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1 [The R.M.C. 803 session was called to order at 1402, 31 May
2 2016.]

3 MJ [COL POHL]: Commission is called to order. Trial
4 Counsel, any change in the attorneys representing the United
5 States?

6 MTC [MR. TRIVETT]: No change, sir. To clarify for the
7 record, Ms. Kim Walsh has not been here today. She was
8 yesterday and announced. I just wanted to make that clear for
9 the record.

10 MJ [COL POHL]: Mr. Nevin, I see that Mr. Poteet is not
11 here, and he is on another project but you will proceed
12 without him.

13 LDC [MR. NEVIN]: That's correct, Your Honor.

14 MJ [COL POHL]: And all other defense counsel appear to be
15 present except for ----

16 LDC [MR. CONNELL]: Colonel Thomas is on his way back from
17 the restroom.

18 MJ [COL POHL]: We'll wait for him to come from the
19 restroom. Sure.

20 LDC [MS. BORMANN]: Can we turn the air conditioning a
21 little off? Because it's really freezing over here. And I'm
22 wearing several layers of clothing.

23 MJ [COL POHL]: Yeah. You're in black. Major, can you

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1 handle that?

2 ATC [MAJ DYKSTRA]: No. Not. It's locked.

3 MJ [COL POHL]: It's locked? Okay. Okay. With that
4 being said, we have been joined by Colonel Thomas.

5 Mr. Ryan, do you wish to be heard further on 422?

6 TC [MR. RYAN]: Yes, briefly. And it's, I think, more
7 logistical than anything else. A few comments that were made,
8 Judge, might -- excuse me -- have caused you to just be
9 concerned, rightfully so, about the ability of the ten folks
10 to make the trip down here. This was something that was
11 incumbent upon us and we did discuss with them at length
12 before we filed our initial pleading.

13 First off, I'll just report to you that of the ten
14 we're asking for, eight have already made this trip as our
15 guests in the past. So they're well aware of it. All ten
16 were strong in their statements that they were physically able
17 to make the trip at this time and, based on that, we did
18 include them. All were also advised of things like public
19 nature that we were seeking, in front of the accused that we
20 were seeking, in this courtroom, that there would be press
21 aware, and all were strong in their agreement as to all of
22 those aspects of it.

23 The timing of the request that we're asking for

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1 October simply comes down to, Judge, we want this to happen as
2 soon as possible for the reasons, you know, that bring us to
3 the motion in the first place. We believed October at the
4 time we were filing was the best opportunity to make it all
5 happen, and also because it was a two-week session where we
6 could take half and half.

7 And as far as what caused -- what brought us to the
8 point of making the motion at that time, the timing was purely
9 about media accounts of what was happening, predictions of
10 timing, and reach-outs from many family members with concerns
11 about that; and then on top of what I told you about this
12 morning, what's in our motion about two of our family members
13 having passed away over the last several months. So all of
14 that is what brings us to this point.

15 I have nothing else to say or to change, only to note
16 that if anything changes in terms of the physical condition or
17 capabilities any of the ten, we'll supplement at that time.
18 But other than that, sir, that's all I have.

19 MJ [COL POHL]: Thank you, Mr. Ryan.

20 Any rebuttal to that from the defense?

21 ACC [MR. MOHAMMAD]: Your Honor, Your Honor, I was neutral
22 in this argument. You were not neutral in this argument
23 because the ----

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1 MJ [COL POHL]: Mr. Mohammad. Mr. Mohammad. Stop.

2 Mr. Mohammad, you are represented by counsel. As I've told
3 you before, he speaks to me.

4 ACC [MR. MOHAMMAD]: Speaking ----

5 MJ [COL POHL]: Mr. Mohammad, I'm going to tell you one
6 more time.

7 ACC [MR. MOHAMMAD]: He's an American person and he
8 represents America and he's not ----

9 MJ [COL POHL]: I'm telling you one more time, you are to
10 be quiet and respect the decorum of this courtroom. Mr. Nevin
11 and Mr. Sowards are your representatives to speak for you.

12 ACC [MR. MOHAMMAD]: I had no interpreter in this
13 session ----

14 MJ [COL POHL]: Mr. Mohammad, I'm going to tell you for
15 the last time, and this is the last time, if you continue the
16 disruptive conduct, you will be escorted from the courtroom
17 and have to sit outside.

18 ACC [MR. MOHAMMAD]: Because the prosecution ----

19 MJ [COL POHL]: Be quiet or you will be escorted out. One
20 more word, you're leaving.

21 ACC [MR. MOHAMMAD]: Speak.

22 CDC [MR. SOWARDS]: Do you want to consult with David?

23 ACC [MR. MOHAMMAD]: Speak.

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1 MJ [COL POHL]: Do you want to talk to your client,
2 Mr. Nevin?

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

4 ACC [MR. MOHAMMAD]: He needs to know. He needs to know
5 that this is a nuclear bomb in the world.

6 **[Learned Defense Counsel did as directed.]**

7 LDC [MR. NEVIN]: Your Honor, there -- I think there are
8 two issues that Mr. Mohammad wants to articulate to the
9 military commission. And one of them was that Mr. Ryan went
10 on at some length about the nature of September 11th and our
11 objections to that were overruled, and that seems unfair to
12 Mr. Mohammad.

13 MJ [COL POHL]: Well, that's the way the system works.

14 LDC [MR. NEVIN]: But that's ----

15 MJ [COL POHL]: That's fine. I understand.

16 LDC [MR. NEVIN]: From the point of view of someone
17 sitting in his position, that's the -- that's the effect of
18 that.

19 And the second point is that he -- we have the
20 ongoing problem of our interpreter. And Mr. Mohammad does
21 have in-ear translation -- or interpretation that is occurring
22 simultaneously, as the military commission has previously
23 noted, but he really doesn't understand or didn't understand

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1 during the course of the conversation what exactly a
2 deposition was. And I think he was not -- he was left
3 somewhat in the dark about exactly how that would be
4 structured. And because he didn't have an interpreter sitting
5 with him, he was uncertain about the meaning of these things.

6 MJ [COL POHL]: Have you had an opportunity to explain to
7 him what a deposition is?

8 LDC [MR. NEVIN]: Yes. Right. But this is a problem that
9 arose as we were going forward during the course of today's
10 hearing.

11 MJ [COL POHL]: Okay. Understand.

12 LDC [MR. NEVIN]: And, you know, he -- apparently one of
13 the other interpreters came and sat with him for a few
14 minutes, but it is a -- it is kind of a patchwork solution to
15 the problem.

16 MJ [COL POHL]: Okay. No, I understand that. And I
17 understand -- I understand how accused, defendants, don't
18 understand part of the system and that's fine. And he has the
19 perfect opportunity to work with you, to consult with you on
20 whatever it is. What I will not put up with is not following
21 the decorum of the court and disrupting the court sua sponte,
22 because that is not -- we can't get anything done that way.
23 That's my point. If he has got a problem, he works through

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1 you on it, he just doesn't blurt it out in open court. I've
2 told him that before. I've told him again today. I want him
3 to stay. That's the way the system is supposed to work, but I
4 will not have a disruptive accused remain in the courtroom
5 disrupting the proceedings.

6 Thank you, Mr. Nevin.

7 That brings us back to the 018 series, and I think
8 we're going to start with 018BB.

9 Is that you, Mr. Schwartz?

10 DDC [MR. SCHWARTZ]: Yes, sir.

11 MJ [COL POHL]: Okay. Go ahead.

12 DDC [MR. SCHWARTZ]: Good afternoon, Your Honor.

13 MJ [COL POHL]: Good afternoon.

14 DDC [MR. SCHWARTZ]: Before we jump into BB, I just wanted
15 to add one exhibit to the 018 series.

16 MJ [COL POHL]: I'm sure you're going to explain to me
17 what this means.

18 Trial Counsel, have you had an opportunity to see
19 this, marked 018FFFF, one piece of paper with a bunch of
20 stamps on it?

21 DDC [MR. SCHWARTZ]: Your Honor, I just provided a copy to
22 the government.

23 MJ [COL POHL]: All right. Let them have an opportunity

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1 to look at it.

2 MTC [MR. TRIVETT]: One moment, Your Honor.

3 MJ [COL POHL]: Sure.

4 DDC [MR. SCHWARTZ]: I can explain what it is, if you'd
5 like, Your Honor.

6 MJ [COL POHL]: Yeah. But let them look at it. Did you
7 see this?

8 MTC [MR. TRIVETT]: We've reviewed it, sir, and have no
9 objection.

10 MJ [COL POHL]: Okay. Go ahead, Mr. Schwartz.

11 DDC [MR. SCHWARTZ]: Your Honor, when I was listening to
12 Colonel Gleason discuss the unsealing and resealing and
13 unsealing of the envelopes and it brought back some horrible
14 memories so I, over lunch, pulled up the backing of what would
15 go through the PRT before going over to Echo II.

16 So if I write my client a letter, to process it
17 before an attorney-client meeting I mark it with banner
18 markings and initials per 018U, and then it goes up to the PRT
19 for stamping.

20 This is a copy of the back of an example -- the back
21 of a letter that we had processed. It looks like eight or
22 nine times, it says "lawyer-client privileged communication."
23 It's not, obviously. This is simply the back. It doesn't

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1 include the privileged information, but I offer it just to
2 demonstrate the process, the way that it's playing out
3 currently having to take material in, and then as soon as it's
4 opened in the envelope, bring it back out for remarking.

5 MJ [COL POHL]: Go ahead.

6 DDC [MR. SCHWARTZ]: Your Honor, in 018BB Mr. Bin'Attash
7 is asking you to enforce a provision of 018U, Section 3(e)(2),
8 and order the government to provide a duplicate paper copy of
9 all discovery in this case to him. 018U 3(e)(2) is clear on
10 its face. The plain language is quite simple. It says that
11 upon request the government must provide a duplicate copy of
12 paper discovery materials releasable to the accused directly
13 to the Privilege Team for delivery to the accused.

14 In March of 2014 we submitted such a request to the
15 government. The following week the government responded,
16 adding to your standard in 018U and requiring a particularized
17 justification for such provision of discovery. We're simply
18 asking you to enforce your order, Your Honor. It's impossible
19 for Mr. Bin'Attash to meaningfully cooperate and participate
20 in his defense if he can't have a copy of discovery that he
21 can mark, annotate, tabulate, reorganize, and discuss with
22 defense counsel. The e-reader that was provided to him years
23 ago doesn't allow for any of that, and really has become more

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1 of a paperweight than any sort of meaningful tool of analyzing
2 discovery.

3 MJ [COL POHL]: Okay. Thank you.

4 DDC [MR. SCHWARTZ]: Thank you, sir.

5 MJ [COL POHL]: Any other defense want to be heard on
6 this? Apparently not.

7 Trial Counsel? Mr. Swann.

8 TC [MR. SWANN]: I think counsel's interpretation of what
9 you wrote in 018U is wrong. But nevertheless, in ruling on
10 Protective Order No. 2 on 20 December 2012, this commission
11 said, and I quote, "Due to the large amount of discovery
12 material in this case, the government may provide the
13 discovery in electronic media format."

14 Now thus far, we have turned over 330,000 pieces of
15 paper in this case. And by anyone's estimation, I think that
16 would amount to about 66 boxes -- or 66 reams of paper.

17 I don't think counsel really understand what they're
18 asking for, and I think -- he takes issue with the e-reader
19 that we provided. Well, the e-reader may not be able to be
20 searched, but you can certainly from that e-reader identify a
21 page number, write it down on a sheet of paper, and then come
22 back and ask your lawyer, hey, get me a paper copy of this
23 particular document.

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1 All of those documents are marked "releasable to the
2 accused," and in every instance where counsel has reached out
3 to us and asked us to mark, say, a motion or anything else, we
4 always do that for them. They Xerox the piece of paper and
5 take it in through the proper procedures.

6 Your Honor, we are fulfilling our discovery
7 obligations in this case pursuant to the order, pursuant to
8 the communications order as we understand it, and pursuant to
9 our obligations.

10 MJ [COL POHL]: Are you saying the communications order's
11 inconsistent with this order?

12 TC [MR. SWANN]: I don't think it is, because I don't
13 interpret the communications order quite the way that counsel
14 do here.

15 MJ [COL POHL]: I'm talking about 018U.

16 TC [MR. SWANN]: Yes.

17 MJ [COL POHL]: Okay, it says ----

18 TC [MR. SWANN]: Yeah, I don't interpret it quite that
19 way. I think what we set out in our pleading to you and
20 this -- actually, this particular filing is -- well, it's a
21 little over two years old now. And our motion -- our response
22 to it is found at 018DD, and in particular, pages 6 through 10
23 of our filing. There's nothing inconsistent with it. We say

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1 that our discovery obligations, their motion for paper copies
2 of these materials should be denied, and they don't cite to
3 any legal authority or justify its requested relief. And the
4 one sentence of the written privileged communication order
5 that is cited by the defense mischaracterizes the commission's
6 intent and does nothing more than abuse the members of the PRT
7 by unnecessarily intimidating them and -- with nearly 260,000
8 pages. And, of course, I've just told you that that's gone up
9 by another 70,000.

10 MJ [COL POHL]: So if I've got it right now, currently you
11 provided this information to the accused on a disk, electronic
12 format of some kind.

13 TC [MR. SWANN]: We provided this information to the
14 defense, and it's on a rolling basis, to the defense on a
15 disk.

16 The first 250,000 or so were placed on these
17 e-readers that the accused have access to. We are envisioning
18 that what's going to happen going forward, I believe, is that
19 we'll put them on the computers and simply do a dump onto the
20 computers of all of the material. And if counsel wants it and
21 we can accommodate it, we'll go ahead and just dump the whole
22 330,000 pages of material onto that computer so they'll have
23 one device to be able to look at.

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1 MJ [COL POHL]: When will this happen?

2 TC [MR. SWANN]: When they ask.

3 MJ [COL POHL]: So what you're telling me, just so I
4 understand, is that if they ask, you will simply -- instead of
5 giving them 366,000 pieces of paper to go through the
6 Privilege Review Team, you will give them 366,000 pieces of
7 paper on an electronically ----

8 TC [MR. SWANN]: Yeah.

9 MJ [COL POHL]: ---- in an electronic method?

10 TC [MR. SWANN]: Yeah. We'll put it on a format that's
11 manageable instead of having 66 boxes of paper sitting around
12 in a cell that obviously, you know, will only create issues
13 with respect to what they're entitled to and what they're not
14 entitled to.

15 MJ [COL POHL]: Okay. Got it.

16 TC [MR. SWANN]: Thank you, sir.

17 MJ [COL POHL]: Mr. Schwartz, do you wish to be heard
18 anymore on it?

19 DDC [MR. SCHWARTZ]: It sounds like peace is breaking out
20 again, but before we conclude this, I don't think 66 boxes of
21 paper in each individual cell is a good idea, right? I mean,
22 that ----

23 MJ [COL POHL]: Okay.

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1 DDC [MR. SCHWARTZ]: ---- nobody does. This process
2 started by the government putting the discovery on an
3 e-reader, which is a laptop that is specifically disabled so
4 that any of the functionality that would allow a person to
5 prepare his case couldn't be utilized. That stopped when
6 clearly it wasn't providing any sort of assistance and the
7 government didn't want to spend that effort.

8 But what this really is about is a very simple, clear
9 sentence in 18U that isn't followed simply because the
10 government doesn't want to follow it. If we can get to a
11 point where the discovery can be provided on laptops and added
12 to the laptops that actually do allow the teams to -- the
13 defendants to participate with their defense teams, wonderful.

14 But in practice, on Mr. Bin'Attash's case, at least,
15 we have a laptop that is completely full. The hard drive has
16 no more space. So 300,000 pages of discovery, we'll probably
17 be able to add about ten pages to the laptop as it exists. So
18 I don't know how wonderful of a solution that is.

19 MJ [COL POHL]: Apparently Mr. Swann says all you've got
20 to do is ask and they're going to give it to you. Would I
21 take it that your position, you're asking?

22 DDC [MR. SCHWARTZ]: Your Honor, we're asking. And I have
23 a feeling I'll see you back here in a few months.

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1 MJ [COL POHL]: Okay. Well, when we come back in July,
2 feel free to raise the issue, because I don't -- I tend to
3 agree with you that you probably don't want 350,000 pieces of
4 paper floating around a cell. And if you had 350,000 pieces
5 of paper floating around a cell, it would be very difficult to
6 organize it in any type of logical manner. So let's see if
7 the government keeps their promise; and if it they don't,
8 we'll come back and talk about it.

9 There's got to be a way overwhelming -- I'm not sure
10 how big those cells are, but I suspect there becomes a space
11 problem very quickly in them. So let's see if they're going
12 to keep their promise and, if they don't, we'll see you in
13 July.

14 DDC [MR. SCHWARTZ]: Yes, sir.

15 MJ [COL POHL]: Okay. Mr. Connell.

16 LDC [MR. CONNELL]: I just wanted to point out that if the
17 military commission adopts the suggestion in AE 018W about the
18 Privilege Team processing of electronic material, then, you
19 know, today the prosecution could put all of this on an
20 external hard drive and we could hook it up to the client
21 laptops. So it seems to me that the pieces are somewhat
22 coming together, but if there's expeditious action on
23 AE 018W ----

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1 MJ [COL POHL]: What we're simply talking about, though,
2 is regardless of how I -- I got it, you know. There's
3 limitations in the current order that may change.

4 LDC [MR. CONNELL]: Right.

5 MJ [COL POHL]: If the government wishes to not -- that
6 they proposed a change that no one's opposed to.

7 LDC [MR. CONNELL]: We all agree on this change.

8 MJ [COL POHL]: They don't need to wait for my order to
9 come out because it benefits you to implement the change.
10 Because there's a lot of pieces to this document that --
11 that's going to take some thought to bring them all together.
12 So the government agrees with that, and it can be on handled
13 on an external hard drive, then you don't worry about the
14 capacity of your hard drive itself, then maybe we've gotten
15 there. But they don't need -- I don't see anybody needs to
16 wait for my order as long as everybody understands that's what
17 they want the PRT to do.

18 LDC [MR. CONNELL]: The only question is -- we haven't
19 heard from the PRT on this question. So, you know, the
20 discussion between the government and the defense on these
21 external hard drives is how is the PRT going to handle them
22 and -- and we have reached a solution, both parties have
23 agreed to that solution. And I know that it takes time -- I

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1 mean, there's some big AE 018 issues out there, right? I want
2 the military commission to take its time on AE 018Y and not
3 act precipitously. And I don't know if there's an interim
4 solution, you know, if the military commission would be
5 willing to do it in two stages, but the electronic ----

6 MJ [COL POHL]: I tell you what, Mr. Connell, if this
7 appears to be an issue that we can resolve easily, you draft
8 an interim order on that paragraph and that paragraph alone,
9 get the government to sign off on it, I'll sign it, and we'll
10 send it to the PRT, understanding it will just be assumed when
11 there's a new 018.

12 LDC [MR. CONNELL]: Sold, sir. Thank you.

13 MJ [COL POHL]: Okay, Mr. Nevin, I believe that brings you
14 to EE.

15 LDC [MR. NEVIN]: EE comes right out of 018Y, and it is a
16 request for discovery that is geared toward providing a
17 variety of materials that would allow us to assess the
18 allegations that were made by the government, excuse me, in
19 018Y, and that is -- and that has never been ruled on.

20 And it's true, and it's both, I assume, part of the
21 problem and also part of the solution that the government,
22 after having filed 018Y soon -- I mean, I think it was very
23 early on that they referred in one setting or another to the

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1 allegations in 018Y just being points of reference as opposed
2 to something else, allegations of fact or something to that
3 effect.

4 But on the other hand, the allegations have never
5 been withdrawn and obviously the allegations were serious.
6 We've talked to the military commission about this before,
7 that these are allegations of rule violations. And in the
8 context that we live in, rule violations can be -- can have
9 pretty ugly consequences. So it was deeply concerning to us
10 that these allegations were made, and we thought that they
11 were made without the prosecution having a full understanding
12 of the facts.

13 And so the effort in 018EE is to get to the bottom of
14 that and to know and to try to understand what the prosecution
15 knew when it made those allegations and whether there's some
16 aspect of this that we've missed and which would allow us
17 to -- which would allow us to address 018Y more thoroughly or
18 in a different way, depending on what the military commission
19 sees as controlling the outcome of it.

20 And I think it also -- the discovery that's at issue
21 here also is important for ruling on the government's second
22 supplement to 018Y, which is the one where they proposed this
23 new language. Because to a certain extent, the idea of

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1 potential harms is wrapped up in the argument for why you
2 should do one or another thing. And the discovery that was
3 propounded in 018EE would give us a lot more visibility on
4 exactly what this looked like to JTF-GTMO and what the real
5 nature of the risk was. Because in sorting out the reality,
6 or the nature of the risk, the military commission as well
7 would be in a much better position if it had this information
8 at hand.

9 So subject to your questions, that's what I have to
10 say about that.

11 MJ [COL POHL]: I don't have any. Thank you, Mr. Nevin.
12 Trial Counsel. Mr. Ryan.

13 TC [MR. RYAN]: Your Honor, 018Y has been argued and I
14 know it keeps getting touched upon, so I won't speak to those.
15 I'll simply say that the prosecution, in filing various
16 motions related to 018, was obligated to address specific
17 problems, misunderstandings, loopholes, somehow things were
18 falling through a crack or two that we saw and we wanted to
19 apprise you of what we believed that is in the existing orders
20 and we wanted to apprise you of the things that we felt were
21 relevant for your full understanding of the issue.

22 To the extent counsel disagrees, dislikes, rejects
23 these things, he can fully apprise the commission as well.

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1 And Your Honor can do what you need to do; that is,
2 you can agree to certain facts or you can decide some are
3 unnecessary or some are not worthy of accepting; you can
4 ignore them; you can cross them out. And I imagine you can do
5 what judges do all the time, which is apply the law to the
6 relevant facts and ignore what you don't need.

7 This request for discovery was just, we believe, an
8 invitation to additional litigation that is absolutely
9 unnecessary.

10 MJ [COL POHL]: Are these -- you refer to these in your
11 pleading, I believe, as points of reference.

12 TC [MR. RYAN]: Yes, sir.

13 MJ [COL POHL]: What does that mean?

14 TC [MR. RYAN]: Points to be considered by Your Honor.

15 MJ [COL POHL]: Should I consider them as facts?

16 TC [MR. RYAN]: We present them as facts as best we
17 understand them at the time.

18 MJ [COL POHL]: But again, you gave me no evidence of
19 them.

20 TC [MR. RYAN]: No, sir.

21 MJ [COL POHL]: Okay. And the other part of it is ----

22 TC [MR. RYAN]: I'm sorry, sir, we gave -- we represented
23 to you the facts as we understood them at the time.

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1 MJ [COL POHL]: And at the time you had your one
2 explanation of them violating the order, and then since that
3 time, as we discussed, 018 -- the 018 series, you've got
4 Mr. Connell and Mr. Nevin and the others explaining why they
5 think this doesn't violate the order as currently written.

6 TC [MR. RYAN]: Yes, sir.

7 MJ [COL POHL]: So my point being is, as opposed to
8 evidence of violation of an order, a willful violation of an
9 order, it's just a disagreement of what the order means.

10 TC [MR. RYAN]: Understood.

11 MJ [COL POHL]: Okay. I guess that's not really a
12 question, but that's ----

13 TC [MR. RYAN]: Well, I'll take it anyway.

14 MJ [COL POHL]: Okay.

15 TC [MR. RYAN]: Thank you, sir.

16 MJ [COL POHL]: Okay. Anything further, Mr. Nevin?

17 LDC [MR. NEVIN]: Right. I understand that and I
18 appreciate that. You make arguments based on how things
19 appear to you, and I understand that.

20 I'm just asking now in this -- in 018EE to say what
21 was behind it? How much harm was there really? So this would
22 shine some more light on that, is really all this is.

23 MJ [COL POHL]: Thank you. Understand.

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1 That brings us to 018FFF.

2 Mr. Ruiz.

3 LDC [MR. RUIZ]: Judge, 018FFF arises out of 018PP and
4 018PP (MAH). I'm going to ask you for just a little bit of
5 latitude to weave these together. As you know, many of these
6 018 series motions have an interconnectedness that I think is
7 important to highlight once again, once I have an opportunity
8 to do so here.

9 MJ [COL POHL]: Go ahead.

10 LDC [MR. RUIZ]: 18FFF (MAH) is a motion to compel
11 witnesses. The witnesses are witnesses that would be
12 necessary to argue 018PP and 018PP (MAH), and that series of
13 motions arises out of events that took place on February 5 of
14 2015, on March 7 of 2015, and on 14 May of 2015.

15 Each of those incidents were times where
16 Mr. al Hawsawi's privileged attorney-client communications
17 were seized by members of the JTF guard force, were removed
18 from his cell without notification either to Mr. Hawsawi or to
19 us, his counsel, pursuant to the procedures that you
20 implemented in the communications order. In each of those
21 instances, those documents were removed -- in some instances
22 they were notepads and in some instances they were pieces of
23 paper. In all of the instances, however, they contained

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1 attorney-client privileged information, and we have, where
2 appropriate, provided a synopsis for the court under seal of
3 what those materials were and why those materials are
4 important to our defense.

5 We reached out to the prosecution and made a request
6 for the opportunity to speak to those witnesses. The
7 prosecution's first response was that we had not made any
8 outreach to the witnesses themselves. We subsequently did
9 that, filed a supplement indicating that we had done so, and
10 then filed a motion to compel when predictably ----

11 MJ [COL POHL]: How did the outreach go?

12 LDC [MR. RUIZ]: It didn't go very well, Your Honor,
13 predictably, as you can imagine as these things often go. I
14 think, I don't know, we may be 0 for whatever it is. I'm not
15 sure where we are for that.

16 As it stands right now, we have talked to one
17 witness. The prosecution did facilitate our opportunity to
18 talk to the Staff Judge Advocate at the time, the Staff Judge
19 Advocate who was then serving as the HVD liaison. He was no
20 longer on island so we were able to do a telephonic interview
21 of the Staff Judge Advocate.

22 However, if I can refresh your recollection, this is
23 not the first time that we've been to this rodeo as you

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1 recall. The first time was on an unrelated incident where we
2 litigated essentially the same issue but for a different set
3 of information.

4 In that motion series, we also brought before the
5 commission a request for witnesses that would allow us to get
6 into the specifics and the details of why that information was
7 removed, who made the decisions, what guidance they received,
8 where the information was transferred, how it was mined or how
9 it was reviewed, and then subsequently when and how those
10 determinations were made to return that to the defense.

11 In that series of motions, Judge, you granted one
12 witness, and at that time it was the Staff Judge Advocate as
13 well. You may recall it was Mr. Massucco. His name was
14 openly discussed on the record, so I'm not revealing anything
15 that wasn't otherwise revealed in testimony.

16 The Staff Judge Advocate testified; however, Your
17 Honor denied my request for additional witnesses in connection
18 with that particular incident.

19 What happened, and you may not recall this, I recall
20 it vividly, is the Staff Judge Advocate took the stand. I
21 started asking him questions about his role, where he worked,
22 how much time he spent in the facility, and what his
23 connection was in relation to that particular seizure. I then

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1 tried to get into whether he had any specific knowledge about
2 the seizures themselves, the reasoning, the guidance, those
3 kinds of issues. It drew an objection from the prosecution, I
4 think it may have been an objection from either Mr. Swann or
5 Mr. Ryan, and Your Honor upheld the objection.

6 In the back and forth of the objection, I was -- as I
7 was trying to articulate why I wanted to be able to ask that
8 question, Your Honor's comment to me was that this witness
9 didn't have the basis of that knowledge. And my response to
10 you was, yes, Judge, I recognize that, which is why I
11 requested the other witnesses who were directly involved and
12 who had access and would have had the basis for the knowledge
13 of the questions I was asking.

14 So we're here again on unrelated circumstances, but
15 very much similar in their nature. Repeated instances and
16 violations where attorney-client privileged communications are
17 removed without notification to the Staff Judge Advocate as is
18 required by your communications order. The Staff Judge
19 Advocate, in your communications order, takes a central role
20 and a key role in the determination of why materials are
21 seized. Your rule itself specifies that when and if materials
22 are removed from somebody's cell, the Staff Judge Advocate --
23 they must be sealed, the Staff Judge Advocate must then make a

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1 determination as to whether those documents are appropriately
2 marked or not, and only then does the next step in the
3 analysis take place, which is either it's returned to
4 Mr. al Hawsawi in this instance or whether it's returned to
5 the defense in this case.

6 And nowhere in your communications order does it
7 contemplate that there would be any involvement by
8 translators, by additional guards, or by unknown persons who
9 have entities or equities in the facility and Camp VII. And,
10 Judge -- and here's where the materiality and here's where the
11 relevance of these witnesses comes before this commission. As
12 I've said, we've been here before. And I think that my point
13 has, in some respects, been vindicated, Judge. And what I
14 told you before was this: That unless this court seeks
15 accountability in these instances, unless you hold the JTF
16 personnel responsible for these seizures that are outside of
17 the constraints of your communications order, unless there is
18 real accountability for those violations, they will continue
19 to happen and they have continued to happen and they did
20 continue to happen on multiple times after the litigation of
21 the very same type of issue and the very same motion where you
22 affirmed, on the record, that your order was clear, where you
23 made it very explicit as to what role each person ought to

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1 have taken and had taken in the conduct of those proceedings.

2 So we come to you and we're asking again for you to
3 compel the production of these witnesses so that we can ask
4 them specific questions about how they are executing your
5 order or why, when they are not executing your order, they are
6 not doing so. As you know, this was styled as a motion to
7 show cause why your order is being violated.

8 So we've asked for the Deputy Staff Judge Advocate,
9 as I've indicated. He has already talked to us on the phone.
10 We would like to call -- we would like to call him to testify
11 on this issue at the appropriate time. We're not there yet
12 because we're still litigating the production of the
13 witnesses. We've asked for the guards, the specific guards as
14 you know, we don't know their names. We have specific ----

15 MJ [COL POHL]: Let me make sure I understand. Your basic
16 issue is the seizure of legal materials from Mr. Hawsawi's
17 cell; is that correct?

18 LDC [MR. RUIZ]: Yes.

19 MJ [COL POHL]: And later on, they were returned to him.

20 LDC [MR. RUIZ]: In some instances they were returned to
21 him. Some instances they were just returned to the cell and
22 he recognized that they had been returned. Some instances we
23 were later contacted and told that the materials had been

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1 returned after there had been a review by some personnel.

2 MJ [COL POHL]: Was it on one occasion or multiple
3 occasions that they were taken out of his cell?

4 LDC [MR. RUIZ]: Three occasions are the basis of these
5 particular motions: One on February 5th, one on the 7th of
6 March, and one on the 14th of May.

7 MJ [COL POHL]: Of last year?

8 LDC [MR. RUIZ]: March 2015.

9 MJ [COL POHL]: Okay. When you talked to the Deputy Staff
10 Judge Advocate, did he tell you why these were done?

11 LDC [MR. RUIZ]: He did not know. In fact, the Staff
12 Judge Advocate, that's the whole point, was unaware until he
13 was handed a package and said, return this to either
14 Mr. al Hawsawi or to counsel. And as you know, that is
15 completely inconsistent with the role that you designated
16 within your communications order. So the Staff Judge Advocate
17 doesn't know anything, is the bottom line.

18 MJ [COL POHL]: But the -- the three other, and some of
19 these are groups, most talk about people that returned the
20 information -- the librarian, for example, and others who
21 returned the information to him. Isn't the crux of your -- is
22 the crux of the issue is why it was taken in the first place?

23 LDC [MR. RUIZ]: That's part of the crux is why it was

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1 taken and what happened to the materials while they were
2 taken. The reason the returnees are important is because it
3 goes directly to show basically the chain, the link in the
4 chain of custody of those documents to the extent that it
5 exists.

6 Judge, we're looking to -- we're looking to get to
7 the root of the issue, not just to look at the end result.
8 And I understand -- I understand what your issue is, is why
9 was it violated. But we think that the analysis needs to be
10 broader than that. Not only why was the material taken, but
11 when it was taken, where did it go, how was it mined, and
12 then -- or if it was mined at all, and then why was it
13 returned in this manner as opposed to the manner that is
14 contemplated by the communications order.

15 MJ [COL POHL]: Were you -- or was your client there at
16 the time this was seized? Let me rephrase the question.

17 LDC [MR. RUIZ]: I don't think so, Judge.

18 MJ [COL POHL]: I'm just saying -- so I'm just saying, do
19 you know exactly how many people seized it and what was seized
20 or anything like that ----

21 LDC [MR. RUIZ]: According to ----

22 MJ [COL POHL]: ---- except for coming back one day and it
23 wasn't there?

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1 LDC [MR. RUIZ]: Sure, we did receive some statements
2 after the fact. They were procured by JTF from the camp
3 commander that purport to be the individuals who seized the
4 materials. So we have seen that. We also have what purports
5 to be ----

6 MJ [COL POHL]: Do these individuals say why they did
7 this?

8 LDC [MR. RUIZ]: They do. They do indicate some reasoning
9 in their statements as to why the documents were seized. Yes,
10 that's correct.

11 MJ [COL POHL]: Do they tell you whose idea this was?

12 LDC [MR. RUIZ]: Does not. Or expand on what happened to
13 those materials, who saw them, why they were looked at in
14 contravention to your order. Because your order doesn't
15 provide for these materials to be reviewed by anybody other
16 than the SJA.

17 And so, Judge, this is a matter of not only looking
18 at the why, but bringing accountability to us as to why, and
19 making sure that when you bring accountability to this issue
20 with the authority and the power that you have that it never
21 happens again.

22 Because quite frankly, Judge, if you just keep
23 affirming and saying it's -- my communications order is --

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1 says what it means but no one ever has to really truly be
2 accountable by coming into this courtroom, raising their right
3 hand and saying this is why we did this, then with all due
4 respect to the commission, you are allowing them to escape the
5 degree of accountability that at this point I think is
6 necessary, because we're here again.

7 This is time and energy and resources of the
8 commission multiple times. This isn't the first time that
9 we've been here. And this is a very serious issue, as you
10 know, from the history of this litigation. It's been at the
11 heart of many of our issues and litigation that we've brought
12 before this commission.

13 You hear the prosecution all the time make the
14 argument, and it's -- they're correct that we spend a lot time
15 litigating matters that are not directly related to the
16 allegations in the charge sheet. I would have to agree with
17 that. This is a perfect example of the amount of time and
18 energy that we have spent litigating the preservation of the
19 attorney-client relationship. But what I think goes without
20 saying is that I had absolutely nothing to do with this
21 seizure and neither did Mr. al Hawsawi.

22 What I think is an undisputable fact is that you
23 issued an order that was clear in its terms and conditions how

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1 material was to be seized, reviewed and segregated, and then
2 who it was to be returned to. It was agents of the
3 government. It was JTF personnel. It was JDG personnel. It
4 was persons that had nothing to do with Mr. al Hawsawi or his
5 defense that have caused us to bring this issue to the
6 commission's attention and that are asking us now why we're
7 asking you, Judge, to provide these witnesses.

8 So we do believe that these witnesses are witnesses
9 that are required to come here before this commission, raise
10 their right hand, testify under oath and be accountable to
11 this commission for why they took the actions that they took.

12 I know the prosecution's predictable position is the
13 predictable position that it was before, is that we've
14 provided the defense some statements; the statements have the
15 numbers of the guard force; we've given them chain of custody
16 documents; we've provided them information and discovery on
17 why this seizure took place.

18 That allows them to escape the accountability that is
19 necessary not only to get to the bottom of this issue once and
20 for all, fix it, and move on to the issues that I think the
21 prosecution wants to be addressing, other than why it is that
22 they continue to seize attorney-client privileged materials
23 and why that continues to happen.

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1 I know some of the reasoning. I know some of the
2 reasons they put forth before, but I think this commission
3 needs to seriously prosecute this issue. Not that you haven't
4 done it before, but I think you expected them, rightfully so,
5 to adhere to the rule. And again, this is an issue that has
6 to go to the root of the problem, and it can't just address
7 the symptoms of the issue. And I think that requires these
8 people coming here and testifying and being accountable to the
9 commission under oath for why these events took place and
10 continue to take place.

11 That's what I'm asking for and ----

12 MJ [COL POHL]: So basically what you want is who decided
13 to search the cell. I mean, I understand you're doing the
14 best you can with your requests of witnesses, but let me just
15 see if I got you.

16 Who decided the cell -- the search for the legal
17 materials was a good idea, because guards don't do this on
18 their own, I suspect. And then where was the material -- what
19 was done with the material when it was outside of
20 Mr. Hawsawi's cell, and was all of the material returned?

21 LDC [MR. RUIZ]: Correct.

22 MJ [COL POHL]: Okay.

23 LDC [MR. RUIZ]: That's correct. And, yeah, I think

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1 that's a fair assessment of what we're discussing.

2 I will point out, however, Judge, as I was going
3 through and reviewing our documents, there is a classified
4 portion to this that we would like to argue. I think we're
5 going to have to ask that we also -- we also have a 505 notice
6 on that to add to it in terms of the relevance or the argument
7 we would like to make as to why these witnesses are necessary.
8 That is part of this motion as well. That's 018VVV (MAH) is
9 the actual motion that was filed that addresses that issue,
10 and I don't have the -- if you give me a moment, I'll tell you
11 what the 505(h) number is.

12 MJ [COL POHL]: That's okay. That's okay. I've got ----

13 LDC [MR. RUIZ]: All right. So I think that's all I have
14 on this point at this juncture, Your Honor. Thank you.

15 MJ [COL POHL]: Thank you.

16 Trial Counsel? This appears to be a Mr. Hawsawi
17 issue alone.

18 TC [MR. SWANN]: Your Honor, you will find our response at
19 018RR, government amended, dated 14 April 2015.

20 MJ [COL POHL]: Go ahead.

21 TC [MR. SWANN]: Attached at the back of that is what
22 occurred, contemporaneous recording of exactly what happened
23 on the 5th of February 2015. As you can see, that when they

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1 entered Mr. Hawsawi's cell they found a number of items, to
2 include books containing writing in English, labeled with the
3 ISN ----

4 LDC [MR. RUIZ]: Judge, I'm going to -- the actual
5 litigation of the substance of this motion that's at issue is,
6 are these witnesses relevant, material, and need to be
7 produced. If we're going to get into the actual factual
8 argument, that's 018PP, and 018PP (MAH). I think it's
9 premature to get there.

10 MJ [COL POHL]: Mr. Ruiz, no, I understand that. I'm not
11 talking about the merits of the thing, but I think what
12 Mr. Swann is saying, the witnesses aren't necessary because of
13 this other evidence. So only in that context will I listen to
14 it, not to the merits of anything.

15 I'm assuming that's what you're doing, Mr. Swann. Do
16 I assume correctly?

17 TC [MR. SWANN]: That's the only thing I'm doing, Your
18 Honor.

19 MJ [COL POHL]: Objection is overruled.

20 TC [MR. SWANN]: Why would you call witnesses when you've
21 got the information before you. Why would you have to put
22 them under oath when they provided a sworn statement attached
23 to the very same documents I'm making reference to?

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1 That particular inspection, like I say, they found
2 two books belonging to another detainee, they found three
3 Qurans with writing in English with various ISN numbers not
4 belonging to the detainee, they found a legal pad, yellow in
5 color, containing writing of an unknown foreign language in
6 red ink marked with ISN 1011 handwritten, and then a white
7 legal pad marked the same way.

8 The statement by the guards is that the documents
9 were recovered because they didn't have any proper labels on
10 them, "attorney-client information." So what they did,
11 according to the follow-on, is they turned that information
12 over to a translator, the translator looked at it and then it
13 was returned to Mr. Hawsawi.

14 Now, technically, I would say the following. Yes,
15 what should have happened is they should have given it to the
16 Staff Judge Advocate rather than giving it back to the
17 detainee and then the Staff Judge Advocate could have returned
18 the information to Mr. Ruiz. But what they did here is the
19 librarian gets the information, told that, in fact, it is
20 legal, they stamp it appropriately, give it back to the
21 accused so that it doesn't get picked up in the next search.

22 The same thing happened again in April -- excuse
23 me -- in March. There are documents attached reflecting the

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1 same thing. Of course ----

2 MJ [COL POHL]: Where are those documents?

3 TC [MR. SWANN]: Yes, sir. In each of these instances,
4 the first two, the information is before the court in which
5 the -- the guards who seized the material prepared sworn
6 statements reflecting why they took the information, why they
7 gave it, and then what happened to the information going back
8 to the accused.

9 MJ [COL POHL]: No, my point is that the first document
10 you referred to is attached to RR.

11 TC [MR. SWANN]: There's another one, Your Honor, and let
12 me ----

13 MJ [COL POHL]: I'm sure there might be, it's just
14 that ----

15 TC [MR. SWANN]: Bear with me just a moment, please. QQ.

16 Yes, sir. The second instance is in our pleading to
17 the court, 018DDD, 10 June 2015. Attached at the back, once
18 again, the evidence custody document. In this instance, they
19 found three pieces of nonlegal mail that was marked with the
20 ISN of 10 -- or 10024. They found unstamped legal pads,
21 yellow in color, containing writing in an unknown language.
22 The third was an envelope of assorted, unstamped legal paper
23 containing writing in an unknown foreign language. The guards

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1 say that they found these things -- they were found in a
2 detainee legal -- they removed the items from the daily and
3 turned them over to the assistant watch commander. They took
4 something else, a spray bottle containing what appeared to be
5 rose water or something and removed it, listed it as
6 contraband, and then turned -- they then turned it over to the
7 watch commander.

8 There's a chain-of-custody document reflecting that
9 the watch commander gave it to -- the routine contraband was
10 returned to the library. There was a translation done by the
11 translator and then it was returned to Mr. Hawsawi.

12 Now, the third instance, and I think there's also a
13 pleading on this, as I understand that third instance, that
14 item that he's speaking about was not an item that was
15 actually removed from the cell. I think Mr. Hawsawi asked
16 about it, what happened to this particular book. They went
17 looking for it, couldn't find it, and then I think they found
18 it in a -- a bin where some of his clothing is maintained when
19 he comes to the commissions and stuff, and the item was
20 returned to Mr. Hawsawi at that point in time.

21 All of this is reflected in the pleadings. There's
22 nothing these witnesses would say that's not otherwise
23 contained in sworn statements before this court.

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1 MJ [COL POHL]: So what you're saying, this was just a
2 routine cell inspection by guards on their own and they saw
3 unmarked material and took it out and got it marked and
4 returned it.

5 TC [MR. SWANN]: That's precisely what it says in the
6 documents. We don't get involved in these things. And when
7 they do happen, we go back and immediately try to find out
8 what happened.

9 In this instance, because they had taken these items,
10 they left detailed records of exactly what they did, time,
11 place, manner, and what they did with the item. I will say
12 this: What they should have done at the end of the day, they
13 should not have given it back to Hawsawi; they should have
14 just given it back to Mr. Ruiz. That would have been -- that
15 would have been in accord with what your -- the communications
16 order says.

17 We have rectified that problem. I have had these
18 discussions with -- well, this is -- we're talking about an
19 incident that took place more than a year ago. And I've had
20 this -- these discussions with the SJAs for the camp and that
21 they are instructed to deal with this. Every time we have a
22 new group, it changes, and so we're now instructing them don't
23 be touching any mail that's properly marked legal. These

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1 items weren't, as you can see by the various items that were
2 removed from the cell belonging to other individuals.

3 So then they were put back into the system and
4 returned to the accused. Nobody looks at them and they don't
5 even keep a record, from what I understand, of what they are.
6 They don't photocopy them or do anything like that. They just
7 return them to the accused.

8 MJ [COL POHL]: Where do they go? From the cell to the
9 librarian?

10 TC [MR. SWANN]: No. In this case they go from the cell
11 to the watch commander, as reflected in the 4137s, I believe.
12 Yeah. 4137 -- oh. Yeah, 4137 reflects that -- in this
13 instance, the guard discovered all of the items. He, in turn,
14 then gave it to an assistant watch commander, who then, in
15 turn, gave it to a translator to look at it. What is this
16 stuff? Can I give it back to him? And then it was given to
17 the evidence custodian, who also serves the same role as the
18 librarian, and in this instance, both of these instances, and
19 I've talked to the librarian, what they did is they simply
20 stamped it to reflect correctly that it was the accused's
21 belongings and it was given back to them -- or given back to
22 him immediately.

23 MJ [COL POHL]: Thank you.

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1 Mr. Ruiz.

2 LDC [MR. RUIZ]: Judge, I understand why you -- some of
3 the same reasons that I gave you some background on the motion
4 to give you the context because there's so many issues that we
5 litigate. But I really have -- I really have a serious
6 problem with the fact that this is what always happens, is
7 that when we raise an issue where we're asking for witnesses
8 to come in and be accountable and testify as to the facts and
9 their statements, what normally ends up happening is
10 Mr. Swann, or whomever the prosecutor is, has an opportunity
11 to basically stand up and make their argument, argue their
12 case, and tell us exactly how that procedure went.

13 I believe that if these witnesses took the stand and
14 were subject to cross-examination, a very different picture
15 would likely emerge. However, they continue to be allowed to
16 escape that kind of accountability because they're not
17 required to come here and argue in court.

18 I want to know how these statements are produced.
19 Mr. Swann says he's had the benefit of talking to the camp
20 librarian. I don't have that access, I don't have those
21 benefits. And what I can say to you is that it's time that
22 you stop taking the prosecutors's word for that. It's time
23 that the court stops accepting these canned statements that

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1 are produced by somebody at JTF. And I'm not willing to
2 accept that the guard wrote that statement themselves.

3 And if I had wanted to, I could get into the
4 statements themselves and make argument based on why I think
5 those things are, but it would be speculation at this point.
6 If I am able to ask these questions directly of the people who
7 supposedly executed these documents, get them to answer the
8 questions, they'll do one of two things: They will either
9 completely affirm Mr. Swann's version or they will confirm
10 that, in fact, those statements were made by somebody else and
11 the inaccuracies or the inconsistencies in those statement is
12 because what they say happened is not actually what happened.

13 And I will tell you, Judge, there's more afoot here
14 than meets the eye in terms of why these documents are being
15 seized. Mr. Swann will come in here and tell you and gladly
16 say this was a routine cell search, but I don't think that's
17 what's happening. I don't think that's what's been happening.
18 I think there's something more afoot here. And I think if we
19 were allowed to get to that that next layer of questioning,
20 which we haven't been, we would be able to find out exactly
21 why it is that these materials are being seized other than
22 what we keep getting, which is this routine cell search.

23 I was notified when I went back to my table that one

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1 of those searches took place when Mr. al Hawsawi was here in
2 the courtroom. That was for a search that you had asked me if
3 Mr. al Hawsawi was present, and it's not as simple as they
4 take them and they look at them and then they marked them and
5 then they return them. These documents, in many instances,
6 are gone for lengthy periods of time where there is really no
7 accountability as to why these materials are gone for the
8 amount of period that they are gone.

9 MJ [COL POHL]: Do you believe that the materials were
10 properly marked in his cell when they seized them?

11 LDC [MR. RUIZ]: No. No. But I believe that the proper
12 procedure for determining what's in those documents would have
13 been to ask the SJA to come in and take a look at them.

14 Now, in terms of the attorney-client privilege
15 materials that we are referencing, we believe that those
16 materials were, in fact, according to your order, if those
17 materials are located in the legal bin, this is a point that
18 Mr. Swann kind of moved over fairly quickly, there is
19 indication that those materials were inside the legal bins in
20 the attorney-client privileged materials.

21 And when I say no, they're not properly marked, there
22 is a question as to whether they were properly marked or not.
23 That's what I want to get at in questioning the guard force,

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1 is exactly what their directive is, why they're seizing these
2 documents, and why they're being mined subsequently the way
3 that they are being mined.

4 MJ [COL POHL]: Okay. I understand.

5 LDC [MR. NEVIN]: Could I be heard?

6 MJ [COL POHL]: Sure.

7 LDC [MR. NEVIN]: This is not our motion, but I take it
8 we're coming back to 018PP at some point, and we also have a
9 filing in that series, it begins with 018QQ. But I do want to
10 just say for whatever it's worth that this problem of
11 continually changing rules continues to plague us.
12 Mr. Mohammad was just telling me today about an incident
13 that -- having to do with books having been marked in one way
14 at one time and sometimes they're allowed to have them in
15 their cells, sometimes they're -- the guards come in and seize
16 them.

17 And it's -- the changes don't appear to be based on
18 specific -- on -- directed toward the resolution of specific
19 problems and it raises the inference that it's done to disrupt
20 functioning and so on. So it's a concern that continues. And
21 I just wanted to say that I do think it's an issue that we
22 should get to the bottom of, and I appreciate the court
23 hearing us on that.

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1 MJ [COL POHL]: Thank you.

2 That would bring us to KK, or did we decide that is
3 subsumed by another motion?

4 DDC [MR. SCHWARTZ]: We agree with the government, Your
5 Honor, it's been subsumed.

6 MJ [COL POHL]: By what?

7 DDC [MR. SCHWARTZ]: By 018Y.

8 MJ [COL POHL]: When you -- just so I'm clear, when you
9 say subsumed because I have a -- a member of my staff who is
10 very concerned to make sure that we keep things correctly he
11 marked on the filings inventory, when you say subsumed,
12 therefore, any decision on 018Y would address any issue in
13 018KK. Sure.

14 DDC [MR. SCHWARTZ]: Your Honor, if you're looking to put
15 something in that far right column on the filings inventory
16 and you put 018Y, I think that's misleading. Where we are is,
17 depending on the rulings that you will issue in this 018
18 series, based on all of the arguments we've heard over the
19 past two days ----

20 MJ [COL POHL]: Okay.

21 DDC [MR. SCHWARTZ]: ---- it seems that KK ----

22 MJ [COL POHL]: Might go away and might not?

23 DDC [MR. SCHWARTZ]: Might go away.

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1 MJ [COL POHL]: Okay. Got it.

2 DDC [MR. SCHWARTZ]: Thanks.

3 MJ [COL POHL]: Now, on the 018 series, is there anything
4 else for an unclassified discussion? I think QQ we said was a
5 classified issue. Okay.

6 So let's ----

7 LDC [MR. RUIZ]: Judge, can we have one moment just to
8 make sure?

9 MJ [COL POHL]: Sure.

10 [Pause.]

11 LDC [MR. RUIZ]: Judge, we don't have anything; we were
12 just making sure.

13 MJ [COL POHL]: Okay. No problem.

14 Okay. We didn't discuss this earlier. 118's been an
15 issue that's out there for a while and sometimes these
16 issues -- I'm looking at 118, and it appears to be a resource
17 issue that may or may not have been resolved.

18 LDC [MR. CONNELL]: Sir, there are four different aspects
19 to 118; some of them have been resolved, some have not.

20 MJ [COL POHL]: Are you prepared to address it?

21 LDC [MR. CONNELL]: Yeah. Give me just a moment to
22 shuffle papers around.

23 MJ [COL POHL]: I don't think it was on the list.

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1 Government, are you prepared for 118? Okay. Yeah.

2 MTC [MR. TRIVETT]: One second, Your Honor.

3 MJ [COL POHL]: Okay. Go ahead, Mr. Connell. Take your
4 time too.

5 Let's go ahead and take a quick 15-minute recess.

6 Commission is in recess.

7 [The R.M.C. 803 session recessed at 1511, 31 May 2016.]

8 [END OF PAGE]

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