[The R.M.C. 803 session was called to order at 0902, 28 February 2023.]

MJ [COL ACOSTA]: The commission is called to order.

Government, good morning.

TC [MR. O'SULLIVAN]: Good morning, Your Honor. These proceedings are being transmitted via CCTV to public viewing locations in the United States pursuant to the commission's order AE 028M dated 22 November 2019.

All of the following personnel have the requisite clearances for being in the courtroom and the Remote Hearing Room:

Present for the United States at Guantanamo Bay are myself, Michael O'Sullivan; Mr. John Wells; Major James Garrett; Major Michael Ross; Captain Jonathan Danielczyk; Mr. Pascual Tavarez-Patin; Staff Sergeant Jaune Daniels; Mr. Forrest Parker Smith; Mr. Louie Marmo; Ms. Joleen Sanders; and our linguist.

Present in the Remote Hearing Room in northern Virginia are Lieutenant Commander Keven Schreiber, Major Stephen Romeo, Lieutenant Tess Schwartz, Mr. Edward Ryan, Master Sergeant Laura Speranza, Staff Sergeant Kyle Swayzee, Ms. Paige McLachlan. Also present, Special Agent Paul Rude with the Transregional Criminal Investigation Unit; and from the FBI, Supervisory Special Agent Mary Sonnen. Ms. Karissa Grippando may be joining us at some point during the day.

MJ [COL ACOSTA]: All right. Thank you, Counsel.

Good morning, Defense. Who's here on behalf of the defense?

LDC [MR. NATALE]: Good morning, Your Honor. Anthony Natale on behalf of Mr. Nashiri, who is present in court with the aid of his interpreter. Also present here in the ELC is Lieutenant Colonel Nettinga, Ms. Morgan, Staff Sergeant McGuire, LN1 Wood, Mr. Bendernagel. And Mr. Dolphin may be coming in.

I have a correction. Staff Sergeant McGuire may be coming in and out. She's not presently here now.

And as far as the RHR, Lieutenant Commander Piette, Mr. Padilla, Ms. Carmon, Mr. Roy. And the following individuals will probably be coming in and out as we need them to be: Mr. Hoffmann, Ms. Pinate, and Mr. Lange.

All of the people I have listed at both locations have the necessary clearances and qualifications to be present.

MJ [COL ACOSTA]: Thank you, Counsel.

As defense stated, and just to be clear, the accused is here today.

Yesterday, following a closed session, the commission held a brief 802 session with the parties. We discussed generally the plan for today to take up AE 534. We discussed that Agent McFadden is not anticipated as a witness again, at least right now. And we discussed the submission for written argument on 319, and the commission told the parties that it -- that the commission wanted to -- will issue an

order outlining the parameters of that argument, that written argument, much in the way that the commission did for AE 399. We also briefly discussed the defense concerns about their ability to argue 444 this week.

Regarding taking up AE 534 today, the government asked the commission not to order the production of the interpreter citing JTF concerns that the government stated that they did not -- that the government did not fully understand the JTF concerns regarding the production of that witness. Further, the government indicated that the testimony of the SMO, the senior medical officer, may negate to hear from the -- from the interpreter, and the government further indicated that the affidavit submitted by the SMO, the medical provider, provided on this issue may be incomplete in some way.

The commission had previously informed the government to have the SMO here now. As the commission understands the way things are now for the testimony of the SMO, a portion of that testimony may be -- need to be taken up in closed session. If so, we'll order a closure and potential -- and before we do that, I'll try to take up as many things as I can before that, but we might very well take up in open session after that, and the commission will inform the parties if that is the case.

With regard to AE 027X, this is the order of the commission:

The pleadings, as they are submitted, indicate that there is

at least -- that there is a high potential -- and the arguments of counsel indicate there is a high likelihood that the parties are at least in some form of agreement, that there needs to be a modification with that.

And that in light of the need to resolve the raised issue as quickly as possible, the commission directs and orders the parties to confer and submit a joint file -- filing containing proposed modifications on the areas in which they can agree and outlining those areas in which there is disagreement to modifications of the privilege written communications order not later than COB, close of business, on 3 March.

Regarding AE 319 and my intent to issue the written order on how to -- my order -- the order outlining how you're going to outline your written argument on that, parties, are we done with the lay witnesses and the presentation of evidence on the admissibility of the lay witness statements at the end of this session this week?

Government?

ATC [LCDR SCHREIBER]: Yes, Your Honor. Assuming that Ken Hieb arrives and testifies, then yes, we should be done with the lay witness presentation of evidence.

MJ [COL ACOSTA]: Defense?

LDC [MR. NATALE]: Yes, Your Honor.

MJ [COL ACOSTA]: All right. All right. Now we -- as the

commission ordered the SMO to be present for the defense, as the defense requested as their witness, defense, you may call your witness.

DDC [LCDR PIETTE]: Yes, Your Honor. The defense calls the senior medical officer.

ATC [Capt DANIELCZYK]: Good morning, sir. If you could please stand next to the witness stand and raise your right hand.

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

ATC [Capt DANIELCZYK]: And can you please state your rank and current duty assignment for the record.

WIT: Sure. I'm a commander, and I'm the senior medical officer for Camp V[redacted]

DDC [LT DANIELSON]: Thank you.

DDC [LCDR PIETTE]: I don't yet have an image of the witness down here. Okay. There we go.

DIRECT EXAMINATION

Questions by the Detailed Defense Counsel [LCDR PIETTE]:

Q. Good morning, sir.

A. Good morning.

Q. Good to talk to you again. Were you able to receive the documents that I sent over to the prosecution this morning for your review?

A. I did.

Q. Did you have a chance to look over them?

A. Briefly, yes.

Q. Okay. We might be talking about them later. I'm not sure.

A. Okay.

Q. All right. Just briefly, if you could tell the court, what is your profession?

A. I am a physician, and I am an M.D. flavor of physician. And would you like me to tell you my specialties and so forth?

Q. Yes, please. That would be perfect.

A. Sure. I am a board-certified critical care physician, pulmonologist, and internal medicine physician.

Q. And how long have you been a medical doctor?

A. I graduated from medical school in 2004.

Q. Okay. And have you been a naval officer the entire time you've been a medical doctor?

A. Of sorts, yes. I was on active duty for a period of time and then got out to pursue a civilian career. And during that period of time I was in the reserves, and then I rejoined active duty after that period of time in 2018.

MJ [COL ACOSTA]: Counsel, can you hold on one second.

DDC [LCDR PIETTE]: Yes, Your Honor.

MJ [COL ACOSTA]: Is there an issue, Defense, with the presentation or are you able to see ----

LDC [MR. NATALE]: No, Your Honor, no.

MJ [COL ACOSTA]: I was just trying to make sure you can see and hear.

LDC [MR. NATALE]: Everything is fine, Your Honor.

MJ [COL ACOSTA]: Okay. You may proceed.

DDC [LCDR PIETTE]: Thank you.

Q. And what is your current duty station?

A. I am active duty, as I previously mentioned, and I am deployed here to this assignment from Naval Hospital [redacted] and ----

Q. How long ----

A. ---- my duty assignment there is as a critical care and pulmonary physician.

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

A. Approximately [redacted]

Q. And about how much longer do you have on this tour?

A. A little less [redacted]

Q. Thank you. All right. Now let's get into -- we're going to talk a little bit about the training that you have specific to this job.

What, if any, training have you had regarding the care and

treatment of torture victims?

A. There has been no specific treatment to torture victims.

Q. How about your medical staff? As far as you know, have they had any training in the care and treatment of torture survivors?

A. Not specifically to that, to the best of my understanding. We have a psychiatrist who is board certified and she is also an M.D. and I think that it's reasonable to assume that she has a fundamental basic amount of training in taking care of and treating -- assessing and treating patients who have been exposed to difficult situations.

But beyond that, I don't think there's been anything specific to torture victims. It's just not something that in regular graduate medical education you can go and get a residency or a fellowship in torture medicine. I'm not sure you could find that in the yellow pages.

Q. And to be clear, when you're talking about the psychiatrist there, you said it's safe to assume, but do you know for sure, like do you know if she has had special -- or he -- has had specialized training on the treatment of torture victims?

A. Well, as I've stated, I don't think that she has. But I -- but just as a physician who's been practicing medicine for a number of years who consults various specialists -- for instance, if I consult an orthopedic surgeon, I'm assuming that they know how to fix a broken arm.

Likewise, if I consult a psychiatrist, I would assume that they would know how to speak to a patient about difficult problems which may include traumatic situations and anxiety and things of that nature. So insofar as those medical conditions may be related to torture, I would assume that there would be some level of experience and expertise there, yes.

Q. And on that note -- we might pick this up in more detail later, but when you -- in your job now you deal with patients who have suffered from trauma from torture. Is that something that you have sought assistance with, talked to other medical doctors who maybe have a specialty or have a lot of experience or maybe would refer -- I don't think you can refer these people, but if you could, would you refer them to somebody who had a medical specialty or at least experience in treating torture victims?

A. No, I don't see that as being part of my mission, to be honest with you. You know, I'm deployed here in the capacity of a primary care physician because I happen to have an internal medicine board certification, even though it's not my primary practice. As such, I feel very comfortable operating in that capacity to provide primary care to the patients.

And any care along the lines that you're alluding to or asking me about, I would -- I would assume would be more appropriately consulted out from our psychiatrist rather than from

me. Doesn't mean that I wouldn't know about it or help facilitate it with the use of our logistics team, but it's not something that I would specifically do because the JTF medical mission isn't one of investigation or forensics or factfinding or anything along those lines. It's one of providing safe, legal, and humane primary care to the best of our ability to the detainees.

Q. Okay. Thank you. All right.

Moving on to this -- were you -- we're going to move on to your knowledge, like what you did to prepare for coming here, beyond training in any specific area. But first, were you -- did you volunteer for this position or were you voluntold?

A. I was voluntold to come here because I had a security clearance that allowed me to come here.

Q. All right. And with that security clearance, did you -- [redacted]

A. Yes.

Q. [redacted] at any time prior to coming here, as you were coming here, were you given specifics about what happened to the detainees in their prior CIA custody?

A. I was not given any information prior to coming here because I was not read on until I arrived.

Q. Okay.

A. The further follow-on answer to your question is, I was

not given any specifics. I was given general information about their prior experiences before they were transferred here.

Q. And if you recall, how general was that? Like, what were you told?

A. I feel like ----

TC [MR. O'SULLIVAN]: Your Honor ----

A. ---- you just asked me a question about what I was told during a read-on ----

TC [MR. O'SULLIVAN]: Excuse me, Your Honor.

MJ [COL ACOSTA]: Hold on. Hold on.

WIT: Sure.

TC [MR. O'SULLIVAN]: I'm sorry, Your Honor. I just want to make sure that the witness knows that if he feels like he needs to go into classified, he should not say it in open court.

MJ [COL ACOSTA]: Right. What government counsel is indicating is that if you think that your answer is going to be classified, say "I believe that's a classified answer" and that you need to -- and that you cannot answer it in open court.

WIT: Yes, Your Honor.

MJ [COL ACOSTA]: Can you do that?

WIT: Yes.

MJ [COL ACOSTA]: All right. Let's -- re-ask your question, Defense Counsel, and then we'll get the answer.

Q. Okay. How general was what you were told and, more specifically, if you could tell us just what you were told about their prior treatment in CIA custody.

A. Specific during [redacted]

Q. Yes, or during your turnover, as you were coming here.

A. I can speak to the turnover when I was coming here, and that is that all of the detainees who are my patients experienced CIA enhanced interrogation, which has been characterized by many as torture.

Q. But you didn't get any specifics on that at that time, during your turnover?

A. That's correct.

Q. Okay. And prior to coming here at any time, had you ever heard of the SSCI Report, otherwise known as the Torture Report, about what had happened to some of these detainees in CIA custody?

A. I had not.

Q. Had you ever heard of or read the 2007 ICRC, Red Cross, report about what happened to some of these detainees?

A. I read some of that reporting in my orientation coming here but not previous to it, no.

Q. Okay. And that didn't -- you didn't -- don't remember reading any specifics about what happened to the detainees?

A. I don't. I don't remember any specifics during that time.

Q. And with respect to Mr. Al Nashiri, when in -- when -- I'm asking for a time frame here -- did you start learning specifics about what happened to him in prior custody?

A. I began to read some open-source information and learn a little bit more from prior testimony that was forwarded to me when I was notified that I may be asked to come testify for this case.

Q. And what open-source information was that?

A. Media articles, testimony from some of your experts, and testimony from -- from -- given by prior senior medical officers.

Q. Did you listen to -- or read, excuse me, testimony from Dr. Crosby?

A. I only reviewed briefly a *New York Times* article by Dr. Crosby yesterday because it was forwarded to me.

Q. Okay.

A. But I did not memorize it.

Q. And why did you start -- I think you might have answered this, but why did you start reviewing this open-source material?

A. I did that because I was -- I was notified that the nature of the motion that you had filed, or your team had filed, had pertinence to allegations of prior treatment.

Q. And when you were reviewing that open-source material, did you come to learn that Mr. Al Nashiri had been hung -- shackled by his wrists and hung from the ceiling for extended periods of time,

even days on end, while in CIA custody?

A. I can't speak to the details, but yes, I do remember reading that.

Q. Okay. Did you also remember reading that Mr. Al Nashiri was shoved into a small box that he could barely fit into, again, for days at a time?

A. Yes, I remember that too.

Q. Do you remember reading that he was subjected to extreme cold temperatures for extended periods of time as well?

A. I don't remember that piece.

Q. And do you remember reading about him getting walled? In other words, them wrapping a towel around his neck and slamming his head into a wall multiple times over the course of his time in CIA custody?

A. No, I don't remember hearing about that with him specifically. But over the course of my several months, I have heard about such a technique regarding that generically existing.

Q. All right. And at any time, did you see any mention of those techniques or any others in Mr. Al Nashiri's medical record?

A. No. I don't remember seeing anything like that.

Q. And have you reviewed Mr. Al Nashiri's medical records?

A. Yes, I have.

Q. How far back do his medical records go, if you can recall?

A. The medical records that we have available to us go back to 2006. And I can't say that I was able to memorize all of those medical records, but I did review every page in the medical record as best as I could read them, all the way back to his intake.

Q. And at no point in those records, going all the way back to 2006, do you see any sort of -- did you see any sort of trauma history or detailed accounting of the injuries that he had received in CIA custody and how those might be of -- affecting his current injuries?

A. If there were, I missed them. It's a lot of data.

Q. Understood. That is true.

You mentioned before your turnover. So we're talking about when you arrived, you had a turnover with the prior SMO. How long was that turnover?

A. I believe it was about ten days. It may have been a little bit longer, but I was delayed a little bit because of our teams having some COVID-positive issues, and so we were all kind of in ROM. So I got a -- I got there a few days late. So I arrived over the weekend and we essentially got off the plane, got some lunch, and went into the office and got to work.

Q. And what did that turnover consist of?

A. It consisted of a lot of -- a lot of education and orientation regarding process and who's who in the zoo in terms of

JTF staff, where to get things done, where to get answers, where to get support.

It involved sort of drinking from the firehose, if you'll accept that expression, in terms of, you know, just the -- just how things were done in terms of getting folks medical care, getting specialists on the island, getting people the care they need and the primary issues that exist for each detainee. Everybody has a couple of things that are active issues. And trying to learn those, trying to learn faces, trying to learn ISN numbers, trying to learn names, trying to learn all of those things and how they -- how they marry up together.

So it's a lot to take in over the course of ten days. And to be honest with you, you get a -- you get a flash sight picture; I know you know what that means -- and then you start to learn over the course of months and get into each person's medical history a little bit more.

Q. And during that turnover, did you and the prior or the outgoing SMO have a chance to sit down with Mr. Al Nashiri?

A. Yes, we did.

Q. About how many detainees agreed to sit down with you and the outgoing SMO?

A. To my recollection, probably -- probably 13.

Q. Okay. And was Mr. Al Nashiri cooperative and willing to

talk to you in that meeting?

A. Oh, yes, as he always is. He's very pleasant and fun to talk to and, frankly, very entertaining.

Q. And how long -- I guess we could figure this out by doing the math, but how long have you known and interacted with Mr. Al Nashiri?

A. You know, to be frank with you, my official clinical interactions with him haven't been as many as some of the other detainees, primarily because we have him seen by physical therapy more than anyone else. And the issues that he's presented to me for have been issues that I think we've been able to get around and get a handle on, which I've felt good about.

And he also tends to be someone who kind of -- kind of puts on kind of a tough-guy -- a tough-guy shield and says, no, no, I'm good, I'm good, I got it, I'm okay. I think things are good, you know. So we'll take him -- take him at his word and do what we can.

Some of my other interactions have been glancing interactions. I think that it would help to understand kind of the -- the way we -- the way our workflow kind of comes out of left field sometimes.

[redacted] And most of the patients don't want to be seen

in the clinical space; most of them just want to ask me a question or sidebar. And sometimes I'll be up at the -- the sally gate speaking to someone and then, you know, four or five more people may come up and say, oh, by the way, can I ask you about this or can I ask you about that? And so some of my interactions have been along those lines.

You know, usually he's trying to ask me how much protein powder and BCAAs he can take so he can get swole. So he likes to work out. And that's been a lot of the interactions I've had with him.

Q. Understood. And other than protein powder, getting huge, what else do you guys talk about?

A. We talked recently about getting him an ENT appointment [redacted] so we got that taken care of for him. [redacted] He's got, as you know, chronic issues with motion sickness, so, you know -- and these are, you know -- these are pretty easy to deal with.

Some of it's just med refills that come through the -- come through the nursing staff. They tell me that they talked with him and he wants to -- wants a refill of this medication or that medication, and we just sort of handle it. It's sort of routine.

Q. Okay. And about how many times a week would you say that

you speak to him either in those -- kind of in passing or in actual appointments?

A. Not that frequently, to be honest with you.

Q. Would you say that over the eight months you've talked to him, you've been able to develop some kind of rapport with him?

A. I think so.

Q. I remember yesterday you mentioned that he treats you as his -- like his personal trainer. Is that true?

A. I think that's fair.

Q. And how so, if you could briefly describe.

A. I remember -- you know, besides the -- besides the interaction I described, he's asked about -- we have these -- I think some of your -- maybe some of your team provides him with some of these protein powders or supplement -- amino acid supplements and so forth, and so we sign these things off.

And so I remember one interaction where we were signing these things off, and he -- the linguist asked if he could ask me some -- a couple of questions about it while I was signing him off. And that cascaded into him asking about his form and how he should do his bicep curls and, you know, how much he should rest and, you know, what's the best time to take these supplements for him to get maximum muscle gains and so forth. And so it -- it comes off to me as being just kind of friendly interaction.

Q. And just so we have a better picture of these friendly interactions you have with Mr. Al Nashiri, do you speak Arabic?

A. I don't. I know a couple of -- a couple of words for etiquette.

Q. And when you speak to Mr. Al Nashiri, does he speak English?

A. He doesn't speak English fluently. He does speak a few -- a few phrases. And my impression, being someone that does speak other languages, is that I can tell that he can understand a lot of what I say, but he has issues just kind of expressing himself and putting sentence structure together, which is why we rely exclusively on the linguist.

Q. Okay. And so in every interaction you have with him is the linguist present?

A. I don't know if we had the linguist present when I was trying to get him an ENT appointment [redacted] And -- but the linguist may have been present. I just don't remember.

But we had a lot of hand-waving and things that went on when he was describing his worsening issues [redacted] and I asked him if he wanted to see the nose doctor, and I think that was -- you know, I think that may have been without the linguist, but that was probably the only interaction we had. And that's because I

wanted to make sure I got him an appointment because the guy who was the provider for the ENT specialty was basically going to be inbound.

Q. We spoke about this yesterday, but do you remember your August of -- I believe it was 17 August 2022 meeting with Mr. Al Nashiri where you spoke to him about his x-ray on his shoulder that he had had?

A. I remember the interaction.

Q. Was an interpreter present for that?

A. Yes, he was.

Q. Okay. And do you remember, did Mr. Al Nashiri tell you anything about the origins or suspected origins of his shoulder injury?

A. I know that's the -- the main focus and topic of your motion, regarding that encounter. And we've talked about it and thought about it, and I don't recall that coming up.

As I've spoken -- as I said to you yesterday, I'm not asserting that a hundred percent certainty it did not come up and I'm telling you beyond a shadow of a doubt, because August was a minute ago. But I don't remember anything like that coming up.

Q. And again, just to be clear, with the interpreter, does the interpreter -- do you know if what the interpreter tells you is a verbatim -- is verbatim as to what the detainee or Mr. Al Nashiri's telling you or if you're getting a gist?

A. It would be completely speculative of me to try to answer that question.

Q. Understood. So it's only the interpreter could answer that question?

A. Right.

DDC [LCDR PIETTE]: If I could have the court's indulgence briefly, Your Honor.

MJ [COL ACOSTA]: You may.

[Counsel conferred.]

Q. All right. And we were just talking about that August of 2022 meeting. You ended up writing an affidavit about that ----

A. Correct.

Q. ---- meeting? Okay.

Did you draft that or did somebody else draft that for you?

A. I drafted it with the assistance of our LSS team and essentially dictated a large amount of verbiage that basically came from my recollection of events and I reviewed it after it was put in the proper, you know, format and agreed with it and signed it.

Q. Okay. Do you know a -- somebody who was the former chief medical officer here, Dr. Corry Kucik, I think is how you say his last name?

A. I know who he is, and I've -- I may have met him once. He's in my -- he's in my specialty field. He's an anesthesia

critical care physician. I'm a pulmonary critical care physician, but we sort of live in sort of the same Venn diagram community, and so I know who he is. I'm familiar that he's, you know, testified and so forth to various cases.

Q. And you've never published an article with him?

A. Not to my knowledge.

Q. Thank you.

A. Not unless me added me kindly as a sixth or seventh author and I need to put it on my CV.

Q. Understood.

I'm going to go back here to -- I'm going to dig a little bit deeper into the medical health professional, the psychiatrist. Do you supervise the psychiatrist?

A. I supervise her on paper, and I'm technically her clinical supervisor, but I don't read all of her work and critique her work. Her peer review is done by her fellow behavioral health staff colleagues.

Q. All right. And so then setting aside any speculation or, you know, what we would assume that a psychiatrist would have, what do you know about her specific qualifications?

A. I know she's a board-certified psychiatrist.

Q. Thank you. And so if we were to want to talk to her about her specific qualifications or if we were to want to know those, we

would have to talk to her directly; is that ----

A. That would be correct. Yeah.

Q. ---- accurate? Thank you.

Back to your turnover, your in-briefings. Was the word "torture" used when you were told generally about what happened to the detainees?

A. I heard it used. I can't say what context it was used in.

Q. And earlier, you spoke about -- we were talking about what you did to -- once you heard about this motion and were preparing for it, reviewing open-source documents. Who forwarded you the article by Dr. Crosby?

A. I was made aware that it existed by our chief medical officer but because I don't subscribe to the *New York Times*, I directly asked the LSS department to find someone who had a subscription and print it off for me so I could review it.

Q. Understood. And other than the *New York Times*, if you can remember specifically, what other open-source materials did you review?

A. I did glance through the primary findings of the SSCI but not specific to him, obviously, and then I reviewed prior testimony. So I guess when I said plural open-source information, I was alluding to the *New York Times* document and then the second one would probably be the SSCI.

Q. And did you review them for any other purpose than addressing this testimony or this hearing?

A. No.

DDC [LCDR PIETTE]: At this time, Your Honor, we have nothing further. We may, after consulting with my -- the rest of the folks on my team, have a question or two in a closed session, but I will ----

MJ [COL ACOSTA]: Talk to your team.

DDC [LCDR PIETTE]: ---- confirm that after -- after the redirect.

MJ [COL ACOSTA]: Okay.

DDC [LCDR PIETTE]: Thank you.

MJ [COL ACOSTA]: Government, cross?

ATC [Capt DANIELCZYK]: Thank you, Your Honor.

CROSS-EXAMINATION

Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:

Q. All right. Good morning again, sir.

A. Good morning.

Q. So I want to start just very broadly, just to make sure that we have it. As the senior medical officer, what is your role at the detention facility?

A. My role is one that is the chief clinician who oversees all medical care performed for the detainees by both other

physicians, nursing staff, and corpsmen. My role is one that is of a dyad nature, wherein an officer in charge handles staffing and other personnel-type issues and ensuring the processes are followed insofar as medication administration and things of that nature.

Q. Are you involved in detainee operations on the detention facility side in any way?

A. How do you mean?

Q. Taking medical services out of it ----

A. Uh-huh.

Q. ---- other sorts of operations pertaining to the detainees, are you involved in that?

A. I'm only involved in detainee operations insofar as I may be asked for my advice about comfort items, dietary accommodations, and things of that nature, things that may cross over into a realm that would require some medical knowledge for me to give some advice to command staff.

Q. Understood.

In your opinion, are you accessible to the detainees?

A. Yes.

Q. And approximately how frequently do you interact with them?

A. I'll interact with them as -- as frequently as they -- as they need. I'm -- I generally tell individuals during our tours that

the detainees have quicker access to a physician than you and I do because they can generally see me within 24 to 48 hours if they need to. And if they need to see me emergently, I'll be there within 30 minutes.

Q. Now, you talked a little bit about turnover that you had with the outgoing senior medical officer and you talked a little bit about what that looked like.

With the review of medical records, did that include the behavioral health records as well?

A. No, it didn't.

Q. In your review in preparation for testimony today, did you review all of the psychological records?

A. No, I didn't. I only reviewed the medical records and the physical therapy records. I probably would still be there now if I tried to do that.

Q. Now, you mentioned on direct about the SSCI Report.

A. Uh-huh.

Q. In your clinical opinion, you're here to provide medical care, correct?

A. Correct.

Q. Did you find that necessary for you to provide the appropriate care to the detainees?

A. No.

Q. Why not?

A. Primarily because of the passage of time. It's not completely implausible that there may be continued physical manifestations from pre-2006 that could be relevant today, and frankly, some of them are with some of the detainees. But we handle those on a case-by-case basis. And essentially at this point in time, we handle those issues insofar as they present to us clinically. The nature and the context and the mechanism of those situations are irrelevant to me at this point in time.

Q. Now, speaking about Mr. Al Nashiri in particular, have you seen anything in the clinical presentations that would suggest -- what you were just alluding to would suggest that that past trauma is relevant to your diagnosis and treatment?

A. No, nothing at all.

Q. Now, is there any policy that prohibits you from asking about previous trauma experienced in U.S. custody?

A. No. If there is one, I'm not aware of it.

Q. Is there any policy that prohibits you from including detainee claims of previous trauma in custody?

A. No.

Q. Have you ever been told not to include anything in the medical records?

A. No.

Q. Have you ever instructed anybody at the medical facility not to include anything in the medical records?

A. No.

Q. Have you ever purposefully left something out of Mr. Al Nashiri's medical records?

A. No.

Q. Now, are you familiar with the SOAP method, the S-O-A-P method of notation?

A. Yes.

Q. Can you explain that for us, please.

A. We generally refer to it as a SOAP note, and SOAP stands for Subjective, Objective, Assessment, Plan. And the SOAP note is the canonical dogma of medical documentation during a medical interaction with a patient, between a physician and a patient, or any medical provider and a patient. And that is universally accepted as the way, specific to outpatient medicine, specific to how we document patient care.

Q. So am I correct in saying that whether it's outpatient, you know, in the civilian world or in the military, that's the method used?

A. Yes. I think that the thing about medicine in the military is that to the best of our ability, except for the flavor of, you know, military readiness and things of that nature and

deployment readiness and everything, medicine is practiced in the civilian sector -- in military sector just as it is in the civilian sector.

Q. And just to put a fine point on this, talking about the SOAP note method, is that your practice here in the detention center?

A. Yes.

Q. You talked a little bit about active issues. Is it fair to say that that's your focus when you're providing treatment to the detainees?

A. It's my focus anytime I'm taking care of anyone. Specifically, because as we live our lives longer and longer, we've been through -- we've been through things that we've recovered from and we've -- we have no other -- no ongoing relevance with.

I mean, for instance, if you broke your ankle and you had surgery in 2001, I'm unlikely to spend time asking you about how your ankle is doing if since 2001 you haven't come to me and asked about your ankle one time, or asked any other medical provider. I won't bring it up.

Q. In talking about that, sir, you mentioned what's relevant. How do you make that determination in your practice?

A. Recent history, for one thing, and furthermore what I glean from a medical interview with the patient. I'll interview a patient, and I'll ask specific questions that provide answers that

I'm looking for answers to. I'm not sure if I said that correctly, but what I mean is I'll interview a patient specific to things that I need to answer in order to arrive at a diagnosis for a patient.

So if somebody presents to me with chest pain, for instance, I'll ask them to tell me if the chest pain started at any particular point in their chest. I'll ask them did it radiate anywhere. I'll ask them did it seem to go to your back. I'll ask them if it seems to be made worse by certain types of activity or if it's present just as much at rest as it is with activity. Or I'll ask them if it's worse when they lean forward versus when they lie back.

And every one of those things that I just said to you carries with it an if-then and leading to a more likelihood -- higher likelihood of another diagnosis as a cause for the chest pain versus another.

Q. So in your interactions specifically with Mr. Al Nashiri, I think you said that he was, you know, maybe paraphrasing, but a pleasure to be around; is that ----

A. Sure.

Q. ---- a fair assessment?

A. Sure. I love interacting with him.

Q. And has he ever appeared apprehensive in any way around you?

A. No, not at all.

Q. Did you ever get the sense that he was afraid to talk to you about any topic?

A. Oh, no. He's -- he's very happy to converse and have conversations.

Q. Have you discussed his injuries with him?

A. I have.

Q. And did that include a treatment plan?

A. It did. His -- specifically regarding his musculoskeletal issues, he hasn't really -- he hasn't really had that many issues with his knees and with his back and with his hands as much as he has in the past.

Since 2006, the preponderance of his musculoskeletal complaints were around his knees, lower back, upper back, hands, things of that nature. But more recently, as of about 2021, he started to present to the previous senior medical officers, I think maybe two ago, and to our physical therapists with the shoulder injuries, which have all been enveloped in this idea that he loves to work out, loves to lift weights, loves to do pull-ups, loves to do bicep curls specifically with 70-pound sandbags.

And, you know, he's -- he's actually a fairly short guy. Most people his size don't do 70-pound curls. And so the -- the medical advice from the orthopedic surgeon and from the senior medical officers, one of whom is a sports medicine specialist, and

the physical therapist, has been that he's lifting too much weight and injuring -- not developing his muscles but he's actually injuring the tendons going up into his shoulder. And so that's why the biceps tendon constitutes his shoulder injury, because it wraps up into the shoulder joint.

And so the focus on his shoulder injury, both in 2015 when he first actually presented for it, when he actually said I think this is from lifting weights, and when he presented in 2021, has been completely focused on his training, his overuse, and what mitigation strategies we could help him implement so that he could heal from these things and not make it worse and develop, you know, worsening chronicity of injury. And so that's been the thrust of it ever since 2021.

When I saw him in August, the encounter was essentially just yet another follow-up for the same type of injury that he had been nursing previous to my arrival.

Q. Now, you brought up that August meeting, and I know defense counsel asked you a question on this, but I just want to confirm.

In that -- you submitted a declaration, correct?

A. Correct.

Q. Now, in that declaration, you said that you couldn't recall if Mr. Al Nashiri attributed that shoulder pain to previous

trauma; is that correct?

A. That's correct.

Q. Now, you said there's -- you can't say with a hundred percent certainty, so is there a possibility that he did attribute that?

A. Because I'm sensitive to just the fact that we're living in a universe where we don't have a hundred percent recall of everything, I have to say -- we're in a courtroom, I have to say, yes, there is a possibility that he said something that I don't remember.

Q. If he had said that, would that have impacted your care and treatment of him in any way?

A. I don't know that it would have because the mechanism of injury and the history of repeated injury and exposure of -- based on his voluntary activity is so compelling that it's difficult to imagine that any injury or any -- anything that occurred to his joints pre-2006 in any way, shape, or form have something to do with his hurting his biceps tendon from 70-pound sandbag curls. It just doesn't make clinical sense. It's just not consistent with reality.

Q. Did you intentionally not include a claim of previous trauma so that it would not appear in the medical records?

A. No.

Q. And have you ever not included a claim of previous trauma

so that it did not appear in the medical records?

A. No.

Q. Now, you said you reviewed Mr. Al Nashiri's medical records; is that correct?

A. That's correct.

Q. And we've talked about the ongoing shoulder injury.

A. Uh-huh.

ATC [Capt DANIELCZYK]: Your Honor, I'd like to show the witness a document, and it has been premarked as AE 534K.

MJ [COL ACOSTA]: Defense, do you have a copy?

ATC [Capt DANIELCZYK]: I believe copies were sent over. I do have copies with me.

MJ [COL ACOSTA]: Just -- defense, do you have the copy?

DDC [LCDR PIETTE]: Yes, Your Honor.

MJ [COL ACOSTA]: All right. This is cleared for publication? All right.

You can present it.

ATC [Capt DANIELCZYK]: Your Honor, would you like a copy?

MJ [COL ACOSTA]: I have a copy.

ATC [Capt DANIELCZYK]: May I approach?

MJ [COL ACOSTA]: You may.

ATC [Capt DANIELCZYK]: I've handed the exhibit to the witness.

Q. Sir, do you recognize that document?

A. I do recognize it.

Q. And can you explain what that is?

A. This is a SOAP note and it was written by my predecessors, and it is a note that memorializes a follow-up visit for his right shoulder bicipital tendonitis which was diagnosed in apparently December of 2021 according to the note.

And it talks about the patient wanting to get a steroid injection and it talks about the fact that he was reluctant to rest his shoulder but he eventually started decreasing the weight anyway and then he was doing curls with 70-pound -- 70 pounds and had been doing physical therapy, and had been taking anti-inflammatory medication, and that he took a rest from lifting during Ramadan, and that he started with 10 pounds but then increased it to 20 and ----

MJ [COL ACOSTA]: Actually ----

A. ---- 30 pounds. And so ----

MJ [COL ACOSTA]: Excuse me.

WIT: Sir? Your Honor.

MJ [COL ACOSTA]: I don't need you to read it.

WIT: Okay.

MJ [COL ACOSTA]: You have a question about it?

ATC [Capt DANIELCZYK]: Yes, sir.

Q. Just -- and I think -- I think you hit it already. Does

that document detail the workout routine and some of the issues maybe exacerbating a shoulder injury?

A. I would say that this note is very consistent with his -- the accepted history of the shoulder injury and what we've been dealing with with him regarding the shoulders.

Q. All right.

ATC [Capt DANIELCZYK]: I'd like to retrieve that document, Your Honor.

MJ [COL ACOSTA]: You may. You may move freely.

ATC [Capt DANIELCZYK]: All right. I've retrieved the document.

Showing the witness -- or, excuse me, handing to the witness what's premarked as AE 534J. I believe defense also has a copy, was sent with the previous.

MJ [COL ACOSTA]: You may.

Q. Sir, does that document also look familiar?

A. It does.

Q. Is that, generally speaking, in the same format as the previous?

A. It is.

Q. And does that also discuss his shoulder injury and the bicipital tendonitis?

A. Yes, I would say the entire -- the underlying premise of

the entire note is specific to lifting and overuse injury and treatment of his weightlifting-induced shoulder pain.

Q. Thank you.

ATC [Capt DANIELCZYK]: I'll retrieve the document.

Now, I do have one additional document. It is labeled a SECRET document. I don't intend to have the witness discuss any of the information within the document.

MJ [COL ACOSTA]: Okay. So what are you going to do with the document, then?

ATC [Capt DANIELCZYK]: I'd like him to authenticate it and ----

MJ [COL ACOSTA]: You want to authenticate an exhibit that is a government exhibit of medical records that you've submitted to both parties?

ATC [Capt DANIELCZYK]: Yes, sir.

MJ [COL ACOSTA]: You may proceed.

ATC [Capt DANIELCZYK]: All right. Your Honor, I'm showing the witness a document that is not yet premarked or at least it wasn't ----

MJ [COL ACOSTA]: Oh, so this is an unmarked document. Have you provided it to the defense?

ATC [Capt DANIELCZYK]: It has been provided, yes, Your Honor, and it was sent over this morning, understanding there may not have

been ----

MJ [COL ACOSTA]: Hold on a second.

Defense, do you have it?

DDC [LCDR PIETTE]: Your Honor, I don't believe I do. I can check with my colleagues up here, but I only have the previous two that were just presented.

MJ [COL ACOSTA]: So this is an unmarked document that is classified that you want him to authenticate but before showing to the defense?

ATC [Capt DANIELCZYK]: Your Honor, it was sent over last night.

MJ [COL ACOSTA]: Sent over meaning?

ATC [Capt DANIELCZYK]: To defense.

MJ [COL ACOSTA]: To defense last night?

ATC [Capt DANIELCZYK]: Yes, sir.

MJ [COL ACOSTA]: When did you send it over? What time?

ATC [Capt DANIELCZYK]: It was after hours. Approximately 1900.

MJ [COL ACOSTA]: 1900, you sent it to the defense for the testimony that I said we were going to be talking about today.

ATC [Capt DANIELCZYK]: Yes, sir.

MJ [COL ACOSTA]: Okay. You can provide it to -- the defense doesn't have a copy of this at all? Defense, nobody on your team has

a copy of this?

DDC [LCDR PIETTE]: No, Your Honor, and I have to admit I did not check SIPR this morning. So if it was sent on SIPR, I did not see it.

MJ [COL ACOSTA]: Well, you're not the only ----

DDC [LCDR PIETTE]: I wasn't notified that ----

MJ [COL ACOSTA]: I know that you're not -- you have a team, so I'm wondering if you can consult with your team and see if your team got it.

ATC [Capt DANIELCZYK]: Your Honor, I'm getting word that the staff has marked this exhibit.

MJ [COL ACOSTA]: What staff have marked this exhibit?

ATC [Capt DANIELCZYK]: The court reporters, sir.

MJ [COL ACOSTA]: I'm looking at my court reporter right now and I'm seeing a shaking of the head, so -- so that's not correct.

[The military judge conferred with courtroom personnel.]

MJ [COL ACOSTA]: Counsel, hand a copy of it to the court reporter, and she'll tell you whether or not she's received it and marked it.

ATC [Capt DANIELCZYK]: Yes, Your Honor.

[The military judge conferred with courtroom personnel.]

MJ [COL ACOSTA]: All right. Well, Counsel, I'm not going to allow you to proceed with that document.

ATC [Capt DANIELCZYK]: Understood.

Q. So, sir, speaking specifically about those two documents you did get a chance to review, is that information generally consistent with your interactions with Mr. Al Nashiri?

A. Yes, it is.

ATC [Capt DANIELCZYK]: Your Honor, may I have a moment?

MJ [COL ACOSTA]: You may.

[Counsel conferred.]

Q. So I just have a couple more questions on that 17 August interaction. That was to discuss a radiology report; is that correct?

A. To the best of my recollection, it was both to discuss a radiology report and to just perform a general follow-up on his chronic shoulder pain.

Q. Now, that radiology report -- or let me go back.

Was that radiology report specific to shoulder pain? Is that the x-ray that defense counsel alluded to?

A. It probably is, yes. I don't -- when you said that defense counsel alluded to, I don't know. But if you hadn't said that I would say yes, it was about the x-rays we had taken.

Q. All right. I'll clarify. Defense counsel talked about x-rays of a shoulder ----

A. Right.

Q. ---- correct?

A. Right.

Q. To your recollection, is that one of the topics of discussion in that 17 August 2022 meeting?

A. Yes.

Q. Now, that radiology report states really kind of general language of it may be secondary to secondary -- or, excuse me, may be secondary to prior trauma. Is that common in the medical field?

A. It is, especially in his -- at his age, and radiologists will often -- will often provide their own kind of differential diagnosis in terms of it could be this or it could be that or -- but it seems like it's most likely consistent with that.

And so that was probably, as I recall, the flavor of that read as well, [redacted] but in the body of the impression the radiologist dictated that there could be some prior trauma there looking at the, you know, joint -- the glenohumeral joint, which is the shoulder joint.

Q. You talked about Mr. Al Nashiri's age. Does that come into play, into your kind of assessment and treatment of him?

A. Absolutely. Specific to joint injuries [redacted] type of changes and sensitivity to soft tissue, tendonitis and so forth.

Q. So are there injuries that people may experience over time that don't, in a sense, resurface until later due to age?

A. That's very accurately stated. I mean, I think you'd be hard pressed to find someone in there who has been active who is in their 50s that doesn't have at least some shoulder pain or some knee pain. And as someone who has been doing military medicine for a long time, it's -- among infantry folks specifically, it's one of the top things that shows up on their VA claims, is chronic shoulder pain.

Q. Would that also be consistent with somebody who lifts weights in their youth?

A. Yes.

Q. Now, you talked a little bit about your role as a primary care physician essentially -- right? -- in the detention center.

A. Yes.

Q. Is it your goal to remain neutral to the detainees?

A. Absolutely. In fact, I think that's the ethos of any physician, is to take care of the patient as a patient. We did that during the war. We would take care of, you know, people who were enemy combatants, and we would take care of them and give them the best medical care we could.

As a critical care physician, I'm oftentimes in situations where I have to take care of someone who may have just been in a drunk-driving accident and, as a result, five people are dead, but I

take care of that patient just the same and provide him or her with the best medical care I can in a vacuum, regardless of what they may or may not have done. And that's just part of the business, and I pride myself in that. I approach these patients the same way.

Q. That was going to be my question. Thank you.

A. Yeah.

ATC [Capt DANIELCZYK]: I don't have anything else, Your Honor. Thank you.

MJ [COL ACOSTA]: Defense, redirect?

DDC [LCDR PIETTE]: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

Questions by the Detailed Defense Counsel [LCDR PIETTE]:

Q. All right. Now, you talked about with the prosecutor, your -- and you mentioned it on direct as well.

Your mission, as you see it -- well, your mission as it is and as is your duty as the senior medical officer is to provide treatment to these detainees of emergent issues; is that right?

A. That's part of the job, yes. Most -- the preponderance of what I do is taking care of just usual everyday issues.

Q. So issues -- they come to you presenting with pain and injury or pain, and you want to treat it, or sickness? Is that right?

A. Can you rephrase it as a more direct question?

Q. Yeah. So your main concern as a primary care physician is, when somebody comes to you with a complaint, you want to determine what the symptoms are showing, diagnose it, and treat the immediate injury in front of you. Is that what I understand your role -- your role to be there?

A. Sure. I guess we could summarize it that way.

Q. And so you, based on that -- based on your role and based on your training, you determine what is relevant to the current injury based on -- I believe you said recent history and the medical interview that you do with a patient?

A. Yes.

Q. And to be clear, as was stated earlier, you have never been trained specifically on treatment and care of torture victims; is that correct?

A. That's correct.

Q. Okay. Now, you mentioned earlier -- you were talking about along those lines, if somebody comes to you with -- presenting what I understood to be symptoms of a heart attack, as your example, would it help you to know when a patient comes to you saying maybe their left arm hurts, and you want to ask -- or their chest hurts, you ask them questions about is it radiating into the jaw, is it radiating into the back, would you also ask them questions about any prior medical health conditions relating to their heart?

A. I would ask them relevant questions to the presenting -- the history of present illness, the presenting set of symptoms, yes.

Q. So if they were presenting with pain in their chest that's radiating to their left arm, their jaw aches, would it be relevant to ask about if they have had or do have health -- or heart problems?

A. Yes.

Q. Would it be relevant to know if they had had heart problems even as late as 20 years ago?

A. I think we're stretching the metaphor. I'm not sure how to answer that.

Q. Well, you can answer it truthful ----

A. Either have a history -- well, they either have a history of cardiovascular disease or they don't. But when you're talking about cardiovascular disease, it's not the same thing as a musculoskeletal injury.

Q. Well, let's talk about that, then.

A. Sure.

Q. You said you have dealt with infantry issues, and I believe yesterday you said you were UMO for Special Operations; is that correct?

A. I was in the past, yes.

Q. And so if an operator comes to you with -- who's been in

for, say, 20 years operating that entire time and comes to you with pain in their shoulder that's affecting their ability to workout and do the mission, and they tell you that 20 years ago, well, in winter warfare training in Alaska they ripped their shoulder joint out of socket, would that be medically relevant or at least good to know?

A. Yes, it would be good to know.

Q. Would you record that in their medical record?

A. Yes.

Q. And would it at least affect your diagnosis and treatment of their current shoulder injury?

A. More than likely, yes.

Q. Okay. Has Mr. Al Nashiri ever told you that he has made complaints to previous medical providers at GTMO about -- regarding torture?

A. I don't remember.

Q. When you were reviewing the open-source material, going back to that, did you ever -- the government had asked you questions -- sorry. I'm going to back up a little bit and start over.

The government had asked you questions about whether policy prohibits you from asking questions about the detainee's treatment in prior custody, and you said no. When you were looking at the open-source documents in preparation for this hearing, did you come

across an article that talked about -- that was written where previous medical providers were interviewed from GTMO and said that there was a policy back then not to ask detainees about ----

A. No, I don't -- I don't remember reading that.

Q. Okay.

DDC [LCDR PIETTE]: Now, Your Honor, I have a couple documents I would like to show the witness. I have provided them to the government. However ----

MJ [COL ACOSTA]: Have they been provided to the government and are they marked?

DDC [LCDR PIETTE]: They are not marked, so I would ask that -- LN1 Wood is down there and can provide them to the court reporters to be marked.

MJ [COL ACOSTA]: Government, do you have them?

ATC [Capt DANIELCZYK]: We do, Your Honor.

MJ [COL ACOSTA]: Are these unclassified?

DDC [LCDR PIETTE]: Yes, Your Honor. So if I could ----

MJ [COL ACOSTA]: Government, you have them before you?

What are -- what are these documents, Counsel?

DDC [LCDR PIETTE]: One is -- so I have the Bates stamp numbers I can give to the government to make sure.

MJ [COL ACOSTA]: I don't want the Bates stamp number. I want to know what the document is.

DDC [LCDR PIETTE]: Yes, Your Honor.

MJ [COL ACOSTA]: Is it a medical report?

DDC [LCDR PIETTE]: Yes.

MJ [COL ACOSTA]: Is it a memo? Is it an e-mail?

DDC [LCDR PIETTE]: The first one that I'm going to talk about is a page in the medical record that's labeled Chronological Record of Medical Care. It's from 25 January 2007, at least the note on it that I'm going to be referring to.

The next one is a medical officer's note dated 22 March 2007, that's part of the medical record, but it is a medical officer's note.

MJ [COL ACOSTA]: Government, you're standing.

ATC [Capt DANIELCZYK]: Your Honor, I'm going to object as outside the scope of cross.

MJ [COL ACOSTA]: Defense?

DDC [LCDR PIETTE]: Your Honor, he -- this is absolutely within the scope of cross because, in just a quick proffer, what these show is complaints of injuries back in 2007 before Mr. Al Nashiri had much time to develop a workout routine. I'm sure he didn't -- wasn't lifting sandbags in CIA custody ----

MJ [COL ACOSTA]: And ----

DDC [LCDR PIETTE]: ---- or ----

MJ [COL ACOSTA]: Can you tell me how they're relevant to the

SMO's testimony or can you just submit them as exhibits? Do you need him to tell you about them?

DDC [LCDR PIETTE]: Well, it ----

MJ [COL ACOSTA]: Or are they -- or are they -- or do they speak for themselves and their contents? Because the government can submit its -- claims they've submitted, their other document. I'll take it under consideration if -- you know, if I get it.

DDC [LCDR PIETTE]: Well ----

MJ [COL ACOSTA]: Is this -- is this witness required to testify on those documents or can you submit them on your own?

DDC [LCDR PIETTE]: Well, Your Honor, the test -- the documents show that as far back as 2007, he was making claims about shoulder injuries, and the testimony so far has made it -- has made it seem like there were no complaints about shoulder injuries and that they were only related to the workouts here. I'd like to ----

MJ [COL ACOSTA]: You want to ask him about those documents?

DDC [LCDR PIETTE]: Yes, and ask him if these are ----

MJ [COL ACOSTA]: Part of the records that he reviewed?

DDC [LCDR PIETTE]: Yes.

MJ [COL ACOSTA]: Your objection as to outside the scope is overruled. I'll allow them to be marked, and you can present them for -- to the witness.

DDC [LCDR PIETTE]: Thank you, Your Honor. I'll wait until

they're marked or at least I have the number.

[The military judge conferred with courtroom personnel.]

MJ [COL ACOSTA]: 534 -- the 22 March '07 is L, 534L. And the chronological medical -- the chronological record is 534M.

DDC [LCDR PIETTE]: Thank you, Your Honor. All right.

First I'd like to show the witness what has been -- just been marked as AE 534M.

MJ [COL ACOSTA]: You want me to hand it to him?

DDC [LCDR PIETTE]: If LN1 could hand it to him or somebody could hand it to him. I obviously cannot.

Q. Sir, real quick, are you familiar with what Mr. Al Nashiri's ISN number is?

A. Yes.

Q. If you look at the bottom of this, do you recognize his ISN number on the bottom of this document?

A. Yes, it's consistent.

Q. Would this have been part of the medical records that you reviewed during turnover and over your time here as the senior medical officer?

A. Yes.

Q. If you look at the top, the 25 January 2007, if you could read that.

A. Sure. This says 25 January '07 ----

MJ [COL ACOSTA]: You don't need to -- don't read it out loud. That's not what we do.

WIT: I thought he asked me to -- okay.

MJ [COL ACOSTA]: Do not read it out loud. Read it to yourself, and then he's going to ask you questions.

WIT: Okay. I've read it.

MJ [COL ACOSTA]: Okay.

Q. And you were able to review that this morning before coming into court?

A. I was.

Q. Okay. And again, the date on that is 25 January 2007, correct?

A. That's correct.

Q. And in this one, it says detainee is -- talks about him complaining about shoulder pain?

A. That's correct.

Q. Okay. And obviously you were not here in Guantanamo Bay back in 2007, correct?

A. That's correct.

Q. And you don't know what his workout routine was at the time?

A. That's correct.

Q. You don't know if he was able to develop a workout routine

in CIA custody?

A. That's correct.

Q. Do you know when he got out of CIA custody and was brought to Guantanamo Bay?

A. I'm assuming it was somewhere in 2006 because that's when his intake was.

Q. Thank you.

DDC [LCDR PIETTE]: And again, now if we could show the witness what has been marked as AE 534L.

A. If I could elaborate?

Q. Yes.

A. This is -- this is labeled -- the -- the writer of this note is "HM Note." That's a hospitalman. That's a corpsman. This corpsman wrote that the patient was complaining of pain in his shoulders. This wasn't written by a physician. But even though the corpsman has limited medical training, they did actually qualify it and said specifically under his shoulder blades.

That's subscapular pain. That's not the shoulder joint. That's not the glenohumeral joint. And so to characterize it as shoulder pain is wholly inaccurate. He has a long history of subscapular pain throughout the medical record.

Q. And is there anything in the medical record about that subscapular pain that indicates its origins?

A. If there is, I don't remember seeing it.

Q. And again, you said Mr. Al Nashiri does not speak English very well and has trouble expressing his -- himself in English and needs a translator?

A. Correct. I don't know if there was a translator here or not. We obviously weren't there.

Q. Understood. All right.

DDC [LCDR PIETTE]: Now if I could show the witness what has been marked as AE 534L. Thank you.

MJ [COL ACOSTA]: The other document has been retrieved.

DDC [LCDR PIETTE]: Thank you.

Q. Have you had a chance to review this document this morning as well?

A. Yes.

Q. And this one, it says that the detainee is complaining of muscle soreness and stiffness in the left shoulder?

A. That's correct.

Q. It says that his shoulder was injured during an FCE [redacted]

A. Yes.

Q. Are you familiar with what FCE stands for?

A. Yes.

Q. And what does it stand for?

A. It stands for forced cell extraction.

Q. And so in this -- as his medical provider and you see this in the medical record, what does that indicate to you?

A. It does indicate that he has pain in his shoulder that he is attributing to the forced cell extraction.

Q. Does it help you in -- is it useful in diagnosing a later shoulder injury in the same way that knowing that the operator had tore his shoulder out of joint was in our previous example?

A. It would be helpful if this had been an injury that didn't seem to have been absent from the record for many, many years afterwards.

In your previous example, operators often hide injuries for 20 years until they get their VA physical and their retirement physical, and then all of a sudden they have sleep apnea, shoulder pain, and tinnitus, and everything else.

In this individual's instance, I don't -- I can't see any secondary gain to hiding his injury for years and years and years on end, and so it's -- it's striking that I didn't see it for so many years out of this.

And I'll tell you, because -- and just being transparent, I don't remember seeing this document in the medical record.

Q. Okay. And on that, you said that you can't see a secondary benefit in the same way, like, an operator might hide his

injuries for 20 years so that he can continue doing his job until retirement?

A. Correct.

Q. But you don't see any secondary gain for a detainee here to hide injuries. But to be clear, you're not a board-certified psychiatrist, correct?

A. That -- that's correct. But there are assumptions that you make in clinical care, and that is that if someone has an injury and they have symptoms and there doesn't seem to be a logical reason for them to not disclose them, that they would tell you.

Q. Okay. And again ----

A. Otherwise I would have to be a psychiatrist and an internist to do any part of my job, because everything I do involves human interaction.

Q. But as a -- your assumptions then are based -- let's go through it.

A. On being a physician.

Q. Right. So you're -- your profession, your training, and your experience?

A. Correct.

Q. But again, you haven't had any training in treating, providing care for former torture survivors, correct?

A. Correct.

Q. And you haven't had any training on -- excuse me.

You haven't had experience -- up until coming here, you haven't had experience in dealing with and treating survivors of torture; is that correct?

ATC [Capt DANIELCZYK]: Objection, Your Honor. It's been asked and answered.

DDC [LCDR PIETTE]: Your Honor, I'm asking -- the difference between this last one, I asked training. This one is experience.

MJ [COL ACOSTA]: Right. This one is slightly new. I'll allow him to answer that.

Have you had any prior experience treating victims of torture?

WIT: No.

MJ [COL ACOSTA]: All right. Defense.

Q. But you ----

A. I think it's difficult to overlook the fact that he did bring it up at one point and then didn't bring it up for several years and then all of a sudden brought it up in 2021 and was seen for it, sometimes twice a month.

So it would stand to reason that he doesn't have any reason to hide his shoulder injuries if in the past he hasn't in 2015 and then in 2021 he isn't hiding his shoulder injury. So why would I presume that between 2007 and 2015 he's hiding a shoulder injury and

from 2015 to 2021 he was hiding a shoulder injury for reasons that I don't understand.

Q. All right.

A. That's the last -- that's part of being a physician. Some things just make sense.

Q. Understood.

DDC [LCDR PIETTE]: Hold on one second, Your Honor.

[Counsel conferred.]

Q. Again, in preparing for coming here, based on that, did you have any training in cross-cultural competency specifically for treating Muslim men?

A. Not before this deployment.

Q. And did you -- for this deployment, did you receive any training on that?

A. No. Our training leading up to this deployment did not have any specific cultural sensitivity training or awareness training that I remember, in contrast to the types of training that you and I probably both received during -- before previous deployments to the Middle East.

Q. Understood.

A. I also grew up in Muslim countries.

Q. Okay.

DDC [LCDR PIETTE]: I believe that's all I have. No further

questions, Your Honor.

MJ [COL ACOSTA]: All right. I don't have any questions for this witness. Anything else? Does either party anticipate a need to take anything up in a closed session? Defense?

DDC [LCDR PIETTE]: Your Honor, just one moment. If somebody could pick up the headset down there.

MJ [COL ACOSTA]: While they're discussing, Government, your submission will be considered -- of the classified document will be -- will be considered by the commission.

You stated that he just was going to verify that it was a medical record of the accused; is that correct?

ATC [Capt DANIELCZYK]: Yes, sir, with that understanding, no need to close.

MJ [COL ACOSTA]: Okay. Again, because I'm -- I'm not trying to prevent the presentation of the evidence. I just -- if they don't have it in their hand to look at, I -- you know, I don't want to get into it in a closed session if it's not necessary.

If it will only open a closed session for him to look at a -- the medical record that is classified only because it is that of the accused, I -- I'd prefer to keep it in the open session.

Defense?

DDC [LCDR PIETTE]: Your Honor, defense has no reason to go into a closed session.

MJ [COL ACOSTA]: Government, likewise?

ATC [Capt DANIELCZYK]: Yes, Your Honor.

MJ [COL ACOSTA]: Permanent excusal okay, then, Defense?

DDC [LCDR PIETTE]: Yes, Your Honor.

MJ [COL ACOSTA]: Any objection, Government?

ATC [Capt DANIELCZYK]: No, Your Honor.

MJ [COL ACOSTA]: All right. Doctor, you're permanently excused from his session. Do not discuss your testimony or your knowledge of this case with anyone other than counsel for either side.

You can step down and return to your duties.

WIT: Very good. Thank you, Your Honor.

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

MJ [COL ACOSTA]: All right. Defense, is there anything else on 533 -- Government, you had previously -- hold on. I'm sorry, Defense. I went to you.

Government, you previously stated that this would obviate the need for the -- for the linguist, that this could obviate the need for the linguist and that there is some objection to producing the linguist.

Do you want to further elaborate on that now that you've heard the extensive testimony of this doctor?

ATC [MAJ GARRETT]: Yes, Your Honor. The government stands by the notion that you can rely solely on the SMO, but we will be submitting an ex parte filing imminently.

MJ [COL ACOSTA]: You will be imminently filing an ex parte filing about what? About the -- why the linguist can't testify?

ATC [MAJ GARRETT]: Yes, Your Honor.

MJ [COL ACOSTA]: Defense? I'm not asking you to respond to the -- to a filing that you have not seen nor will see, apparently, because if it's going to be ex parte. But your need for the linguist, does it still exist, Defense?

DDC [LCDR PIETTE]: Yes, Your Honor. I think it was shown in the testimony that only the linguist can answer the question, the specific question I asked, elaborate further.

MJ [COL ACOSTA]: Can we talk about 5 -- just what the motion is, right? The motion is -- we're -- we seem to be going down a -- very deep down a very narrow rabbit hole on this shoulder -- this particular shoulder injury or shoulder complaint.

That's not what the -- the defense motion isn't about this shoulder injury. The defense motion is there are things that are not appearing so much that -- that there are so many things left out of the defense medical records that they cannot prepare for their case, right, Defense?

DDC [LCDR PIETTE]: Correct, Your Honor.

MJ [COL ACOSTA]: Okay. So is that -- that is your example -- right? -- that you've provided in this case or an example of something. Do we need to chase this any further to get to this one example of a shoulder injury on this topic for me to resolve this, Defense?

DDC [LCDR PIETTE]: I think that it would be helpful to explore it further because this example -- this is an example that demonstrates kind of the systemic problem, and also, I would like to be able to ask the interpreters, just generally speaking, so specifically in that 2022 interaction, are they providing just a gist or is it a verbatim? Did they not include everything? And does that happen in other ----

MJ [COL ACOSTA]: Well, they don't write their reports, right?

DDC [LCDR PIETTE]: ---- clinical settings.

MJ [COL ACOSTA]: You're saying when they include everything your talking about in their ----

DDC [LCDR PIETTE]: Yes.

MJ [COL ACOSTA]: ---- in their real-time translation is what you're talking about?

DDC [LCDR PIETTE]: Yes, Your Honor.

MJ [COL ACOSTA]: Okay.

DDC [LCDR PIETTE]: And it would be limited to that. We're not digging around or fishing for anything else.

MJ [COL ACOSTA]: I'll wait to see what the government files in their ex parte to determine whether or not I need to hear any other evidence on this motion.

Again, the government's overall opposition was this is not even ripe now because this goes towards sentencing, towards the other, right? So -- and the defense's response is, when do you want us to accumulate the evidence? Do you want it to wait until after trial for us to accumulate E&M evidence?

There's -- there is some foundational correctness in both positions that the defense shouldn't have to wait until the very end and that it may not be an issue ripe as of yet. There's an argument for that.

But I'll take the -- I'll take the government's ex parte filing on this before I decide if I'm going to take any further evidence, before I need -- not whether or not I want to take it, but whether or not I believe, based upon the evidence and the motions filed, that I need to take any further evidence on this.

So, Government, make your imminent, about-to-be-filing ex parte filing, and I will review it.

ATC [MAJ GARRETT]: Yes, Your Honor.

MJ [COL ACOSTA]: All right. The next issue to take up is argument on 533. Before we take that up, we'll take a 15-minute recess.

The commission is in recess for 15 minutes.

[The R.M.C. 803 session recessed at 1038, 28 February 2023.]

[The R.M.C. 803 session was called to order at 1056, 28 February 2023.]

MJ [COL ACOSTA]: The commission is called to order.

Government, all parties present as before?

TC [MR. O'SULLIVAN]: In the ELC, yes, Your Honor. We're missing a couple of folks at the RHR. They'll return shortly, though. Lieutenant Schwartz and Supervisory Special Agent Sonnen will be back in momentarily.

MJ [COL ACOSTA]: All right.

Defense?

LDC [MR. NATALE]: Your Honor, Mr. Nashiri is not present and I spoke with him, and he voluntarily understands that he could be present, but he was having intestinal problems and that he wanted to go back to the cell.

Earlier today we confirmed that the earphones are working so that he can see and listen to what's going on.

MJ [COL ACOSTA]: Okay.

LDC [MR. NATALE]: It was totally voluntary in order for him to be able to deal with ----

MJ [COL ACOSTA]: He voluntarily absented himself from this portion of the proceeding?

LDC [MR. NATALE]: Yes, sir.

MJ [COL ACOSTA]: All right, thank you. And of course if this goes on -- depending on how long we go today, if he wishes to come back, if he's in the local area, he may return at any time.

LDC [MR. NATALE]: He is, and he has been informed of that.

MJ [COL ACOSTA]: All right. Thank you, Counsel. All right.

We're going to take up 533, which is the defense motion to abate pending transcription redactions reflecting actual classified material.

Government, it's my understanding -- and I'm going to you first. I know this is a defense motion, but this is essentially the last time -- I believe the last I've heard of this from your response, was that this is being corrected; that there was over-redactions and that they're being corrected as we speak and being posted correctly; is that correct?

Government, who is taking this?

ATC [MAJ ROSS]: Yes, sir. It's Major Ross here in the ELC.

MJ [COL ACOSTA]: Yes, you can come up. Good morning, Major Ross. Is there -- is there an update on this process?

ATC [MAJ ROSS]: I do have an update. Would you like it now or would you like it during argument?

MJ [COL ACOSTA]: Defense, do you have any evidence to put on of this, for this issue, or ----

LDC [MR. NATALE]: Ms. Carmon is handling this.

MJ [COL ACOSTA]: All right. Ms. Carmon, do you have evidence to put on on this or just argument?

DC [MS. CARMON]: No, sir, just argument. And I -- this may obviate my update of the mc.mil website if Major Ross has one for you, but I also have one as well.

MJ [COL ACOSTA]: Okay. Well, Defense, I'll let you go -- stay where you are. You can stay up there, Ms. Carmon. Go ahead. We're at two separate podiums, but everybody stay at their podium.

Let's have this. Defense, you can go first with what the update to the website is -- and not only to the website, have you received any -- not only to what's been posted and I understand that there -- it's because it's the commission's understanding there's a delay at times between the provision of transcripts to the parties and a post -- and the posting of them on the website.

So if you have anything on that, if you could address that in your update. Go ahead.

DC [MS. CARMON]: Yes, sir. Thank you. I would direct the commission to paragraph 5.e. in AE 533. I'll start there with the update. That's the 4 August 2022 transcript where I identify multiple and voluminous redactions. As of last night, that transcript is posted with zero redactions. So that has been fixed.

On 9 August 2022, there were no redactions anyway.

On 24 October 2022, the transcript was originally released without any redactions. We saw it, we saved it, went back a few days later, it was no longer available on the website. It has now been re-released on mc.mil, and as of last night in the 221-page transcript, 147 pages were completely blacked out.

The 25 October 2022 transcript that I noted was mostly redacted, 101 pages were completely redacted. It's still the same on the website. It has not been ----

MJ [COL ACOSTA]: So you have one ----

DC [MS. CARMON]: ---- modified in any way.

MJ [COL ACOSTA]: So there's one posting from October which appears to have been correct -- or fixed or released correctly, and then the rest in October are not -- not fixed? Is that what I'm hearing?

DC [MS. CARMON]: That is -- the only one that has been unredacted, or less redacted than it was released as, is the 4 August transcript.

MJ [COL ACOSTA]: 4 August. Not October. Pardon me. Okay.

DC [MS. CARMON]: And you're right ----

MJ [COL ACOSTA]: I'll let you continue.

DC [MS. CARMON]: ---- everything else has either -- and I would just point out on the 27 October transcript, that was one of

those that originally released, no redactions at all, then pulled back from the website. That one has been re-released to the website and is heavily redacted, including the title of the defense's motion in AE 480. I just noted that as one of the redactions that seemed notable.

And then the 28 October 2022 transcript is exactly the same.

MJ [COL ACOSTA]: So it has not been -- it's still heavily redacted is what that means, correct?

DC [MS. CARMON]: Yes, sir.

MJ [COL ACOSTA]: Okay. Is that all you have for me, Defense, on that?

DC [MS. CARMON]: Yes, sir.

MJ [COL ACOSTA]: Okay. Did you have anything on whether or not you have been provided any unredacted updates that have not been posted to the Internet or to the website?

DC [MS. CARMON]: We have not.

MJ [COL ACOSTA]: Okay.

DC [MS. CARMON]: We have not.

MJ [COL ACOSTA]: Thank you, Counsel. All right.

Major Ross?

ATC [MAJ ROSS]: Thank you, Your Honor.

May it please the court, the 4 August 2022 transcript, complete second review, posted on mc.mil, as Ms. Carmon noted, I was

tracking there was one redaction in Agent McFadden's testimony on page 18140 through lines 3 on 18141.

MJ [COL ACOSTA]: From the 4 August?

ATC [MAJ ROSS]: Yes, sir. And my understanding is the OCA has declared that as classified, and there is an ex parte declaration to support that as well. But if you scroll down a couple lines past the redaction, you'll see Your Honor sustaining a 505 objection. So there's one redaction in Agent McFadden's testimony on 4 August.

27 October, half of that day's proceedings have been reviewed a second time and posted. The other half has not. And I believe Ms. Carmon is referring to the portion that has not been completely re-reviewed and submitted. So what has been done is parts two and three of the p.m. session, and there are no redactions there. So that's the second review complete.

The remaining items -- and this is where it gets a little bit confusing, specifically ----

MJ [COL ACOSTA]: Hold on. We're still on 27 October, correct?

ATC [MAJ ROSS]: Yes, sir.

MJ [COL ACOSTA]: 27 October you said half was reviewed and reposted, parts two and three are the parts that were reviewed and reposted and there are no redactions -- parts two and three of the p.m. -- I'm assuming you mean the afternoon session ----

ATC [MAJ ROSS]: Yes.

MJ [COL ACOSTA]: ---- were reviewed and reposted with no redactions.

ATC [MAJ ROSS]: Yes, sir. So the morning session and part one of the afternoon session is still at SC/DRT awaiting a final review by them.

MJ [COL ACOSTA]: So that's up to 27 October. Okay.

ATC [MAJ ROSS]: That's 27 October.

The other transcripts have been reviewed by the relevant OCAs. They are with SC/DRT for final processing.

The versions that are now posted -- Ms. Carmon mentioned originally some were taken down and then there's another version that has been posted since. That version is not the final review version. So there's somewhat of a problem of version control, keeping track of the items that are undergoing that second review.

So anything beyond 4 August and the 27 October parts two and three of the afternoon session are with SC/DRT. And we've been told they are aiming to have everything done and submitted to the webmaster by the end of this week, barring any further ----

MJ [COL ACOSTA]: So the entire October session will be posted by the end of this week?

ATC [MAJ ROSS]: That -- there -- they've told me that they will -- they aim to have it completed and submitted to the webmaster.

MJ [COL ACOSTA]: Okay. So through the SC/DRT review and on to the individuals who will post that. And it's my understanding that what we're finding is massive corrections to the massive over-redactions that have occurred, correct?

ATC [MAJ ROSS]: There are changes.

MJ [COL ACOSTA]: Okay.

ATC [MAJ ROSS]: I would leave it to Your Honor to characterize those changes.

MJ [COL ACOSTA]: Okay. So there is much more that's being released that was previously redacted, correct?

ATC [MAJ ROSS]: Yes, sir, that's correct, and that's as the reg anticipates. The reg notes, 19-4, further revisions may be necessary. And, you know, that's what we're trying to do, is work within that regulation to ensure that these concerns raised by the defense are addressed.

MJ [COL ACOSTA]: And the -- next would be the December session. Is it currently undergoing review as well?

ATC [MAJ ROSS]: I don't think a second review was requested on the December session. I think those are fairly lightly redacted in the first place.

My focus has been on correcting the -- the ----

MJ [COL ACOSTA]: October? August and October?

ATC [MAJ ROSS]: The ones that have been identified in -- in

the motion, sir.

MJ [COL ACOSTA]: All right. The -- well, it seems, though, that what it identified was perhaps a more systemic issue, which is really what their motion is about. It's like we're not getting enough, and that the ones that she specifically addressed are demonstrative of a systemic issue.

These ones that have gone up and come down, is it the government's position that they should have never gone up in the first place?

ATC [MAJ ROSS]: I wouldn't say they should have never gone up in the first place. Again, I think you have to put yourself in the shoes of the individual that is making those redactions. And on the initial review, they lean towards caution. They ----

MJ [COL ACOSTA]: No, no, no. Not the ones that -- not the ones that -- with the heavy redactions that were taken down. I'm talking about the -- very much the original ones that were posted with no redactions that Ms. Carmon referred to. Like, there was a set that went up with no redactions, came down, and then were reposted with heavy redactions.

I'm talking about the very first posting with no redaction. Is that -- was that in error?

ATC [MAJ ROSS]: As I understand it, there was one release of classified information on a transcript. I don't know if it's the

transcript to which you're referring to, Your Honor. I would hate to ----

MJ [COL ACOSTA]: No, I understand.

ATC [MAJ ROSS]: I would hate to shine a spotlight on the precise date as well, Judge.

MJ [COL ACOSTA]: Well, it has -- it was taken back down, so that's the -- okay.

Ms. Carmon, do you have anything -- that's the updates that we have, that you're going to get, according to the government that -- pardon me, not that you're going to get, but that the SC/DRT will have the corrected versions -- the second-reviewed versions of the October pleadings to the web -- to the individuals responsible for posting on the web by the end of this week.

Any response?

DC [MS. CARMON]: Yes, sir. Just if I may address the December transcripts as well.

MJ [COL ACOSTA]: Uh-huh.

DC [MS. CARMON]: The -- the reply from the defense was on 26 January. The December transcripts were just beginning to be released. And I would direct the government to footnote 1 where I noted that the transcripts that were available from Agent Khoury's December testimony are heavily redacted.

I will go back and -- I have not reviewed to make sure all

transcripts from December have been released, but I certainly will. But I would ask of a second review of those as well. And again, it's the same categories of information that are being redacted throughout from August to December. And so if those -- if that's the process, if those can undergo a second review as well.

MJ [COL ACOSTA]: Okay. What I'll want is an update -- and I will also check to see, but what I want is an update as to when those second reviews are completed -- of the October session are complete and if there's more complete transcripts posted of those.

Government, any issue with submitting the December session for secondary review?

ATC [MAJ ROSS]: And, Your Honor, I apologize. I must have missed the footnote. We'll take a look at December as well and submit that.

MJ [COL ACOSTA]: Okay. So -- thank you. So that will handle January. All right.

Defense, any argument that you wish to make?

DC [MS. CARMON]: Sir, the reason we filed the motion is that we wanted action. Obviously that's occurring, which is what we wanted. We want our client to be able to read when he's not present, we want our expert to be able to review, and we want the public to be apprised of what's happening in the commissions.

And so I don't see that there's necessarily any argument

right now. What I'd like to do is defer any argument until these transcripts are re-released, and hopefully the process will work as intended.

MJ [COL ACOSTA]: All right.

Government?

ATC [MAJ ROSS]: Only if Your Honor cares to hear any argument from us.

MJ [COL ACOSTA]: I don't. I'm assuming that you concur -- that you agree that it's appropriate for the commission to wait -- to hold this particular motion off to delay -- to defer ruling or hearing anything further on it until we get final review of those transcripts that are required to be reviewed.

ATC [MAJ ROSS]: Absolutely.

MJ [COL ACOSTA]: All right. Thank you, Major Ross.

Ms. Carmon?

DC [MS. CARMON]: Thank you.

MJ [COL ACOSTA]: All right. As the commission stated, it will defer ruling on 533, as it appears that there has been improvements.

I will just say this: My only editorial note would be the commission expects consistent guidance across -- consistent application of the classification guidelines across all of the -- the transcripts as we go forward, again, with a view to making them as

unclassified as possible for the public -- not just for the accused but for the public as well. It appears that that is happening.

But I will defer ruling on 533 until we see the remainder of the second-reviewed transcripts, including those from January. And if it appears that we have corrected the issue sometime after that, then going forward, I would expect to see more complete transcripts of this session and all sessions going forward so that there doesn't need to be a second review going forward.

I understand that that is always a possibility and -- for review, and I would encourage the parties to -- Government, independently, if you look at a transcript and you see that there's something that has been taken out that you know to not be -- to be classified, to address it as soon as possible before you're asked to make sure that the public is aware -- is informed as possible. Thank you, Government. All right.

Tomorrow we have Mr. Kelley and Special Agent Bongardt, right, Government?

ATC [MAJ ROMEO]: Yes, Your Honor.

MJ [COL ACOSTA]: And they're here -- they're -- they're local or arriving today, correct?

ATC [MAJ ROMEO]: Yes, Your Honor.

MJ [COL ACOSTA]: Okay. And they're both open sessions?

ATC [MAJ ROMEO]: Your Honor, I'm handling AE 461 for both

witnesses that pertain to that. Those sessions are open. I'll defer to the defense regarding calling ----

MJ [COL ACOSTA]: On 482.

ATC [MAJ ROMEO]: ---- Bongardt for 482.

MJ [COL ACOSTA]: On 482, Defense, you anticipate that not being closed, correct? You anticipate that being an open session?

DC [MS. CARMON]: Yes, sir. It should be all open.

MJ [COL ACOSTA]: Okay. All right. That's all I've got on my agenda for today.

I know that that -- as always, it pains me to be down here and not be productively conducting a session or receiving evidence on the -- on the number of motions for which I have evidence outstanding to receive, but this will give the parties an opportunity to review those things that have been submitted to them that need review.

Is there anything else to take up before I recess the commission until 0900 tomorrow?

Government?

TC [MR. O'SULLIVAN]: No, Your Honor.

MJ [COL ACOSTA]: Defense?

LDC [MR. NATALE]: No, Your Honor, but I can assure you that my team are being aggressively required to work even though we're not sitting here.

MJ [COL ACOSTA]: I understand.

DDC [LCDR PIETTE]: Your Honor?

MJ [COL ACOSTA]: Yes.

DDC [LCDR PIETTE]: This is Lieutenant Commander Piette. I do have one quick thing, if I could bring up quickly.

MJ [COL ACOSTA]: Yes. Is it the aggressiveness with which Mr. Natale's making you work?

DDC [LCDR PIETTE]: No, Your Honor.

MJ [COL ACOSTA]: Can't do anything about that.

DDC [LCDR PIETTE]: Right. This is in regards to the motion to compel witnesses in 534. I know Your Honor is waiting to issue your ruling on the -- on the witnesses you've granted and denied until you see the government's ex parte filing.

I would ask Your Honor to take into account the SMO's testimony and maybe reconsider the decision you've indicated on the psych, or the medical provider testimony -- I mean mental health provider testimony, based on the SMO today testifying that he doesn't know her qualifications or only kind of wavetops knows them and she's the only one who can testify to her qualifications regarding torture, treatment, and the documentation of torture treatment.

MJ [COL ACOSTA]: Okay. I will take everything into consideration that I've heard before making a final ruling on the motion to compel those witnesses.

DDC [LCDR PIETTE]: Thank you, Your Honor.

MJ [COL ACOSTA]: And what counsel is referring to is I gave a preliminary communication in the form of an e-mail 802 on what I was going to -- on what the commission was going to rule upon, and then the -- the commission indicated that it was going to grant the motion to compel the senior medical officer, which we've heard from, and the translator. And that that -- and then later that -- the next day, that -- the -- the government indicated it had a higher than previously recognized objection to the production of the -- of the linguist.

And that's where we are now. That is what counsel are referring to and have in the past. I wanted to make sure that was on the record. It's essentially an e-mail 802, but I failed to -- I don't know if I indicated enough what counsel were referring to, and that was a communication from me to the parties about what I was about to rule on when I came in here. And then the government asked me to not issue any ruling until they had it. I agreed to not issue any such ruling. Nonetheless, the SMO was produced, and we heard from him today.

So -- but I will take into consideration all of those -- all of the evidence, the motion, the attachments thereto, the argument of counsel, the testimony of the SMO, the -- the attachments to the pleading, the -- the government's classified document that they are -- or have offered, the defense's several documents that they

offered this morning, and the -- the government's ex parte classified filing regarding this issue in -- I will take all of that into consideration before I issue a ruling on the motion to compel.

[The military judge conferred with courtroom personnel.]

MJ [COL ACOSTA]: Oh, and I did fit -- the -- the staff has reminded me that 534N is the -- for the record, is the government's classified -- is the AE number for the government classified filing that they made in court this morning. Okay. Thank you, Counsel. All right.

If there's nothing else, the commission is in recess until 0900.

[The R.M.C. 803 session recessed at 1119, 28 February 2023.]

[END OF PAGE]