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1 [The court-martial was called to order at 1125, 6 August 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties and the status of the court.

4 TC[MAJ FEIN]: Yes, ma'am. Your Honor, all parties [present]
5 when the court last recessed are again present. The witness is on
6 the witness stand--ma'am, all parties, when the court last recessed,
7 are again present, including--the witness is on the witness stand.
8 This is a closed session at the Secret level. The bailiff is
9 present, the Court's paralegal is present, members of the prosecution
10 and defense teams are present, and the security.

11 Also, Your Honor, the court security officer completed his
12 closed hearing checklist and that will be filed with the post-trial
13 allied papers.

14 MJ: Proceed.

15 [The examination of MG Nagata continued.]

16 Questions by the assistant trial counsel [CPT MORROW]:

17 Q. General Nagata, we talked, briefly, about the
18 , but I'd like to go back to that for a
19 moment, if we could, in closed session.

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1 A.

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13 Q. And, sir, you've said--now, you've said it several times,

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15 A. Yes.

16 Q. Was the nature of that

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18 A.

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1 Q. And, sir, from your perspective,

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4 A.

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14 Q. Sir, when did it become apparent to you that the release of

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18 A.

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MJ: Yes?

ADC[MAJ HURLEY]: Sorry, sir. Objection, hearsay, ma'am.

MJ: Yes?

ATC[CPT MORROW]: Your Honor, we'd offer these statements under M.R.E. 803(3), but he can describe the general nature of the conversation as well.

MJ: Well, he was just saying, "He said, 'X.'" So, what are you relying on?

ATC[CPT MORROW]: The state of mind of the declarant, M.R.E. 803(3).

MJ: All right. I'm going to overrule the objection. Go ahead.
[Examination of the witness continued.]

Q. Sir, let's go back to--

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MJ: I'm sorry, sir. Could you say that name one more time?

WIT:

MJ: Thank you.

WIT: ----at the time, .

[Examination of the witness continued.]

Q. And, sir,

A.

Q. And, sir, if you would, just describe sort of what occurred

A.

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ADC[MAJ HURLEY]: Captain Morrow, I'm sorry. Ma'am, we would renew our objection. Based on the government's response, we don't believe what General Nagata is talking about--

MJ: Is the request hearsay?

ADC[MAJ HURLEY]: Yes, ma'am. We--ma'am, we believe the request is hearsay, yes.

MJ: All right. Is it offered for the truth of something in the past? The government has offered it under M.R.E. 803(3), so I've overruled your objection.

ADC[MAJ HURLEY]: Thanks, ma'am.

[Examination of the witness continued.]

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1 Q. General Nagata, I'm handing you what's been marked as
2 Prosecution Exhibit 202 for identification. Can you just briefly
3 describe what that is?

4 A. [Examining PE 202 for identification.]
5
6

7 ATC[CPT MORROW]: Your Honor, permission to publish?

8 MJ: Go ahead. And it's Prosecution Exhibit--what?

9 ATC[CPT MORROW]: 202 for identification.

10 MJ: Okay.

11 [The assistant trial counsel published PE 202 for identification on
12 the projected screen.]

13 Q. Sir, we'll talk about
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18 A.
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12 Q. And, sir, if you would, can you, just,

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14 A. I can.

15 Q.

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17 A.

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3 Q. And, sir, what was the result of a conversation with

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6 A.

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1 entirely from the Northwest. Either the people that were operating
2 with those Frontier Corps brigades or the training centers in Khyber
3 Pakhtunkhwa--he told me, specifically, "Do not bring them back to
4 Islamabad. Do not send them back to the United States." His
5 expectation, as he explained it to me, was this was a temporary
6 suspension.

7 Q. How did having

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9 A.

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16 ADC[MAJ HURLEY]: Captain Morrow-----

17 MJ: Yes?

18 ADC[MAJ HURLEY]: ----if I can interrupt. Ma'am, just our

19 1001(b)(4) objection.

20 MJ: Got it.

21 [Examination of the witness continued.]

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1 Q. And, sir,

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4 A.

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7 Q. And, sir, you referred to, sort of, the--and maybe I'm
8 using my own word--but the--

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10 A. Yes.

11 Q. Can you describe how that worked

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13 A.

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15 Q. And what did you observe after the release,

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17 A.

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20 MJ: And how long were you there? I'm sorry, sir.

21 WIT: I left in September of 2011.

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1 ADC[MAJ HURLEY]: Ma'am, we would object to that last answer,
2 again, under 1001(b)(4).

3 MJ: The 2011 or the other one?

4 ADC[MAJ HURLEY]: The 2011. The--I'm sorry, ma'am. The
5 information--the 2011 information

6

7 MJ: All right. Thank you.

8 [Examination of the witness continued.]

9 Q. Circa, once the transition a bit into some of the--sort of
10 the other observations and impacts you experienced while you were
11 there. Are you familiar with the phrase,

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13 A. I am.

14 Q. And,

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17 A.

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3 Q. And, sir, was the

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5 A.

6 Q.

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8 A.

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21 ADC[MAJ HURLEY]: Captain Morrow, again--ma'am, 1001(b)(4).

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1 MJ: Okay. Let me ask just a follow up question on that. I
2 don't understand--

3 WIT:

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15 MJ: All right. Thank you. I have your objection.

16 ADC[MAJ HURLEY]: Yes, ma'am.

17 [Examination of the witness continued.]

18 Q. Sir, you referred to a,

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1 A. I can.

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20 ADC[MAJ HURLEY]: Captain Morrow--1001(b)(4), ma'am.

21 MJ: Got it.

22 [Examination of the witness continued.]

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1 Q. Sir, did this

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4 A.

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20 ADC[MAJ HURLEY]: Captain Morrow, 1001(b)(4), ma'am.

21 [Examination of the witness continued.]

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1 Q. And, sir,

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5 A.

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3 ADC[MAJ HURLEY]: Sorry, 1001(b)(4), ma'am.

4 Q. Sir, overall,

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7 A.

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14 Q. And, sir,

15

16 A. No, it had not.

17 ATC[CPT MORROW]: Thank you, sir.

18 MJ: Cross examination?

19 ADC[MAJ HURLEY]: Thank you, ma'am.

20 ATC[CPT MORROW]: I'm handing the court reporter Prosecution

21 Exhibit 202 for identification.

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1 ADC[MAJ HURLEY]: Captain--well, let's leave that just in case
2 it comes up. I don't know if it will, but in an abundance of
3 caution, thank you.

4 I'm putting prosecution Exhibit 202 for identification back
5 up on the monitor. Sir, can you see it okay?

6 WIT: I can.

7 ADC[MAJ HURLEY]: Sir, I'm going to take a second just to get
8 organized, if that's okay. Ma'am, same.

9 MJ: Certainly.

10 **CROSS-EXAMINATION**

11 **Questions by the assistant defense counsel [MAJ HURLEY]:**

12 Q. It's barely morning. Good morning, General Nagata.

13 A. Good morning.

14 Q. Sir, let's start off with
15
16
17

18 A. That is correct.

19 Q. And----

20 MJ: when?

21 ADC[MAJ HURLEY]: I'm going to answer that question right now,
22 ma'am.

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1 Q.

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3 A. That is correct.

4

5 Q.

6 A. Roughly.

7

8 Q.

9

10

11 A. Yes.

12 Q.

13

14 A.

15

16 Q. And you also describe then, generally, it's difficulties?

17 A.

18 Q.

19

20 A. That is correct.

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~~SECRET~~

1 Q.

2

3

4 A.

5 Q. Not just

6 A. That's correct.

7 Q. Often--and this is just a generalized notion, General

8 Nagata--but often the concerns and the--that are felt in the

9

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11

12 A. Very often, yes.

13 Q.

14

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16 A.

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5 Q. And that

6

7 A. It does.

8 Q.

9 A. It does.

10 Q. And there were concerns--and just getting back to the

11 general arc of my questions--

12

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14 A.

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1 Q. But one dimension of that concern--

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4 A. In some cases, yes.

5 Q. Now, you testified earlier that there

6

7 A. Yes.

8 Q. And that

9

10 A. It did.

11 Q.

12

13 A. That's correct.

14 Q.

15

16

17 A.

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1 Q.

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4 A. They do.

5 Q. And for the longest time,

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7 A.

8 Q.

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10 A.

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14 Q.

15

16

17 A.

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1 Q. And the WikiLeaks disclosures,

2 Is that right?

3 A.

4

5 Q.

6

7

8 A. In my estimation, yes.

9 Q. And there were other factors that contributed to the

10

11

12 A.

13

14

15 Q. And, sir, I just want to go over parts of the closed direct

16 that you just did with Captain Morrow, okay?

17 A. Uh-huh.

18 Q. The

19

20 A. Correct.

21 Q. And there was also

22 A. Correct.

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~~SECRET~~

1 Q.

2

3 A. That's correct.

4 Q.

5

6 A.

7

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9 Q. And we'll get to--

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11 A.

12

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15 Q. Yes, sir. So--and, again, going back to the closed part of
16 your direct, sir, you indicated with Captain Morrow that there were--

17

18

19 A.

20 Q. Are there--and that observation that you had was from your--

21 -from

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1 A.

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12 Q. Did you attempt to identify any

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15 A.

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21 Q. And these were with your--

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1 A.

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5 Q. Now, sir, again, you testified in your closed direct that

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9 A.

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12 Q. And then, after that,

13 A. We did.

14 Q. Did you attempt to identify any other--

15

16

17 A.

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7 Q. Now, and just since we're on the topic, sir--in your
8 conversations--

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10 A. Okay.

11 Q.

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13 A. He did.

14 Q. And that was reflected, also,

15

16 A. It was.

17 Q.

18

19

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21 A. That is correct;

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1 Q. Now, you testified that--

2

3 A. That's correct.

4 Q. And that--

5

6 A. Approximately.

7 Q. And you testified in your open direct that there were

8

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10 A. There were.

11 Q. And that those challenges,

12

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14 A.

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3 Q. And, sir,

4

5 A. Uh-huh.

6 Q. ----there were--

7

8 A. There is always friction in that relationship.

9 Q. And, typically speaking, from our conversation earlier
10 today,

11

12

13 A.

14

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21 Q. Right. Sir, I'm just editing a couple of questions I've
22 already asked you.

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1 Now, this changed--or,

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5 A. Yes, it was,

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13 MJ: What was that number again, I'm sorry?

14 WIT:

15 MJ: Thank you.

16 [Examination of the witness continued.]

17 Q. And that was the result of

18

19 A. Yes, it was.

20 Q. So let's talk about--and these, again, sir are in general

21 terms--

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3 A. They are, indeed.

4 Q. And those with

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6

7 A. Right. I would characterize it a little differently.

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13 Q.

14

15 A. I don't think I know

16 Q. They--

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21 A.

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Q.

A. The topic you've raised is something I cannot discuss in this setting.

Q. Yes, sir. Sir, could you discuss the--

A.

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1 Q. The—do you recall assessing that

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4 A.

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10 Q. Yes, sir. Generally speaking, sir, you knew that

11

12

13 A. Yes, that's always true.

14

15

16

17 Q. And that attitude existed before the WikiLeaks disclosures?

18 A. It did.

19 Q. And it certainly existed after as well?

20 A.

21

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1 Q. All right, sir. So, what I want to do now is I'm going to
2 try be, in my subsequent questions, very specific in terms of time
3 frames.

4 MJ: All right.

5 Q. And the first time frame that I want to talk about is from
6

7 A. Uh-huh.

8 Q.

9 MJ: All right.

10 Q. So that discreet period of time.

11 A. Right.

12 Q. Sir, how long was that period of time, to your memory?

13 A. My recollection is that spanned,
14

15 MJ: I'm sorry, that

16 WIT:
17

18 [Examination of the witness continued.]

19 Q. So, approximately 2 months?

20 A. Thereabouts.

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1 Q. All right, sir. So, in--just to

2

3

4 A.

5 Q.

6

7 A.

8

9 Q.

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11 A. It did.

12 Q. And, again, you indicated that that incident happened
13 around February of 2011?

14 A. Yes, I can't remember the exact date, but I believe it was
15 in February.

16 Q. And, sir, now, let's go back to the substance of your

17

18 A. Yes.

19 Q.

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1 A. Yes.

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3

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5 Q.

6

7 A.

8 Q.

9 A.

10 Q.

11

12 A.

13 Q.

14

15 A.

16 Q.

17

18 A.

19 Q.

20 A.

21 Q.

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~~SECRET~~

1 A.

2 Q.

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5 A.

6 Q.

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10 A.

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13 Q. And in the--

14

15 A. Okay.

16 Q. Going back to

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19

20 A.

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8 Q.

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10 A.

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12 Q. Now,

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15 A.

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18 Q.

19

20 And, sir, let me just skip to--that was a very convoluted
21 question and I will skip that very convoluted question and move onto
22 something----

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1 A. Okay.

2 Q. ----I hope is less convoluted.

3 A. All right.

4 Q.

5

6 A. Yes.

7 Q.

8 A. That's correct.

9 Q. And he

10

11 A. Right.

12 Q.

13 A.

14 Q.

15 A.

16

17

18

19

20 Q. And the effects that you

21 A. Uh-huh.

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1 Q. ----were those all of the effects that you talked with
2 Captain Morrow about, sir, in your direct examination?

3 A. Yes.

4 Q. Do you recall, in the conversation that you had with
5 Captain Morrow during your direct examination,
6
7

8 A.
9
10
11

12 Q. And speaking of the
13
14

15 A. All right.

16 Q. The
17

18 A. Yes, as far as I know, unrelated.

19 Q. Now,
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4 A. In my view, yes.

5

6

7 Q. Right. And the--and it goes both ways.

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11 A. I do not know.

12 Q.

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14 A. It did.

15 Q.

16

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18 A.

19

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7 Q. But it did

8 A. Absolutely.

9 Q. And that

10

11 A. That is correct.

12 Q.

13 A. It did.

14 Q. And that--

15

16 A. I think that's the right date, yes.

17 Q. And the United States government representatives killed

18 Osama bin Laden in his home in Abbottabad, Pakistan?

19 A. That's correct.

20 MJ: And the date of that was?

21 WIT: I'm sorry, ma'am?

22 MJ: The date of that was?

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1 WIT: I believe you said 1 May of 2011.

2 ADC[MAJ HURLEY]: Does that generally comport with your memory,
3 sir?

4 WIT: I believe that's the right date.

5 [Examination of the witness continued.]

6 Q.

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8 A.

9 Q. And that concern--

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13 A. It was.

14

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1 Q. And this incident--

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4 A. I did not.

5 Q.

6

7

8

9 A. Yes, that's my understanding.

10 Q. Overall,

11

12 A. It did.

13 Q. And there--again, much like before, counterfactuals, here,

14 are just far too speculative to suss out which was--which of these

15 three complicating factors, sir, was the worst to have to deal with?

16 A. Yes, however,

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4 Q. Now, sir, you talked about

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6 A. Uh-huh.

7 Q.

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11 A. Yes.

12 Q. And that

13 A. Yes.

14 Q.

15 A.

16 Q.

17 A.

18 Q. And we

19

20 A.

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1 ADC[MAJ HURLEY]: Just going through the other questions I have,
2 sir, to make sure that I've already asked them. If I can have a
3 second, ma'am? Sir, thank you. I don't have any further questions.

4 MJ: Redirect?

5 ATC[CPT MORROW]: Just briefly, Your Honor.

6 **REDIRECT EXAMINATION**

7 **Questions by the assistant trial counsel [CPT MORROW]:**

8 Q. Sir, you

9

10 A. I did.

11 Q. And, in your opinion,

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13 A.

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16 Q. And how would you

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18 A.

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4 Q. And, sir,

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7 A.

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16 Fortunately,

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1 ATC[CPT MORROW]: Thank you, sir. I have nothing further.

2 MJ: Sir, I just have a couple of questions.

3 **EXAMINATION COURT-MARTIAL**

4 **Questions by the military judge:**

5 Q. When was the flood?

6 A. The flood occurred in August of 2010.

7 Q. I believe testified to WikiLeaks release was early December
8 of 2010?

9 A. I think the release was in late November.

10

11

12

13 Q. How did the WikiLeaks--

14

15 A.

16

17

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19 Q. And I believe you testified earlier,

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3 A.

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7

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9 Q.

10

11 A.

12

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14

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16 Q.

17

18 A. Yes.

19 Q.

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21 A.

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~~SECRET~~

~~SECRET~~

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12 Q. This

13 A. Yes.

14 Q.

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17 A.

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20 Q. There was a

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~~SECRET~~

~~SECRET~~

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4 A. No, there was not.

5

6 A. No.

7 MJ: I think that's all I have. Does either side have anything
8 further, based on what I asked?

9 ADC[MAJ HURLEY]: Ma'am, I do have a question.

10 MJ: Go ahead.

11

REXCROSS EXAMINATION

12 **Questions by the assistant defense counsel [MAJ HURLEY]:**

13 Q. General Nagata,

14

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16 A. That is correct.

17 ADC[MAJ HURLEY]: Thanks.

18 MJ: Anything else from the government?

19 ATC[CPT MORROW]: One more question, Your Honor.

~~SECRET~~

~~SECRET~~

REDIRECT EXAMINATION

Questions by the assistant trial counsel [CPT MORROW]:

Q. Sir, in your estimation,

A.

ATC[CPT MORROW]: Thank you.

MJ: Well, the defense counsel's actually triggered another one
from me.

EXAMINATION BY THE COURT-MARTIAL

Questions by the military judge:

Q. The question that you responded to was:

A. That's correct.

Q. Did the language ever change

A.

~~SECRET~~

~~SECRET~~

1 Q. I believe you testified earlier that

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5 A. Yes, they did.

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10 Q. And I don't want to misinterpret things that you say-

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12

13 A.

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17 MJ: Thank you, sir. Any follow-up based on that?

18 ATC[CPT MORROW]: No, Your Honor.

19 ADC[MAJ HURLEY]: No, ma'am.

20 MJ: Temporary or permanent excusal?

21 ATC[CPT MORROW]: Temporary, Your Honor.

~~SECRET~~

~~SECRET~~

1 [The witness was duly warned, temporarily excused, and withdrew from
2 the courtroom.]

3 ATC[CPT MORROW]: I'm retrieving Prosecution Exhibit 202 for
4 identification from the ELMO.

5 ADC[MAJ HURLEY]: Thank you, Captain Morrow.

6 [The assistant trial counsel handed PE 202 for identification to the
7 court reporter.]

8 MJ: All right. The Court is noticing it's a little over an
9 hour until 1400. Do you want to make it a little bit later?

10 ADC[MAJ HURLEY]: No, ma'am, I think we can make 1400.

11 MJ: You can make 1400?

12 ADC[MAJ HURLEY]: Yes, ma'am, and let me rephrase my answer to
13 the Court's question: I'll be read at--or the defense will be ready
14 at 1400.

15 MJ: Okay. Because what I don't want to do is have dribbles and
16 drabs, "I need another 15 minutes, I need another 15 minutes," so
17 we're going to be ready at 1400?

18 ADC[MAJ HURLEY]: Yes, ma'am.

19 MJ: Okay, so be it. Court is in recess until 1400.

20 **[The court-martial recessed at 1249, 6 August 2013.]**

~~SECRET~~