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1 UNITED STATES VS. MOHAMMED JAWAD
2 PROCEEDINGS OF A MILITARY COMMISSION

3 The deposition officer called the R.M.C. 702 session
4 to order at Arlington, Virginia, at 0911 hours, 3
5 July 2008, pursuant to the attached memorandum for
6 LTC Martha L. Foss, USA, DAJA-LA dated June 30, 2008.

7

8 The following were present at the proceedings:

9

10 MAJOR DAVID FRAKT, US AIR FORCE - DETAILED DEFENSE
11 COUNSEL

12 LCDR KATHERINE DOXAKIS, UNITED STATES NAVY, DETAILED
13 ASSISTANT DEFENSE COUNSEL

14 LTC. DARREL VANDEVELD, ASSISTANT PROSECUTOR, UNITED
15 STATES AIR FORCE

16 COLONEL LAWRENCE MORRIS (VIA TELEPHONE), ASSISTANT
17 PROSECUTOR, UNITED STATES AIR FORCE

18 STAFF SERGEANT PATRICIA WILLIAMS, DEFENSE PARALEGAL

19 STAFF SERGEANT GUADALUPE ONA, PROSECUTION PARALEGAL

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1 P R O C E E D I N G S

2 LTC. FOSS: This deposition is convened by
3 the order of Military Judge Colonel Steven Henley
4 dated 26 June 2008 pursuant to RMS 702-D-1. I am
5 Lieutenant Colonel Martha Foss, United States Army
6 JAG Corps. I was appointed as the deposition officer
7 by Miss Susan Crawford on 30 June 2008.

8 Counsel, if you will please state your
9 ranks, names and positions for the record, starting
10 with the government.

11 LTC. VANDEVELD: Sir, do you want to go
12 first, Colonel Morris?

13 COLONEL MORRIS: I'm Colonel Lawrence
14 Morris. And I'm detailed to this case as an
15 assistant prosecutor by myself in my capacity as the
16 chief prosecutor.

17 LTC. VANDEVELD: Lieutenant Colonel Darrel
18 Vandeveld. I'm present. Colonel Morris is present
19 by telephone.

20 MAJOR FRAKT: Major David Frakt, Detailed
21 Defense Counsel. That's F-R-A-K-T.

22 LTC. DOXAKIS: Lieutenant Commander

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1 Katherine Doxakis, Assistant Detailed Defense

2 Counsel.

3 LTC. FOSS: I caused service of the notice
4 of this deposition on 1 July 2008. Sir, at this
5 point, I would like to swear you in, if you'll please
6 stand.

7 Whereupon,

8 PATRICK M. McCARTHY,

9 having been duly sworn by the Deposition Officer, was
10 examined and testified as follows:

11 LTC. FOSS: For the record, please state
12 your name and your rank and your current position.

13 THE WITNESS: My name is Patrick M.
14 McCarthy, M-C-C-A-R-T-H-Y. I'm a Captain O-6 in the
15 United States Navy. I'm the Staff Judge Advocate of
16 Joint Task Force Guantanamo, Guantanamo Bay, Cuba,
17 and have been in that capacity since 2 May 2006.

18 LTC. FOSS: Sir, at this time I'm going to
19 turn the questioning over to the defense counsel.

20 EXAMINATION BY COUNSEL FOR DEFENSE

21 BY MAJOR FRAKT:

22 Q. Good morning, Captain McCarthy. Thank you

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1 for coming. I had nothing to do with the logistics
2 of this, so I apologize for bringing you up here.

3 A. That's all right.

4 Q. Can you tell me your prior SJA positions?

5 A. I was first the Staff Judge Advocate in
6 Okinawa, Japan from November 1992 until July of 1995.
7 I was then the legal advisor to the commandant of
8 midshipmen, which is a very similar position of a
9 Staff Judge Advocate from July 1995 until August of
10 1997. I was the Staff Judge Advocate to Iceland
11 Defense Force from June of 1998 until July of 2001.
12 And then I've been the Staff Judge Advocate of the
13 Joint Task Force Guantanamo from 2 May 2006 to
14 projected 25 July 2008.

15 Q. And sir, at these SJA positions, were you
16 Staff Judge Advocate to a general court martial
17 convening authority in any of these positions?

18 A. I was the Staff Judge Advocate to a
19 general court martial convening authority, authorized
20 general court martial convening authority in Okinawa.
21 However, we deferred all of our court martials to the
22 Commander, Naval Forces Japan up in Yokosuka, but we

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1 had the authority to convene. In Iceland, I believe
2 we had GCMA authority. In Guantanamo, we have not
3 been delegated that authority, and it was not
4 delegated. We were not a GCMA authority in
5 Annapolis.

6 Q. How many military commission legal
7 advisors have you dealt with in your capacity?

8 A. Two. By legal advisors, you mean legal
9 advisor to the convening authority?

10 Q. Yes, sir.

11 A. Or the predecessor to the convening
12 authority.

13 Q. The legal advisor to the convening
14 authority under the current military commission
15 system?

16 A. One. Well, no. I take that back. Two,
17 because there was a short time when General
18 Hartmann's predecessor was in the job.

19 Q. Now, we have not previously discussed the
20 Jawad case, have we?

21 A. No.

22 Q. And we have not discussed any possible

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1 unlawful influence by Brigadier General Hartmann?

2 A. No. However, I want to make clear that in
3 my office, I have a Viper system that allows me to
4 hear and see what is going on from the courtroom from
5 a perspective -- we have a camera that zeros in on
6 the accused, so it allows us to keep up to date of
7 what's going on in that courtroom, and I have
8 witnessed what's going on in that courtroom, and I
9 witnessed the last hearing, a fair chunk of that last
10 hearing.

11 Q. Yes, sir. But you and I haven't had any
12 personal discussions?

13 A. No.

14 Q. On the phone?

15 A. No.

16 Q. Through email?

17 A. No.

18 Q. Our prior interactions were limited to a
19 couple of brief meetings in the hallway outside your
20 office at JTF Guantanamo?

21 A. Having to do with the logistics of comings
22 and goings to meet with Detainee Jawad, ISN 900.

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1 That's correct.

2 Q. So, sir, I just wanted to -- I don't
3 necessarily know what you may have to offer that may
4 be relevant to this deposition, and I apologize in
5 advance that some of the questions may pertain to matters
6 of which you have no knowledge, but it's because we
7 really haven't had the opportunity to talk before.

8 I'd like to talk a little bit about your
9 interactions with Brigadier General Hartmann. Could
10 you give us an overview of what your dealings have
11 been with General Hartmann since he took over as
12 legal advisor to the convening authority last July?

13 A. Well, I'm more than willing to do that if
14 I'm ordered to do that by the judge, but I want to
15 limit my answers to what the judge's order was, which
16 is that I discuss SVTC. I am more than willing to
17 discuss my interaction with respect to SVTC and
18 General Hartmann, but I don't think that I'm in a
19 position, given the order and the nature of that
20 order, to go further than that.

21 Q. And you're referring by SVTC, you mean
22 secure video teleconference?

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1 A. That's correct.

2 MR. FRAKT: Madam Deposition Officer, it's
3 the defense position that although the order is
4 fairly specific, that Colonel Henley did intend for
5 to us have more latitude in questioning this witness.
6 And in support of that belief, yesterday we had
7 requested that Colonel Henley authorize the release
8 of Brigadier General Hartmann's testimony so that we
9 could prepare questions based on that testimony.

10 And I informed Colonel Henley that we were
11 viewing Captain McCarthy essentially as a rebuttal
12 witness to General Hartmann's testimony. And given
13 that Captain McCarthy observed that testimony, he may
14 have some relevant information beyond merely the
15 existence of a secure video teleconference, so I
16 would request to be given a bit of latitude to ask
17 questions beyond merely these video teleconferences.

18 LTC. FOSS: Did you receive the testimony
19 of General Hartmann as you requested?

20 MAJOR FRAKT: We did. Colonel Henley
21 authorized the release. It was provided to both
22 prosecution and defense.

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1 LTC. FOSS: Government, is there any
2 objection to -- sir?

3 COLONEL MORRIS: There sure is, yes. If
4 Colonel Henley had meant what the defense meant here,
5 he would have put it in writing, and he didn't do so.
6 The fact that he released the testimony doesn't mean
7 he indulged any wider questioning. And if he did, he
8 clearly had the authority and would have meant to
9 have done so and would have done so.

10 Secondly, to question the relevance of
11 bringing in the testimony of somebody who sat in his
12 office and watched it, Colonel Henley was on the
13 record as correcting the defense earlier when the
14 defense had its own witness watch testimony, and then
15 come in and presume to give an opinion about that.

16 As you well know, the rules of court
17 normally forbid somebody other than an expert witness
18 from watching testimony and then coming in and giving
19 an opinion about it. And then we would question the
20 relevance of Captain McCarthy's testimony in that
21 regard. If you want to let them do that, then, of
22 course, we need time to prepare for whatever response

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1 we need to have. We are prepared to examine the
2 witness based on the judge's order.

3 LTC. FOSS: Any other response, defense?

4 MAJOR FRAKT: Well, yes. First, the
5 judge's admonishment to a scheduled witness not to
6 watch other witnesses is really not relevant to -- I
7 mean, there is certainly nothing improper about
8 Captain McCarthy observing the proceedings from his
9 office when he had no idea whatsoever that he might
10 ever be involved as a witness in this case, nor did
11 the defense have any intent or knowledge that he may
12 have relevant information at that point.

13 But, you know, here's my proposal. I would like to
14 be able to ask the questions. Captain McCarthy, as
15 we know, is on his way to Italy for his next
16 assignment. In our request for this deposition to
17 the judge, we cited the fact that Captain McCarthy
18 may not be available for trial. He has traveled all
19 the way here from Guantanamo, and to ask him three or
20 four questions, I mean if the questions are not
21 relevant and he doesn't have a relevant answer, then
22 the judge can take care of that later. Not admit it.

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1 Strike it. What have you.

2 But to, you know -- I have a good faith
3 basis for asking a number of questions that I believe
4 are relevant. I'd like to just let them -- let the
5 objections be stated to the individual questions.

6 LTC. FOSS: Major Frakt, I've got my
7 order. If counsel would like to adjourn from the
8 deposition to then try to contact the military judge
9 to get clarification since Captain McCarthy is here,
10 I will entertain that request. Otherwise, I will
11 follow the orders that were given to me, which is
12 very clearly stated in the order from the military
13 judge.

14 COLONEL MORRIS: All right.

15 MAJOR FRAKT: All right. We request an
16 adjournment to try to contact the judge to seek
17 clarification.

18 LTC. FOSS: That request is granted. At
19 this time, we'll go off the record at 9:28.

20 (Discussion off the record.)

21 LTC. FOSS: The time is now 10:02. We
22 took a break to allow the deposition officer to

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1 confer with legal advisor to the commissions. And
2 based on that information, defense counsel submitted
3 a request to the military judge to request expansion
4 of the order of the deposition.

5 In the meanwhile, we are going to continue
6 the deposition within the parameters of Colonel
7 Henley's order dated 26th June. If we hear any
8 response back from the military judge during this
9 deposition, based on his order, we will expand the
10 testimony if the military judge orders it.

11 If he -- if we either do not hear from him
12 by the time this deposition closes or he denies the
13 defense request, then we will close the deposition at
14 the conclusion of Captain McCarthy's testimony. At
15 this point, sir, I just want to remind you that
16 you're still under oath.

17 Major Frakt, you can continue with your
18 questioning within the original military judge's
19 order of 26 June.

20 BY MAJOR FRAKT:

21 Q. Thank you, ma'am. If I could just get one
22 point of clarification. You said you consulted with

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1 military commission legal advisor. Can I ask you --

2 SERGEANT ONA: The legal advisor to the
3 military judge.

4 LTC. FOSS: The legal advisor to the
5 military judge.

6 MAJOR FRAKT: So the military commission's
7 judiciary staff essentially.

8 LTC. FOSS: That's correct. Yes.

9 BY MAJOR FRAKT:

10 Q. Captain McCarthy, you mentioned that you
11 had a chance to observe part of the 19 June hearing
12 at which Brigadier General Hartmann testified.

13 A. I did.

14 Q. Did you see his testimony?

15 A. I did. Part. Part of it. Yes.

16 Q. All right. Do you believe Brigadier
17 General Hartmann's testimony was completely accurate?

18 COLONEL MORRIS: Objection. Objection.
19 Objection. First, relevance. Secondly, there is
20 such breadth to that question that I can't imagine
21 what the reply would give us.

22 BY MAJOR FRAKT:

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1 Q. I'll focus the question a bit more. One
2 of the answers that --

3 LTC. FOSS: Major Frakt, I'm going to
4 interrupt. I believe this is specifically what
5 you've requested the military judge to clarify that
6 you sent the email to -- and government counsel, you
7 can correct me if I'm mistaken -- but I think this is
8 the heart of what you've sent to the military judge
9 requesting to seek clarification regarding the order
10 of 26 June.

11 MAJOR FRAKT: Well, actually, ma'am, this
12 goes directly to the video teleconferences, but I'll
13 ask a more specific question so we don't draw the ire
14 of Colonel Morris.

15 BY MAJOR FRAKT:

16 Q. I asked General Hartmann if he had monthly
17 video teleconferences with senior leaders, including
18 general officers from SOUTHCOM, from Joint Task Force
19 Guantanamo, and he said that that was -- that was not
20 true, that that did not happen. Have there been
21 regular video teleconferences with general officers?

22 A. To my knowledge, Brigadier General

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1 Hartmann has had secure video teleconference or SVTC
2 with senior leadership JTF Guantanamo and U.S.
3 Southern Command on three occasions this calendar
4 year.

5 Q. Would that be February 7th, March 24th,
6 and June 25th?

7 A. I believe it was on or about March 4th --
8 excuse me, February 4th, March 24th and June 25th.
9 That's correct.

10 Q. And was the June 25th video teleconference
11 rescheduled from the June 12th?

12 A. That is my understanding.

13 Q. So that it was scheduled for the week
14 prior to the June 19th hearing and rescheduled to the
15 June 25th, the week after the June 19th hearing?

16 A. That is my understanding.

17 Q. Were you present in any of these video
18 teleconferences?

19 A. I was present for the very beginning of
20 the February video teleconference.

21 Q. Was there any reason that you did not
22 remain at that video teleconference?

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1 A. General Hartmann came on the screen, saw
2 that there were individuals in the room, including
3 myself that were not general or flag officers and
4 immediately said to Admiral Buzby, "Admiral Buzby, I
5 need to call you in your office. Can you please go
6 to your office?" Admiral Buzby left, came back, and
7 directed that General Hartmann has directed that I
8 leave the video teleconference room.

9 Q. Did you find that unusual?

10 A. Yes.

11 Q. And why?

12 A. Because as the legal advisor to the
13 convening authority, it seems to me that General
14 Hartmann should always be willing, and in fact, his
15 primary point of contact within a command should be
16 the legal advisor of that command. That's how my
17 experience has been with command legal advisors and
18 their communication.

19 Q. And General Hartmann indicated in his
20 testimony that he viewed his role as being equivalent
21 to a Staff Judge Advocate. Did you hear him say
22 something like that? Did you hear that part of his

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1 testimony?

2 A. I did hear that part of his testimony.

3 Q. And so did you feel that he was acting

4 consistent with the role of --

5 COLONEL MORRIS: Objection. Relevance.

6 LTC. FOSS: Counsel, keep it within the

7 parameters of the military judge's original order,

8 please.

9 BY MAJOR FRAKT:

10 Q. Do you have any knowledge of the subject

11 matter of these video teleconferences?

12 A. I only have secondhand knowledge because

13 in accordance with General Hartmann's demand, I was

14 not included in those video teleconferences.

15 Q. Can you share your secondhand knowledge?

16 A. The secondhand knowledge I have is that

17 during the video teleconferences, General Hartmann

18 would talk about particular upcoming cases, charges

19 that were pending, as well as his plans for future

20 cases, so how many cases per month were going to be

21 charged and what the future outlook appeared to be.

22 Q. And this is coming from being back briefed

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1 by an attendee at the conference?

2 A. That is correct. Either Admiral Buzby,
3 General Crawford, General Zanetti or Admiral Thomas.

4 Q. And you have no reason to doubt what any
5 of those general officers may have told you.

6 A. No. I do not.

7 Q. So after this February 7th VTC, where you
8 were invited to leave, did you make any effort to
9 attend the future conferences?

10 A. No. I was -- I was told you're not
11 allowed to attend. It's my understanding that
12 General Hartmann reiterated his GO/FO, which stands
13 for -- it's GO/FO which stands for general officer
14 flag officer only demand in connection with the SVTC,
15 so I understood the demand that General Hartmann had.
16 My command understood it. And I felt no need to try
17 and push back against them.

18 Q. Do you have any other information that, of
19 any kind about these video teleconferences that you
20 can share?

21 A. Only that the legal personnel, legal staff
22 in U.S. Southern Command was also denied access to

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1 the, to the video teleconferences by General

2 Hartmann.

3 Q. And that's another O-6 legal advisor?

4 A. That's correct.

5 Q. Can you identify the name of that

6 individual?

7 A. Captain DeRenzi. And then I named the

8 individuals at U.S. -- JTF Guantanamo that were

9 present for these video teleconferences at U.S.

10 Southern Command. The individuals present were

11 Admiral Harris, General Ellis, Admiral Parker, I

12 believe those are the three individuals who have

13 taken them at SOUTHCOM. And they have firsthand

14 knowledge of what was discussed at the conferences.

15 Q. And is it true that these video

16 teleconferences were set up at the request of General

17 Hartmann?

18 A. That is my understanding.

19 MAJOR FRAKT: That's all the questions I

20 have on video teleconferences.

21 LTC. FOSS: Sir, do you have any

22 cross-examination?

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1 COLONEL MORRIS: Please.

2 LTC. FOSS: Go ahead, please.

3 CROSS-EXAMINATION BY COUNSEL FOR GOVERNMENT

4 BY COLONEL MORRIS:

5 Q. Captain McCarthy, have you personally
6 examined your records or the admiral's records back
7 to last July to determine the dates of any
8 teleconferences?

9 A. Back to, you mean July of '07? You mean
10 since --

11 Q. July when the -- correct, when General
12 Hartmann took his position, since July of '07?

13 A. We have looked at our records, and our
14 records reflect that there were three teleconferences
15 held and those were the ones already discussed,
16 February, March and June.

17 Q. And the June one occurred after the
18 hearing at which he testified, is that correct?

19 A. That is correct. That is correct.

20 Q. So there were two video teleconferences
21 between the 2nd of July and his testimony on the 19th
22 of June, is that correct?

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1 A. That is correct.

2 Q. When you talked --

3 A. Well, if I could say this, Colonel.

4 Q. Please. Go ahead.

5 A. To the best of my knowledge, there were
6 two.

7 Q. I understand. When you talked to your
8 bosses afterwards, I assume they talked to you freely
9 on the assumption or understanding that it was fine
10 to share that information that was discussed during
11 the teleconferences?

12 A. I don't know exactly what they thought. I
13 don't know that I got all the information discussed
14 on the teleconferences, but we did have back briefs.
15 I will say that in this last video teleconference, I
16 did not get a back brief from Admiral Thomas.

17 Q. The one that occurred after the hearing?

18 A. That is correct.

19 Q. But on the ones that, the two that
20 occurred before the hearing, you had what you
21 considered professional discussions with your
22 superiors after those teleconferences?

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1 A. That's correct.

2 Q. Now, when Lieutenant Delaparra gave me
3 what she understood to be a message from you on the
4 18th of June that you would feel obliged to testify
5 for the defense if General Hartmann testified in a
6 manner that you found improper or inconsistent, did
7 that relate to this issue or to other concerns you
8 had about General Hartmann?

9 A. I don't know what Lieutenant Delaparra
10 said to you precisely on that date.

11 Q. And we'll again -- we'll establish her
12 testimony on her own. But did you give direction to
13 Lieutenant Delaparra to tell me to be prepared for
14 your testimony for the defense if General Hartmann
15 testified in a manner that concerned you or that you
16 found objectionable?

17 A. No. I did not direct her to do that.

18 Q. You didn't tell her to give any warning to
19 the prosecution that you were a potential defense
20 witness in this case then?

21 A. Colonel Morris, what do you mean by I was
22 a potential defense witness. I believe I sent you an

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1 email, didn't I, that day?

2 Q. No. Lieutenant Delaparra came and told me
3 that she had a message from you to tell me, advised
4 me that you were a potential defense witness pending
5 how General Hartmann testified in the hearing that
6 was to occur the next day.

7 A. Colonel, I believe I sent you an email
8 that day when Lieutenant Delaparra came back and said
9 she had this conversation with you explaining my
10 position. I would recommend that you pull out that
11 email. This has nothing to do with SVTC. I'm not
12 going down this road with you, Colonel, and if you'd
13 like me to go, if you would like me to pull that and
14 have a discussion with you, I certainly can.

15 MAJOR FRAKT: And the defense would
16 request a copy of it which has not been provided in
17 discovery in clear violation of discovery rules of
18 exculpatory evidence.

19 BY COLONEL MORRIS:

20 Q. Am I right, then, Captain McCarthy, that
21 those concerns had nothing to do with the video
22 teleconference issue?

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1 A. The -- what I said to you -- I'd have to
2 look at the email and tell exactly what the concerns
3 were. I don't know if I had specific concerns about
4 a teleconference issue. I don't recall thinking
5 earlier that day or previously that there was a
6 concern specifically with respect to teleconference
7 issues.

8 COLONEL MORRIS: Colonel Foss, no further
9 questions from the government at this time.

10 LTC. FOSS: Do you have any further
11 questions?

12 REDIRECT EXAMINATION BY COUNSEL FOR DEFENSE

13 BY MAJOR FRAKT:

14 Q. Prior to General Hartmann's testimony, did
15 you have any idea that he would deny the existence of
16 video teleconferences?

17 A. Absolutely not.

18 Q. Did that come as a surprise to you that he
19 denied it?

20 A. I want to be clear here. You asked
21 General Hartmann a question, General Hartmann made a
22 denial based upon the question that you asked, I

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1 suppose. And I don't have an opinion as to whether
2 his particular denial, based upon your particular
3 question, is surprising.

4 Q. But you feel that -- well, strike that.

5 No further questions on this line. We would request
6 before excusing the witness to have an opportunity to
7 see if the judge has received our request.

8 LTC. FOSS: Colonel Morris, any further
9 questions from the government?

10 COLONEL MORRIS: No, ma'am.

11 LTC. FOSS: Sir, at this point, we are
12 going to go ahead and go off the record. It is
13 10:18.

14 (Recess.)

15 LTC. FOSS: It is now 10:48.

16 COLONEL MORRIS: So do I need to respond,
17 then? Does that mean Colonel Henley is awaiting a
18 response from us?

19 LTC. VANDEVELD: That's how I read it. Do
20 you have email capability?

21 COLONEL MORRIS: I do. I'm typing as I
22 sit here. Let me -- I was trying to --

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1 LTC. FOSS: Go back off the record.

2 (Recess.)

3 LTC. FOSS: The time is currently 10:51.

4 In the break, the defense submitted a request through
5 the legal advisor to the military judge. And we will
6 attach to the deposition the request, as well as the
7 response from Miss Bley, which is date stamped
8 Thursday, July 3rd at 10:40 a.m. in which the
9 military judge agreed to expand the original scope of
10 the deposition subject. Obviously, any government --
11 any government objections of relevance may be noted
12 on the record as the defense proceeds. Defense, you
13 may proceed with any additional questions you have
14 right now.

15 EXAMINATION BY COUNSEL FOR DEFENSE

16 BY MAJOR FRAKT:

17 Q. Thank you. Sir, did Brigadier General
18 Hartmann ever talk to you or in your presence about
19 Colonel Morris Davis and his views of him as a chief
20 prosecutor?

21 A. No.

22 Q. Did he ever talk to you or talk in your

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1 presence, talk about Lieutenant Colonel Britt and his
2 views of Lieutenant Colonel Britt as a deputy or
3 acting chief prosecutor?

4 A. No.

5 Q. Did Brigadier General Hartmann ever
6 indicate to you or in your presence that he was, he
7 had a role in selecting the cases to be charged
8 before the military commissions?

9 A. General Hartmann in or about November of
10 2007 briefed me on a plan for, a way forward on the
11 number of cases that would be charged in each month.
12 He has a very large foldout chart that's probably
13 three or three and a half, four feet long. It's a
14 well-known chart and it has on that chart the kind of
15 lay down of how many cases will be proceeding and
16 sort of monthly times as they will proceed.

17 I do not recall if there were actually ISNs or
18 internment serial numbers assigned to those cases, so
19 it's kind of a bar chart that reads left to right and
20 it's a big calendar and it just lines, it has big
21 lines on it as to when cases will be proceeding and
22 that kind of thing.

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1 Q. Did Brigadier General -- excuse me. Now,
2 was that a product that you believe or he indicated
3 that he had prepared?

4 A. He prepared that product. Yes.

5 Q. Did General Hartmann ever seem to be
6 assuming the role of chief prosecutor to you?

7 A. I don't know that -- I don't know what the
8 particular role of the chief prosecutor is. I'm not
9 in that office. General Hartmann clearly gave the
10 impression that he was the one that ran and runs
11 commissions, yes.

12 Q. Did Brigadier General Hartmann ever
13 mention to you or in your presence his views about
14 the use of classified evidence and the
15 declassification process?

16 A. Not to my recollection.

17 Q. Did he ever mention his views about the
18 use of evidence obtained by coercion?

19 A. Not to my recollection.

20 Q. Brigadier General Hartmann indicated that
21 he would occasionally permit his frustrations to
22 become apparent from time to time. Did you ever

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1 witness Brigadier General Hartmann allowing his
2 frustrations to become apparent?

3 A. Yes.

4 Q. Do you recall what the subject matter was?

5 A. These were on meetings, questioning the
6 joint task force, JTF Guantanamo's concern about the
7 production of medical records, the production of
8 intelligence materials, and the first meeting when
9 he -- when he showed me that long line chart.

10 Q. And he was expressing displeasure with
11 what exactly?

12 A. He did not like that JTF Guantanamo had
13 gone to U.S. Southern Command and raised questions about
14 how to best produce this information. He did not
15 like the fact that I personally was involved. He was
16 remarkably aggressive on a personal level to me
17 during these meetings.

18 Q. And his preferred approach was what?

19 A. His preferred approach was to aggressively
20 question JTF Guantanamo personnel, and then when I
21 attempted to interject and correct misunderstandings
22 that were clear in the conversation, he would say

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1 things like, “who asked you? No one has asked you.

2 You just be quiet.” Things along those lines.

3 Q. And with regard to the medical records,

4 what was he asking to be done?

5 A. At the time, the question was how to

6 structure a mechanism to release medical records in a

7 way that provided the prosecution with the records

8 that they needed to satisfy their legal requirements

9 while also maintaining a certain level of

10 independence for JTF Guantanamo, so that it did not

11 appear that the medical care providers of Guantanamo

12 were actually information collectors.

13 Q. Brigadier General Hartmann indicated that

14 he did not watch or observe any of the testimony

15 presented at the hearing on June 19th, 2008 prior to

16 his testimony. Do you have any information that

17 would suggest that that may have been inaccurate?

18 A. No. The testimony would have been

19 technically available in the building in which he was

20 located, but I have no personal information that he

21 in fact took advantage of that and watched any of

22 that testimony.

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1 Q. What knowledge do you have of his
2 whereabouts in terms of what building he was located?

3 A. My understanding was that he was located
4 in his office in AV 29 for a good deal of that day.
5 And then later on, he came over to AV 34, which is
6 the building in which the courthouse is located, and
7 he was in the -- the distinguished visitor lounge and
8 there is a large monitor in that lounge and that was
9 turned off.

10 Q. On June 19th, was there any issue with
11 General Hartmann holding up an airplane that was
12 bound for Fort Belvoir?

13 A. I have no knowledge about that.

14 Q. Did Brigadier General Hartmann ever
15 mention the Jawad -- Mohammed Jawad case either by
16 name or descriptively as the Afghan kid who threw the
17 hand grenade? Did he ever mention that to you or in
18 your presence?

19 A. No.

20 Q. In addition to these video
21 teleconferences, are you aware of any face-to-face
22 meetings with General Hartmann and senior leaders

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1 regarding the military commissions?

2 A. I have knowledge of two meetings that
3 occurred. At least two.

4 Q. What do you recall about those?

5 A. In that November meeting, I -- that I
6 discussed, we were led to believe that General
7 Hartmann was going to come down and brief me as the
8 SJA and a couple of other appropriate staffers there
9 on JTF Guantanamo, as well as General Crawford, who
10 was the acting commander at the time. Admiral Buzby
11 was off the island.

12 In fact, General Hartmann demanded that he
13 alone speak with General Crawford. We were kept out
14 of the room, and it was only after the meeting when I
15 raised a concern that General Hartmann agreed to come
16 back into the room and without General Crawford being
17 there, briefed me on that long slide show.

18 Then on or about January 8th or 9th,
19 General Hartmann and some of the OMS staffers came
20 down. And I recall that there was a premeeting
21 between General Hartmann and Admiral Buzby and
22 General Crawford concerning OMC matters. Again, I

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1 was not permitted to be in the room, so I can't give
2 you details on what was discussed.

3 Q. Brigadier General Hartmann during his
4 testimony disagreed with the characterization of his
5 management style as nano management. Do you believe
6 that that is an accurate characterization of his
7 management style?

8 A. Well, I don't know what nano management
9 is, but General Hartmann --

10 COLONEL MORRIS: Object, please.

11 LTC. FOSS: I will note the objection, but
12 would direct the witness to answer the question.

13 THE WITNESS: It has been my experience in
14 working with General Hartmann that he is involved at
15 a level of detail that no other general or flag
16 officer that I've ever worked for or with has ever
17 been involved at.

18 BY MAJOR FRAKT:

19 Q. General Hartmann was directed by the
20 convening authority not to perform any duties as a
21 legal advisor while a complaint that Colonel Morris
22 Davis had filed was being investigated. That

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1 complaint and the investigation has come to be known
2 as the Tate investigation after Brigadier General
3 Clyde Tate. Are you generally familiar with that?

4 A. I've heard of that. Yes.

5 Q. And the time frame would have been from
6 approximately late August until early October 2007
7 when Colonel Davis submitted his resignation. Are
8 you aware of any activities by General Hartmann
9 during that time frame, late August 2007 to early
10 October 2007, where he was acting as the legal
11 advisor?

12 A. I would have to go back and -- back and
13 check my records. I have no specific recollection of
14 that occurring, but I just can't answer that
15 question.

16 Q. All right. The Tate investigation
17 admonished Brigadier General Hartmann not to get too
18 deeply involved in prosecutorial matters. And
19 Brigadier General Hartmann said he felt that he had
20 complied with that guidance and did not become too
21 deeply involved in prosecutorial matters. Do you
22 believe that to be true from your observations?

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1 A. I guess I have trouble with the term
2 prosecutorial matters. I don't know how that's
3 defined, so it's difficult for me to answer that
4 question.

5 Q. Was General Hartmann closely identifying
6 himself with the prosecutorial effort?

7 A. I believe in the areas where JTF
8 Guantanamo raised questions, he was. He would
9 closely identify himself with prosecutorial efforts.

10 Q. Did you ever observe General Hartmann
11 taking credit for moving the process forward or for
12 charging certain cases?

13 A. Yes.

14 Q. Can you expand on that?

15 A. In those meetings I described earlier,
16 General Hartmann made reference to the fact that we
17 need to get these things moving. "We need to get
18 these things moving. They have been languishing," or
19 words to that effect, long enough. "We need to get
20 going here."

21 Q. But did he take any credit for
22 jump-starting the process?

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1 A. I believe, I can't specifically recall him
2 using the words to the effect of, "I did this, this is
3 all because of me," or words to that effect.

4 Q. Was there a general impression that he was
5 taking credit?

6 A. There was a general impression.

7 COLONEL MORRIS: Objection to his general
8 knowledge of the general impression. He can answer
9 for himself.

10 THE WITNESS: My impression as the staff
11 JTF of GITMO that General Hartmann was responsible
12 for moving forward with military commissions in all
13 respects.

14 BY MAJOR FRAKT:

15 Q. Brigadier General Hartmann stated -- are
16 you still with us, Colonel Morris?

17 COLONEL MORRIS: Can I ask you to hold for
18 just a second, sir?

19 (Discussion off the record.)

20 BY MAJOR FRAKT:

21 Q. Brigadier General Hartmann stated that he
22 didn't feel that charging a juvenile was an issue

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1 worth mentioning to the convening authority. Did the
2 issue of charging child soldiers or juvenile
3 combatants ever come up in any of your interactions
4 with General Hartmann?

5 A. Not to my recollection.

6 Q. General Hartmann also when I asked him
7 about the frequent flier sleep deprivation program
8 initially didn't appear to understand what I was
9 talking about. Did you ever discuss or are you aware
10 of any discussions with General Hartmann about the
11 so-called frequent flier program or --

12 A. I'm not.

13 Q. All right. Aside from being removed from
14 those meetings as you described, did you ever see
15 General Hartmann act in a way that was inconsistent
16 with the role of a Staff Judge Advocate or legal
17 advisor?

18 COLONEL MORRIS: Objection. Basis for
19 knowledge.

20 LTC. FOSS: Can you rephrase the question,
21 counsel?

22 MAJOR FRAKT: Well, I asked him if he had

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1 personally observed. Well, he has established the
2 foundation that he has been a legal advisor, Staff
3 Judge Advocate several times, including general court
4 martial convening authority, SJA, so I think he has
5 familiarity with the roles and responsibilities of
6 that.

7 COLONEL MORRIS: Objection, because he's
8 asking for opinion as an expert, and the witness has
9 not been so qualified and shouldn't have the burden
10 of answering such a question.

11 LTC. FOSS: If you can rephrase the
12 question in a way that does not -- I mean, are you
13 asking for his expert opinion based on his own
14 experiences?

15 MAJOR FRAKT: I'm asking for him to
16 describe anything else unusual that could have been
17 construed as unlawful influence by those who were
18 present.

19 LTC. FOSS: That's not -- I mean, I
20 understand you asked it in a question way, but I
21 don't see --

22 BY MAJOR FRAKT:

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1 Q. Let me try one more time. Captain
2 McCarthy, did any other actions that General Hartmann
3 took as the legal advisor strike you as unusual?

4 A. The -- as I described it, it struck me as
5 unusual that General Hartmann dismissed Staff Judge
6 Advocates from the room when speaking directly with
7 senior leadership of other commands. It's not been
8 my experience that Staff Judge Advocates speak with
9 senior leadership about the commands, particularly
10 not without their counsel present. Other than that,
11 from a -- from a Staff Judge Advocate perspective, I
12 don't think that I have seen anything that I would
13 deem to be unusual.

14 Q. What about berating your subordinates?

15 A. Well, again, from a Staff Judge Advocate
16 perspective, I would not deem that to be unusual. I
17 don't have personal knowledge of him berating his
18 subordinates. He did not berate my subordinates. He
19 berated me in front of my subordinates which I found
20 to be offensive, and I came up with, you know, ways
21 to work around that.

22 He is a general officer and I respect that

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1 rank deeply. And I worked out a way with my client
2 to -- to overcome that and continue to move forward
3 in a way that I thought was professional and was
4 constructive and helped the process move forward.

5 Q. You mentioned earlier that you were aware
6 of General Hartmann being in certain buildings on
7 June 19th. Were you aware of any other personnel
8 that were accompanying him throughout the day that we
9 might be able to talk to who would have observed what
10 he was doing?

11 A. Well, he has an aide, an aide-de-camp who
12 was assigned to him. He was with him. I saw him a
13 couple of times that day. He was with him. I'm sure
14 that he could probably provide additional
15 information. But I have no personal knowledge that
16 he watched any part of the testimony on that day.

17 MAJOR FRAKT: I understand. I'll turn him
18 over to you, Colonel Morris.

19 LTC. FOSS: Sir, do you have any
20 questions? Proceed, sir.

21 CROSS-EXAMINATION BY COUNSEL FOR GOVERNMENT

22 BY COLONEL MORRIS:

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1 Q. On the issue of watching the testimony, am
2 I correct that your testimony is he had the
3 opportunity to do so had he wanted to do so?

4 A. The building is technically capable of
5 carrying that. And yes, he would have had the
6 opportunity had he wished to. And again, I have no
7 knowledge that he did.

8 Q. I understand. On the issue of, as you
9 responded to your counsel or to counsel's question
10 about identifying himself with prosecution efforts,
11 isn't it right that a number of the issues that you
12 and he dealt with each other on, and some of the ones
13 that became controversial or matters of debate were
14 not prosecution specific, but had to do with the
15 process and had equal impact on defense, as well as
16 prosecution?

17 A. The issues that we dealt with -- I'll go
18 down the five issues that became most contentious.
19 One was joint meetings for the, for defense counsel,
20 defense military commissions counsel and habeas
21 counsel. That's one.

22 The second one was access to medical

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1 records. The third one was access to intelligence
2 information. The fourth one was access to videotapes
3 of foreign delegations meeting with their nationals.
4 And the fifth one was access to ICRC records.

5 In each of those, in each of those
6 discussions, the issue became the requirement of the
7 prosecution to get access to those records so that
8 the prosecution could meet its legal obligation to
9 provide exculpatory information for the defense,
10 provide discoverable information for the defense, but
11 also to do their own due diligence with respect to
12 those cases.

13 Now I want to be clear here. I am not an
14 expert on the -- on what influence is proper or
15 appropriate or improper and inappropriate with
16 respect to the legal advising convening authority for
17 military commissions. I'm merely stating my
18 interaction with General Hartmann on those issues.
19 And the judge, I suppose, can figure out, you know,
20 whether it's right, wrong or indifferent.

21 I did not have those conversations by and
22 large with the head prosecutor, and I did not have

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1 those conversations by and large with the head
2 defense counsel. I had those conversations with the
3 legal advisor to the military commissions, to the
4 convening authority.

5 Q. And during a number of issues, as you've
6 recounted it, he was pushing for access to
7 information so that, among other things, Brady or
8 exculpatory type material could be provided to the
9 defense?

10 A. That's correct.

11 Q. And were not most of the matters of
12 disagreement or discussion between the two of you
13 issues having to do with how to make that happen as
14 opposed to whether it should happen?

15 A. That's a fair statement. Yes.

16 Q. And to look at -- just to take one of
17 those several as an illustration, to look at the
18 issue of defense counsel access, isn't it accurate to
19 say that General Hartmann was pushing to maximize
20 defense counsel access to the facilities and to their
21 clients, not to reduce it?

22 A. That's fair. Yes. That's a fair and

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1 accurate statement. Absolutely.

2 COLONEL MORRIS: Colonel Foss, I have no
3 further questions at this time.

4 LTC. FOSS: Major Frakt, based upon the
5 cross-examination of the government counsel, do you
6 have any further questions.

7 MAJOR FRAKT: Nothing further.

8 LTC. FOSS: Just one administrative
9 matter, I did not swear you in as the reporter, but
10 if we can swear you in, and then if you could state
11 your name for the record.

12 Whereupon,

13 SUSAN L. CIMINELLI,
14 was sworn to report the proceedings correctly.

15 MAJOR FRAKT: I would just ask if there
16 is -- the judge indicated, I think, he was going to
17 actually write an expanded order, so if he does, that
18 should be appended. But other than that, nothing
19 further.

20 LTC. FOSS: Colonel Morris, anything
21 further from the government?

22 COLONEL MORRIS: No, ma'am.

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1 LTC. FOSS: Thank you. This deposition is
2 in recess.

3 (The proceedings adjourned at 11:16 a.m.)

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1 UNITED STATES)
2 VS.) CERTIFICATE OF CORRECTION
3 MOHAMMED JAWAD)

4 -----
5 The record of deposition in the above case, which was
6 ordered by Military Commission convened by Convening
7 Order (RMC)702 Office of the Convening Authority,
8 Office of Military Commissions, Washington, DC, Dated
9 26 June 2008, at Arlington, Virginia, is corrected by
10 the insertion on page _____, immediately following
11 line _____, of the following:

12
13

14 AUTHENTICATION OF CORRECTION

15 I have examined the correction to the record of trial
16 in the above referenced case and find it accurately
17 reports the proceedings. I authenticate the
18 correction in accordance with R.M.C. 1104.

19 _____
20 Date Stephen R. Henley
21 Colonel, U.S. Army
22 Military Judge