Counsel [LT BALL]:

Q. Good morning, sir.

A. Good morning.

Q. Sir, I'd just like to ask you the question about this

document that you provided today. I understand that the back of this -- I failed to note the exhibit number, but the exhibit that was just provided to you, I see that there is a statement there. Do you recall what you wrote at that time? AE 132G.

A. Right. So not verbatim, but I did say that, I think, ISN 10026 refused to sign a statement of understanding and asserted that he did not feel well enough to participate in today's hearings ----

Q. So with ----

A. ---- words to that effect.

Q. What I'm reading is that he refused to sign this statement of understanding asserting his medical condition preventing him from attending today's commission proceeding; is that correct?

A. That's correct. That's what I wrote.

Q. And you and I, we spoke earlier this morning, correct?

A. Yes.

Q. Yes. Okay.

And I understand that you arrived at approximately 6:30 a.m. this morning?

A. Right.

Q. And he indicated that he was still in severe pain this morning to you?

A. Yes.

Q. And he indicated that he took another Valium before 6:30 as a result of this severe pain; is that correct?

A. Right. He indicated he took one after the dose he took at 8:00 last night.

Q. Okay. He also indicated to you that Monday had taken a lot out of him; is that correct?

A. That's correct.

Q. And he also indicated to me that he really wanted to be here today.

A. Yes.

Q. And I quote, he said to you "I want to go" several times; is that correct?

A. Yes.

Q. Okay. And he explained clearly to you that he did not waive his rights to attend; is that correct?

A. That's correct.

DC [LT BALL]: Thank you.

MJ [LtCol LIBRETTO]: Mr. Spencer, any follow-up questions?

ATC [MR. SPENCER]: No, Your Honor.

MJ [LtCol LIBRETTO]: Bear with me just a moment.

[Pause.]

MJ [LtCol LIBRETTO]: Okay. Thank you. I have no questions for you. You can step down and depart the courtroom.

[The witness was excused.]

MJ [LtCol LIBRETTO]: Trial Counsel, is the senior medical officer prepared to testify as well?

ATC [MR. SPENCER]: Yes, Your Honor.

MJ [LtCol LIBRETTO]: If you would, please call him.

ATC [MR. SPENCER]: Your Honor, the government calls the senior medical officer.

SENIOR MEDICAL OFFICER, U.S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Assistant Trial Counsel [MR. SPENCER]:

ATC [MR. SPENCER]: Your Honor, again consistent with the Appellate Exhibit 014, this witness is testifying under pseudonym. I will refer to him as the senior medical officer or SMO. The defense is already in possession of his name, subject to the classification NOT RELEASABLE TO THE ACCUSED.

MJ [LtCol LIBRETTO]: Okay. Thank you. Please proceed.

Q. Good morning, sir.

A. Good morning.

Q. Are you the senior medical officer currently treating detainees in Camp VII?

A. I am.

Q. And how long have you been the senior medical officer?

A. I have been the senior medical officer since early September, taking care of patients at Camp VII since early November.

Q. And how did you become -- how did you come to treat Camp VII patients in addition to your previous patients?

A. The old SMO had to leave for medical reasons rather suddenly and so they had to have me oversee Camp VII as well.

Q. And you have been doing that since November?

A. Since November.

Q. How often have you treated the accused in this case, Abd al Hadi al-Iraqi, since that time?

A. I have seen him approximately every one to two weeks since that time in an outpatient setting.

Q. Let me jump back a little bit, sir. How long have you been a physician?

A. I graduated medical school in 2009, and I finished residency in family medicine in 2012.

Q. And are you board certified?

A. I am. I'm board certified in family medicine.

Q. And do you have any other concentrations or specialties?

A. So I'm a medical acupuncturist. So in my final year of residency, I did a 300-hour course in medical acupuncture to be able to do, more or less, full-scope acupuncture within a medical setting.

Q. And acupuncture, would that fall under a pain management-type specialty?

A. Yes, it does.

Q. Do you have any other experience with pain management as a family medicine physician?

A. I do. You know, in family medicine you often manage patients with chronic pain. And in the clinics that I've worked in the military, when you're a medical acupuncturist, you frequently get consulted by other physicians to treat patients with chronic pain. So I -- you know, as a medical acupuncturist, they don't specifically just send them to see you for acupuncture but also for pain consultation to kind of review the record or review what has been tried, what has been therapeutically effective, and to maybe think of other ideas for what you can do to treat chronic pain.

Q. And have you discussed chronic pain treatments with the accused, sir?

A. I have.

Q. Can you tell me about those discussions, please?

A. So we've -- so when you have chronic pain, you know, you like to try to come up with a therapeutic regimen that involves medications, therapies, things like physical therapy, activities that they can do, sometimes non -- nonmedical interventions such as, you know, creams, Lidocaine patches, things that are not specifically taking oral medicines.

And you try to build a therapeutic plan that involves taking these things on a -- you know, some sort of a regular regimen and then having something that they can do for when they have a bad day, right, you know, something you can do above and beyond. Because patients with chronic pain, it's not the same every day; some days are worse than others. So we did discuss that at length to try to put him on a chronic regimen.

Q. Is the accused currently on a regimen for pain medication?

A. He is not. He is not. His -- if I had to say like his therapeutic regimen that's on a regular basis, it would be physical therapy periodically and then self-physical therapy

that he does on his own.

Q. Why he is not on a pain medication plan?

A. He's not interested in being prescribed a regular regimen.

Q. But he does take medication on a somewhat regular basis; is that accurate?

A. He does.

Q. Can you explain what those medications are?

A. So he takes -- I have my list here of his PRN medications. So the ones that he takes specifically for pain, he has -- he has two that I recommend that he take regularly for lower-level pain, which is Tylenol and ibuprofen. And then he has Percocet for higher-level pain. For muscle spasms and stiffness, he has Flexeril for lower-level muscle spasms or stiffness. And he takes Valium if he has worse stiffness or spasm.

Q. And how regularly does he take, let's say, Tylenol or ibuprofen?

A. Very regularly. He so he takes ibuprofen almost every single day in the morning. He takes -- I made some notes here. He takes Flexeril most every day in the morning. In the afternoon, he takes Valium most every day. Percocet, he takes one to two a day. So he has a fairly regular regimen

of how he takes these as-needed medicines that we prescribed.

Q. So they're prescribed on an as-needed basis, but he takes them on a somewhat regular basis?

A. That's true.

Q. So but he's not prescribed -- he's not on a, officially, a pain medication management program, but effectively he is in a way; is that ----

A. Effectively, he is.

Q. And does that change -- so in the past week, for example, or last week, for example, was he taking all of those medications that you just mentioned?

A. When I look at his last week -- because I have written down some jotted-down notes from the January 1 until now from the medication record, he took ibuprofen every day but two over the last week except for yesterday. Tylenol he took every day except for one. Valium, he took ----

DC [LT ASKAR]: Your Honor?

MJ [LtCol LIBRETTO]: Yes.

DC [LT ASKAR]: At this point we have allowed at least a little bit of background and foundation; however, this is really starting to veer into the substance of the SMO's testimony in 131. We ask that it just be cabined at this point to what we are here to discuss at this hearing.

MJ [LtCol LIBRETTO]: I find it relevant for the court's inquiry into the matters presented at this preliminary hearing. Your objection is overruled.

DC [LT ASKAR]: Thank you, Your Honor. The only other matter which we just want to bring to the court's attention on this is that the SMO seems to be relying on records that the defense does not have access to in this moment, and so there may be some requests to review them before this matter is ruled upon by Your Honor.

MJ [LtCol LIBRETTO]: Doctor, do you have notes of some sort that you're relying upon?

WIT: So we -- this morning we brought the medication administration record from camp, but because that has to be released, has to be declassified, we were told we can't bring it into the courtroom. So I had the corpsman take the actual record back and I just made some little tick mark notes.

MJ [LtCol LIBRETTO]: Okay.

DC [LT ASKAR]: Your Honor, the only thing that I'm a little concerned about in this moment is the transportation of some of those notes. I don't mean to jump the gun here, Your Honor, the doctor's clearance level ----

WIT: They were couriered.

DC [LT ASKAR]: ---- with respect to him transferring

pieces of those notes from classified materials.

MJ [LtCol LIBRETTO]: Okay. I appreciate your concern.

Would you like to take a quick look at what the doctor is referring to?

DC [LT ASKAR]: I would, Your Honor.

MJ [LtCol LIBRETTO]: Go ahead.

ATC [MR. SPENCER]: Your Honor, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

ATC [MR. SPENCER]: Your Honor, just to clarify, the underlying medical record were couriered over by a person with the appropriate clearance, of course. Those medical records, as the commission knows and as defense knows, have to go through a process of declassification. The defense will have those certainly.

The medication that he's taking is not classified. It's been listed in numerous declarations by this SMO and previous SMOs. And because it's a lengthy medication list, the SMO made some notes from that, but clearly this information is not classified.

MJ [LtCol LIBRETTO]: I understand, thank you.

DC [LT ASKAR]: And, Your Honor, while I certainly appreciate that, the only point I'm trying to make here is the

doctor is clearly relying on medical records in his testimony, which he should be, that we do not have access to. And that creates a problem for us.

MJ [LtCol LIBRETTO]: Okay. I understand your concern. For purposes of this hearing, I'm going to take his testimony.

ATC [MR. SPENCER]: Your Honor, if the commission desires, we can have that marked as an appellate exhibit as well.

MJ [LtCol LIBRETTO]: We will.

ATC [MR. SPENCER]: Your Honor, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

WIT: Thank you.

Questions by the Assistant Trial Counsel [MR. SPENCER]:

Q. I've handed back to you, sir, the notes that you were referring to earlier.

A. Yes.

Q. I believe the last question I asked was about -- was specific to Tylenol and ibuprofen.

A. The specifics of Tylenol and ibuprofen. He took ibuprofen every day except for three of the last nine. He took Tylenol every day except for two of the last nine.

Q. What about Flexeril -- oh, I'm sorry. What about Percocet for the stronger pain?

A. Percocet was taken once every day, except for twice on two occasions.

Q. So that was last week and this week?

A. That was last week and this week.

Q. And was that -- was there any increase in that medication subject to movement of the accused either for attorney-client meetings last week or for the commission session this week?

A. I'm not a statistician, but the pattern is very consistent as far as I can tell. Nothing would -- if I were reviewing this looking for outliers, I wouldn't notice any specific outliers.

Q. So from your interpretation of the medication, he's not taking more medication on days that he's moved?

A. Do you know what day he moved last week?

Q. I believe it was 2 January for an attorney meeting.

A. On 2 January he took two Percocet, no ibuprofen, and then one each of his other PRN medications. That's consistent with other days.

Q. And what about 7 January, for the Monday session of this commission?

A. On Monday, he took two Percocet, two Flexeril -- these are half a tablet of Flexeril, so Flexeril is a very low

dose -- one Valium that was administered here in the courtroom, and no Tylenol. He took no Tylenol or ibuprofen on Monday.

Q. And no Valium during the evening when he normally takes Valium?

A. He only took the one at 1103.

Q. Specifically to Valium, how often is he taking that?

A. He takes it generally once a day in the evening.

Q. And that's been consistent as well?

A. That has.

ATC [MR. SPENCER]: Sir, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

ATC [MR. SPENCER]: Sir, the notes that the doctor was referring to have been marked as Appellate Exhibit 131K and are with the court reporter.

MJ [LtCol LIBRETTO]: Thank you very much.

Q. Did you meet with the accused this morning, sir?

A. I did.

Q. Where did you meet with him?

A. Outside his cell door.

Q. Is that the first time you've met with him this week?

A. It is not. I have met with him yesterday.

Q. Let's talk about the yesterday meeting. Where did

you meet with him yesterday?

A. So I met with him face-to-face at what we call the sally port. It's basically a face-to-face encounter through a fence.

Q. And what did he tell you at that time?

A. He refused to come to the medical spaces for evaluation. He said that he has been having worse pain. He stated that I was not there for his health, that I was only there because I was required to be there by the court.

Q. Did he say anything about your opinion as to his health or your attitude as to his health?

A. I'm not sure. Can you be more specific?

Q. Do you recall telling me this morning that you -- that he stated to you that -- words to the effect of "You don't care about my health"?

A. He did say something along those lines, yeah, you know, and he has said that to me before.

Q. This morning, did you meet with him also in the sally port?

A. This morning I met at his cell door.

Q. And why is that?

A. Because there -- because at this time in the morning when I met with him, they're not in -- they're in a different

setting. They're in a different level of custody, so their cell doors are locked when they're in their cells.

Q. Understood. So you met with him at his cell?

A. I met with him at his cell.

Q. Were you able to go into his cell?

A. No.

Q. How did you communicate with him?

A. There's a port in the cell that you can open and speak to him through the port.

Q. Could you observe him through that port?

A. I could.

Q. How well could you observe him in that port?

A. At the point that I was talking to him from, I was less than ten feet away from him. He was sitting in his bed.

Q. How long did he -- how long did you speak with him?

A. About 15 minutes.

Q. What was his demeanor?

A. He was angry. Yeah.

Q. What did he -- what did he tell you about his condition?

A. He said that he's having much worse pain; that he has shooting pains all over. When I asked him what "all over" meant, he said that's through his back and his shoulders and

his neck and in his leg, and that he's having spasm.

Q. Did you ask him about medication taken?

A. I did.

Q. What did he say?

A. He had requested a Flexeril and a Valium from the corpsman earlier this morning.

Q. Do you know what time he took those?

A. The record said that he took them about 6:00 in the morning, 6:10 in the morning.

Q. And you met with him at what time?

A. 8:30.

Q. Did he appear to be under any kind of -- have a mental effect from any medication taken?

A. He did not.

Q. He was ----

A. He was lucid.

Q. He was able to communicate with you freely?

A. He was.

Q. Did he say anything else specific to the commission proceeding as to his presence here?

A. He said something along the lines of -- I think this is what you're asking. He said that, you know, he -- that this makes it worse; that coming here makes it worse; that he

can't rest here like he does in his cell.

Q. Does he have a hospital bed in his cell?

A. It's a modified cell bed to accommodate his medical needs. It's not a hospital bed, per se. A hospital bed won't fit in his cell.

Q. Modified how?

A. It's wider. It's wider. It's got a wedge under it so that the back is elevated similar to a hospital bed. It has the same mattress as a hospital bed, which is the mattress he prefers.

Q. So it is a different mattress than what he has here?

A. It is -- it is not the same mattress as the one he has here.

Q. I'm sorry. It's a different bed?

A. I'm sorry. What are we ----

Q. It's not a hospital bed, as you testified?

A. It's not -- so when I think hospital bed, I think a bed that's got wheels on it, that has a lock and unlock mechanism, like a brake, that has side rails that go up and lower, and that has a back that's adjustable, you know, with the mattress on it, obviously.

So it doesn't have those. It doesn't have rails. It doesn't have a back that's adjustable. It's got a wedge under

it so that it's at a fixed angle, but it has the mattress from a hospital bed.

Q. The hospital bed is what he has in the courtroom?

A. Correct.

Q. And the hospital bed is what he had in his recovery facility ----

A. Correct.

Q. ---- that he was -- where he was located for a couple of months; is that right?

A. That's correct.

Q. From your assessment, were you able to detect whether he was limited in movement in any way?

A. I was. I mean, I -- it was not an ideal assessment, but I was able to, you know, observe his functionality. And he was able to gesture with his hands. He was able to move his neck. He was able to say, you know, for example, I have pain here in my back, you know, and ----

ATC [MR. SPENCER]: For the record, the witness is using his arms and -- above his head indicating to the upper neck, lower neck, upper back area.

A. And he was able to -- I witnessed that he -- when he sat up to talk to me, he sat up quickly. You know, it didn't take him a lot of effort to sit up; he sat up quickly and

started to talk to me. During the time he was talking to me, he was able to sit up on his own without having to prop himself up or anything.

ATC [MR. SPENCER]: Your Honor, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

Q. Sir, I've just handed you Appellate Exhibit 131J, I believe it's marked. Do you see that on the bottom?

A. I do, yes.

Q. That's a two-page document. Can you tell me what that document is?

A. This is a summary that I sort of did as a comprehensive summary of what's been tried so far. When I consult with a patient on pain management as an acupuncturist, a lot of times one of the things you do is you go through an exhaustive list of what's been tried, what hasn't been tried, what's worked, what hasn't worked so that you can -- so you're not starting over from scratch.

Q. Sir, at the bottom of that page after listing the therapies offered or tried, there's a note. Is that a note that you wrote?

A. Are you talking about where I lined out and put "follow-up in one to two weeks"?

Q. No, I'm sorry. Beginning with the words "During our 6 December encounter" on the page 1.

A. Right, this is my note.

Q. And that's something that you wrote?

A. That is something that I wrote, yes.

Q. Was that based on a discussion with the accused?

A. Yes.

Q. The commission has a copy and the defense has previously been provided a copy.

Could you please read that first sentence?

A. The paragraph that says, "During our 6 December"?

Q. Yes.

A. "During our 6 December encounter, he repeatedly stated that he wanted to focus on his health now -- health now postoperatively, to the end that he would prefer to ignore, put off his legal requirements. He believes that the movements for legal meetings and court hearings may worsen his condition or set him back in his postoperative recovery."

Q. Now, understanding that that's his subjective belief, is that consistent with your objective findings or any specialists that may be treating him, their objective findings?

A. The idea that these proceedings set him back or ----

Q. Yes.

A. My opinion is that these proceedings would not set him back.

Q. And you've previously stated in declarations that would not impact his underlying health condition; is that correct?

A. That's correct.

Q. And he is -- obviously has pain -- pain medication available to him, but he takes that on a somewhat consistent basis, whether he's moved to commissions or not; is that accurate?

A. That's true.

Q. Sir, earlier the SJA testified that he appeared to have anxiety or be anxious about the proceedings. Have you ever observed anything like that with the accused?

A. I think that's safe to say, yeah, that he would be -- that he seems anxious.

Q. Safe to say or you observed him?

A. Have I observed specific anxious behaviors? I -- I've asked him about court proceedings. I've asked -- there's a couple of times we have talked about the possibility of court proceedings and whether that makes him anxious. And his response generally has been something along the lines of what

I just put, that he prefers to not talk about that now, he doesn't want to think about that now, and he wants to focus on his health.

Q. Sir, if you would, please, look at the second page of the document that I handed -- that is in front of you.

A. Okay.

Q. Would you please read the first two sentences?

A. On the -- on the second page?

Q. Yes, sir. Top of the second page.

A. "I pointed out that he's been able to move to Camp VII for social visits twice without significant exacerbation of the pain. He did not offer a specific response to this. I started to discuss medication and pain management options, coming up with pain management plan, but he is not interested in any daily medications. He prefers to take as-needed medications and focus on physical therapy."

Q. Thank you, sir.

With the anxiousness or anxiety that the accused has apparently experienced with respect to the commission specifically, is that consistent with or is that the type of thing that could cause increased physical stress and increased pain?

A. Yeah. I would -- I would say so, yes. If a person

is under more stress or in a more stressed physical state -- mental state, then it can affect physical pain.

ATC [MR. SPENCER]: Your Honor, may I have a moment?

MJ [LtCol LIBRETTO]: You may.

Q. Sir, one final question. Since you've been treating the accused in November, are you aware of any time that Valium has not alleviated or improved his muscle spasms or tension?

A. I have no knowledge of any specific case that it hasn't helped him. On the cases when I or the corpsman at my direction has gone and re-evaluated him one or two hours later, he's said that it helps him.

ATC [MR. SPENCER]: Your Honor, may I approach the witness?

MJ [LtCol LIBRETTO]: You may.

ATC [MR. SPENCER]: Sir, I've retrieved Appellate Exhibit 131J from you. I have no further questions for you. Defense and the military judge may have questions for you.

WIT: Thank you.

MJ [LtCol LIBRETTO]: Defense.

DC [LT ASKAR]: Thank you, Your Honor.

CROSS-EXAMINATION

Questions by the Defense Counsel [LT ASKAR]:

Q. Good morning. Lieutenant Askar on behalf of

Mr. Al-Tamir.

Doctor, the movements that Mr. Al-Tamir asked to go through post-surgery, any movement for any period of time, those cause him pain, don't they?

A. So pain is subjective, so I can't -- I don't have an objective way to say that those cause him pain. But he reports that they cause him pain.

DC [LT ASKAR]: All right. At this point, Your Honor, permission to approach opposing counsel and the witness?

MJ [LtCol LIBRETTO]: Go ahead.

DC [LT ASKAR]: Your Honor.

MJ [LtCol LIBRETTO]: Go ahead. Is that marked?

DC [LT ASKAR]: It is not marked by the court reporter. It is in evidence.

[Counsel away from podium; no audio.]

MJ [LtCol LIBRETTO]: Okay. Got it. Thank you. We don't need to re-mark that, then. We don't need to re-mark it.

WIT: Thank you.

ATC [MR. SPENCER]: Your Honor, apologies for the interruption. I'm not sure that was captured on the record from the microphone. If defense counsel can restate.

DC [LT ASKAR]: Not a problem. I'll be referring to AE 099VVV, Attachment B.

Q. Sir, this is a declaration that you submitted to this court on 28 November 2018; isn't that right?

A. That's correct.

Q. And that's after you had taken over care of the detainees in Camp VII?

A. Yes.

Q. Would you do me a favor, sir, and familiarize yourself by reading silently paragraph 5 of your declaration?

A. Yes.

Q. And just look up and let me know when you're done.

A. I'm finished.

Q. All right. Sir, I'm going to refer to the last sentence. Please read silently again while I read aloud:

"Prolonged periods of immobility can provoke spasm. Likewise significant movement such as vehicle transport can promote a mild to moderate worsening of the pain or spasm but does not worsen the underlying condition or have lasting repercussions."

Did I read that correctly?

A. You did.

Q. These movements, movements to commission sessions, they cause Mr. Al-Tamir some pain?

A. So my statement here talks about what is possible.

You're asking me about what specifically happens with this patient. So I can't speak to what specifically happens with him with these movements. I mean, he tells me that they cause him pain. It is possible that these cause him pain, in accordance with my declaration.

Q. Well, Doctor, they -- he tells you if they cause him pain, and that pain is significant enough for you to approve him being provided with opioid medication when he needs it, right?

A. The opioid -- so you're asking is the opioid medication given to him for the movements?

Q. I'm asking if the opioid medication is given to him for his pain. And it is, right?

A. It is given to him for his pain.

Q. A moment ago in the prosecution trailer, you and I had a conversation, right?

A. Yes.

Q. And we talked about that there exists AMA guidelines for the prescription of opioids?

A. Correct.

Q. And there exists DoD guidelines for the prescription of opioids?

A. There do.

Q. And there are FDA guidelines for the prescription of opioids?

A. There are.

Q. And they all talk about, largely, trying to treat with lesser means, right?

A. Correct.

Q. And the reason for that is because opioid medication is both very addicting?

A. It is.

Q. And as you build up a tolerance to it, it can be dangerous to patients, right?

A. Tolerance in itself isn't really dangerous. The tolerance just means it has less therapeutic effect over time.

Q. I understand, Doctor, but as it has less therapeutic effect, you increase the dosage, right?

A. That is true sometimes.

Q. And the increases in dosage ultimately can be dangerous to someone?

A. Absolutely.

Q. Now I want to talk about the opioids that you have prescribed him for his pain.

A. Okay.

Q. You prescribed him Valium, right?

A. Valium is not an opioid.
Q. Excuse me. You prescribed him diazepam, Valium ----
A. Diazepam is a benzodiazepine. It's -- yes, it's not an opiate ----
Q. My apologies for ----
A. Percocet is the only opioid that he is prescribed.
Q. My apologies for misspeaking. You provide him a benzodiazepam **[sic]** and Valium?
A. Valium is in the class of medications called a benzodiazepine.
Q. Again, I apologize for the misspeaking. And you've provided him with Percocet, right?
A. Right. Which is an opioid.
Q. Now I just want to go through some of the side effects of those medications, Doctor. With respect to Percocet, potential side effects of Percocet include -- and my apologies, the court's indulgence for just a moment.
They include dizziness, right, Doctor?
A. Yes.
Q. Sedation?
A. Yes.
Q. Nausea?
A. They can.

Q. They can also include tremors?

A. I've never seen that. I've never seen tremors caused by Percocet.

Q. Are you aware of whether or not Percocet's -- one of Percocet's known side effects is tremors?

A. If you say so. I haven't memorized the list, the complete list of side effects for Percocet.

Q. I appreciate that, Doctor. Are you aware of ----

A. I'm putting it in a frame of reference of my own experience as a doctor.

Q. I appreciate that. But I want to make sure I understand what the known side effects are, not just what you've seen before in your capacity as a physician.

A. Okay. Okay.

Q. So the known side effects ----

ATC [MR. SPENCER]: Your Honor, objection. Lack of personal knowledge.

DC [LT ASKAR]: Your Honor, I'm asking whether or not ---- excuse me. My apologies, Your Honor.

I'm asking whether or not the doctor's aware of each known side effect I asked about. If he's not, he's certainly capable of saying that he's not aware.

MJ [LtCol LIBRETTO]: Okay. Go ahead.

DC [LT ASKAR]: Thank you, Your Honor.

MJ [LtCol LIBRETTO]: Objection is overruled.

Q. Now I want to turn to Valium. Common side effects for Valium are drowsiness, right?

A. Correct.

Q. And fatigue?

A. Correct.

Q. And muscle weakness?

A. Correct. It's a muscle relaxant. It has a muscle relaxant effect.

Q. There are also known side effects that include confusion?

A. Yes.

Q. And are you aware that one of the other side effects for Valium is depression?

A. For long-term use? For long-term use, yes.

Q. Aggressiveness as well, Doctor?

A. Aggressiveness? I don't think I was aware of that as a possible side effect.

Q. Are you aware that one of the known side effects of Valium is anxiety?

A. Yeah. Rebound anxiety after using it, right.

Q. And hallucinations, Doctor?

A. I'm not aware -- excuse me.

I'm not aware of a patient hallucinating from Valium, but I suppose it's possible.

Q. Are you aware that one of the known side effects is also psychosis?

A. I was not aware of that.

Q. Doctor, so you mentioned again -- I want to circle back to you took over the treatment of Camp VII detainees in November, right?

A. That's correct.

Q. And that was right around the last time this commission met. Are you aware of that?

A. That is true. It was actually -- yeah, I believe it was Tuesday of the last time the commissions met.

Q. And when you and I spoke a few days ago, you mentioned that after that commission session was some of the worst period of time you've observed Mr. Al-Tamir; isn't that right?

A. That is true.

Q. After that commission session where Mr. Al-Tamir had, I believe, multiple serious spasms, according to you, he exhibited a number of really serious pain behaviors, right?

A. He did. I saw him on Friday and Saturday of that

week, and he -- he appeared to be in discomfort.

Q. Doctor, you've reviewed his medical records -- I believe last time we spoke, you said you reviewed them up until May of 2018; is that right?

A. Yeah, that's about right.

Q. So that would cover the November of 2018 time frame?

A. That would cover November, correct.

Q. Are you aware, Doctor, that in his medical records it was reported that Mr. Al-Tamir felt hopeless?

A. That's consistent with my experience, yes.

Q. Are you aware that after the November hearings in which he suffered those muscle spasms, Mr. Al-Tamir felt like he was going to die?

A. He did not use those specific words with me. Are you asking if I know if those specific words were in the medical record?

Q. I am.

A. I can't speak to whether those specific words were in the medical record, but that's consistent with my experience from November.

Q. And it's consistent with your experience of him in November because after he pushed himself in the November hearings, that is the sort of pain that he experienced in the

follow-up -- excuse me, in the aftermath to the November hearings, right?

A. Let me -- let me rephrase what I just said for your previous question.

He -- what he specifically said to me, the words that I remember he said, "I felt like I could lose it all." And I asked him did that feel like that he was suicidal or death or impending death or whatever, and he didn't elaborate. But he said, "I felt like I could lose everything." Those are the specific records words that I remember him saying at that time, that Friday and Saturday of that week.

Q. Yeah. And that was right after he had experienced those intense muscle spasms in November, right?

A. That was on Friday and Saturday of that week when I took over his care.

Q. I'm sorry, I'm not trying to be difficult here, Doctor. I just want to make sure I have these ----

A. Sure. Go ahead.

Q. ---- this timeline right.

That's after the November hearings, in the immediate week after the November hearings?

A. The hearings -- yeah. At that point in time, I wasn't very involved in the commissions process, so I think

the hearings went Monday through Friday. So I think I -- and I saw him on Friday and Saturday. So those are Friday and Saturday of that week.

Q. So, Doctor, I want to go back to the Valium and the Percocet for a moment. When someone takes Valium or Percocet, you don't advise them to go drive a car, right?

A. That's true, especially if -- especially if it's a person taking it for the first time.

Q. When someone takes Valium or Percocet, you don't advise them to go operate heavy machinery?

A. No. As a matter of fact, not only do I tell them that it can have a sedating effect, but it's written on the bottle; usually there's a warning on the bottle.

Q. And that's because some cognitive function, some -- like the sedation effect means that they can't appreciate their surroundings the way you'd want someone to be able to, right?

A. Yeah. I mean, that's the nature of sedation. Sedation is a -- you know, you're drowsy. It's the same effect as if you weren't -- didn't sleep last night.

Q. You wouldn't recommend that someone -- well, hold on, Doc. I want to take a second there.

Sedation is a -- is it your testimony that sedation

is the same as someone who's groggy from not getting a great night's sleep last night?

A. It's similar. It's similar. I mean, there are other effects besides that, as you mentioned. You listed a list of side effects, so there are other effects. Sedation is one of those effects.

Q. It's similar, it's not the same.

A. But sedation -- it's not the same.

Q. In fact, if someone didn't have a great night's sleep, you wouldn't tell them absolutely don't drive a car, right?

A. You know, I tell people that if they don't sleep well, that you should consider not going on a long drive. That's true.

Q. Doctor, if you prescribe someone Valium, you don't want that person making life-altering decisions while they're in a sedated state, right?

A. So I'll tell you what -- this is what I tell patients when I give Valium or Percocet or a potentially sedating medication, even Flexeril for the first time. I say, "When you go home, take a test dose when you're at home and you're not going to be driving or making important decisions, and see how it affects you. And once you've had a chance to take it a

few times and you see how it affects you, then you can make -- you know, then you can consider taking it during the workday or you can consider taking it when you're driving."

So I don't make an absolute prohibition. I tell them you need to see how it affects you.

Q. So then let's back it up, Doc. In the abstract -- and I apologize, Doctor. In the abstract, you would not recommend that someone who had taken Percocet or Valium make a life-altering decision while they're in a sedated state, right?

A. Not if it's for the first time. Not the first time taking that medication.

Q. And if that Percocet or Valium brings on in them a sedated state after they've taken it a few times, then you wouldn't recommend that they make any life-altering decision while they're in a sedated state, right?

A. I would not recommend that they make a life-altering decision for a period of time after that while they're in a sedated state, yes.

Q. Now I want to talk about the specifics of Mr. Al-Tamir's care today. Now, he takes Percocet generally in the morning; isn't that right, Doctor?

A. If I remember correctly from reviewing the record,

that's true. In the morning, typically.

Q. And he takes Valium in the evening?

A. Typically.

Q. And that's because on the schedule of drugs that Mr. Al-Tamir is provided, Valium is one of the stronger drugs, right?

A. It is.

Q. On the schedule of drugs he's provided, it's about the strongest drug; would that be fair to say?

A. I would say of the five medicines that he is prescribed for PRN use for this back condition, that is probably the strongest in my experience.

Q. Yeah. So he doesn't normally take it in the morning, right?

A. He does not normally take it in the morning.

Q. But he did today?

A. He did.

Q. And that's because he reported that the pain was so significant that he needed to take Valium this morning?

A. That's consistent with what I was told by the corpsman.

Q. And when you spoke to him, as you mentioned earlier, he was experiencing lingering spasms and pain after taking the

Valium today, right?

A. That's what he stated to me.

Q. And he was worried that if he came into court, the stress from the move and from being here would cause him an episode, right?

A. That's not specifically what he said to me. What he specifically said to me, he went on to -- he went off and he started to talk about being able to rest in his bed better than being able to rest in a public setting with lots of people around and not having privacy. That's kind of -- he went down that road when we got on that topic.

Q. Doctor, you mentioned when you were speaking to Mr. Spencer, that when you looked at the schedule of medications, it was about what you'd expect from the notes that you brought, right?

A. About -- about what -- explain what you mean by about what I would expect.

Q. I apologize. When you looked at the notes on medication that you brought to court today ----

A. Right.

Q. ---- you said that his medications were about normal for his average doses, right?

A. Correct.

Q. Doctor, when you reviewed his medical records -- and again, I only have the medical records up until November -- but isn't his normal practice to take one Percocet in the morning and then one Valium in the evening?

A. His normal practice is to take about one Percocet in the morning and one Valium in the evening. Sometimes he takes a second Percocet during the day.

Q. And just to be clear that he takes those second Percocets -- or your recommendation for him to take an additional Percocet is when he's experiencing an increase in pain, right?

A. Right. He has been recommended to take, you know, the -- a Tylenol or ibuprofen for lesser pain and Percocet for more severe pain.

Q. And so on 7 January -- that was Monday?

A. Correct.

Q. He took two Percocet, right?

A. Can I -- can I reference my notes again?

Q. You certainly can.

DC [LT ASKAR]: Your Honor, may I approach opposing counsel to retrieve -- I believe it was 131K.

Your Honor, may I approach the court reporter to retrieve 131K and tender it to the witness?

MJ [LtCol LIBRETTO]: You may. That's it.

WIT: Thanks.

A. So on Monday, to answer your question, he took two Percocet and he took two Flexeril and he took one Valium.

Q. And that's consistent with the days where there's been an increase in pain for him enough to merit a second Percocet, right?

A. Well, you know, they're as-needed medications for pain. So if he takes more, I would -- usually I equate that with more pain.

DC [LT ASKAR]: All right. Your Honor, just one moment to confer with counsel?

MJ [LtCol LIBRETTO]: Go ahead.

DC [LT ASKAR]: Thank you, Your Honor.

Just for the record, before I conclude, I just want to note that Government Exhibit -- I believe it's AE 131J, the December two-page document of the medical record, at this point it is clear that the government is able to provide specific cherry-picked portions of the accused's medical record while the defense still has nothing from December in order to examine the context in which it's being provided, and we ask that the court take that into account when assessing the use of 131J.

With that, Your Honor, we have nothing further.

MJ [LtCol LIBRETTO]: Thank you.

WIT: Do you want this back?

MJ [LtCol LIBRETTO]: Doctor just -- yeah, if you would, please retrieve the AE 131K, please, and return it to the court reporter.

[Did as directed]

EXAMINATION BY THE MILITARY COMMISSION

Questions by the Military Judge [LtCol LIBRETTO]:

Q. Doctor, with respect to Lieutenant Askar's last question, the notes that are contained within AE 131J in which as you described it to be a summary of notes that you reviewed, the notes that you reviewed, were those taken by you or a treating practitioner?

A. No, by me. So I met with him on a couple of occasions and took some notes, just some -- because the place where we treat him, there's not a computer available to write a nice, clean note. And so I saw him on a couple of occasions to summarize all this information, and then I wrote that document and had to courier it to his record in a different location.

Q. Okay. I understand.

A. Yeah.

Q. So this is just a summary of other notes?

A. It's a summary -- yeah, it's a summary of probably two or three visits where I kind of accumulated information on him as I got to know him.

Q. So that you personally took?

A. Those are my personal notes, right; not other people's.

MJ [LtCol LIBRETTO]: Trial Counsel, any follow-up questions?

ATC [MR. SPENCER]: Very briefly, Your Honor.

Your Honor, just to clarify, the exhibit to which the defense counsel referred is an appellate exhibit, not a government exhibit.

REDIRECT EXAMINATION

Questions by the Assistant Trial Counsel [MR. SPENCER]:

Q. Sir, defense counsel asked you a series of questions in the abstract or possible side effects. In your time treating the accused, what have you observed or what has the accused reported side effects of Percocet?

A. Specifically with Percocet? None.

Q. So the accused ----

A. He has not complained about side effects.

Q. ---- in reality, not abstract, has reported no side

effects from Percocet?

A. He has not reported to me any side effects from Percocet.

Q. And you have observed no side effects?

A. I have not.

Q. In reality, not abstract, what are the side effects that the accused has reported or you have observed of Valium?

A. After taking Valium he will -- after taking Valium he will sometimes take a nap for a short period of time. Aside from that, I have not observed any specific side effects from Valium.

Q. So the possible side effect of drowsiness is a side effect that the accused exhibits after taking Valium?

A. If you -- if you would characterize taking a nap as a -- you know, evidence of a possible drowsiness, yes. I mean ----

Q. Is that a fair interpretation of ----

A. So, you know, drowsiness, if I talk to a person, and they exhibit drowsiness, you know, the person starts to nod off while they're talking to you, et cetera. So that's me observing drowsiness, you know.

If a person takes a medication and they told me they went and took a nap, that's not really me observing it, but

it's consistent with drowsiness.

Q. Thank you, sir.

Since November '18, the serious episode of pain which the defense counsel has discussed with you, have you observed any similar episodes with the accused?

A. Similar to -- to the -- to the Friday and Saturday ----

Q. Friday and Saturday that were bad days for the accused?

A. I have not seen him in that state.

Q. That's despite -- that's despite seven movements for legal meetings and two movements for social visits since that time ----

A. That's true.

Q. ---- is that correct?

So the only time that the accused has taken an additional Valium has been specific to commissions sessions; is that accurate?

A. The only time that he has taken Valium outside of the normal prescribed pattern or -- there's not a prescribed pattern. There's his pattern, when he requests it.

The -- I can't answer 100 percent sure, but to the best of my recollection, the biggest deviations we've seen on

when he requests Valium is based on the past week.

Prior to that, he has been pretty consistent requesting it in the evening. I think there may have been a couple of instances in early December when he took one in the afternoon before his nap.

Q. With respect to the Valium administered today, how long ago was that at this point ----

A. He took it at 6:10 is what was written in the record.

Q. Almost five hours, is that ----

A. That's true.

Q. Would there be any lingering effects, in your opinion, of that Valium on the accused at this point?

A. Based on my experience with this patient and the effect on this patient, I would say no.

ATC [MR. SPENCER]: Thank you, sir. I have no further questions.

MJ [LtCol LIBRETTO]: Lieutenant Askar, any brief follow-up?

DC [LT ASKAR]: Very briefly, Your Honor.

RECROSS-EXAMINATION

Questions by the Defense Counsel [LT ASKAR]:

Q. Doctor, Mr. Spencer asked you about reality and real symptoms, and I want to focus on that for a moment.

A. Okay.

Q. One of the known side effects we talked about for Valium is anxiety, right?

A. Correct.

Q. And Mr. Spencer on direct examination asked you whether or not the accused was feeling anxious today, right?

A. He just asked me that, if he was feeling anxious today.

Q. For the first time I spoke to you.

A. Oh ----

ATC [MR. SPENCER]: Your Honor, objection. This is outside the scope of redirect.

MJ [LtCol LIBRETTO]: Overruled.

A. So just -- can you just rephrase your question so I understand exactly what you're asking?

Q. Mr. Spencer talked about real symptoms, right?

A. Correct.

Q. Okay. Now, one of the known side effects of Valium is anxiety?

A. Right, like rebound anxiety. Generally, Valium when you take it, does not cause anxiety. It's an anxiolytic. It reduces anxiety.

Q. I appreciate that.

A. Afterwards long term, you can get rebound anxiety.

Q. I appreciate that, Doctor. I want to be really clear, though.

Were you here when the SJA testified, Doctor?

A. No.

Q. You were not standing right outside when the ASJA testified?

A. No.

Q. Did the ASJA report to you today that Mr. Al-Tamir was feeling anxious?

A. I don't think we talked about that.

Q. When you first -- when you first spoke to Mr. Spencer today, did he ask you whether or not the -- do you recall that he asked you that the -- whether or not Mr. -- excuse me.

DC [LT ASKAR]: Your Honor, withdrawn. I'll rephrase.

Q. Do you recall on direct examination the first time you spoke to Mr. Spencer in court today?

A. Yes.

Q. He asked you whether or not Mr. Al-Tamir was feeling anxious, right?

A. I don't know. Can we reference the record?

MJ [LtCol LIBRETTO]: I'm looking at my notes here. Just a moment, please.

I believe there was a question and answer with respect to about his -- his attendance at the proceedings today, and whether or not he appeared anxious to attend.

WIT: So whether he appeared anxious.

MJ [LtCol LIBRETTO]: Lieutenant Askar. Let him answer the question, please.

DC [LT ASKAR]: My apologies, Your Honor.

A. So whether he appeared anxious to attend today?

Q. Whether he appeared anxious.

A. And so is the question whether he asked me that or whether the patient appeared anxious?

Q. The first question is whether or not Mr. Spencer asked you whether or not Mr. Al-Tamir appeared anxious.

A. So I guess referencing the judge's notes, yes.

Q. And the answer to that question was, yes, he did appear anxious, right?

A. He was angry. I would describe his mood as angry.

Q. At this point, when Mr. Spencer asked you that question on direct examination ----

A. Okay.

Q. ---- you said that he appeared anxious, right?

ATC [MR. SPENCER]: Your Honor, objection. Defense counsel is mischaracterizing the evidence. When I asked the

question, I relayed the -- the -- SJA's testimony that he appeared anxious. I didn't -- I did not ask the question whether this witness observed him appearing anxious.

MJ [LtCol LIBRETTO]: I understand. I have notes of the testimony. I'm well aware of what the doctor testified to. Move on, please.

DC [LT ASKAR]: Yes, Your Honor.

Q. Doctor, one of the side effects we talked about with respect to Valium are rage and irritability, right?

A. Correct.

Q. And a moment ago, you just said that Mr. Al-Tamir appeared angry, right?

A. So rage and irritability, like rebound anxiety, would be a rebound symptom. It's an antianxiety medicine. So if you take benzodiazepines for a while, when the medicine wears off, you're going to be more agitated and irritable. So it's a rebound symptom.

Q. I appreciate that, Doctor. A moment ago, you just testified that Mr. Al-Tamir appeared angry, right?

A. He did. He did. He was angry with me.

Q. Now, you said on -- a moment ago with Mr. Spencer that Mr. Al-Tamir had met -- had had seven legal meetings?

A. That's -- when we talked to the SJA office, that was

what the final count was, that he had had seven -- seven -- I believe what we decided was seven movements, but I'd have to reference the record. It was somewhere in the neighborhood of seven or nine; two social visits, plus a certain number of legal meetings.

Q. That's not a problem to reference material.

DC [LT ASKAR]: Your Honor, may I approach the witness with AE 09XXX **[sic]**, Attachment B?

MJ [LtCol LIBRETTO]: You may in a moment. Where are we going with this? If it's a matter of record, you can reference it in any argument that we might have with respect to this issue. Covering things that are already in the record and clearly so does nothing for this commission in any future determinations.

DC [LT ASKAR]: I appreciate that, Your Honor. Where I'm going with this is that there's a factual inaccuracy in the declaration and in the doctor's testimony on that declaration. I just want him to be able to have it in front of him when I ask him about it.

And I only bring it up now because Mr. Spencer brought it up on redirect, that the accused has been moved seven times, and I don't want this commission to take that as fact.

MJ [LtCol LIBRETTO]: Mr. Spencer?

WIT: Can I speak to that?

MJ [LtCol LIBRETTO]: Just a moment, Doctor.

ATC [MR. SPENCER]: Your Honor, unless the defense counsel is going to testify, I -- this witness has testified to what his knowledge is. The exhibit to which defense counsel is referring is this senior medical officer's declaration.

While it's certainly possible that there may be inaccuracies, because we're all human beings, this witness has already testified as to his knowledge. Impeaching that with defense's own knowledge would be defense counsel testifying.

MJ [LtCol LIBRETTO]: I understand. In light of the probative value, Lieutenant Askar, I'm going to ask you to move on to your next set of questions. If there's inconsistencies that you believe exist in the declarations vis-a-vis the testimony that has already been elicited today, then you are free to point that out during your argument to the commission to determine -- in its determination as to what weight, if any, to give either the testimony or the declarations.

But I do not find it helpful to proceed during -- along these lines of cross-examination for the purposes for which we're here.

DC [LT ASKAR]: I appreciate that, Your Honor. In that case, with that, the defense is ready to move to argument when Your Honor is ready. We have no further questions on recross.

MJ [LtCol LIBRETTO]: Okay. Thank you.

Doctor, I have just a few follow-up questions.

EXAMINATION BY THE MILITARY COMMISSION

Questions by the Military Judge [LtCol LIBRETTO]:

Q. With respect to the regimen that the accused is currently taking as far as medications go, he's taking a significant amount, it appears, on a daily basis, but you said that it's not pursuant to any sort of pain management plan.

Would it be more effective if he were actually on a plan on a routine basis that has established times and amounts and types of drugs being administered?

A. That's what I would prefer, and then having medicines that he can use on top of that as needed. That's generally what we try to go for. And I think that's what I was trying to get at in my notes, is that I would like to establish a plan for him.

But I will say that, that said, this population generally prefer to not take oral medications.

Q. But he does so on a regular, consistent basis anyway?

A. That's true.

Q. In your declarations, and then again in the summary marked as AE 131J, you sort of get to the issue of whether or not the movements, whether it be for legal meetings, social visits or commission sessions, is not, in your opinion, tied to exacerbations of or perhaps an increase in the likelihood of acute spasms. Is that a fair characterization?

A. So I think in my declaration, I said something along the lines that they can provoke a mild or moderate spasm or worsening of pain. So that's what's possible.

Q. In your observations of when he experiences -- has experienced in the past muscle spasms, is it directly correlated with transport, transportation movements, in your ----

A. Not directly correlated. It's -- basically, sir, it's a sample size of one or two, right? He had spasms on that one occasion when I examined him. The other times that I've examined him, if he had any spasm that I could -- that was observable, it was on the mild level and not directly correlated to anything specific.

Q. And you mention in your declarations that he has, in fact, voluntarily been moved several times for other purposes without any episodes afterwards or during; is that correct?

A. That's true, yes, sir.

Q. One of which was a five-hour stay for a social visit?
A. That's true.
Q. Have you discussed with him at all -- well, I'm not going to ask that question in this session.
Based on your observations of Mr. Hadi this morning, did he appear to be suffering at that time from one of his spasms that he's reported in the past?
A. So my observe -- the observed behavior that I saw was not consistent with a severe spasm. He -- it is possible that he had a mild or moderate spasm, but it did not look like a severe spasm to me, such as I've witnessed in like an emergency room setting.
Q. Based on your observations of him this morning and your discussions with him, based on your medical opinion, is there any reason medically -- medically driven reason, that is, that he would not be capable of being transported for these commission sessions here today?
A. Is there any reason he would not be able to be transported? No, there's -- in my opinion, there's no reason he could not be transported. It would -- I would be a better informed opinion if I had a chance to medically examine him, but he has declined examination.
Q. Okay. So ----

A. If I can add one more thing?

Q. Sure. Go ahead.

A. I did observe him yesterday. And at that point in time we were both standing and he was walking with a wheeled walker, and his mobility as observed yesterday was consistent with what his normal mobility is with the walker.

Q. When you visited him this morning, did you offer him an evaluation?

A. I did. I requested an evaluation.

Q. And he refused?

A. He would -- he would not take me up on it. So he didn't specifically use the words "I refuse," sir, but he would not take me up on it despite repeated requests.

Q. I'm sorry. Despite?

A. Despite me requesting, saying, "I would like to evaluate you in the medical space. Would you please move?"

Q. Okay. In that regard, do you believe that his lack of taking you up on it was driven by a reluctance by him to undergo the evaluation or simply to move locations such that you could examine him? Or do you have any basis to assert one way or the other?

A. Are you asking do I think he did -- did he refuse because he couldn't move or because he didn't want to move, is

that what you're asking?

Q. That's correct.

A. It appeared to me that he didn't want to move.

Q. I believe you indicated earlier during your testimony that his movements within the cell that you could observe were fairly freely done?

A. That's true.

MJ [LtCol LIBRETTO]: Okay, Doctor. Thank you very much. That's all the questions that I have for the time being. I'm going to ask you to step down from the stand and depart the courtroom, but please stand by in the local -- or in the immediate area for any follow-up questions that we might have.

WIT: Yes, sir.

MJ [LtCol LIBRETTO]: Thank you.

WIT: Here's ----

MJ [LtCol LIBRETTO]: Thank you.

I have retrieved a copy of AE 099VVV that the witness was referencing during his testimony. It's a copy, not an actual exhibit.

DDC [MS. HENSLER]: Your Honor, the defense requests permission to make an evidentiary record on -- or rebuttal evidentiary record on the limited question of the waiver of our client, of the question of whether or not our client has

waived his appearance today.

MJ [LtCol LIBRETTO]: Okay. If we get into that sort of analysis, then I will permit you to do so. I'm not there yet.

So we're going to take a 10- to 15-minute recess for me to have an opportunity to evaluate where we are and where we might go, and then we will come back and I will discuss the matter with the counsel.

This commission is in recess.

[The R.M.C. 803 session recessed at 1118, 9 January 2019.]

[The R.M.C. 803 session was called to order at 1139, 9 January 2019.]

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

In light of the purpose of the commission's order outlined in AE 131 and the purpose for convening this session of the commission this morning, the commission does not find it necessary at this time to make a determination on whether the accused's absence is voluntary or involuntary.

To be sure, assuming arguendo that this commission were to find the accused's absence to be involuntary, the taking of the senior medical officer's testimony related to AE 131 would be appropriate in any event.

In fact, the accused's absence today perhaps most clearly demonstrates the need for the commission to inquire into the viability of the current accommodations provided for the accused and whether additional accommodations may be required to facilitate the conduct of this commission in the long term while ensuring the accused's maximum participation.

Accordingly, the commission will take additional testimony from the senior medical officer for its AE 131 inquiry. All questions asked by counsel from this point forward will be narrowly focused for that purpose.

Tomorrow, as outlined in AE 131I, the commission will continue the M.C.R.E. 505(h) hearing we began yesterday. That will be conducted tomorrow afternoon.

This commission will reconvene at 0-9 on Friday morning, 11 January, for an open session of the commission during which we will take the unclassified portions of testimony from the JDG commander and move into a closed R.M.C. 803 session to take his testimony that has been determined to be classified.

Additional hearings of this commission during this January session will be determined at a later time.

Government, please call the senior medical officer for additional testimony.

ATC [MR. SPENCER]: Your Honor, may we have a brief recess in place to secure him? He's not in the immediate vicinity of the courtroom at this moment; he's in the ELC, though.

MJ [LtCol LIBRETTO]: Okay. We may. The commission is in recess.

[The R.M.C. 803 session recessed at 1142, 9 January 2019.]

[The R.M.C. 803 session was called to order at 1146, 9 January 2019.]

MJ [LtCol LIBRETTO]: The commission will come back to order. All parties present when the commission was recessed are again present.

Mr. Spencer.

ATC [MR. SPENCER]: Your Honor, just for clarification purposes, the government's reading of R.M.C. 804, different from federal case law, and since 505 is not at play here, is the commission -- can the commission point to a specific provision to allow the taking of testimony, even a preliminary matter in open, unclassified session without the presence of the accused?

Apologies if the government is overlooking something, Your Honor. I just want clarification.

MJ [LtCol LIBRETTO]: I'm relying on the -- in some respects F.R.E. 804, understanding that it's not necessarily

applicable in courts -- military commissions; however, in light of the unique circumstances presented with this commission, given the accused's either inability or unwillingness to attend, the commission finds that the only appropriate remedy is to -- or the only possible solution is to proceed in his absence for the limited and narrow purpose of determining what accommodations may be present and available to effectuate his attendance at these commission sessions.

DDC [MS. HENSLER]: Your Honor, the defense would like to note two objections for the record before moving forward with the taking of this testimony.

MJ [LtCol LIBRETTO]: Bear with me a moment.

ATC [MR. SPENCER]: Sir, I understand the commission's position. Obviously, from the government's perspective, as has been our consistent position throughout this case, the -- this particular -- and the military rule is different in a substantive way from the federal rule. In the federal rules, in federal case law, very clear, the accused does not have a right to be present on preliminary questions of law. Certainly, you know, on the merits, and as the defense itself said in their cases for presence, those were all merits cases or, in one case, voir dire.

The government's concerned because of the distinction, which is obviously a deliberate one, between both the military courts-martial practice and rule and the commission rule from the federal rule, that absent a finding of -- or at least affording the accused a voluntariness opportunity, similar to what the commission did in a previous session where the commission sent the SJA back to the camp -- I believe it was either later in the afternoon or in the subsequent day -- to re-advise the accused that we may go forward if he does not, the government would express uneasiness, let's say, with proceeding absent such a finding of voluntary -- voluntariness on the accused's part.

The defense obviously wishes to make a rebuttal evidentiary showing on the voluntariness piece of it, and it's the government's position that the voluntariness can be easily established on the current record. The commission obviously disagrees, and we respectfully understand that.

But proceeding without a finding, kind of deviating in some sense from R.M.C. 804, from the government's perspective, is problematic.

MJ [LtCol LIBRETTO]: I understand your concern, and I share in it only to the extent that it's not specifically laid out in the R.M.C.s to conduct an 803 session outside of the

presence of the accused under certain limited circumstances -- with the exception of under certain limited circumstances.

However, given, again, the unique set of circumstances with which this commission is faced, the commission really sees no other way. And I liken it to the -- a fact-finding inquiry that would necessarily have to take place, if, for instance, in a hypothetical situation, an accused were to go into an unauthorized absence status. A fact-finding session would have to take place before the commission -- a court-martial, for that matter, could find that the accused voluntarily absented himself by going into an unauthorized absent status.

I liken this situation to that, where it's not contemplated necessarily specifically by the rules, but there is no other way to get to yes or no or to make a determination either way.

So in light of the narrowly focused objective of AE 131, that is clearly necessary in light of the circumstances even today with the accused's absence. The commission feels comfortable in proceeding for that limited purpose.

ATC [MR. SPENCER]: Understood, Your Honor. I just would like to add one additional clarification.

I presume that Your Honor is basing this, your decision, in part because even though the accused is obviously in custody, because of his current health situation and repeated doctor recommendations, he cannot be brought here against his will without risking his health. So presuming that's a part of your findings as to the uniqueness of this particular situation.

MJ [LtCol LIBRETTO]: That is correct. My decision to proceed today is, in part, based on this court's unwillingness to risk further aggravation of Mr. Hadi's underlying medical conditions as recommended by numerous senior medical officers over the last several months. The commission is not going to do that, even at this point proceeding in his absence.

ATC [MR. SPENCER]: Thank you, Your Honor. The government's concerns are satisfied.

The government calls the SMO ----

DDC [MS. HENSLER]: Your Honor, the defense ----

MJ [LtCol LIBRETTO]: Hold on one moment.

DDC [MS. HENSLER]: The defense has asked to note an objection, and I would ask that I be permitted to make my record on this point.

MJ [LtCol LIBRETTO]: You may make your record. If you would, please, limit your oral argument to a summary of the

objection, and you are free to supplement that oral argument with a written filing and a written objection for purposes of making the record.

DDC [MS. HENSLER]: Yes, we know.

MJ [LtCol LIBRETTO]: You are free to make a note of your objections at this time.

DDC [MS. HENSLER]: Thank you, Your Honor.

If my understanding of the court's guidance is that I'm simply to note the general topic matter of the objection and I may supplement later, then I would note that we note a procedural objection to moving forward with testimony at this point.

We also -- in several respects, there has not -- there is no finding as to voluntariness, and we think that would be required.

We also note that given the day-to-day nature of the accused's -- the demonstrated day-to-day nature of the accused's medical condition, and given that the ASJA testified that he specifically said that he wanted to be here for the -- for the SMO's testimony on this motion, we would ask that the court simply defer additional testimony on the motion by the SMO until tomorrow.

MJ [LtCol LIBRETTO]: I understand your request, and your

objection is overruled. The commission is prepared to take the limited testimony of the senior medical officer for its purpose and inquiry under AE 131.

I will note that the commission taking the testimony in this regard is to assist the defense in obtaining the accused's presence for future commission sessions, which ought to be and, I believe, is an objective of all parties to include the commission.

So with that said, Mr. Spencer, if you would please call the senior medical officer.

ATC [MR. SPENCER]: Yes, Your Honor. The government calls the senior medical officer to the stand.

Sir, thank you. Please be seated. I'll remind you that you are still under oath.

WIT: Yes.

SENIOR MEDICAL OFFICER, U.S. Navy, was called as a witness for the prosecution, was reminded of his oath, and testified as follows:

DIRECT EXAMINATION

Questions by the Assistant Trial Counsel [MR. SPENCER]:

Q. Doctor, have you or your medical staff observed the accused in his day-to-day activities in his current location?

A. We have limited observation in his current -- in his

current location.

So some of the time we can observe what he's doing. Not a hundred percent observation, but yes.

Q. Is that because the -- you and/or corpsmen don't have eyes on him 24 hours a day, seven days a week ----

A. That's correct. That's true.

Q. ---- every second of the day?

What you have observed of him, what are his day-to-day activities?

A. He gets up in the morning, 6:00 to 7:00 time frame. He generally will walk around. He will get on his wheeled walker and kind of walk around his space, his area there, which is good from a doctor perspective. And then he ----

Q. That's consistent with your recommendation; is that correct?

A. Yeah. Right. I mean, you want -- when you have a patient with a back injury, a back pain, you know, more mobility is better, right? You want -- one of the few things we know pretty consistently about back pain and back injury is that immobility tends to make things worse, right? We say bedrest is contraindicated. So even when you see a patient with a really severe back injury, the sooner you get up and move around, the better you're going to get quicker, right?

So that's part of his long-term plan, is to just move within the scope of what he can do.

And so then he will -- when they go into communal period of time, then he'll move into their communal recreation space where they can interact with each other, and he has a hospital chair there, and he'll spend a lot of time sitting in his hospital chair. He has a hospital chair in his room, too, in his cell.

And so he usually takes a nap in the middle of the day for an hour to two hours, and then he spends a significant amount of time communal. But he changes position from sitting to up and about and walking around in the communal area to sitting. I'd say he spends a great -- you know, most of the day sitting.

Q. During when he's in the communal area or in his cell, is he free to change positions?

A. He is.

Q. And is that what he does?

A. Yeah. I mean, he'll get in -- you know, sometimes he'll sit in the bed and, I think, watch a movie and then sometimes he will get out and sit in the chair. For things like prayer, he typically does prayer in the chair. He doesn't get on the floor for prayer. He does -- so he will

read or watch movies or eat in the chair. He has a little hospital table bed -- a table in front of him that's adjustable that he can use so he's more comfortable in the chair.

Q. So you said that he then spends most of his day seated?

A. Yes.

Q. Doctor, you've testified to this a little bit previously, and it's certainly in your declarations, but I'd like to clarify for this particular context in terms of future ability or risk of bringing the accused to trial.

In your opinion, based on your observations and treatment as well as discussions with his neurosurgeon, is having him present in court likely to endanger his health or exacerbate his underlying medical conditions?

A. No.

Q. What about moving him to and from court?

A. By movement, do you mean walk -- coming and going, walking or in vehicle, or all of the above?

Q. Vehicle movement.

A. So I had the -- I had the staff describe to me what his vehicle movement consists of, how they -- how they go about doing his vehicle movement, whether it's in a bed

movement, which we have done for him, or in a wheelchair movement, which we have done for him. And nothing about what they described to me sounds particularly traumatic or rigorous.

Q. The movement by vehicle isn't likely to cause risk to his underlying medical condition?

A. It isn't. As far as his overall underlying medical condition, it's not going to alter the course.

Q. Now, are you aware of the accommodations that have been made for his presence within the courtroom and his holding area here?

A. What I understand is that we made a bed available for him here and that he has a hospital chair here, and I had recommended that he be able -- that be allowed to stand during courtroom procedures if he wants to stand with his walker or -- so are there accommodations above and beyond that?

Q. For example, hand railings in his cell location, things of that nature?

A. Here?

Q. Yes.

A. Oh, I guess I wasn't aware of that, but it makes sense.

Q. In your opinion, are there any other accommodations

that could be made that would limit the health concerns that he has expressed, for example, the spasms?

A. Not -- not really. And, you know, I've been asked that question. You know, we try the best we can to accommodate him. And as a senior medical officer, it sort of falls on me to try to think of other ways that we can accommodate him, and I haven't had much else that we can really offer to try to accommodate him.

Q. I want to back up just a little bit. You have offered him, though, multiple pain management options.

A. That's true.

Q. Such as acupuncture, in -- of which you have particular expertise?

A. We have. We've offered acupuncture. You know, there are other pain modulating medicines that work when you give them on a regular basis. There's a long list in my, like, kind of summary note, and, you know, I've offered those. That's kind of what I do for chronic pain management for people. But he's declined a kind of baseline pain control medication management plan.

Q. And that would include other things like the TENS unit?

A. So TENS unit, yeah. So there would be nonmedical

creams and, you know, topical ointments and creams, Lidocaine patches, et cetera, and then medications such as gabapentin, Lyrica, tricyclic antidepressants.

Q. Would that include trigger point injections?

A. It can include trigger point injections. Trigger point injections are the most useful when you have a specific location, you have one specific location where the person has kind of an origin of pain or one specific spasm. When I've had the chance to examine the defendant, I haven't thought that he would be a good candidate for trigger point injections.

Q. And why is that?

A. Because his pain is a little bit more widespread through his back musculature, or at least where he indicates that his pain is, and I have never been able to pinpoint a specific location, a specific nidus of the pain that would respond the best to trigger point. So he would probably respond better to acupuncture, which treats a larger area.

Q. With respect to the spasms themselves, does he indicate the -- a particular location of a spasm?

A. No, he -- he indicates kind of a general location. He -- he sort of will point to the base of his skull and his shoulders and his back, and he doesn't -- and on examination,

likewise, I have a hard time finding a specific location where there's a spasm. He is tight in his back muscles. This is common after spine surgeries, they have tightness. But as far as a specific location of spasm, I haven't really observed that he has a specific spasm location.

Q. Other than medication as needed and physical therapy, has the accused expressed interest or accepted any other pain management options?

A. No. No. Outside of what was documented in my note, he has not. He -- I mean, when we spoke in December, one of the things that he said that he thought would be a lot better for his health was to move back to be with his brothers. He didn't like being isolated. He said that if his mental health was better being with his brothers, then he thought that it would affect his physical health, and I concurred with that. So that's why we, you know, made the accommodations we did and moved him back to Camp VII.

Q. And that happened in December; is that right?

A. That happened December 24th.

Q. So in the comfort of his companions, he finds some physical relief; is that fair to say?

A. What he told me this morning when I asked the question -- because I'll ask the question in the way, you

know, like, "Do you think you would do better in the previous location where we had you?" He says, "My mental wellness is better here. My physical wellness is less good." That's what he told me this morning.

Q. In terms of his physical wellness, would moving him during sessions of the commission -- let's say a one-week session, would moving him to a location in closer proximity to the courtroom for that week help alleviate the risk of spasms or other pain?

A. I -- I think that would -- you know, the less movements would, you know, would mitigate some of the risk associated with movements.

ATC [MR. SPENCER]: Your Honor, may I have a moment?

MJ [LtCol LIBRETTO]: You may.

Q. Sir, one final couple of questions.

You are aware of the accommodations that have made -- were made for him in Camp VII?

A. I am.

Q. In terms of his day-to-day functions, not just ----

A. Right, and his living arrangements there, yes.

Q. Other physical or structural ----

A. Changes to his environment?

Q. ---- accommodations. Yes, sir.

A. Yes.

Q. And if those had been implemented or are being implemented here, would that assist him as well in his ability to ----

A. Yes. I mean, I think that's the right thing to do, to accommodate, you know, for safety and comfort as well as possible.

ATC [MR. SPENCER]: Thank you, sir. I have no further questions. Defense and the judge may have questions for you.

MJ [LtCol LIBRETTO]: Lieutenant Askar.

DC [LT ASKAR]: Thank you, Your Honor.

CROSS-EXAMINATION

Questions by the Defense Counsel [LT ASKAR]:

Q. Thank you, sir, for coming back.

I had a -- my first question, Doctor, why is continuity of care important in the medical field?

A. Continuity of care is important because when you have hand-overs -- well, for one reason, you know, when we have hand-offs of medical care, that's when medical errors happen. So medical errors can happen with hand-offs, you know, information not communicated correctly, whatever. But a lot of information is lost, too, knowing -- you know, knowing -- as a family medicine doctor, we kind of pride ourselves on

knowing our patients and understanding their context and all. And so a person who knows the patient better can provide better care within the context and the history of that patient.

Q. Makes a lot of sense, Doctor.

You are scheduled to leave island in a few months; is that fair to say?

A. That's true.

Q. And that's because, essentially, this is a short-term assignment?

A. It is. Nine months.

Q. Doctor, you've viewed the -- you viewed Mr. Al-Tamir's cell in Camp VII, right?

A. I have.

Q. And you made recommendations for accommodations to be made in that cell?

A. We did. They consulted me, and they consulted the patient as well to make accommodations for him.

Q. Absolutely. And some of those accommodations have been made, right?

A. Yes. Yes. We -- it is an ongoing process. We have made the accommodations based on what he initially told us would make him, you know, the most comfortable and facilitate

his mobility and movement. And it's an ongoing process. He'll say things like, you know, "If I'm sitting here, it would be helpful to have a handhold here and it would help me to get out of my seat to get up to the walker." And so we work on putting a new handrail in, for example.

Q. Absolutely. And I want to make it clear, just because it's in open session, and I don't really know where the left and right bounds is, I don't want to ask about specific future recommendations ----

A. Right.

Q. ---- but just to be clear for the commission, you are making -- there are additional accommodations that you believe can and should be made to his cell in Camp VII, right?

A. I think it's -- there's not anything specifically lacking right now that I can identify, but I think it's going to be an ongoing process of trying to have a dialogue with the patient and figure out what's going to best accommodate him.

Q. Doctor, I do want to talk for a moment about why he's in Camp VII.

Why was it important to -- I think the word that you used when we spoke a few days ago was socialize Mr. Al-Tamir. Why was it important for him to be around people again?

A. I think it's good for a person's mental health to be

around people. We know that socialization and just being around people in general is protective. It's protective, you know, from an overall health perspective; not just with respect to, you know, suicidality, which is not that -- what we're talking about today, but just it's protective. People tend to do better if they're around other people.

Q. So the social visits that you referenced earlier today and in your declarations, those social visits have a medical purpose, right?

A. They have multiple purposes, but I think they fit in with the medical plan.

Q. Yeah. So they have multiple purposes ----

A. Yeah.

Q. ---- and one of them is medical, right?

A. I've never prescribed a social visit, but I will recommend such, so yeah.

Q. Doctor, I want to talk about some of the chronic pain factors that Mr. Al-Tamir is experiencing or that a person with chronic pain can experience.

Stress is one thing that can exacerbate chronic pain, right?

A. Yes.

Q. And one of the things that can be important for

someone who is suffering chronic pain is adequate rest, right?

A. Yes.

Q. Ensuring that they have enough time to recover when they have a significant episode, right?

A. Yes.

Q. Doctor, we got in again to the topic of movement with respect to Mr. Al-Tamir.

A. Right.

Q. And one of the things that was talked about was, you know, the impact that movement may have on his pain levels, right?

A. Right. Right.

Q. Doctor, generally when Mr. Al-Tamir moves, he take Percocet immediately before moving, right?

A. So in my declaration, to clarify, in my declaration, I realize over the course of time that I put that he generally takes a Percocet before movement and he generally takes a Valium after movement. Closer review of the medical record has shown that it's not that significantly different from his normal pattern, whether he's moving or not. So he typically takes a Percocet in the morning and he typically takes a Valium in the evening.

And hasn't -- again, I'm not a statistician. I can't

say what's statistically significant, but it hasn't -- that Percocet in the morning and the Valium in the evening hasn't been statistically very significant, at least not to my eye, from what his normal pattern is.

Q. I want to be clear, Doctor. It was significant enough that you wrote in your declaration ----

A. It is true, I did write that ----

Q. ---- right?

A. ---- in my declaration.

Q. And I want to be clear, Doctor. If you believe that he -- it was inappropriate for him to receive a Percocet before movement, then you would take action to make sure that he didn't?

A. No, I didn't think it was inappropriate.

Q. And he takes those medications when he's in pain, right?

A. Right.

Q. Or in this case, he could also take that medication in anticipation of pain?

A. Correct.

Q. And he takes -- according to your declaration, at least there's some time correlation between him taking a Percocet before movement, right?

A. There is. I mean, he takes one in the morning, and he usually moves after the morning during the middle of the day. And then he takes a Valium in the evening, and he -- you know, that's usually at the conclusion of the day.

Q. And he takes a Valium generally when he comes back from any movement?

A. He takes a Valium in the evening most every day.

Q. And sometimes there have been occasions where he's had to take that Valium before coming back because the pain from movement is such that he needs it, right?

A. I know that's true this week. He took one during the hearings on Monday, so that was before his movement. So it has been true.

Q. And, Doctor, are you aware that on one of what you referred to as one of the social visits, he had to take a Valium while he was in Camp VII?

A. Yes, he did. He took a Valium while he was in Camp VII one time.

Q. And that's because the movement caused him enough pain that he needed to take a Valium?

A. I can't speculate on that.

Q. Doctor, you have -- you don't write prescriptions for anyone who doesn't need that sort of medication, right?

A. Sure. Yes.

Q. And so it's your medical determination, your professional determination that Mr. Al-Tamir needs this medication, right?

A. They're as-needed medications, so I'm writing them for the circumstance in which he needs them. So if I said that -- if I thought that he needed them, then I would prescribe them on a regular schedule saying that they give it to him every day or at least offer it to him every day. But since I write them as a PRN, as needed, it's by patient request.

So I guess by writing it as a PRN medication, I'm saying he may need it, so I'm offering it so that he has it available if needed.

Q. Doctor, I don't mean to belabor the point, sir ----

A. Is that -- no, go ahead.

Q. ---- but if someone who did not have a medical need for Percocet asked you for Percocet, you would not give it to them, right?

A. That is true.

Q. So Mr. Al-Tamir has a medical need for the medications you prescribed him?

A. He has a medical condition that may require

something, a pain medicine of that strength, yes.

Q. Now, I also want to talk about the specific aspects of movement that may be problematic for him.

A. Okay.

Q. Shackling may be problematic for someone with the sort of medical history that Mr. Al-Tamir has, right?

A. I think -- I'm not an expert on the different levels of, you know -- I know quite a bit about the different levels of shackling and custody and the different kinds of cuffs that they use. My biggest concern regarding the shackling or the restraints is that it doesn't impair his mobility.

Q. Excuse me. And because immobility is something that, especially for someone with his specific condition, can exacerbate his pain, right?

A. It can, and, you know, you -- he also has a -- he walks with a wheeled walker. He has a different gait than, you know, people that don't use a walker. And so his gait could be affected by shackling depending on the way it's applied.

Q. Of course, Doctor.

Sir, were you aware that he was shackled during his most recent visit to his physical therapist?

A. No, I was not aware.

Q. When he was under your consistent care, when he was back in the recovery facility ----

A. Yes.

Q. ---- it was not the -- it was not the procedure for him to be shackled during visits with the physical therapist, right?

A. Typically, when he interacted with medical in that setting, he was not shackled.

Q. And why was that important to you?

A. That was a -- that was a detention group determination. The levels of custody is not determined by medical.

If I think that there's a specific reason why the level of custody or shackling or et cetera has to be altered, then I'll make that recommendation to the JDG, but I don't make those decisions.

Q. Of course, sir.

Now, I do want to talk about your declarations in specific.

A. Okay.

Q. You relied on prior declarations when writing your current senior medical officer declarations that you provide to this court, right?

A. I do.

Q. And then once you've drafted part of your senior medical officer declaration, you send that declaration to the litigation support staff at the Joint Task Force; is that right?

A. That's true.

Q. And then now you're aware that the litigation support staff send that document to the prosecution, right?

A. Yes. As of what we just discussed the other day, that is -- they send it to a number of people for sort of comment and clarification, and then it comes back to me, and we decide what, if anything, we want to do with their comments. Sometimes we just, you know, ignore them or maybe make the wording a little bit more clear, and then I finalize it and sign it.

Q. Well, I want to be clear about what we found out a couple of days ago when you and I spoke.

A. Okay.

Q. We found out that that document is sent to prosecution, right?

A. That was mentioned, yes.

Q. And it was sent to the Office of General Counsel, right ----

A. I -- I think that was mentioned.

Q. ---- at DoD?

A. Yes.

MJ [LtCol LIBRETTO]: Lieutenant Askar, not to cut you off, how does this line of questioning inform the commission's inquiry under AE 131?

DC [LT ASKAR]: Yes, Your Honor. I appreciate the question, sir.

So the reason for this line of questioning is that given some of the inconsistencies in this SMO declarations, and given the reliance necessarily by this commission on the SMO declarations for accuracy and to inform our way forward, I think it's important for the commission to note who is able to edit this document before it comes before the court.

MJ [LtCol LIBRETTO]: Okay. I'm familiar with the process as it's been testified to in previous sessions. If you want to ask whether or not any of his declarations are not his own such that he wouldn't otherwise not have signed off on them, you can go down that line of questioning.

It's unnecessary at this time to proceed through the procedure of how those declarations are vetted or screened for various different purposes.

DC [LT ASKAR]: I appreciate that, Your Honor, and I can

move on to a new line of questioning. The only thing I would note on that, Your Honor, is without the ability to assess for ourselves whether -- what edits were offered, it's difficult to provide more substantive reasons that this commission ----

MJ [LtCol LIBRETTO]: Well, I'm not preventing you from asking him those questions in terms of what was edited, if there was specific substantive issues associated with those declarations that you potentially take issue with and you'd like to inquire as to whether or not those particular points were edited in some way from the -- either the original or what he would otherwise have written, then you're free to do so.

DC [LT ASKAR]: I appreciate that, Your Honor, and I'm happy to do so. I do imagine that it may be difficult for the senior medical officer absent having those track-change documents in front of him to say what exactly was and was not edited; however, I'm happy to inquire if the court would find it probative.

MJ [LtCol LIBRETTO]: I don't necessarily find it probative. I'm not going to prevent you from doing so if you believe it's relevant for this commission's determinations under AE 131. If we get too far along and I still think it's not probative, then I will let you know.

DC [LT ASKAR]: Roger that, Your Honor.

Questions by the DC [LT ASKAR]:

Q. Doctor, I want to ask you specifically about your most recent declaration in which you stated that the -- that Mr. Al-Tamir had had seven legal visits.

A. Okay.

Q. Where did you get that information?

A. The staff judge advocate office.

Q. So you had not seen him after each visit?

A. No, not specifically after every visit.

Q. So you were not aware -- you were only aware of what the staff judge advocate told you?

A. That's correct. We -- we specifically -- we wanted to put the -- an exact number of visits, and so I had them sort of pull the data on what his visits are.

Q. And, Doctor, the reason that you are not aware is -- as you stated, not only do you not meet with him after every move, you meet with him either once a week or once every two weeks ----

A. That's correct.

Q. ---- right?

A. That's correct.

Q. And in the meantime, what you have to rely on is the

records from your staff?

A. From my staff. The corpsmen, the nurses, and then the medication record, and talking to the patient.

Q. Of course. One of the things you noted, Doctor, when the court was questioning was that you hadn't seen significant spasms similar to the 8 November ones -- excuse me, the ones that Mr. Al-Tamir experienced in November ----

A. Right. Right.

Q. ---- in a prevailing; is that right?

A. That's true.

Q. Now, Doctor, you do rely -- as we just stated, you rely on those medical records from your staff, right?

A. I do.

Q. And would it surprise you to know that there are whole-week periods in which it's reported that Mr. Al-Tamir suffers spasms every day?

A. Would it surprise me to know that?

Q. Let me rephrase it, Doctor. I apologize.

A. Okay.

Q. Are you aware that the medical records indicate that Mr. Al-Tamir suffers spasms on daily bases?

A. It would not surprise me. He requests Flexeril and Valium, which are muscle relaxant effect medicines, on a daily

basis. So he has -- he has stiffness and/or spasm most every day.

DC [LT ASKAR]: Your Honor, may I have a moment?

MJ [LtCol LIBRETTO]: You may.

DC [LT ASKAR]: Thank you very much, Doctor. Thank you, Your Honor. Nothing further at this time.

MJ [LtCol LIBRETTO]: Okay. Thank you.

[END OF PAGE]

EXAMINATION BY THE MILITARY COMMISSION

Questions by the Military Judge [LtCol LIBRETTO]:

Q. Doctor, to follow up on Lieutenant Askar's last point, in your 28 November -- well, let me -- bear with me just a moment.

In each of the declarations that you've signed over the last several weeks, you indicate that there have been no acute injuries, emergent conditions, or significant developments since you had assumed care on 9 November 2018. Can you just explain what you mean or what you're referring to with respect to acute injuries, emergent conditions, or significant developments, particularly as it relates to the -- what appears to be some history of spasms on a routine, regular basis?

A. So we'll see if this answers your question, sir. You know, when you have a -- when you have a history of degenerative disc disease and a back condition, it is -- it is within the range of normal to have tightness, you know, minor -- mild muscle spasms, et cetera, over -- you know, on a chronic basis. It's kind of a day-in-and-day-out thing that people live with.

He had -- with the exception of the first week that I was under his care, that he appeared to be in moderate to

severe discomfort and stiffness, you know, i.e., consistent with a higher level of spasm, his stability as a patient has been very stable. He's been more or less the same every day.

The patient medication record and my observations of him would be consistent with a person that has the stiffness that you would expect day in and day out associated with having a back condition like he's had and his surgeries.

Does that answer the question?

Q. It does, thank you.

I think you touched on this, I just want to revisit it a little bit. In terms of pain management, there are certain medications that you've identified, and I think to some extent you've also identified medications such as Flexeril that can be used to minimize the likelihood of the onset of spasms. Is that true, there are medications to -- however helpful that they might be for any given person, that might reduce the likelihood of spasms from occurring?

A. You know, Flexeril will -- Flexeril is a muscle relaxant, and it will reduce muscle tension and, therefore, might reduce the risk of a spasm or at least a severe spasm.

Q. Are there any other measures that could be taken in terms of medication that would either similarly or perhaps even in a greater -- have more greater effect in reducing the

likelihood?

A. There are other muscle relaxants. He and I spoke about them. Some of them are listed in that big summary that I had. Robaxin is a muscle relaxant. Skelaxin is a muscle relaxant. They all sort of have a similar effect. Some are stronger in terms of more -- more muscle relaxation but also a little bit more sedating; some are a little bit more milder.

I think when he and I went through the list, either they hadn't worked and/or he wasn't really interested in trying other things.

Q. Based on this commission's objective of having the commission proceed in a reasonable manner with the accused's participation at each session, are there any other medical -- I'm sorry, let me break that down -- medications that could be provided to him, regardless of whether or not -- and not to say it would be forced, but just not taking into account whether or not he would be willing or not to take them, are there any other medications that you're aware of that would assist the commission's objectives in getting him here with the -- reducing the likelihood of spasms or severe pain from occurring for any length of time?

A. The list that I kind of covered, sir, in my note and just now is -- is the list of medications, kind of the

comprehensive list of things that I would consider for someone like him. I can't think of anything above and beyond what we've done.

The neurosurgeon may have additional recommendations above that, being a specialist and taking care of these postoperative patients more than I do.

Q. Okay. So basically from your perspective, what he's being provided now in terms of the types of medication, that is about as good as we can get right now?

A. Yes, sir. I mean, there are other things you could try that would be stronger, but they would have more sedation effect. There are things that are milder that we could recommend that would have less sedation effect but might reduce his level of muscle tension. But the ones that -- the ones we discussed he wasn't interested in or had tried previously and thought they didn't work.

Q. Okay.

A. So I don't really have much else in my toolbox.

Q. And perhaps the only thing, taking into consideration the medications that have seemingly worked, would be to implement a more routine administration of those, towards a schedule of sorts?

A. Potentially. And, you know, I would like to -- we

talk a lot about the spasm, but I would like to put him on sort of a pain regimen, something that kind of reduces his level of pain. Because if your level of pain is decreased, then the likelihood of a spasm also -- just like stress increases the likelihood of a spasm, the baseline level of pain can increase tension and increase the likelihood of a spasm.

Q. And to this point, he has been unwilling to entertain a specific regimen of medications?

A. That's true.

Q. In your opinion, there seems to be two options that have currently been put in place in terms of his transportation to commission sessions, one of which has him sitting up in a -- I believe a medically -- a medical chair of some sort and the other lying down. Is one or the other, in your opinion, better and should be implemented on a regular basis or is it subjective to the patient as to which he believes at any certain point would be more appropriate?

A. No, there's not medical evidence to say that one is preferable to the other. Most -- I will say most patients that have what he has are easily accommodated by regular vehicle transport, you know, sitting plus a walker.

You know, most of the patients that I see in regular

practice will come in a regular vehicle, an automobile, and just have the walker in the trunk of the car. Someone helps them to get out of the car and use the walker, and that accommodates most people fine.

I wouldn't -- I wouldn't recommend prescribing a specific mode of transportation. I would leave it to patient choice.

Q. Okay. Just to clarify your last point. When you say other patients you see with the accused's condition, are you referring to patients with the accused's conditions that are either as severe or similar in nature to him?

A. Right. Right. Other patients with a history of back surgery and degenerative disc disease.

Q. You indicated that since being transferred back to Camp VII, that he has expressed a worsening, I guess, of symptoms of his health condition. Did he specifically indicate what accommodations he had at his previous location that he doesn't have that are making his symptoms worse?

A. The -- you know, when we went and -- and again, this is not -- this is not my direct questioning. This is indirect questioning about what -- you know, what could we do, what could the engineers do to make his space more comfortable.

The things that he had mentioned to our staff were

that the metal flooring of his shower was uncomfortable, so we put in nonskid strips. It's like a piece of tape with a nonskid, you know, both for safety and to kind of insulate his feet from the discomfort. We put in some handholds to sort of help his mobility into and out of his sitting position.

But relative to -- relative to his old rehabilitative setting, he has more accommodations in Camp VII. He has more handholds. In his old setting, to get up to standing, he just -- he just used a chair and the walker itself. He didn't -- because of the setup being different ----

Q. Okay.

A. ---- he was able to easily -- I observed that he was able to easily get from the chair to the walker just using the walker to stand up.

And so he's got extra handholds. He has extra accommodations where he is now above and beyond that.

Q. Okay. Taking into account the medical accommodations that have been provided to Mr. Hadi within the courtroom during commission sessions, specifically the medical chair that he's accustomed to using, the hospital bed that is available for his use, and the ability to move, stretch, and change positions as he deems appropriate and necessary, aside from those accommodations, are there any other medical

accommodations that you can readily think of that would assist the commission in its stated purpose?

A. No, sir.

Q. In declarations by past senior medical officers, they've provided a specific recommendation as to the frequency and duration that commission sessions be held. Is that a recommendation that ought to be considered in terms of the value of it, or is it better to make a determination on a day-to-day basis, a week-to-week basis, and the like?

A. This question was brought up when I talked to prosecution and defense beforehand, you know, the difference between my way of writing the declaration, and the previous SMO had a little bit more prescriptive recommendations.

In my personal opinion, the -- you know, that sort of prescriptive, one should have this many days off after -- you know, or this many hours of session is very arbitrary.

So, you know, it would be based on -- if I were to base that -- if I were to make that opinion, it would be based on, you know, based on his observation and how what we do here in the commissions relates to what he does in his normal activities of, you know, daily life, his normal functional life. And his normal functional life is sitting primarily, getting up and moving around, occasionally laying in the bed,

perhaps taking a nap.

So, you know, I think that what we have done this week with respect to the day off is a good idea, and I'm happy to go on the record saying that I think it's a good idea, but I haven't specifically prescribed that or recommended it in my declaration.

Q. Okay. Thank you.

You noted during your testimony that you've never been able to identify a specific location where -- nor has Mr. Hadi identified a specific location where these spasms are occurring. Is that something that you would expect to be able to determine or locate, given the nature of the spasms that he indicates he has?

A. It differs patient to patient. Patients that have had multiple back surgeries, including in the neck and the lower spine, I would expect them to have muscle tension kind of throughout his back. It's consistent with what he reports.

The question that I was responding to at the time was whether he would benefit from trigger point injections. Trigger point injections is really most beneficial for the person that has like a specific location of spasm. So he probably has pain and/or stiffness and tightness kind of in different locations throughout his back. That's not going to

respond so well to trigger point injections.

So what he reports to me and what, on examining his back, I see is consistent with his surgical history.

Q. Okay. At the last session of the commission back in November, the commission was convened, and during the commission Mr. Hadi had experienced a spasm. The commission took a break for an extended period of time, a few hours, to allow him to rest and take medication. At that time we had some medical person on standby.

What capability do you believe would -- whether or not it's feasible or not, so best-case scenario, in your medical opinion, what would the medical assistance that would most be beneficial to permit the commission to continue in his presence if an episode like that were to reoccur?

A. You know, he will need -- I mean, he needs what we give him on a regular basis, so, you know, a corpsman, a trained corpsman that can offer the medications that have seemed to help him.

You know, in the past -- you know, in the past that's the way we've -- that's the way we've dealt with his pain condition, and that's kind of the -- that's what we have to offer him. There's not much that I can think of outside of what we've been doing.

Mostly, it would be having a corpsman there to just assess him and to give him the as-needed pain medications.

Q. Okay. You indicated a moment ago that Mr. Hadi's activities within the courtroom are fairly similar in nature to that which he routinely does on a daily basis; most of the time is spent sitting, stretching, perhaps moving about a little bit in his space. Has he indicated that there's anything different about that environment and this that causes him to have the anxiety which he expressed to you today?

A. The one thing I referenced earlier -- the one specific thing I can say that he mentioned this morning, that trying to take a nap in his cell is much more comfortable than trying to take a nap in a location like this with hundreds of people watching, that he feels like he doesn't have privacy, and that's not comfortable for him. Other than that, I can't remember anything specific.

Q. Along those similar lines with his activities being fairly similar in both locations, on a day-to-day basis, is he prevented -- does his condition prevent him from participating or conducting those minimal activities?

In other words, what I'm trying to get at is, in light of the similarity between his daily activity in the commission and in the cell, while he's in his cell, does he

have days where he just cannot, because of the pain attributed with his condition, function, eat ----

A. We have not witnessed that. So what you refer to, sir, is what we call activities of daily living, right. So the ability to do toileting. You know, he does -- you know, the ritual washing before prayer, so he can move to the shower and sit down and wash his feet and all. It requires a fair amount of mobility to be able to wash your feet and to sit in a shower chair, to get up and move around, to get out of the chair and get to the walker and to be able to move the walker to sit on the shower chair, which is actually quite low, and to be able to do his washings. And so we have not witnessed that there's ever been a point in time where he was so immobilized that he couldn't do the basic activities of daily living.

And that's consistent with what he has told me. When I asked him, "Can you do these things?" He'll say, "Yes, I can do them. I challenge myself, but I can do them."

Q. Okay. Would it be of any benefit -- and if it were to be of any benefit, I'd ask you to opine as to the significance of that benefit -- to have -- you said that -- and I think it's in your summary, that he responds well to physical therapy.

Would there be any benefit to having, at times, a physical therapist onsite to assist Mr. Hadi in stretching and performing some of those activities that seem to relieve him stress or relieve him from his symptoms?

A. So generally we don't utilize physical therapists that way. Generally, physical therapy is more for like chronic management of pain and mobility. But I think that to assist him with stretching -- you know, to assist him with stretching to accommodate whatever specific stiffness he has, it could be beneficial.

Q. The stretches that -- and from past experience with physical therapy, it's my understanding that physical therapy, you -- basically is an educational tool ----

A. That's right.

Q. ---- to demonstrate how to conduct those therapies on your own.

A. That's right.

Q. And I suspect, and if you can confirm, that Mr. Hadi -- that is the type of physical therapy that Mr. Hadi is undergoing?

A. He is. So, you know, often a patient will say, after a while when they go see the physical therapy -- physical therapists for enough sessions, they'll say, "Okay, I've

figured out the pattern by now, I've got it," and they do it on their own. And that's what kind of the physical therapist wants, is that a patient does it on their own.

So I have a feeling that -- he and I haven't specifically talked about this, but he has told me that he does -- or he tries to do self-physical therapy most days. Most of these things he knows how to do on his own and he's capable of doing on his own.

Q. Okay. Has Mr. Hadi ever expressed to you any specific request on his part that would make it more feasible in his own mind for him to attend and participate in these proceedings?

A. Not that I can recall, Your Honor.

MJ [LtCol LIBRETTO]: Okay, Doctor. That's all the questions that I have. I thank you very much for coming back in to provide me some information. At this time we have no further questions for you, so you may return to your normal duties. Thank you.

WIT: Thank you, sir.

DC [LT ASKAR]: Your Honor?

MJ [LtCol LIBRETTO]: Yes.

DC [LT ASKAR]: Court's indulgence. I was wondering, I apologize, if the court would inquire to the doctor as to

whether or not the pain management specialist is still going to be on island in January.

MJ [LtCol LIBRETTO]: I'm sorry?

DC [LT ASKAR]: I was hoping the court could inquire as to whether or not the pain management specialist scheduled to come to Guantanamo Bay was still going to arrive this month.

Questions by the Military Judge [LtCol LIBRETTO]:

Q. Doctor, did you hear the question?

A. I did hear the question. The answer to the question is it's unlikely that we're going to have a pain management specialist here in January. Pain management specialists are a rare breed, specifically pain interventionalists, and especially of military medicine, but just in general. And we are trying to our hardest to find one. We're trying to expand the scope of where we're looking for a pain management specialist that we could get here, but they're in short supply right now. I don't have a specific time frame.

We have certainly -- we certainly realize that there is a -- that, you know, he's kind of the next step in our plan of care. The level of urgency as a doctor that I have for a pain management specialist, it would be a routine consult, right? There's nothing about his specific condition that would say he urgently needs one, but I know that it is

important for the kind of the next step in his plan of care to get the pain management specialist.

But that said, the Joint Medical Group staff is working to try to acquire one. I don't have a specific time frame.

Q. Just sort of to follow up on that question. The pain management specialist, as I understand it, would implement a pain management schedule, a pain medication management, is that ----

A. Actually, sir, to clarify, so the pain management specialist that we're seeking to bring is an interventionalist. So this is an anesthesiologist that is trained on injections, either Lidocaine nerve block injections or epidural steroid injections, you know, type steroid injections.

This -- our defendant, the patient, has undergone these previously in the past, and when I've asked him about the pain management specialist and, you know, how beneficial does he think that it's going to be, he's not really interested in further injections and injection-type approaches.

So I'm hopeful that when the pain management specialist does come, a lot of times they will weigh in on the

medical plan of care, which is similar -- in other words, this summary medical management note that I wrote, sort of weigh in on my summary and see if he has anything to add above and beyond that. But I'm not particularly hopeful that he's going to have a lot to offer, especially if the patient is not interested in injections.

MJ [LtCol LIBRETTO]: Okay. Thank you.

DC [LT ASKAR]: I appreciate the court's indulgence, Your Honor.

MJ [LtCol LIBRETTO]: Very well. Doctor, at this time you can step down and return to your normal duties. Thank you very much.

WIT: Thank you, sir.

[The witness was excused and withdrew from the courtroom.]

MJ [LtCol LIBRETTO]: As previously indicated, this commission is going to stand in recess until 0900 on Friday morning, with the exception of 505(h) hearing that will be conducted tomorrow afternoon.

Anything to take up before the court -- commission stands in recess?

TC [CDR SHORT]: Nothing from the government, Your Honor.

DDC [MS. HENSLER]: Nothing from the defense, Your Honor. Thank you.

MJ [LtCol LIBRETTO]: This commission is in recess.

[The R.M.C. 803 session recessed at 1251, 9 January 2019.]