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1 [The R.M.C. 803 session was called to order at 1651,  
2 17 October 2016.]

3 MJ [Col SPATH]: These commissions are called to  
4 order. All of the parties present before the recess are again  
5 present.

6 Trial counsel.

7 **CROSS-EXAMINATION**

8 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

9 Q. Mr. Toole, good afternoon. Can you hear me okay?

10 A. Yes, I can, Lieutenant Morris.

11 Q. Now, I wondered, if you would, to give us just a  
12 little bit of background on the normal procedure, the normal  
13 way a request would come in and how the office of the  
14 convening authority would handle that, from either party,  
15 requesting resources or whatnot before the judge's  
16 disqualification order of March 4, 2015?

17 A. Very well.

18 The way it would work would be that for either party,  
19 either party would send a request to the Office of the  
20 Convening Authority. I think there was a legal advisor  
21 distributor list that they would use. I think there is now a  
22 mailbox. But the request would come in, I would generally see  
23 the request, and I would take a very quick look at it, and

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1 then assign it to an assistant legal advisor to do the initial  
2 workup on. I would also let one of the paralegals know or  
3 they would come and ask who the action officer was going to  
4 be, and they would go ahead and note that on the tracker.

5 Q. Following ----

6 A. So you would know when ----

7 Q. Go ahead, Mr. Toole.

8 A. We would just note when it came in and what the title  
9 of the request was and who submitted it, that kind of stuff.

10 Q. Following the judge's disqualification order in which  
11 you were disqualified, did you make any assignments of Nashiri  
12 requests?

13 A. I did not.

14 Q. Did you take any actions, make any recommendations,  
15 or make any decisions regarding any Nashiri requests following  
16 the judge's order?

17 A. I made no decisions, I made no recommendations in  
18 relation to anything related to this case. No, I did not.

19 Q. Would you describe for his Honor the immediate impact  
20 of the judge's order on yourself and your observations of its  
21 impact on others?

22 A. You know, the immediate impact was kind of what you  
23 would think. It was significant and, you know, it was -- it

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1 wasn't -- it was a significant moment, an important moment.  
2 It impacted -- and obviously, you know, we -- you know, it was  
3 legitimate. It was -- obviously, it was the -- an appropriate  
4 order, but it impacted morale, as you can imagine, pretty  
5 significantly.

6           There was a lot of uncertainty as to the next steps.  
7 And so generally, you know, we responded and recognized the  
8 necessity of taking some immediate action in compliance with  
9 it, and that's what we tried to do. And also just made sure  
10 everybody was informed as to, okay, you know, this is the  
11 order, we won't be dealing with any Nashiri issues from this  
12 point forward.

13         Q. And did you, in fact, not deal with any Nashiri  
14 issues from that point forward?

15         A. That is correct, we dealt with no Nashiri issues from  
16 that point forward.

17         Q. In regards to complying with the judge's order, with  
18 Lieutenant Commander Gill being the only nonprecluded legal  
19 advisor, did you assist in pointing him to who you believed to  
20 be the -- a convening authority with General Ary being  
21 disqualified?

22         A. I directed him specifically to forward matters up to  
23 Jason Foster at OGC.

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1 Q. And there was a pending request from Mr. Kammen at  
2 this time that, in fact, pre-dated the judge's order of 4  
3 March, correct?

4 A. That is correct.

5 Q. And you had done some work on facilitating or acting  
6 on that request, correct?

7 A. I did, yes.

8 Q. And that was an item or a -- the -- the only  
9 outstanding item that was -- is it correct to say that was the  
10 only outstanding item that was on your plate when the judge's  
11 order came down on 4 March?

12 A. That was the only Nashiri action that was -- that  
13 was -- that had been filed when the judge's order came down,  
14 yes.

15 Q. And so a part of complying with the judge's order in  
16 removing yourself was to hand off any of that material to  
17 Lieutenant Commander Gill, correct?

18 A. That is correct, and asking him to forward it up to  
19 Jason Foster.

20 Q. Now, did you observe from 4 March, the date of the  
21 judge's order, until 21 March, when General Ary resigned, did  
22 you observe any other precluded legal advisors taking any  
23 actions, making any recommendations, making any decisions on

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1 the Nashiri matter?

2 A. I did not, no.

3 Q. During these 19 or so days, you would have been in a  
4 position to observe the precluded legal advisors, correct?

5 A. Absolutely, yes.

6 Q. Now, after General Ary resigned on 21 March and  
7 Mr. Oostburg Sanz became the convening authority on 23 March,  
8 could you describe additional -- any additional impact that  
9 you observed from his Honor's order?

10 A. Well, again, you know, the initial steps were taken  
11 on the 4th to observe the order and segregate all of the  
12 impacted legal advisors from any actions that were in the  
13 office; at that time, the one, and any subsequent ones that  
14 might come in. So that was the initial step. And there were  
15 other steps that -- that were taken. At some point, the  
16 tracker was separated into one for any Nashiri actions that  
17 came in and one for the other cases.

18 Q. And was that, Mr. Toole, around when Mr. Oostburg  
19 Sanz came around 23 March?

20 A. I think it was around that time. It was either at  
21 that time or a little before that time. And the other thing  
22 that was very, very clear when Mr. Oostburg Sanz came on board  
23 was that, even if we wanted to, he was not going to have any

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1 discussions with any of us regarding any Nashiri actions. The  
2 convening authority, when he came back onboard, made it  
3 crystal clear that he would not have any discussions with any  
4 legal advisors in relation to this case.

5 Q. Would you describe what statements or actions  
6 conveyed that understanding?

7 A. Again, I can't remember the exact words other than  
8 to -- that's pretty much close to it. And I'm not -- the  
9 convening authority indicated that he would not have any  
10 discussions regarding any matters related to Nashiri; and he  
11 has not, from that day to this, had any such discussions with  
12 any disqualified legal advisors.

13 Q. Do you recall an e-mail being sent by Mr. Michael  
14 Quinn emphasizing that point?

15 A. Yeah. You know, I -- I vaguely recall that e-mail  
16 being sent. I knew it was sent. I frankly don't recall  
17 whether I was on that e-mail. I know that it was sent,  
18 though, yes.

19 Q. Permission ----

20 A. And that's the -- that's the e-mail I think that went  
21 out to the parties.

22 Q. What date did -- as best you can recall, did  
23 Mr. Quinn arrive at the Office of the Convening Authority?

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1 A. I think it was around April 9, but I'm not certain.  
2 But I believe it was around April 9th.

3 Q. Would April 6th sound about right?

4 A. I guess that sounds about right. Either the 6th -- I  
5 don't know why I think the 9th but perhaps the 6th.

6 ATC [LT MORRIS]: I'm asking that I be allowed to show the  
7 witness Attachment H to AE 332Y. This has been previously  
8 cleared with the court security officer.

9 MJ [Col SPATH]: Attachment H to 332Y.

10 ATC [LT MORRIS]: Do you want me to show that to the CSO,  
11 sir?

12 MJ [Col SPATH]: Yes. Please show Mr. Kammen as well on  
13 your way by.

14 [Pause.]

15 ATC [LT MORRIS]: I'm showing Mr. Kammen the same  
16 document. It's a further redacted version that was on the  
17 website. As soon as I retrieve that from the defense, I'll  
18 show it to the witness, Your Honor.

19 LDC [MR. KAMMEN]: Do you think the unredacted should be  
20 the one that's displayed for completeness? There's apparently  
21 nothing in here that's classified.

22 ATC [LT MORRIS]: Just for the record, the government is  
23 not the one that ----

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1 MJ [Col SPATH]: I know. Let me ----

2 ATC [LT MORRIS]: ---- imposed redactions.

3 MJ [Col SPATH]: I understand. Let me see what you're  
4 proposing to show. I have Attachment H from the exhibit here.

5 When you're done, Mr. Kammen, if you would provide it  
6 to me, Lieutenant Morris. Thanks.

7 Lieutenant Morris, here is Attachment H to 332Y. You  
8 can show the witness the redacted version. The unredacted  
9 version is in the filing, Mr. Kammen, I know you have it, and  
10 so this is just for public display. So I cannot help with  
11 what gets redacted through the security process.

12 LDC [MR. KAMMEN]: Can I just ask who's doing these  
13 redactions?

14 MJ [Col SPATH]: It's the security officers for whoever  
15 looks at the documents. That is a discussion ----

16 LDC [MR. KAMMEN]: We don't need to ----

17 MJ [Col SPATH]: We can't hear your microphone. We're not  
18 going to do that now with the witness.

19 LDC [MR. KAMMEN]: I know. But we do need to -- because  
20 this is a very serious problem of things being retroactively  
21 -- that are not cleared -- clearly not classified.

22 MJ [Col SPATH]: But there's also -- there's personal  
23 information that can be redacted, there's Social Security

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1 numbers, there's names.

2 LDC [MR. KAMMEN]: None of which is on this.

3 MJ [Col SPATH]: There are names. That's what I'm looking  
4 at.

5 LDC [MR. KAMMEN]: The names are what makes it relevant.

6 MJ [Col SPATH]: I concur. It's -- the witness can see  
7 the unredacted version easily. This is merely what cannot be  
8 displayed currently. And I -- believe me, I recognize some of  
9 your frustration with the security reviews and it is something  
10 that come trial, will likely cause lots of discussions.

11 LDC [MR. KAMMEN]: Thank you, Your Honor.

12 MJ [Col SPATH]: But you may display that to the witness.

13 And, Mr. Toole, if you need to see what's been  
14 redacted there, if you think you do to answer the question,  
15 just let us know and we can, as we did before, show you the  
16 full document, okay?

17 WIT: Yes, sir.

18 MJ [Col SPATH]: All right.

19 WIT: Yes, sir.

20 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

21 Q. Mr. Toole, I'm showing you what has been marked as --  
22 or actually what is already in the record as 332Y, Attachment  
23 H.

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1           Do you recognize the "to" line on that being the OMC  
2 list convening authority, correct?

3           A.    Yes.

4           Q.    And you would have been on that, correct?

5           A.    That's true.

6           Q.    And Mr. Quinn at this time, or around this time, what  
7 role had he been brought into the convening authority as?

8           A.    He had been brought in as the acting legal advisor  
9 and chief of staff.

10          Q.    And, you know, this was another example of deference  
11 to his honor's order and steps taken or emphasized to protect  
12 his honor's order, correct?

13          A.    That is correct.

14          Q.    That's the way that you interpreted it, correct?

15          A.    Yes.  I thought there was another one, though, to the  
16 parties to also explain ----

17          Q.    You are correct.

18          A.    ---- about ----

19          Q.    There was.

20                Now are you -- Mr. Toole, are you familiar with the  
21 acronym "RTS"?  I don't know if that's an Army term, that's  
22 something that you interacted with, or if that's just  
23 Navy-specific, but is that something that you're familiar

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1 with?

2 A. I could -- I could guess what it is, but I'm not  
3 sure, no.

4 ATC [LT MORRIS]: I'm going to show -- now, Your Honor, on  
5 Appellate Exhibit 332RR, my recollection is that is not to be  
6 transmitted to the public. So I'm going to present this to  
7 this witness and ask that it not be broadcast or transmitted.

8 MJ [Col SPATH]: All right. We can do that.

9 ATC [LT MORRIS]: Okay.

10 Q. Now, defense counsel -- Mr. Toole, can you hear me?

11 A. I can.

12 Q. Do you see that document, Mr. Toole?

13 A. I can. I do.

14 Q. Defense counsel asked you questions about this  
15 document. You're not a party or recipient or originator of  
16 this document, are you?

17 A. No.

18 ATC [LT MORRIS]: Your Honor, I ask that the document that  
19 you previously viewed be marked as the next appellate exhibit.  
20 And again, I will ask that this not be broadcast or  
21 transmitted to the public but just to the witness.

22 MJ [Col SPATH]: It will be 332SS. Show the defense  
23 counsel before you show the witness and then you may.

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1 Q. I'm showing you what has been marked as 332SS, ask  
2 you to take a look at this.

3 A. Yes, sir.

4 Q. You are not a party to either the e-mail or the  
5 originator of this e-mail, are you?

6 A. No. No, I'm not.

7 Q. All right.

8 MJ [Col SPATH]: If you would give that to the court  
9 reporter so they have the original, Lieutenant Morris. Thank  
10 you.

11 Q. In your direct examination, Mr. Toole, you talked  
12 about one of the performance issues that you had -- or that  
13 Mr. Gill had in regards to changing a document and then  
14 Mr. Gill submitting the same product. Do you recall that  
15 testimony?

16 A. I do.

17 Q. This was a non-Nashiri matter, correct?

18 A. It was a non-Nashiri matter, yes.

19 Q. Mr. Gill was a difficult employee, was he not?

20 A. He was -- he was -- he was not a good employee. In  
21 terms of difficult, you know, he appeared glum most of the  
22 time. I don't know a better word. They -- you know, he  
23 didn't yell or scream or anything like that. He, in terms --

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1 you know, he didn't -- but he -- but he was a poor employee.  
2 I wouldn't say -- I don't know if I would say difficult. I  
3 would say poor.

4 Q. You wouldn't consider him a model employee, would  
5 you?

6 A. No. On the contrary, considering ----

7 Q. Just a moment, Your Honor.

8 A. I wouldn't ----

9 ATC [LT MORRIS]: Thank you, Mr. Toole.

10 If I could have just a moment, Your Honor.

11 MJ [Col SPATH]: Yeah. You may.

12 ATC [LT MORRIS]: Nothing further from the government.

13 MJ [Col SPATH]: Mr. Kammen.

14 **REDIRECT EXAMINATION**

15 **Questions by the Learned Defense Counsel [MR. KAMMEN]:**

16 Q. In April, Mr. -- by April 10, when -- could I see HH  
17 again?

18 MJ [Col SPATH]: Lieutenant Morris, do you have Attachment  
19 H to 332Y handy? The one that we displayed.

20 LDC [MR. KAMMEN]: Was that not put in evidence?

21 MJ [Col SPATH]: It is. The court reporter -- it's  
22 already been marked but the court reporter doesn't have that  
23 version. It's been marked a long time ago.

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1           And this is the one with the redactions that we  
2 talked about, so this can be displayed for the witness.

3           LDC [MR. KAMMEN]: Well, I'm going to be -- I'm going to  
4 ask some questions about it. So if we need to display it,  
5 let's not display it publicly.

6           Q. By April the 10th, there was a new convening  
7 authority; is that correct?

8           A. Yes, sir.

9           Q. That was Mr. Oostburg Sanz had come back; is that  
10 correct?

11          A. Yes.

12          Q. And prior to April 10th, there was still -- you were  
13 still hovering over Lieutenant Commander Gill, and let me be  
14 more specific. He prepared a binder of all pending matters in  
15 the Nashiri case for the new legal advisor and convening  
16 authority; isn't that true?

17          A. Partly true.

18          Q. Well, he ----

19          A. He ----

20          Q. Was such a binder prepared?

21          A. He prepared a binder of pending matters in the  
22 Nashiri case for Mr. Quinn.

23          Q. Okay. And Mr. Quinn was going to become the new

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1 legal advisor, correct?

2 A. That is correct.

3 Q. All right. And you -- despite the fact that you had  
4 been removed from the Nashiri case, you reviewed the binder,  
5 correct?

6 A. I -- I opened the cover and glanced at the table  
7 contents, yes.

8 Q. And -- well, after glancing at the table of contents,  
9 you edited the binder by removing certain documents; isn't  
10 that true?

11 A. I asked that the actual ruling be taken out of the  
12 binder because I knew that the ruling was actually being  
13 placed front and center on the -- on Mr. Quinn's desk so that  
14 when he came in he would be aware of that ruling.

15 Q. So you were reviewing the binder in sufficient detail  
16 that you could tell what should -- that you could tell that  
17 when it was duplicating something else that was going to  
18 Mr. Quinn; isn't that correct?

19 A. By that time, I had very little confidence in the  
20 ability of Lieutenant Commander Gill to complete pretty much  
21 any task in an acceptable fashion.

22 Q. And because ----

23 A. My interest ----

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1 Q. And because you ----

2 A. My interest was to see that the binder was tabbed and  
3 that there was an index. I did not read any documents in that  
4 binder. I do not know what was in that binder other than  
5 whatever actions that you had submitted up to that point.

6 Again, I didn't read it. I don't know what they  
7 were. I never talked to anybody about those matters.

8 Mr. Quinn never even acknowledged to me that he received the  
9 binder. I have never talked to Mr. Quinn or to the convening  
10 authority or to anyone about any of the actions that were in  
11 that binder.

12 But I had little faith in the ability of Lieutenant  
13 Commander Gill. I took a glance. I knew, and -- I knew that  
14 the ruling, that the [VTC transmission interrupted] would be  
15 placed on Mr. Quinn's desk separate from that binder.

16 Q. How thick was this binder?

17 A. I don't specifically recall. I don't think it was  
18 very thick. It was thin.

19 Q. It was thick enough that you had to leaf through it  
20 to find this one document that you removed; isn't that  
21 correct?

22 A. As I said, I looked at the index and it was noted  
23 there, AE whatever the ruling number was, was noted there. I

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1 didn't have to look any further.

2 Q. So -- so let me just ----

3 A. That was ----

4 Q. Let me see if I've got this right.

5 A. Sure.

6 Q. You had no confidence in Lieutenant Commander Gill's  
7 work?

8 A. I had little confidence in his work, yes.

9 Q. Little confidence in his work. So you're only doing  
10 a cursory review, but the review is cursory -- is detailed  
11 enough that you can remove documents -- a document from the  
12 binder, correct?

13 A. I never physically removed anything.

14 Q. Well, you told him to remove it?

15 A. Yes.

16 Q. Okay. And that's what supervisors do; isn't that  
17 right?

18 A. Because -- because the ----

19 Q. They tell the -- they tell their employees what to  
20 do. That's called supervision; isn't that true?

21 A. That's an aspect.

22 Q. Isn't that true, sir?

23 A. That's an aspect of supervision but, again, what

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1 I ----

2 Q. Again, what Lieutenant Commander Gill was complaining  
3 about, what he complained about to Sheeran, what he complained  
4 about to Quinn was your constant supervision over his actions  
5 in the Nashiri case; isn't that true?

6 A. You're asking me again what he complained about. I  
7 think I've mentioned to you what I was told that he was  
8 complaining about, that we, people, were talking about actions  
9 in front of him. In fact, you haven't asked, but I did ask  
10 Lieutenant Commander Gill about his complaint after he had  
11 spoken with Mr. Quinn, and he told me basically the same thing  
12 he had told Mr. Quinn, that people were talking about the  
13 Nashiri case in front of him.

14 Q. No, he said you were talking about the Nashiri case  
15 in front of him because he was complaining about you; isn't  
16 that true?

17 A. I'm telling you what he told me. He told me that  
18 people, including me, I assume, were talking about the Nashiri  
19 case in front of him.

20 Q. Okay. And he complained, as we've discussed, in  
21 March to, I think it was -- I don't remember if it was Quinn  
22 in March and Sheeran in April or vice versa, but then there  
23 was a second complaint about you in April, isn't that correct,

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1 that you became aware of?

2 A. Yes.

3 Q. Okay. Now, just so we're all clear, what you saw in  
4 Defendant's Exhibit -- or in Government's Exhibit SS, I  
5 think -- put it up, so we're -- was -- can you see it?

6 MJ [Col SPATH]: Not yet. Let's see if we can get that  
7 displayed to the witness.

8 LDC [MR. KAMMEN]: To the witness. Can you see it, sir?

9 WIT: I can now, yes.

10 Q. Okay. And you were on this listserv; is that  
11 correct?

12 A. Yes.

13 Q. So you remember getting this, true?

14 A. I do.

15 Q. Right?

16 A. Yes.

17 Q. And what it talks about is a recent ruling --  
18 actually, a ruling a month -- a little more than a month  
19 before from Judge Spath, right?

20 A. Yes.

21 Q. And it makes it clear that several counsel within the  
22 legal advisor's office are recused from taking future action  
23 with respect to the Nashiri proceeding, right?

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1 A. Right.

2 Q. And it makes it very clear that any issues involving  
3 Nashiri go to -- and then there's a list of names, right ----

4 A. Uh-huh.

5 Q. ---- that for some peculiar reason are redacted,  
6 correct?

7 A. Yes.

8 Q. One of those names is Lieutenant Commander Gill?

9 A. Yes.

10 Q. Okay. Or myself, and the "myself" would have been  
11 Mr. Quinn. Right?

12 A. Right.

13 Q. It makes it very clear, coming from on high, those  
14 are the only people who are supposed to have contact with the  
15 Nashiri case, right?

16 A. Right.

17 Q. Now ----

18 A. And that's the same as it was from March 4th to this  
19 very date right now.

20 Q. And so if you're to be believed, why was this  
21 necessary? Because it was already crystal clear that you  
22 folks had been separated, so this would not have been  
23 necessary if none of these complaints had any merit; isn't

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1 that true?

2 A. No. Again, I think you're kind of exaggerating the  
3 point. It was very clear to those of us who were disqualified  
4 that we could not take any action in relation to this case.  
5 It was very clear specifically to us who could. But I'm not  
6 so sure it was clear to the entire OMC, and I think the point  
7 of that e-mail was to make it clear to the entire OMC. I  
8 think it -- I think that -- that e-mail doesn't kind of change  
9 the clarity that we had at all.

10 Q. Well, this e-mail went to OMC List Convening  
11 Authority, right?

12 A. That's a pretty big list.

13 Q. Right. Of the convening authority.

14 A. Right.

15 Q. Thank you.

16 Now, two other points. One of Mr. Gill's --  
17 Lieutenant Commander Gill's complaints was that you were  
18 talking in front of him and other people were talking in front  
19 of him, right, about Nashiri matters?

20 A. That's my understanding, yes.

21 Q. Okay. And I know you don't think that was occurring,  
22 but if you were -- you were his supervisor at that time, were  
23 you not?

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1 A. I was, yes.

2 Q. And so if you were talking about prohibited matters  
3 in front of him, from his perspective, that would be a big  
4 deal, true?

5 A. Ah ----

6 Q. Because you're his supervisor. You're his boss. So  
7 that's -- he's in an awkward position if you're talking about  
8 these prohibited matters; isn't that true?

9 A. I -- I think you -- I think you may have a point.  
10 But I also think that I tried to be pretty open in a -- I  
11 don't think I'm that threatening a guy, and that if there was  
12 an issue, I don't think I foreclosed it being brought to my  
13 attention.

14 Q. Well, it was brought to your attention. It was  
15 brought to your attention on two occasions by Sheeran and  
16 Quinn that these complaints were being made.

17 A. But, again, you know, the specifics of what was being  
18 talked about is still lost on me. I -- I think I've suggested  
19 a couple of things that might have been mentioned but, you  
20 know, when I did talk to Stephen Gill after he had talked to  
21 Mr. Quinn, he did mention that -- that he was very sensitive  
22 to this issue based upon his past experiences, and I  
23 think ----

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1 Q. Right, because he -- he understood that a court order  
2 means what it says and that it is to be scrupulously followed.

3 A. And I 100 percent agree with that, and that was our  
4 effort to do that.

5 I have suggested, I think -- I'm trying to think as  
6 to what could have been sent -- said in front of him that --  
7 that -- that, you know, caused his concern. It wasn't -- it  
8 couldn't have been an action coming from you until, I guess,  
9 the first action you submitted at some point. But I --  
10 perhaps it was the ----

11 Q. He wasn't complaining about me, he was complaining  
12 about you, sir. He was complaining about you violating Judge  
13 Spath's order, and he complained about it over and over and  
14 over again until you guys fired him.

15 A. No, no.

16 Q. That's -- that's the -- but that's -- let's come  
17 to another point.

18 You were the legal advisor until March 4th, correct?

19 A. Acting legal advisor.

20 Q. Acting legal advisor. And you were still the senior  
21 legal advisor for everything other than Nashiri after March  
22 4th; isn't that correct?

23 A. Yes.

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1 Q. And you had a senior role within the legal advisor's  
2 structure in the Convening Authority's office, isn't that  
3 correct?

4 A. I'm sorry? Say that again.

5 Q. You had a senior role in the legal advisor's  
6 structure in the Office of the Convening Authority; isn't that  
7 true?

8 A. That is true.

9 Q. And you understood the significance of this order  
10 Judge Spath issued, right?

11 A. I did. Absolutely. Yes.

12 Q. And you have said, boy, you absolutely understand how  
13 important it is to follow court orders, right?

14 A. I agree with you, absolutely.

15 Q. And yet where is the e-mail from you or anybody else  
16 prior to April 10th telling folks, here's who gets Nashiri  
17 matters? There isn't one, is there?

18 A. You're overlooking -- I mean, the very first step  
19 that was taken in order to, you know, segregate disqualified  
20 legal advisors was, I think, a relatively significant step.  
21 As to the other steps ----

22 Q. Yeah, the relatively significant step of telling  
23 Lieutenant Commander Gill he's a facilitator; that he's no

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1 longer a lawyer, he's an errand boy. He's a facilitator to  
2 carry things from somebody to somebody else?

3 ATC [LT MORRIS]: Objection, Your Honor.

4 MJ [Col SPATH]: Sustained. It's argumentative,  
5 Mr. Kammen. You have to let the witness answer.

6 LDC [MR. KAMMEN]: You're right. It is. And I apologize.  
7 I don't have any other questions.

8 WIT: As to -- I don't think I'm finished with your  
9 answer.

10 MJ [Col SPATH]: There was no question, I sustained an  
11 objection.

12 WIT: Okay.

13 MJ [Col SPATH]: Trial Counsel, do you have any questions?

14 **RE-CROSS-EXAMINATION**

15 **Questions by the Assistant Trial Counsel [LT MORRIS]:**

16 Q. Mr. Toole, good afternoon.

17 A. Yes.

18 Q. Would you please finish your answer.

19 A. You know, I ----

20 LDC [MR. KAMMEN]: Object to the form of the question.

21 MJ [Col SPATH]: Sustained. I sustained an objection to  
22 your question. To Mr. Kammen's question. I sustained the  
23 objection.

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1 ATC [LT MORRIS]: Yes, Your Honor.

2 MJ [Col SPATH]: So none of that answer mattered. It is  
3 up to you to either rephrase or ask another question.

4 Q. Mr. Toole, you were talking about significant steps  
5 that had been taken. Could you explain what you mean by that?

6 A. I think that -- you know, you asked kind of the  
7 impact on this -- from this appropriate order. And so the  
8 first step was to comply with it, to ensure that we were  
9 segregated and could not and would not be involved in any  
10 decisions or make any recommendations associated with this  
11 case.

12 There were other steps that needed to be taken, but I  
13 admit to there is no guidebook on a situation like this.  
14 There are no -- there is no checklist on when you receive an  
15 order like this. I knew there were other steps to take. I  
16 did not, you know, think of the e-mail to -- to OMC. But  
17 there were other steps that were taken. There was the  
18 segregation of the files. There was the physical movement of  
19 all Nashiri files to a location where we would not have  
20 access -- there was -- there was the change to the shared  
21 drive to -- as Mr. Kammen did reference, to block us from  
22 having any access to any Nashiri matters. There was a similar  
23 action done on the SIPR side. There was a new convening

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1 authority coming in. There was a new acting legal advisor  
2 coming in. And when -- and then it was clear that there  
3 weren't -- you know, there were separate meetings in relation  
4 to Nashiri actions from which we were excluded whenever, you  
5 know, a Nashiri matter was discussed.

6 And -- but there were -- there were a number of  
7 significant steps that I think were taken to, as scrupulously  
8 as possible, comply with the judge's order in this case.

9 As to, you know, two complaints made, I never -- and  
10 to this day don't know the basis of those complaints about  
11 people or me talking about Nashiri. I did not and still don't  
12 talk about this case. So I never understood exactly what --  
13 what -- what the complaint was about. But it had nothing to  
14 do with -- nothing to do with Lieutenant Commander Gill's  
15 being -- Lieutenant Commander Gill's being let go by the  
16 Office of the Convening Authority.

17 Q. You mentioned, Mr. Toole, that the physical files  
18 were moved. Where were they moved to?

19 A. I'm not sure. I'm still not sure. Somewhere --  
20 somewhere in the office. To a different part of the office  
21 from -- from where they were. I'm still not sure where they  
22 were located. I have an idea but I'm not sure where they are  
23 right this second.

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1 Q. And Mr. Quinn as the acting legal advisor on 10 April  
2 sending out the e-mail that you just saw, 332Y, Attachment H,  
3 that was four days after he arrived at the office, correct?

4 A. I believe it was, yes.

5 Q. And ----

6 A. I believe it was, yes.

7 Q. And Mr. Quinn would not have been aware of all of  
8 these steps that were taken before he arrived there to comply  
9 with the judge's order, right?

10 A. I -- I never had a conversation with Mr. Quinn before  
11 he arrived. I never had a conversation with Mr. Quinn about  
12 Nashiri after he arrived. I had no idea what he knew about  
13 the case, about -- about the ruling. I -- so no, I had no  
14 idea whether he would know of those previous steps. I would  
15 assume that Colonel Sheeran briefed him on some of them after  
16 he arrived, but he had no idea what Mr. Quinn knew when he  
17 came.

18 ATC [LT MORRIS]: Nothing further, Your Honor.

19 MJ [Col SPATH]: Mr. Kammen.

20 **REDIRECT EXAMINATION**

21 **Questions by the Learned Defense Counsel [MR. KAMMEN]:**

22 Q. Do you suppose it's possible that Colonel Sheeran  
23 told ----

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1 ATC [LT MORRIS]: Objection. Question calls for  
2 speculation.

3 MJ [Col SPATH]: Let me hear the question, if you want to  
4 ask it. Don't answer the question, Mr. Toole, until I hear  
5 it.

6 WIT: Yes, sir.

7 Q. Isn't it a fact that you learned that Colonel Sheeran  
8 and Lieutenant Commander Gill told Mr. Quinn that there were  
9 problems with how the Nashiri case was handled and complained  
10 about you, which is what resulted in the e-mail to everybody,  
11 to make it crystal clear you weren't to have anything to do  
12 with it? Isn't that, in fact, what occurred?

13 MJ [Col SPATH]: Mr. Toole, you -- to the extent you can  
14 answer that question, you can answer that question.

15 A. No. I have no knowledge of that being a fact behind  
16 the issuance of that e-mail. I think it's -- I think the  
17 reason I suggested that -- you know, I'm not so sure everybody  
18 knew. We knew in the legal advisor section, but I don't know  
19 whether or not everybody outside of our section was aware.  
20 And I think that e-mail was designed to make sure that  
21 everybody was on the same sheet of music as to the  
22 disqualification and also any limitations resulting from it.

23 Q. One of the recipients of that e-mail, to make sure

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1 we're all on the same sheet of music, is you; isn't that  
2 correct?

3 A. I'm on that distro list.

4 Q. Thank you.

5 MJ [Col SPATH]: Lieutenant Morris, nothing else?

6 ATC [LT MORRIS]: No, Your Honor.

7 MJ [Col SPATH]: All right. Thank you. Mr. Toole, we're  
8 unlikely to get through this motion for some -- because of  
9 some witness issues for some time, and so I'm going to give  
10 you an order. It's a standard order for witnesses who are  
11 involved in something.

12 Until this motion is resolved, please don't discuss  
13 the substance of your testimony or your knowledge of this  
14 particular case with anybody. And given the order already in  
15 place, likely those discussions would be unlikely anyway, but  
16 I just -- I want to make very clear because there's still  
17 people in your office who might testify, and then there's some  
18 other people outside of your office who might testify, to not  
19 discuss your testimony or your knowledge of the case until  
20 we're finished.

21 WIT: Yes, sir. I understand.

22 MJ [Col SPATH]: Hopefully once this issue is resolved at  
23 least that portion of my order will go away. The other order,

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1 of course, will stay in place.

2 I appreciate your testimony. I appreciate you taking  
3 the time and staying with us into the evening. Thank you very  
4 much. You're excused. We'll disconnect.

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

6 WIT: Thank you. Thank you.

7 MJ [Col SPATH]: All right. For tomorrow, let's start at  
8 9:00. I want to start with the argument on the Dalmazzi issue  
9 first. Once we get the argument behind us, we'll turn to the  
10 witness testimony from Mr. Quinn. I would suggest if we start  
11 at 9:00, we should be ready to hear from him at around 9:30 to  
12 9:45. That would -- given the argument. Maybe the argument  
13 is going to be longer than that, so let's say 9:45 to 10:00,  
14 we'll have him available and we'll take his testimony,  
15 hopefully maybe through the lunch and then take a break then.

16 Then we'll move from there to the other areas that I  
17 talked about, but at least that gives us an idea where we're  
18 going tomorrow morning. Is there anything else we can deal  
19 with tonight before I recess? Trial Counsel?

20 TC [MR. MILLER]: Nothing further from the government.  
21 Thank you, Your Honor.

22 MJ [Col SPATH]: All right.

23 Mr. Kammen, anything else tonight?

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1 LDC [MR. KAMMEN]: No, sir.

2 MJ [Col SPATH]: All right. I'll see you all tomorrow  
3 morning at 9:00. We're in recess.

4 [The R.M.C. 803 session recessed at 1741, 17 October 2016.]

5 [END OF PAGE]

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