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1 [The R.M.C. 803 session was called to order at 1401,
2 25 July 2019.]

3 MJ [Col COHEN]: The commission is called to order.

4 General Martins, would someone from your team please
5 account for the representation here at this session.

6 CP [BG MARTINS]: Your Honor, all members of the -- all of
7 those representing the United States are the same.

8 MJ [Col COHEN]: Thank you, sir. Mr. Nevin -- I notice
9 that none of the accused are here for this session, so you
10 don't need to tell me that, but if you'd please account for
11 the attorney and other staff that are present.

12 LDC [MR. NEVIN]: Your Honor, David Nevin; Lieutenant
13 Colonel Poteet, U.S. Marine Corps; Ms. Radostitz. I expect
14 Ms. Leboeuf shortly.

15 MJ [Col COHEN]: Thank you, sir.

16 Ms. Bormann.

17 LDC [MS. BORMANN]: Judge, myself, Captain Caine,
18 Mr. Perry, Mr. Montross, and some support staff.

19 MJ [Col COHEN]: Thank you, ma'am.

20 Mr. Harrington.

21 LDC [MR. HARRINGTON]: Judge, for Mr. Binalshibh, James
22 Harrington; Wyatt Feeler; and Major Virginia Bare, United
23 States Air Force.

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1 MJ [Col COHEN]: Thank you, sir.

2 Mr. Connell.

3 LDC [MR. CONNELL]: Myself, James Connell; Benjamin
4 Farley; and Alka Pradhan. Captain Andreu is not in the
5 courtroom.

6 MJ [Col COHEN]: Thank you, sir.

7 Mr. Ruiz.

8 LDC [MR. RUIZ]: Judge, myself, Lieutenant Commander Dave
9 Furry, Mr. Sean Gleason are here on behalf of Mr. al Hawsawi.
10 I expect that Suzanne Lachelier will join us shortly.

11 MJ [Col COHEN]: Thank you, sir.

12 Trial Counsel, do you have a witness to address the
13 absences that I just noted?

14 TC [MR. SWANN]: We do, Your Honor, and if you would
15 simply remind the witness.

16 MJ [Col COHEN]: I will.

17 LIEUTENANT COMMANDER, U.S. NAVY, was called as a witness for
18 the prosecution, was reminded of her oath, and testified as
19 follows:

20 **DIRECT EXAMINATION**

21 Questions by the Trial Counsel [MR. SWANN]:

22 Q. Commander, do you have in front of you what's been
23 marked Appellate Exhibit 648B, C, D, E, and F?

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1 A. Yes, sir.

2 Q. Now, all of those documents consist of two pages with
3 the exception of one, I believe 648C. Am I correct?

4 A. That's correct, sir.

5 Q. Let's take Mr. Mohammad first. Did you have occasion
6 to advise him of his right to attend this afternoon's
7 proceeding?

8 A. I did, sir.

9 Q. What time did you do that?

10 A. That was at approximately 1141.

11 Q. Referring to 648B, I see a signature on the second
12 page of that document. Is that his signature?

13 A. It is.

14 Q. And did you use this form to advise him of his right?

15 A. Yes, sir.

16 Q. Did he indicate that he wished to attend or not?

17 A. Not attend.

18 Q. Walid Bin'Attash, 648C. Again, three pages. I see a
19 signature on the third page, the Arabic version of this
20 document. Did he sign that document?

21 A. Yes, sir.

22 Q. Did you advise him of his right to attend in both
23 English and in Arabic?

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- 1 A. Yes, sir.
- 2 Q. Have a translator with you?
- 3 A. Yes, correct.
- 4 Q. Did you use the form that I have in front of me?
- 5 A. I did, sir.
- 6 Q. Excuse me. That you have in front of you.
- 7 A. Yes.
- 8 Q. And did -- and again, is that his signature?
- 9 A. It is.
- 10 Q. With respect to Ramzi Binalshibh, two-page document,
11 648E.
- 12 A. I have D, sir.
- 13 Q. I'm sorry. You are correct, 648D. Is that his
14 signature on the second page of the document?
- 15 A. It is.
- 16 Q. Did you read to him from the document?
- 17 A. I did, sir.
- 18 Q. And he signed the document afterwards?
- 19 A. Correct.
- 20 Q. With respect to Ali Abdul Aziz Ali, a two-page
21 document, is that his signature on the second page?
- 22 A. It is, sir.
- 23 Q. Did you read this document to him?

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1 A. I did.

2 Q. And, finally, Mustafa Ahmed Adam al Hawsawi, two-page
3 document in English, did you read the form to him?

4 A. Yes, sir.

5 Q. Did he sign the second page?

6 A. Yes, sir.

7 Q. Now, with respect to all of these men, do you believe
8 they understood they had a right to attend this afternoon's
9 proceeding?

10 A. Yes, sir.

11 Q. Do you further believe that they voluntarily waived
12 their right to attend these proceedings?

13 A. Yes, sir.

14 TC [MR. SWANN]: I have nothing further, Judge. Thank
15 you.

16 MJ [Col COHEN]: Thank you, sir. Ma'am, if I may have
17 those documents, please.

18 WIT: Yes, sir.

19 MJ [Col COHEN]: Thank you.

20 Mr. Nevin, was your team able to see 648B?

21 LDC [MR. NEVIN]: Yes, Your Honor.

22 MJ [Col COHEN]: Okay. Thank you.

23 Ms. Bormann, has your team been able to see 648C?

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1 LDC [MS. BORMANN]: We have, Judge, and we have no
2 questions.

3 MJ [Col COHEN]: All right. Thank you.

4 Mr. Harrington, has your team seen 648D?

5 LDC [MR. HARRINGTON]: We have, Judge. We have no
6 questions.

7 MJ [Col COHEN]: All right. Thank you. Mr. Nevin, I'll
8 go back to you. Did you have any questions?

9 LDC [MR. NEVIN]: Sorry. No, Your Honor. Thank you.

10 MJ [Col COHEN]: All right. Thank you.

11 Mr. Connell, have you seen 648E?

12 LDC [MR. CONNELL]: I have, Your Honor. No questions.

13 MJ [Col COHEN]: All right. Thank you.

14 And, Mr. Ruiz, have you seen 648F?

15 LDC [MR. RUIZ]: I have.

16 MJ [Col COHEN]: Any questions?

17 LDC [MR. RUIZ]: No, thank you.

18 MJ [Col COHEN]: Okay. Handing those to the court
19 reporter. Same witness subject to recall tomorrow, perhaps?

20 TC [MR. SWANN]: Yes, sir.

21 MJ [Col COHEN]: Okay. Commander, you'll be temporarily
22 excused. Please do not discuss your testimony with anyone

23 other than the prosecution or the defense while the case is

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1 ongoing.

2 WIT: Yes, sir.

3 MJ [Col COHEN]: Thank you very much.

4 [The witness was warned, temporarily excused, and withdrew
5 from the courtroom.]

6 MJ [Col COHEN]: A standing objection by Mr. Connell with
7 respect to the -- the witnesses in general is noted.

8 The commission finds that Mr. Mohammad,
9 Mr. Bin'Attash, Mr. Binalshibh, Mr. Ali, and Mr. al Hawsawi
10 have knowingly and voluntarily waived their right to be
11 present at today's session.

12 I will not disclose anything that -- classified from
13 this morning's thing, but I do need to catch up the record in
14 an open forum with respect to some matters that were
15 discussed.

16 My understanding is that, based on argument with
17 respect to AE 642, that the AAA team is -- is either
18 reassessing or has reassessed the specificity that they have
19 with some specific items and has shown that to the government
20 and the government is now reviewing that request or will be in
21 short order, which would impact any ruling necessary by the
22 commission on AE 642 potentially.

23 So, therefore, the commission intends to await

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1 notification from the parties as to where you are in that
2 status before moving forward on that particular matter.

3 Is that consistent with the parties? I'll hear from
4 Mr. Connell and Mr. Trivett or any other representative of the
5 government.

6 LDC [MR. CONNELL]: That's basically right, sir. I mean,
7 with regard to specificity, we were specific the first time
8 around.

9 MJ [Col COHEN]: No, I understand. I just -- I think to
10 the extent it may have been more specific than even the first
11 time, so ----

12 LDC [MR. CONNELL]: Right. The government made arguments
13 yesterday about having complied with categories of discovery,
14 and so I have brought some particular matters to their
15 attention for them to look into.

16 MJ [Col COHEN]: Thank you, sir. I appreciate it.
17 Mr. Trivett, is that your understanding as well?

18 MTC [MR. TRIVETT]: Yes, sir.

19 MJ [Col COHEN]: Okay. Then I will wait to hear from the
20 parties before moving further on AE 642, and/or any of the
21 other motions that AE 642 generally addressed with respect to
22 a status update.

23 Based on argument of counsel, the military commission

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1 is inclined to go back on its own and reconsider 350RRR and
2 350C with respect to the deposition. I am going to order that
3 a deposition occur. The scope will -- is to be determined and
4 will be in the -- in the formal written ruling that the
5 commission will issue in short order.

6 Government, with respect to 350TTT, there is an
7 indication that the government may move to withdraw that. Is,
8 in fact, that the case?

9 TC [MR. RYAN]: Yes, sir. In light of your comments, we
10 move to withdraw 350TTT. We would ask to do it ore tenus.

11 MJ [Col COHEN]: That motion is granted, and we'll catch
12 the record up with a summary of where that can be located in
13 the record that I just granted that request.

14 That was all of the housekeeping matters that I had
15 intended to address, but if I have omitted something that the
16 parties believe is relevant to put on the -- this open session
17 record before we move into the testimony of Colonel Yamashita,
18 please indicate so now.

19 Ms. Radostitz.

20 ADC [MS. RADOSTITZ]: Your Honor, this is not from this
21 morning's session, but a small housekeeping matter. Tomorrow,
22 as you know, we're having to check out, and we anticipate that
23 the hearing sessions will go all day, and we have to check in

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1 before 4:30 or 1630. And so we would request that we have a
2 little bit longer lunch. And also, we would ask that anybody
3 who is not in session who's here today but isn't going to be
4 in the sessions tomorrow check in other than during the lunch
5 hour so that we can all be able to check in for the flight
6 during the lunch hour.

7 MJ [Col COHEN]: Okay. Thank you. Yeah, whether
8 you're -- there -- whether it's the -- the open gallery or all
9 of the participants here, you know, there's that one flight
10 getting in and out, so we'll work around that tomorrow. But I
11 do believe that what we're going to cover tomorrow is -- is
12 very important in getting the case going forward, which is
13 specifically a trial scheduling issue and some of -- kind of
14 my thoughts.

15 I suspect that after this evening, we'll have
16 initially the open-session testimony, then we will have some
17 closed-session testimony. We'll have -- in an 806 session,
18 based on the prior ruling of the court. And then we'll have
19 some classified argument on 530 triple ----

20 LDC [MR. RUIZ]: Tango.

21 MJ [Col COHEN]: That is TTT. I wanted to make sure it
22 wasn't -- it was the 350TTT. That's what was throwing me off.
23 I felt like I just got rid of one of the motions. It was

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1 530TTT. Thank you.

2 And we'll have that argument. And then following
3 that, I'll have an 802 with counsel to give you just a little
4 bit more things to think about this evening in anticipation of
5 any discussion of 639 tomorrow, to kind of frame that
6 discussion.

7 Mr. Connell?

8 LDC [MR. CONNELL]: Sir, I'll be asking tomorrow morning
9 for about five minutes to address the intent of the military
10 commissions in order 118N. The government and I have been
11 negotiating but seem to have come across a stumbling block, so
12 I'd just like to bring that to your attention, find out what
13 it is that you intend.

14 MJ [Col COHEN]: Okay. That would be wonderful. Thank
15 you.

16 All right then. If there are no other matters to put
17 on the record, Defense Counsel, you may call the witness.

18 LDC [MR. RUIZ]: Judge, we ask to produce
19 Colonel Yamashita.

20 MJ [Col COHEN]: Okay. General Martins, you'll be
21 swearing him in?

22

23

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1 COLONEL STEVEN G. YAMASHITA, U.S. Army, was called as a
2 witness for the defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION:

4 Questions by the Chief Prosecutor [BG MARTINS]:

5 Q. Would you please state your full name and spell your
6 last name.

7 A. Steven G. Yamashita, that is Y-A-M-A-S-H-I-T-A.

8 Q. You are a United States Army Colonel?

9 A. That is correct, sir.

10 Q. You are the Commander of the Joint Detention Group?

11 A. Yes, sir.

12 CP [BG MARTINS]: Your witness.

13 MJ [Col COHEN]: Your witness.

14 LDC [MR. RUIZ]: Thank you, Judge.

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

16 Q. Good afternoon, Colonel.

17 A. Good afternoon.

18 Q. Colonel, my name is Walter Ruiz. I represent Mustafa
19 al Hawsawi. Colonel, I'm going to be asking you some
20 questions that are specific and appropriate for open court,
21 however, I will tell you that if you believe that your answer
22 or -- whether it's the entire answer or part of an answer
23 calls for classified information, if you please would let me

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1 know that, let the judge know that so that we can make the
2 appropriate adjustments or have the appropriate discussions
3 before doing that.

4 A. Okay.

5 Q. Thank you. Colonel, can you please tell us -- you
6 said you're the commander of the Joint Detention Group. What
7 does that mean?

8 A. So as the commander of the Joint Detention Group, I
9 am responsible for the safe, humane, and legal law of armed
10 conflict detention for our law of armed conflict detainees
11 here at Guantanamo Bay.

12 Q. I understand that that's what that responsibility
13 means. Does that also mean that you have authority over the
14 detention camps here in Guantanamo Bay?

15 A. I do.

16 Q. And does that area of responsibility include what is
17 generally referred to as Camp VII?

18 A. It does.

19 Q. And Camp VII is the high-value detainee detention
20 camp, correct?

21 A. Correct.

22 Q. Now, you indicated that's also within your area of
23 responsibility?

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1 A. It is.

2 Q. What exactly does that mean, to have a -- let's focus
3 specifically on Camp VII since that is where Mr. al Hawsawi is
4 currently imprisoned. What does it mean, in terms of your
5 authority over Camp VII?

6 A. So the -- the camp commander and the camp officer in
7 charge report to me and they -- the detention is what we
8 oversee.

9 Q. So it's safe to say though, however, that you have
10 actually visited Camp VII, correct?

11 A. It is safe, yes.

12 Q. And you have done that in excess of at least 15
13 occasions?

14 A. Yes, sir.

15 Q. Do you have an estimate of how many times you may
16 have visited the camp?

17 A. On average, one to two times a week at least.

18 Q. Very well. And what is the purpose of your visits to
19 the camp?

20 A. Sometimes it's to get updates from camp personnel,
21 check on the guard force, and normal command activities.

22 Q. When you first reported on board naval station -- or
23 not naval station, but as the Joint Detention Group commander,

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1 did you have an opportunity to have a turnover period?

2 A. Yes, sir, we did.

3 Q. And as part of that turnover period, did you have the
4 opportunity to be briefed on the security capabilities in
5 Camp VII?

6 A. Yes, sir.

7 Q. Okay. So as you sit here today, is it fair to say
8 that you are aware of all of the safety and security features
9 for Camp VII?

10 A. I have a pretty good knowledge, sir, of most of --
11 most, if not all.

12 Q. Okay. Let me -- let me make sure I understand that.
13 Are you aware of all of the safety and security features in
14 Camp VII, or just some of them?

15 A. So as it relates to detention, I'm pretty confident,
16 yes.

17 Q. And without getting into specifics of what those are,
18 we'll talk about that in a closed session, you are aware of
19 the capabilities of the Camp VII in order to properly and
20 securely detain the men who are in your care, correct?

21 A. Yes, sir.

22 Q. There is no feature of that camp that you are unaware
23 of, correct?

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1 A. Features that -- I know what features that I control
2 and that relate to detention.

3 Q. I understand. So you made an important, I think,
4 maybe distinction there between control and knowledge.

5 My question just focused on knowledge, okay? And
6 we'll talk about control later. But in terms of your
7 knowledge of the capabilities for the detention facility to
8 safely maintain the custody of these men, you do have
9 knowledge and you are aware of all of those capabilities,
10 correct?

11 A. It -- now we're getting into some technical pieces
12 that I'm not sure I can adequately speak to.

13 Q. So I'm not asking you for the specifics of the
14 facility itself. I'm simply trying to establish
15 foundationally that you, as the commander of the Joint
16 Detention Group for the entire base, actually have full and
17 complete knowledge of the security capabilities of Camp VII.
18 Yes or no, Commander?

19 A. Well, I know what I know, which is what the Joint
20 Detention Group has control over.

21 Q. Do you believe that there are aspects of the
22 facilities' security, protocols, and capabilities that you are
23 unaware of?

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1 A. There may or may not ----

2 TC [MR. RYAN]: Objection, Judge.

3 MJ [Col COHEN]: I'll overrule the question. I mean,
4 yeah, I'll overrule the objection. Sorry.

5 Q. Please answer.

6 A. There are -- there -- you hear things, but I don't
7 have a concrete knowledge of stuff. What I do know is stuff
8 that the Joint Detention Group has at our disposal to conduct
9 detention operations.

10 Q. Where do you hear things from?

11 A. You just kind of hear. I don't know.

12 MJ [Col COHEN]: Counsel, let's be ----

13 LDC [MR. RUIZ]: So, Judge, if I -- I'm happy to answer
14 the court's question. However, I would ask that the witness
15 be excused so that I can let you know where I'm headed.

16 MJ [Col COHEN]: Is this something we can talk about in an
17 open forum?

18 LDC [MR. RUIZ]: Yes, sir. And I've been very careful not
19 to get into specifics, but, yes.

20 The -- what I'm happy to explain is the reasoning for
21 my questions. I think the actual meat on this bone, we have
22 to -- we have to deal with that in the closed session. But in
23 terms of what foundationally I'm trying to do, it doesn't

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1 require discussion of any classified information. And I
2 can -- I can articulate that to you. However, I do not
3 want -- I don't want to give the witness a preview of where
4 I'm headed.

5 MJ [Col COHEN]: Okay.

6 TC [MR. RYAN]: Your Honor, based on counsel's comments, I
7 would suggest this is better taken in a closed session.

8 LDC [MR. RUIZ]: Negative. Disagree. Judge, the question
9 I asked ----

10 MJ [Col COHEN]: I understand the question you asked, but
11 there are nuances to the question that you asked. And so what
12 I'm thinking in my head right now is it's not necessarily that
13 I am opposed to the question -- to a question along those
14 lines. It's what exactly do you want to know from the
15 witness?

16 LDC [MR. RUIZ]: Absolutely. I want to know if the Joint
17 Detention Group commander, who is in charge of the detention
18 facilities in Guantanamo -- he's the top guy, right?

19 MJ [Col COHEN]: Right.

20 LDC [MR. RUIZ]: That's why he's here testifying. If he
21 knows about Camp VII, what all of the security capabilities of
22 his facility -- it was under his operation and control -- are.

23 MJ [Col COHEN]: Okay.

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1 TC [MR. RYAN]: That's been asked and answered, sir. I
2 object.

3 MJ [Col COHEN]: I will allow you to ask that specific
4 question.

5 Colonel, to the extent that you just heard that
6 question, you may consider that a question.

7 WIT: Yes, sir.

8 MJ [Col COHEN]: It's overruled.

9 A. I'm aware of our capabilities that the JDG has
10 control over. If there are other capabilities, I don't know
11 what they are and I don't know if they work or not, if there
12 are.

13 LDC [MR. RUIZ]: Okay. I will follow up on that, Judge,
14 in a closed session.

15 MJ [Col COHEN]: That would be fine.

16 LDC [MR. RUIZ]: Appreciate that.

17 Q. Colonel, in support of this litigation, and I'm sure
18 you're well aware by now the litigation involves the use of a
19 laptop, judicially approved and ordered laptop, for
20 Mr. al Hawsawi. You executed a two-page sworn declaration,
21 correct?

22 A. Yes, sir.

23 Q. Now, without getting into the substance of the

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1 declaration, I'm just going to ask you some questions about
2 the declaration itself, okay?

3 A. Yes, sir.

4 Q. That declaration is contained at AE 530UUU, B. It is
5 a classified document. I will not be going into the specifics
6 of that in an open session. However, Colonel, I would like to
7 ask you if you could tell us, please, did you write that
8 declaration yourself?

9 A. I did not. It was presented to me and I read it and
10 concurred with it.

11 Q. And who wrote that declaration for you, Colonel?

12 A. Someone in our Staff Judge Advocate Office.

13 Q. Do you know who?

14 A. Specifically, no.

15 Q. And do you know the basis of their knowledge for the
16 substance that was put into the declaration?

17 A. They are involved with the mission here at JTF-GTMO.

18 Q. Do you know how often they visit the facility?

19 A. Again, I don't know the specific person that wrote
20 it. Could have been one of several. If it's ----

21 Q. So you don't know the source or the basis of their
22 knowledge?

23 A. Sir, depending on who wrote it, sir, if it's people

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1 from our staff judge advocate that interact with stuff at
2 Camp VII, they would have good knowledge.

3 Q. Very well. So you yourself do not know who actually
4 authored the document that you ultimately signed?

5 A. I do not.

6 Q. Very well. You did have an opportunity to review the
7 document?

8 A. Yes, sir.

9 Q. And I understand from your testimony you're saying
10 that you believe that to be accurate?

11 A. Yes, sir.

12 Q. And is that based on your own personal observations?

13 A. It is.

14 Q. And your personal experience?

15 A. Yes.

16 Q. Okay. Colonel, you also had the opportunity to
17 review a diagram of the tier that Mr. al Hawsawi resides in,
18 correct?

19 A. Yes.

20 Q. That was presented to you by a member of the Staff
21 Judge Advocate's Office?

22 A. That is correct, sir.

23 Q. And that is contained in the record at AE 530ZZZ

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1 (MAH), and it's also a classified attachment so I'm not going
2 to ask you to get into the details of that. However, having
3 reviewed that exhibit, is it -- is it your assessment that
4 that exhibit accurately depicts the layout of where
5 Mr. al Hawsawi currently resides?

6 A. Yes, sir.

7 Q. Okay. Now, in terms of Mr. al Hawsawi's access to
8 his court-approved laptop, it is correct, is it not, Colonel,
9 that in a 24-hour day Mr. al Hawsawi currently only has access
10 to that laptop for four hours?

11 A. Yes, sir.

12 Q. Correct? And this is in two 2-hour periods?

13 A. That is correct.

14 Q. All right. One of those hour periods being from 2:00
15 to 4:00 a.m. in the morning, correct?

16 A. That is one of our lockdown periods. That is
17 correct.

18 Q. Okay. Are you familiar with the computer at issue,
19 the 2008 Panasonic model computer for Mr. al Hawsawi? In
20 other words, have you seen it?

21 A. I have not.

22 Q. All right. Colonel, were you aware or made aware
23 that prior to returning -- the military court ordering the

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1 return of that laptop to your facility, that computer had to
2 go under a number of security measures, including forensic
3 examination, to make sure it was safe to go back into the
4 facility?

5 A. I am aware.

6 Q. And you are aware that that laptop also goes visual
7 and actual inspection every time it is removed from
8 Mr. al Hawsawi?

9 A. I am.

10 Q. And that certain capabilities of that computer were,
11 in fact, certified as disabled so it could, in fact, enter
12 your facility?

13 A. Yes.

14 Q. Including it has no WiFi capability?

15 A. Yes.

16 Q. Including the screws on the back of the computer are
17 melted shut so that the computer cannot be opened?

18 A. Yes, sir.

19 Q. To your knowledge -- actually, let me backtrack.

20 As the Joint Detention Group commander, you indicated
21 that you are -- and you participate in briefings with the
22 camp, correct?

23 A. I do.

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1 Q. It is fair to say that some of those briefings
2 include any security violations or infractions by the detainee
3 population?

4 A. Yes, sir.

5 Q. So you have knowledge and experience in terms of what
6 violations may have been taking place in a particular
7 facility?

8 A. I do, sir.

9 Q. And in this instance, in Camp VII?

10 A. Yes.

11 Q. And Mr. al Hawsawi has never had any violation or
12 infraction in the use or handling of his computer, correct?

13 A. Not that I'm tracking.

14 Q. I'm sorry?

15 A. Not that I am tracking, sir.

16 Q. And as the commander of the -- the overall commander,
17 it would be your job to track that, correct? Or be aware of
18 it?

19 A. Yes.

20 Q. And you're not aware of any such violation?

21 A. I am not.

22 Q. I also understand from information from a member of
23 your staff that the camp is currently in the process of

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1 preparing a standard operating procedure for Camp VII,
2 correct?

3 A. Yes, sir.

4 Q. And are you part of that process?

5 A. I would review it and ultimately approve it.

6 Q. Okay. So you would have input into the ultimate work
7 product that comes out, correct?

8 A. That is correct, sir.

9 Q. Now, I'm -- I guess you -- you're indicating you will
10 be kind of a reviewing authority. Who actually -- if you can
11 say, who actually prepares the -- the nuts and bolts of the --
12 of the proposed standard operating procedures for the camp?

13 A. It's prepared by a working group of, you know, camp
14 guard force and people within the JDG and the JTF that have
15 equities in terms of camp operations and security.

16 Q. Next question I'm going to ask you is ---- well, let
17 me ask that in closed session, Judge.

18 Safe to say that the purpose of the standard
19 operating procedure draft that is ongoing is to govern the
20 daily operations of Camp VII and the detention facility?

21 A. Yes, sir.

22 Q. All right. And is it a safe inference to assume that
23 the access of one detainee to their computer would be

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1 something that is considered within the framework of that
2 standard operation procedure?

3 A. It could be. The SOP that we're really looking at
4 right now would be focused on the communal operations and we
5 could touch on that, yes.

6 Q. All right. And certainly this is an issue that has
7 come to the forefront. You're here testifying on this issue,
8 so it would seem appropriate, perhaps, that that would be part
9 of the decision-making process?

10 A. Yes, sir.

11 Q. And it is also accurate, correct, that there is only
12 one detainee right now in Camp VII who has a judicially
13 approved laptop, correct?

14 A. Yes, that's correct.

15 Q. And that would be Mr. al Hawsawi?

16 A. Yes.

17 Q. So at least for right now, the guard force -- your
18 operations are only required to track that one computer?

19 A. That is correct.

20 Q. In the declaration you drafted -- and again, I'm
21 going to talk about this generally. Let's not get into
22 specifics, okay? And that's because of the potential for
23 classified information. But I want to talk generally about

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1 the opinion that you rendered in that declaration.

2 It is accurate, is it not, that you said that
3 Mr. al Hawsawi's current access, which is limited to four
4 hours, including a period from 2:00 to 4:00 in the morning, is
5 the balancing that you can strike right now between the safety
6 and security operations of the facility, correct?

7 A. Yes.

8 Q. And you would agree with me that that balancing is
9 informed by your knowledge of the security capabilities of the
10 facility, correct?

11 A. Correct.

12 Q. You obviously have to know what your facility is
13 capable of doing, seeing, surveilling, et cetera, in relation
14 to what you're being asked to do, correct?

15 A. Sure. Yes.

16 Q. And certainly it would be important for the military
17 judge to also have a full understanding of the security
18 capabilities of Camp VII ----

19 A. Right.

20 Q. ---- correct?

21 So, Colonel, it is true, is it not, that you were
22 directed by a higher authority not to acknowledge the
23 existence of certain security capabilities at Camp VII, either

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1 in open session or in closed session. Isn't that correct?

2 TC [MR. RYAN]: Objection.

3 MJ [Col COHEN]: Counsel, is this -- are we asserting a
4 privilege or where -- what's the objection basis?

5 TC [MR. RYAN]: Objection on the grounds that it should be
6 taken up in closed session, sir.

7 LDC [MR. RUIZ]: I can respond if you'd like, Judge.

8 MJ [Col COHEN]: You -- you can, if you can make it as
9 general as you possibly can.

10 LDC [MR. RUIZ]: Sure.

11 MJ [Col COHEN]: I don't want to get into an inadvertent
12 spill.

13 LDC [MR. RUIZ]: Absolutely. And I don't think I have to.
14 I very carefully asked that question.

15 As I had laid the foundation for that, the foundation
16 was that it is important in the balancing test to know the
17 security capabilities of the facility, to balance it with what
18 we are asking them to do. And it's equally important for the
19 military judge to have full knowledge of the security
20 capabilities of the facility. That's it. I'm not getting
21 into the actual capabilities.

22 And what I wanted to ask the commander is if it was
23 true or not that he was ordered not to acknowledge the

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1 existence of certain capabilities of the facility, not only in
2 open session, but also in closed session. That's the
3 question.

4 MJ [Col COHEN]: Is the government asserting a privilege
5 over that -- that question?

6 TC [MR. RYAN]: The court's indulgence, sir.

7 [Pause.]

8 TC [MR. RYAN]: Judge, I am not asserting a privilege at
9 this time. However, Your Honor instructed the parties to
10 limit your -- limit the questioning to areas concerning
11 reasonable alternatives. And based upon that, my objection is
12 on relevance grounds. It's got to get back to the laptop
13 issue specifically, sir.

14 MJ [Col COHEN]: Counsel, I'll overrule it on the grounds
15 of what he was told he could testify about and what he
16 wouldn't. It is also standing on relevance grounds. But what
17 he knows about the capabilities himself does go to the issue
18 of reasonable alternatives. And so to the extent we need to
19 address that, you may have leave of the court to do so.

20 LDC [MR. RUIZ]: Understand, Judge. However, if the
21 witness was instructed not to provide this court with relevant
22 testimony, which is the security capabilities of that
23 facility, or to acknowledge their existence, which is my

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1 belief, that is relevant to his credibility and it's relevant
2 to the analysis you're going to be able to conduct.

3 MJ [Col COHEN]: Right. And I'll take that up in a closed
4 session.

5 LDC [MR. RUIZ]: The question itself?

6 MJ [Col COHEN]: And the response.

7 LDC [MR. RUIZ]: Very well. Then I don't have anything
8 further.

9 MJ [Col COHEN]: Thank you.

10 LDC [MR. RUIZ]: Thank you.

11 MJ [Col COHEN]: Mr. Ryan.

12 **CROSS-EXAMINATION**

13 **Questions by the Trial Counsel [MR. RYAN]:**

14 Q. Good afternoon, Colonel.

15 A. Good afternoon, sir.

16 Q. Could you give us your background in the
17 United States Army, please.

18 A. Sir, I am a military police officer. I have been in
19 the Army for 25 years. I've held various positions of command
20 and staff throughout the Army.

21 Q. In the course of your career, have you had
22 involvement in any matters concerning detainees?

23 A. So as an MP you do train at certain echelons, albeit

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1 more tactical. And during my last job I was in the -- worked
2 in the J-3 of the Joint Staff and in the Deputy Director of
3 Special Ops, Counterterrorism, and Detainee Affairs, and I was
4 in Detainee Affairs.

5 Q. Is that the Pentagon?

6 A. It is, sir.

7 Q. Colonel Yamashita, how long have you been at
8 Camp VII?

9 A. I've been -- as long as I've been in command here,
10 which is a little over a year.

11 Q. And who did you take over from as JDG C0?

12 A. Colonel Steve Gabavics.

13 Q. And in Camp VII, you are charged with the detention
14 of, among other people, what's known as "the 9/11 five"; am I
15 correct?

16 A. Yes, sir.

17 Q. Five individuals in this case who are charged with
18 the attacks of September 11th, 2001?

19 A. Yes.

20 Q. And is it in Camp VII you also are responsible for
21 the detention of a man known as al Nashiri, or Nashiri, who is
22 alleged to have orchestrated the bombing of the USS COLE?

23 A. Yes, sir.

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1 Q. Are you also charged with the detention of a man
2 named Hadi al-Iraqi, who is charged with the murder of U.S.
3 servicemembers?

4 A. Yes, sir.

5 Q. In the course of your career, Colonel, and time in
6 detainee affairs, how do you rate the -- the security risks at
7 this facility compared to any other you're aware of?

8 A. Sir, this is probably the greatest risk that I have
9 been associate -- associated with.

10 Q. Counsel asked you about awareness of the five --
11 AE 530 litigation concerning the laptops. Do you have some
12 awareness of that, sir?

13 A. Yes, sir.

14 Q. At some point were you made aware of an order from
15 a -- former Judge Pohl in this case?

16 A. Yes, sir.

17 Q. Let me read to you, sir, something from 530LL, an
18 order in this case by Judge Pohl. "The potential ability of
19 the accused to manipulate their government-issued laptop
20 computers" ----

21 LDC [MR. RUIZ]: Objection. Improper foundation.

22 TC [MR. RYAN]: Well, I'm reading an order from the court,
23 Judge, regarding a matter directly that he is aware of.

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1 LDC [MR. RUIZ]: If Mr. Ryan wants to testify, Judge. I
2 think that's a different matter. However, I object on the
3 basis of form of the question, foundation.

4 MJ [Col COHEN]: I'll sustain as to the form of the
5 question, but you may rephrase the question.

6 Q. Colonel, have -- let me ask you this: In the course
7 of your time, whether it was preparing for this or not, did
8 you at some point have a chance to review the record or the
9 order of Judge Pohl, 530LL?

10 A. Yes, sir.

11 Q. All right. And did you read it?

12 A. Yes, sir.

13 Q. Okay. Can I read to you then a portion of it and
14 tell me if you recognize it from when you read it?

15 A. Yes, sir.

16 Q. "The potential ability of the accused to
17 manipulate" ----

18 LDC [MR. RUIZ]: Objection, Judge. I would ask that the
19 witness be provided ----

20 MJ [Col COHEN]: One second, Mr. Ryan. Let me hear the
21 objection.

22 LDC [MR. RUIZ]: Judge, I believe that -- I don't have an
23 objection if he wants to provide the document to the witness,

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1 see if that refreshes his recollection. But I do object to
2 Mr. Ryan entering into a recitation of the order prior to
3 that.

4 MJ [Col COHEN]: I'm going to overrule you. If it's a
5 specific portion, why not read the whole thing. But if you
6 want to ask him if he's aware of a specific finding of the
7 court in reaching his conclusion, then I will allow that
8 question.

9 TC [MR. RYAN]: One sentence, sir.

10 Q. Colonel, listen please. "The potential ability of
11 the accused to manipulate their government-issued laptop
12 computers to bypass previously disabled communication
13 capabilities poses a risk to force protection and potentially
14 to national security."

15 Do you remember reading that at some point, sir?

16 A. Yes, sir.

17 Q. Do you agree with Judge Pohl's statement in that
18 regard?

19 A. I do.

20 TC [MR. RYAN]: That's all I have for the open session,
21 sir.

22 MJ [Col COHEN]: All right. Thank you.

23 Any redirect in open session?

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1 LDC [MR. RUIZ]: One moment, Judge.

2 MJ [Col COHEN]: You may.

3 [Pause.]

4 LDC [MR. RUIZ]: I don't have any additional questions for
5 open session, Judge. Thank you.

6 MJ [Col COHEN]: All right. Thank you.

7 All right then. That concludes the open testimony.
8 My understanding is that, Colonel, it will take approximately
9 30 minutes for us to transition from an open to a closed
10 session, clear the gallery, et cetera. You are welcome to use
11 the restroom. You can talk to other folks in here, but please
12 don't talk with the parties about your testimony while you
13 remain on the stand.

14 WIT: Yes, Your Honor.

15 MJ [Col COHEN]: All right. Thank you, Colonel. We're in
16 recess.

17 [The R.M.C. 803 session recessed at 1423, 25 July 2019.]

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