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4 [The court-martial was called to order at 1535, 9 August 2013.]

5 MJ: Court is called to order. Let the record reflect all
6 parties present when the court last recessed are again present in
7 court. The witness is on the witness chair. Major Fein?

8 TC[MAJ FEIN]: Yes, ma'am. Your Honor, this is a closed
9 session, classified at the Secret level. The court security officer
10 has completed his closed hearing checklist. It will be filed with
11 the post-trial allied papers. In addition to the parties and the
12 Court and the witness, in the courtroom is the bailiff, the Court's
13 paralegal, the members of the prosecution team, members of the
14 defense team, and security.

15 MJ: All right. Captain Morrow?

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1 [Examination of MG McKenzie continued.]

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

3 Q. Sir, I'd like to start with the relationship aspect of
4 impact, first.

5

6

7 A.

8 Q. Yes, please, sir.

9 A.

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16 ADC[MAJ HURLEY]: Pardon me, sir----

17 MJ: Yes?

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

19 MJ: Were you present during these-----

20 WIT: Yes, I was.

21 MJ: Overruled.

22 [Examination of the witness continued.]

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1 Q. Go on, sir.

2 A.

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11 Q. And, sir, if we could just sort of bracket down the time
12 frame of this--would you--when did this first become an issue in
13 meetings with--either that you were personally involved with or that
14 you were an officer----

15 A.

16

17

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19 Q. Sir, I want to transition to some of CENTCOM's planning
20 efforts. We talked about, sort of, in general, planning efforts in
21 the open session. But, at the Secret level, can you describe, in

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1 greater detail, the focus of CENTCOM's planning efforts when you were
2 the J-5?

3 A.

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10 Q. And, sir,

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12 A. Yes, they were.

13 Q. And, sir, what happened to the status

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15 A.

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20 Q.

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1 A.

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8 Q.

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12 A.

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22 Q.

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1 MJ:

2 ADC[MAJ HURLEY]:

3 MJ:

4 [Examination of the witness continued.]

5 Q.

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7 A.

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10 Q.

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13 A.

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22 Q.

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1 MJ:

2 ADC [MAJ HURLEY] :

3 MJ:

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6 WIT:

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14 Q.

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17 A.

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6 Q.

7 A.

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16 Q.

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18 A.

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ADC[MAJ HURLEY]: Captain Morrow--I'm sorry, ma'am, with the first part of the general's answer, the--
the sausage-making part of it,
1001(b)(4).

MJ: All right. Noted.

[Examination of the witness continued.]

Q. Sir, I want to shift, for a moment, for--to a sort of different subject. Did you personally observe or

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1 A.

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21 Q.

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3 A.

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6 ADC[MAJ HURLEY]:

7 MJ:

8 [Examination of the witness continued.]

9 Q. And, sir, overall, how would you characterize the impact of

10

11

12 A.

13

14 ATC[CPT MORROW]: Thank you, sir. No further questions.

15 MJ: Cross examination?

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

17

CROSS-EXAMINATION

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

19 Q. Good afternoon, sir.

20 A. [No response.]

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1 Q. Sir, let's pick up--or let's start, here. In a previous
2 interview, you indicated to me that your work,

3

4 A. That's correct.

5 Q. So, sir, obviously we're operating at Secret/NOFORN levels
6 so if I ask you a question that requires a higher classification,

7 just please let us know.

8 A. Sure.

9 Q. So let's start with the

10

11 A.

12 Q.

13

14 A.

15 Q.

16

17 A.

18 Q.

19

20 A.

21 Q.

22 A.

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1 Q.

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3 A.

4 Q.

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6 A.

7 Q.

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9 A.

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11 Q. And, as you indicated to Captain Morrow in the direct
12 examination,

13

14 A. It was common knowledge.

15 Q. Even before WikiLeaks.

16 A. That's my judgment, yes.

17 Q.

18

19

20 A. Yes, you're correct.

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1 Q. And that insight, based on our conversations before, sir--

2

3

4 A. That's correct.

5 Q. Speaking of that, the CENTCOM AOR has--is an AOR with many

6 different cultures, correct?

7 A. Yes.

8 Q. And many of those cultures--or one aspect of all of those

9

10

11 A. That's correct.

12 Q.

13 A.

14 Q. Yes, sir. And that was--what WikiLeaks gave them was,

15

16 A.

17

18

19 Q.

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22 A.

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1 Q. And that--in line with that, a variety of factors weigh in
2 on any one situation or decision? It's not--there's not just a
3 direct cause and effect that really comes from anything in CENTCOM?

4 A. You're right--you are correct.

5 Q.

6

7 A. That's correct, yes.

8 Q. And, sir, you indicated that a variety of factors, not just
9 WikiLeaks, contributed to

10 A. That's correct.

11 Q. And it's your understanding, by your own experience, that
12 Like that----

13 A.

14

15 Q. But, I guess, as a general notion, sir,

16

17 A. Oh, there are--

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1 Q. Well, sir, let's talk about those other factors. And let's
2 focus, first,

3 A. Sure.

4 Q. And, sir, that was one of the countries that was affected--
5 --

6 A. That's correct.

7 Q.

8

9 A.

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13 Q. But you were able to, as you indicated----

14 A. We--I--we finally

15 Q. And with respect to

16

17 A.

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10 Q.

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12 A.

13 Q.

14 A.

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19 Q.

20

21 A.

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- 1 Q.
- 2 A.
- 3 Q.
- 4
- 5 A.
- 6 Q.
- 7
- 8 A.
- 9
- 10 Q.
- 11 A.
- 12 Q.
- 13
- 14 A.
- 15 Q.
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- 17 A.
- 18 Q.
- 19 A.
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7 Q.

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10 A.

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15 Q.

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18 A.

19 Q.

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21 A.

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1 Q.

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3 A.

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5 Q.

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7 A.

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9 Q.

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11 A.

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18 Q.

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22 A.

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1 Q.

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5 A.

6 Q.

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8 A.

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11 Q.

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13 A.

14 Q.

15 A.

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19 Q.

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21 A.

22 Q.

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1 A.

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4 Q.

5 A.

6 Q.

7 A.

8 Q.

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10 A.

11 Q.

12 A.

13 Q.

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15 A.

16 Q.

17 A.

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3 Q.

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5 A.

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11 Q.

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13 A.

14 Q.

15 A.

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19 Q.

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21 A.

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1 Q. Thank you, sir. Sir, I'm going to look over my notes real
2 quickly.

3 A. Certainly.

4 ADC[MAJ HURLEY]: Sir, those are all the questions I have for
5 you.

6 MJ: Redirect?

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

8 MJ: Major General McKenzie, I just have a couple of questions.

9 **EXAMINATION BY THE COURT-MARTIAL**

10 **Questions by the military judge:**

11 Q. If these

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14 A.

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1 Q. Why

2 A.

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9 Q.

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11 A.

12 Q.

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14 A.

15 Q.

16 A.

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4 Q.

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6 A.

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12 MJ:

13 ATC [CPT MORROW]:

14 ADC [MAJ HURLEY]:

15 MJ: Proceed.

16

RE CROSS EXAMINATION

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

18 Q.

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20 A.

21 Q.

22 A.

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1 Q.

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3 A. That is my assessment as--speaking as the J5.

4 ADC[MAJ HURLEY]: Thank you, sir.

5 MJ: Temporary or permanent excusal?

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

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

9 MJ: All right. Government?

10 TC[MAJ FEIN]: The United States does not intend to call any
11 further witnesses, so the government rests its sentencing case, Your
12 Honor.

13 MJ: All right. So, we have nothing else to do, today, other
14 than the administrative stuff where we'll be looking at exhibits that
15 we discussed earlier, is that correct?

16 TC[MAJ FEIN]: Yes, ma'am.

17 ATC[CPT MORROW]: One moment, Your Honor.

18 TC[MAJ FEIN]: Ma'am, the only other issue, probably just for
19 the record, is we need notice from the defense on the damage
20 assessments at some point just so we can set up a facility. And
21 we'll work with the defense on it.

22 MJ: What type of notice do you need?

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1 TC[MAJ FEIN]: Well, ma'am, there's two damage assessments in
2 question. Whether they intend to use them so we can have them ready
3 to go to be marked. And then the second part is one of the damage
4 assessments is

5

6

7 MJ: All right. Defense?

8 ADC[MAJ HURLEY]: Ma'am, we'll show up to the 802 on Monday
9 morning with our intent whether or not we want to use those damage
10 assessments.

11 MJ: Is that sufficient for the government?

12 TC[MAJ FEIN]: It is, ma'am. The only--the government is fine
13 with whatever time the defense wants to use, it's just we need time,
14 too, in order to actually,

15

16 MJ: Actually, looking at--just--this does trigger a question.
17 I don't know if either side knows, yet, the sentencing arguments that
18 you're both going to have, are they going to be referencing any
19 classified material or are you going to have any closed portion of
20 them?

21 CDC[MR.COOMBS]: The defense will not, Your Honor.

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1 TC[MAJ FEIN]: Ma'am, at the present time, the United States
2 intends to have a solely open session. If, at most, a collateral
3 document similar to what happened in the merits phase

4 MJ: Okay. I'm just saying if there's some issue about--you
5 know, the only thing, at this point, then--if you what you're telling
6 me is accurate, is the

7

8 TC[MAJ FEIN]: Well, ma'am----

9 MJ: Or your preparation?

10 TC[MAJ FEIN]: It's preparation and then deliberation.

11 ATC[CPT MORROW]: Your Honor, in order--if the defense wants to
12 offer the damage assessment into evidence, they need to allow the
13 accused to look at them first. That's part of the reason for T-

14

15

16 MJ: Okay, because I've already taken judicial notice of them---

17 -

18 ATC[CPT MORROW]: Yeah, that----

19 MJ: ----so its not a question of admissibility----

20 ATC[CPT MORROW]: ----assuming----

21 MJ: ----it's just whether you intend----

22 ATC[CPT MORROW]: No, it's just a matter of offering----

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1 MJ: ----to use it, right?

2 TC[MAJ FEIN]: Yes, ma'am.

3 MJ: Okay.

4 TC[MAJ FEIN]: So it's the preparation piece and then the--if
5 it's offered--or if it's actually admitted, it is provided to the
6 Court. So it's a few--just-it's logistics only, is the issue, ma'am.

7 MJ: So, do both sides believe that, over the course of the
8 weekend, you can figure this out such that it's not going to delay
9 proceedings next week?

10 CDC[MR.COOMBS]: That is correct, Your Honor.

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

12 TC[MAJ FEIN]: Yes, ma'am.

13 MJ: Okay. Is there anything else we need to address now?

14 CDC[MR.COOMBS]: No, Your Honor.

15 TC[MAJ FEIN]: No, ma'am. For the 802, ma'am, the United States
16 has requested if we could provide Chief Ford and paralegals into that
17 802 in order to talk about the administration of the record.

18 MJ: Is it easier to do it in the courtroom where the exhibits
19 are, or is it--do you want to go into the deliberation room?

20 TC[MAJ FEIN]: Probably better in the deliberation room, ma'am,
21 because we're going to layout the classified exhibits and show it on

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1 the table. Probably everyone standing around the table would be
2 easier.

3 MJ: All right. How long of a recess do you need to do that?

4 TC[MAJ FEIN]: Probably 20 minutes, ma'am, so we can have it all
5 set up ahead of time.

6 MJ: All right. Court is in recess for 20 minutes.

7 **[The court-martial recessed at 1608, 9 August 2013.]**

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