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1 [The R.M.C. 806 session was called to order at 0927, 2 March  
2 2018.]

3 MJ [COL POHL]: This hearing pursuant to Rule of Military  
4 Commission 806 is called to order.

5 General Martins, who is here behalf of the United  
6 States?

7 CP [BG MARTINS]: Good morning, Your Honor. Present for  
8 the prosecution, Brigadier General Mark Martins, Mr. Robert  
9 Swann, Mr. Edward Ryan, Mr. Jeffrey Groharing, Mr. Clay  
10 Trivett, Ms. Nicole Tate, Major Christopher Dykstra, Mr. Dale  
11 Cox, Sergeant [REDACTED]. And at the doors, Mr. Rudolf Gibbs  
12 and Sergeant [REDACTED]. All personnel have the required  
13 clearances.

14 MJ [COL POHL]: Mr. Nevin?

15 LDC [MR. NEVIN]: For Mr. Mohammad, David Nevin,  
16 Lieutenant Colonel Poteet, Ms. [REDACTED], Mr. Sowards,  
17 Ms. [REDACTED], Commander [REDACTED], Major [REDACTED], Mr. [REDACTED], all  
18 with appropriate clearances.

19 MJ [COL POHL]: Ms. Bormann?

20 LDC [MS. BORMANN]: On behalf of Mr. Bin'Attash, myself,  
21 Edwin Perry, Captain Brian Brady, Major Matthew Seeger,  
22 Ms. [REDACTED], Mr. [REDACTED], all with appropriate  
23 clearances.

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1 MJ [COL POHL]: Mr. Harrington?

2 LDC [MR. HARRINGTON]: On behalf of Ramzi Binalshibh,  
3 James Harrington, Alaina Wichner, Major Christopher Lanks, [REDACTED]  
4 [REDACTED], and [REDACTED], all of whom have the appropriate  
5 clearances.

6 MJ [COL POHL]: Mr. Connell?

7 LDC [MR. CONNELL]: On behalf of Mr. al Baluchi, James  
8 Connell; Lieutenant Colonel Sterling Thomas; Alka Pradhan;  
9 [REDACTED]; LN1 [REDACTED]; Captain [REDACTED],  
10 spelled with U. All have appropriate clearances.

11 MJ [COL POHL]: Thank you. And Mr. Ruiz?

12 LDC [MR. RUIZ]: Judge, Suzanne Lachelier, Lieutenant  
13 Colonel Jennifer Williams, Mr. Sean Gleason, Commander David  
14 Furry, Mr. Joseph Wilkinson, Technical Sergeant [REDACTED]  
15 [REDACTED], Mr. [REDACTED], and myself on behalf of Mr. al  
16 Hawsawi, all with appropriate clearances.

17 MJ [COL POHL]: Thank you. And General Baker is also  
18 present and he has the appropriate clearance.

19 Okay. Let's do the 114, 114F. Ms. Pradhan.

20 ADC [MS. PRADHAN]: Good morning again, sir.

21 MJ [COL POHL]: Good morning.

22 ADC [MS. PRADHAN]: Okay. Just a few points on 114 and  
23 525, Your Honor. In October's oral argument on 525 ----

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1 MJ [COL POHL]: Okay. Do you -- do you want to do these  
2 all together ----

3 ADC [MS. PRADHAN]: Yes, sir.

4 MJ [COL POHL]: ---- 525? Okay.

5 ADC [MS. PRADHAN]: I would like to take 114 and 525  
6 together ----

7 MJ [COL POHL]: Okay.

8 ADC [MS. PRADHAN]: ---- if that's all right,

9 MJ [COL POHL]: Okay. I just want to make sure the  
10 government is on notice that that's going to be the approach.  
11 Go ahead.

12 ADC [MS. PRADHAN]: Yes, sir. In October's oral argument  
13 on 525, I laid out for the military commission the major  
14 points of Mr. [REDACTED]'s declaration at 525C, Attachment  
15 B. And that was about a year's-long investigation into

16 [REDACTED]  
17 [REDACTED] had found  
18 with -- [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] But  
23 actually -- and this is just to clarify a point that I think

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1 was mentioned at the 505 on Tuesday. [REDACTED]

2 [REDACTED]. What Mr. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 whatever picture we were able to paint through his declaration  
7 in October, although, of course, we need more from the  
8 government to complete it.

9 [REDACTED]

10 [REDACTED]

11 regarding classification, because I think it -- I think it  
12 puts to rest the government's previous argument from October  
13 and clarifies how simple it would be for the military  
14 commission to order our relief in 525.

15 The government has expressed many times fear of  
16 disclosure of classified information. And we share that fear.  
17 We have no interest in violating our security clearances; we  
18 have zero interest in compromising national security. And  
19 they have expressed that fear in 525 in the context of  
20 travelling to other countries, speaking to potential  
21 witnesses, and government officials.

22 So as I understand it, based on yesterday's  
23 conversation, they may have essentially withdrawn 525G, but

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1 it's been a consistently expressed fear and, in fact, formed  
2 the basis of their argument in October which led -- if Your  
3 Honor recalls, which led directly to the filing of 525G.  
4 That, essentially, if I boil it down, they can't tell us the  
5 locations because then our knowledge of the classified  
6 locations would lead to revealing classified information.

7 I think we cleared this up in your colloquy with the  
8 government yesterday. We established -- again, my  
9 understanding, is that we established that knowledge of  
10 classified information is very different from confirmation or  
11 disclosure of classified information to uncleared people,  
12 which, of course, we're prohibited from doing. So in  
13 conducting interviews, for example, we are limited in scope to  
14 open-source reporting, to rely on open-source reporting.

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MJ [COL POHL]:

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ADC [MS. PRADHAN]: I know.

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MJ [COL POHL]: Okay.

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1 ADC [MS. PRADHAN]: ---- so -- you remember your colloquy

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3 MJ [COL POHL]: I do.

4 ADC [MS. PRADHAN]: What you said, Your Honor, is that --

5 but the reason I mention Canada is just in the context of

6 this -- of this example, what you said was if we have -- if we

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15 the government responded this is a fair reading.

16 So that's our current understanding of the state of

17 play. And if that is true, then that should put to rest the

18 government's concerns about this. Simple knowledge of knowing

19 where the black sites are is not the same thing as disclosure

20 to uncleared personnel. Now, we have had several years to

21 practice our interviews with uncleared personnel, and we are

22 very, very careful about referring only to open-source

23 reporting and not confirming or denying and kind of

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1 open-source reporting because we understand our obligations.

2           So if we were, though, to get that confirmation about  
3 where exactly the sites were, that would allow us to fill in a  
4 lot of the gaps that we have been talking about in open  
5 session and closed session in October, about what we know  
6 about [REDACTED]

7 [REDACTED]

8 [REDACTED]

9           So we could -- could, assuming we could put it  
10 together with the discovery, put that knowledge together with  
11 the descriptions of his conditions of confinement there. We

12 [REDACTED]

13 [REDACTED]

14           MJ [COL POHL]: If the government gave you the actual name  
15 of the country ----

16           ADC [MS. PRADHAN]: Yes.

17           MJ [COL POHL]: ---- you went and visited that country,  
18 wouldn't the country then believe you got the information from  
19 the United States government?

20           ADC [MS. PRADHAN]: Your Honor, [REDACTED]

21 [REDACTED]

22           MJ [COL POHL]: Yeah, but currently -- currently you have  
23 not been told where the black sites are, so ----

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1 ADC [MS. PRADHAN]: But they could make that assumption  
2 now.

3 MJ [COL POHL]: Well, I know they could, and that's --  
4 [REDACTED] example, that  
5 was ----

6 ADC [MS. PRADHAN]: Uh-huh.

7 MJ [COL POHL]: ---- where -- but ----

8 ADC [MS. PRADHAN]: They -- they could make that  
9 assumption ----

10 MJ [COL POHL]: You understand, I'm just saying there are  
11 other equities here other than -- I mean, it's the

12 [REDACTED]

13 ADC [MS. PRADHAN]: Yes.

14 MJ [COL POHL]: ---- and whatever -- whatever type of  
15 promises they made to them if they cooperated.

16 ADC [MS. PRADHAN]: Completely understand, Your Honor.

17 MJ [COL POHL]: Okay.

18 ADC [MS. PRADHAN]: But again, there's nothing to stop  
19 them making that -- I mean, when we go, when we travel, we  
20 have to register our travel, obviously. The authorities in  
21 the countries are well aware that we're employees of the  
22 Department of Defense. They could very well make that  
23 assumption right now. We don't give them that impression that

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1 we are confirming or denying anything, but ----

2 MJ [COL POHL]: But the United States government told  
3 these countries that if you host these black sites we won't  
4 tell anybody. And then ----

5 ADC [MS. PRADHAN]: Uh-huh.

6 MJ [COL POHL]: ---- they -- now you say we -- we're going  
7 to tell the defense, okay, don't they have to go back to those  
8 countries and say, oh, by the way, we broke our pledge?

9 ADC [MS. PRADHAN]: Your Honor, first -- well, I think  
10 that there are a number of assumptions there, and we don't  
11 know the answers to all of those assumptions. We don't know  
12 that United States Government said we are never going to tell  
13 anyone the locations of the black sites.

14 What we know -- what we think we know, and what's  
15 been reported, at least to my knowledge, is that the  
16 government has made agreements with the countries that hosted  
17 black sites that it would never become public, at least not  
18 from the United States' side. Now, we're not proposing that  
19 this become public in any way, shape, or form. We are -- I'm  
20 an employee of the Department of Defense. And what we're  
21 asking for -- we're fully cleared -- all we're asking for are  
22 the tools to be able to conduct this trial. So we're not  
23 asking for the means to disclose this information to anyone

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1 other than security-cleared defense personnel so that I can  
2 add in the details from that location information to the  
3 chronology that we're trying to build about this.

4 MJ [COL POHL]: Okay.

5 ADC [MS. PRADHAN]: The -- you know, that's -- unless you  
6 have any questions, Your Honor.

7 MJ [COL POHL]: I have nothing further.

8 ADC [MS. PRADHAN]: Okay.

9 MJ [COL POHL]: Any other defense counsel wants to be  
10 heard on 525, 114, and 114F? Mr. Nevin. Again, we're only  
11 talking about the classified part of it.

12 LDC [MR. NEVIN]: I understand, Your Honor. And I just  
13 will say now I'm uncertain about where we are with respect to  
14 the discussion we had yesterday.

15 MJ [COL POHL]: Why don't you hold that thought, let me  
16 ask the government a couple questions ----

17 LDC [MR. NEVIN]: Okay.

18 MJ [COL POHL]: ---- I think it may clarify it.

19 Mr. Groharing, let me ask you kind of the question  
20 that got us here. I forget whether it was -- I think it was  
21 probably in October in a closed session [REDACTED]  
22 [REDACTED] which precipitated a lot of the notices and  
23 guidance up to the most recent guidance we got this week. And

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1 what we have, as I recall. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED], whether through open sort or something else.

5 [REDACTED] Is it a fair reading of your most recent guidance  
6 that that is now permitted or not?

7 TC [MR. GROHARING]: That would be permitted to  
8 travel ----

9 MJ [COL POHL]: Okay.

10 TC [MR. GROHARING]: ---- to a location based on  
11 open-source information that they believe hosted a black site.  
12 That would be permitted.

13 MJ [COL POHL]: Okay.

14 TC [MR. GROHARING]: Is that the only question, Your  
15 Honor?

16 MJ [COL POHL]: Unless you have something to add and  
17 then ----

18 TC [MR. GROHARING]: I have nothing to add. Subject to  
19 your questions, Your Honor.

20 MJ [COL POHL]: No. Okay.

21 Mr. Nevin, does that address your question?

22 LDC [MR. NEVIN]: Yes, sir. I was referring to the  
23 discussion yesterday that as long as our question is based

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1 overtly -- or our newspaper ad is based overtly on open-source  
2 information, not on classified information, we'd be fine. And  
3 that was in response to my argument that we were in a conflict  
4 position and basically you were saying, no, you're not,  
5 because you can do what you need to do in the way I just  
6 described.

7           Then when you spoke to Mr. Sowards this morning, you  
8 said, look, the problem is the outside world doesn't know  
9 where you got your information and so they will assume that it  
10 came from a classified source, even if it didn't. And I  
11 don't -- I also would prefer to be just permitted to have the  
12 situation here work in such away that we would be able to  
13 fulfill our obligation.

14       MJ [COL POHL]: I understand.

15       LDC [MR. NEVIN]: I just want to be clear.

16       MJ [COL POHL]: Yeah, okay. I understand. And the  
17 context of Mr. Sowards question which, of course, wasn't  
18 really the issue before me. I'm just saying in the context of  
19 the pleadings ----

20       LDC [MR. NEVIN]: Yeah, okay.

21       MJ [COL POHL]: ---- okay, that's all I'm saying. 

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1 [REDACTED] It did not address  
2 anything other than that.

3 LDC [MR. NEVIN]: Just a pleading. Okay.

4 MJ [COL POHL]: What I -- what I heard the government say  
5 yesterday, if you talk to somebody and say, I saw in *The New*  
6 *York Times* X, and X is classified, are you not confirming or  
7 denying it and you are permitted to do that.

8 Is that correct, Mr. Groharing?

9 TC [MR. GROHARING]: Yes, sir. That's correct.

10 MJ [COL POHL]: Okay. And then with the double-tap  
11 situation, which I think you asked me about yesterday ----

12 LDC [MR. NEVIN]: Yeah.

13 MJ [COL POHL]: ---- that you have classified sources and  
14 unclassified sources, as long as you attribute to unclassified  
15 sources, you're okay.

16 LDC [MR. NEVIN]: Okay.

17 MJ [COL POHL]: And if you have the situation where you  
18 have only unclassified sources and no classified sources, then  
19 you are really okay. I mean, that's what I'm reading and  
20 that's what seems to be ----

21 LDC [MR. NEVIN]: Sure.

22 MJ [COL POHL]: Now, again, I don't want to drift too much  
23 into 524 because that -- that's a slightly different issue.

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1 LDC [MR. NEVIN]: Yes, sir.

2 MJ [COL POHL]: But what we have before me is really what

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4 it appears to have been resolved, that that type of  
5 investigation is permitted.

6 LDC [MR. NEVIN]: Okay. And then -- then just the last  
7 part is I would just simply join Ms. Pradhan's remark, that  
8 if -- if that's the case, then nothing is changed in terms of  
9 the security picture by us being advised by them -- by the  
10 government, that is to say -- confirming the locations. In  
11 other words, from you granting 525, nothing would change about  
12 the security posture.

13 We still would be going to, let's say, [REDACTED]

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16 [REDACTED] We would not, of course, be

17 saying we were told by the government in a classified  
18 pleading. And so -- so it seems to me that -- now, I just  
19 wanted to make sure that there hadn't been some wrinkle in  
20 what was discussed yesterday that was leading to a  
21 different ----

22 MJ [COL POHL]: And that's why I kind of wanted to do this  
23 in a closed session, because I think the Moroccan trip is a

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1 perfect example of open-source information that permitted the  
2 defense to -- the defense to investigate an alleged black  
3 site. And what the government position is today -- and we  
4 don't know whether it evolved, that's not the issue -- is that  
5 that type of trip is permissible.

6 LDC [MR. NEVIN]: Right.

7 MJ [COL POHL]: Now, the 114/114F issue is a variation --  
8 is a disclosure issue and a confirmation issue from the  
9 government to the defense, which is a slightly different  
10 issue. But as far as the investigative piece is, I believe,  
11 consistent with the 525 -- most recent 525 guidance, we're  
12 back to the status quo ante of before you want to say

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15 LDC [MR. NEVIN]: Right. And -- and I'm not asking you to  
16 revisit that or ----

17 MJ [COL POHL]: Okay.

18 LDC [MR. NEVIN]: ---- or anyone to revisit that, I'm  
19 just ----

20 MJ [COL POHL]: I didn't think you were.

21 LDC [MR. NEVIN]: Yeah. But I'm just saying, in view of  
22 that, then there's no loss of security protections by 525  
23 being granted. Because clearly ----

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1 MJ [COL POHL]: Well, you say "being granted." What do  
2 you want me to grant? Because all I can basically -- what I  
3 have now is, and this is where we're kind of out of sequence  
4 here, the most recent thing is I have -- and again, I may have  
5 the dates wrong, I believe the 27 February notice of the most  
6 recent guidance, is that --

7 Mr. Connell, you are always good on this. Is it 27  
8 or 28 February?

9 LDC [MR. NEVIN]: 27.

10 LDC [MR. RUIZ]: On 525, it's 27.

11 MJ [COL POHL]: Okay. The 27 February notice I got from  
12 the government to you, I'm not sure what there is for me to  
13 grant.

14 LDC [MR. NEVIN]: There's the underlying motion in 525  
15 that seeks a clear statement of where our client -- where  
16 Mr. Mohammad was ----

17 MJ [COL POHL]: Okay.

18 LDC [MR. NEVIN]: ---- was held and ----

19 MJ [COL POHL]: Okay.

20 LDC [MR. NEVIN]: ---- and the point of this ----

21 MJ [COL POHL]: Yeah.

22 LDC [MR. NEVIN]: ---- just this last little piece is to  
23 say there's no reason not to grant that motion because there's

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1 nothing about us going out -- as long as we are double  
2 tapping, as you have said, there's nothing about us going out  
3 and following up on information that the government  
4 confirms ----

5 MJ [COL POHL]: Yes, I mean ----

6 LDC [MR. NEVIN]: ---- would reveal classified ----

7 MJ [COL POHL]: ---- the grant -- the grant would be, in  
8 essence, reviewing the 27 February guidance and saying that's  
9 consistent with the current practice. And I will look at the  
10 pleading and how I word it, but it -- what I'm saying is, on  
11 the investigative piece, this is different [REDACTED]

12 [REDACTED] I  
13 know I'm mixing metaphors here, but that's okay [REDACTED]

14 [REDACTED] And -- but the 524 is a different piece  
15 of the investigative pie. I will look at the pleadings and  
16 word something for you. It's not a big deal.

17 LDC [MR. NEVIN]: Well, Your Honor, it -- it may be a big  
18 deal in this sense: I take it -- and I didn't file the  
19 motion, we were joined to it, so others may speak to it. I  
20 take it that the motion asks you to order the government to  
21 tell us affirmatively the locations of the black sites.

22 MJ [COL POHL]: Okay.

23 LDC [MR. NEVIN]: Mr. Mohammad was held in -- not in Site

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1 1. [REDACTED]

2 MJ [COL POHL]: Okay. Now we're mixing two different  
3 issues.

4 LDC [MR. NEVIN]: Yes.

5 MJ [COL POHL]: That's part of this issue, okay. I'm not  
6 addressing that part of it. When I said it's no big deal,  
7 what I meant was ----

8 LDC [MR. NEVIN]: Well, I ----

9 MJ [COL POHL]: ---- saying the guidance change to word it  
10 doesn't strike me as a big deal. That does not necessarily  
11 mean I'm going to grant 114 and 114F.

12 LDC [MR. NEVIN]: Yes.

13 MJ [COL POHL]: I thought your question to me was whether  
14 or not -- I thought what we were discussing was whether or not  
15 the Moroccan investigation would be permitted ----

16 LDC [MR. NEVIN]: Yes.

17 MJ [COL POHL]: ---- under the new guidance. And I think  
18 the answer -- well, the answer to me is yes, and we're back to  
19 there. Does that mean [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 LDC [MR. NEVIN]: I understand that to be still a matter

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1 that the military commissions has not yet decided.

2 MJ [COL POHL]: Right.

3 LDC [MR. NEVIN]: And I only wanted to make the point I  
4 think that I heard Ms. Pradhan make as well, that given all of  
5 the admittedly separate things that we discussed yesterday and  
6 that you and I have just been discussing, those things taken  
7 as a whole indicate that there's no reason -- there's nothing  
8 to be lost by granting 525, the underlying motion, and  
9 ordering the government to provide that information.  
10 Because -- because we -- our investigation will be predicated  
11 on something other than that, so ----

12 MJ [COL POHL]: Okay. I understand. I understand  
13 your ----

14 LDC [MR. NEVIN]: Thanks, Your Honor.

15 MJ [COL POHL]: Any other defense counsel wish to be  
16 heard? Apparently not.

17 That brings us to 534. Ms. Pradhan.

18 ADC [MS. PRADHAN]: A lot of face time today, Your Honor.  
19 Just one minute, if you don't mind.

20 [Pause.]

21 MJ [COL POHL]: What's the classification level of 534?

22 ADC [MS. PRADHAN]: 

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1 MJ [COL POHL]: Okay.

2 ADC [MS. PRADHAN]: The government's response, 534A, was

3 [REDACTED] I believe primarily because of the  
4 attachment of the RDI index, which was classified overall as

5 [REDACTED] And our reply was classified also at the [REDACTED]

6 [REDACTED]

7 MJ [COL POHL]: Okay. Let's take a 15-minute break. I  
8 have a computer issue I need to address and then we'll come  
9 back to 534. Commission is in recess.

10 [The R.M.C. 806 session recessed at 0950, 2 March 2018.]

11 [END OF PAGE]

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1 [The R.M.C. 806 session was called to order at 1018, 2 March  
2 2018.]

3 MJ [COL POHL]: The commission is called to order.

4 Trial Counsel, any changes since we recessed?

5 CP [BG MARTINS]: No, Your Honor.

6 MJ [COL POHL]: Mr. Nevin?

7 LDC [MR. NEVIN]: No, Your Honor.

8 MJ [COL POHL]: Ms. Bormann?

9 LDC [MS. BORMANN]: No judge.

10 MJ [COL POHL]: Mr. Harrington?

11 LDC [MR. HARRINGTON]: No change, Judge.

12 MJ [COL POHL]: Mr. Connell?

13 LDC [MR. CONNELL]: No change, sir. I have a record  
14 issue, when convenient.

15 MJ [COL POHL]: Sure. And Mr. Ruiz?

16 LDC [MR. RUIZ]: No changes.

17 MJ [COL POHL]: Mr. Connell?

18 LDC [MR. CONNELL]: Sir, I wanted to bring to the military  
19 commission's attention that on Tuesday the issue came up about  
20 the status of 525F in the record. In going back and rereading  
21 the transcript and looking at notes, what it appears happened  
22 is that our team had slides in 525 that were marked 525F, but  
23 then were -- after consultation with the CISO were not used in

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1 court.

2           And then in the closed session on 20 October 2017,  
3 the government made an argument, this was the spreadsheet that  
4 was referred to in court yesterday, and said please assign  
5 this the next number, but -- which might have been 525F, but  
6 then 525G came along later and there was never a clear  
7 designation about that other 525F.

8           The significance of that is that -- so we sort of  
9 have an exhibit that wasn't used but got a number, and we have  
10 an exhibit that was used and didn't really get a number. So  
11 what my proposal is is that we retain 525F for the slides,  
12 which were not used although they were marked, and that the  
13 court reporter simply assign another number later in the  
14 series for the -- for the spreadsheet that General Martins  
15 used on 20 October.

16       MJ [COL POHL]: Okay.

17       LDC [MR. CONNELL]: I know you'll have to look into that;  
18 I just wanted to bring it to your attention.

19       MJ [COL POHL]: Yeah, okay. Thank you for mentioning it  
20 to me. Let me -- let me talk to my paralegals and the court  
21 reporters and we'll figure out a way ahead. So the 525F was  
22 marked but never used, and the government spreadsheet was ----

23       LDC [MR. CONNELL]: Used but never marked.

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1 MJ [COL POHL]: ---- used but never marked.

2 LDC [MR. CONNELL]: Yes, sir. Had a certain symmetry to  
3 it.

4 MJ [COL POHL]: Does it have a -- did it have a current  
5 number on it? Well, they never put on it?

6 LDC [MR. CONNELL]: To my knowledge, no.

7 MJ [COL POHL]: Okay.

8 LDC [MR. CONNELL]: Or the number 525F might have been  
9 used on it, put on it, I'm not 100 percent sure.

10 MJ [COL POHL]: Okay. Thank you, Mr. Connell. I'll track  
11 that down.

12 LDC [MR. CONNELL]: Thank you.

13 MJ [COL POHL]: 534.

14 ADC [MS. PRADHAN]: Thank you, Your Honor. Just one quick  
15 housekeeping thing. During the break, a couple of the members  
16 of the trial judiciary who will remain nameless were  
17 expressing that they were freezing; I think the quote was like  
18 an icebox. So I was wondering whether Your Honor might  
19 consider raising the temperature just slightly.

20 MJ [COL POHL]: Perhaps you are cold also?

21 ADC [MS. PRADHAN]: I don't want to weigh in, Your Honor.  
22 I'm just looking for ----

23 MJ [COL POHL]: Actually it feels very pleasant to me.

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1 Does it appear cold to everybody? I'm hearing -- I'm seeing  
2 left to right. Okay. In all my judicial authority, can you  
3 kick it up slightly.

4 TC [MR. SWANN]: It would require me to go out because  
5 I've got to go get a key.

6 ADC [MS. PRADHAN]: All right. We can ----

7 MJ [COL POHL]: Okay. I tell you what, Mr. Swann, stay  
8 because we're not going to be here -- well, rephrase that.  
9 Just go ahead and stay and this may encourage a more succinct  
10 argument, not that it necessarily has to.

11 Go ahead, Ms. Pradhan.

12 ADC [MS. PRADHAN]: I will try my best, Your Honor, mostly  
13 because I can't feel my fingers, which should answer your  
14 question.

15 On 534, this is -- it's a complicated motion. And I  
16 want to first address -- or clarify my answer to the military  
17 commission yesterday. The military commission was concerned  
18 that this was a motion to reconsider. And it is not. And I'd  
19 like to explain why.

20 The original motion, 534, was a motion to compel  
21 documents responsive to category 2.h. of AE 397, [REDACTED]

22 [REDACTED]

23 The government's response in AE 534A at footnotes 2

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1 and 3 -- that's, I think, pages 2 and 3 as well of their  
2 response -- lists several groups of 2.h. summaries or  
3 summaries that they've produced that they consider to be  
4 responsive to category 2.h. And I believe those categories  
5 were statements given by -- primarily statements given by  
6 Mr. al Baluchi to interrogators. Those were produced the 2nd  
7 of February 2017, the 6th of February 2017, 2nd of June 2017,  
8 the 27th of June 2017, and the 13th of September 2017. That's  
9 taking those two footnotes in 534A together.


10 Now, the 2.d. discovery, those are the secret level  
11 personnel profiles with the UFIs, provided to defense were  
12 provided on the 2nd of June 2017. And, of course, we had  
13 received the government's chronology of Mr. al Baluchi's  
14 detention under category 2.a. in September 2016. Okay. So  
15 that's where we are with those dates.

16 Now, I want to reiterate one point that I made  
17 yesterday, which is that when we received the 2.d. discovery,  
18 we had at that point almost no way of associating the  
19 personnel profiles with the statements produced by the  
20 government or the summaries produced by the government that  
21 were meant to be responsive to 2.h. or really any other  
22 summaries. There were a few that we were able to marry  
23 because there are personnel who are listed as having been with

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1 Mr. al Baluchi when he -- during his initial days of torture  
2 at COBALT, or location 2, what -- however you want to refer to  
3 it. But other than those, going through his statements and  
4 his medical records and all of that, there was no way for us  
5 to know which personnel were there. But that's -- that was  
6 our ability to compare.

7           The government then gave us initially the RDI index  
8 on the 6th of September 2017 as an attachment to  
9 Mr. Groharing's letter. 

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20           MJ [COL POHL]: Why would I need to do that?  
21           ADC [MS. PRADHAN]: Excuse me, Your Honor?  
22           MJ [COL POHL]: What I'm saying is, I get a classified  
23 original document ----

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1 ADC [MS. PRADHAN]: Yes.

2 MJ [COL POHL]: ---- and then the government says, we  
3 propose a summary, and eventually I approve a summary.

4 ADC [MS. PRADHAN]: Uh-huh.

5 MJ [COL POHL]: Well, I'm approving a summary of that  
6 document.

7 ADC [MS. PRADHAN]: Yes, sir.

8 MJ [COL POHL]: Not other documents, not other documents  
9 that are related to it ----

10 ADC [MS. PRADHAN]: Yes.

11 MJ [COL POHL]: ---- none other thing. So why did -- the  
12 fact I didn't see other discovery or other documents is  
13 particularly relevant.

14 ADC [MS. PRADHAN]: It's not relevant to your approval of  
15 those -- that particular summary, Your Honor, but it is  
16 relevant to the fact that we later found out and we now know,  
17 all right, the military commission now has the ability, as we  
18 all do, to understand that, when those summaries are compared  
19 to other discovery that the government has put out, they're  
20 internally inconsistent.

21 MJ [COL POHL]: But isn't the summary not -- I approve a  
22 summary of a document.

23 ADC [MS. PRADHAN]: Yes, sir.

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1 MJ [COL POHL]: I don't approve a summary of a document  
2 and say, well, wait a minute, this other document contradicts  
3 it, this other document says something else.

4 ADC [MS. PRADHAN]: Yes, sir.

5 MJ [COL POHL]: So I don't understand your point. Is it  
6 that, okay, other documents may contradict a particular  
7 summary; that does not make the summary inadequate, does it?

8 ADC [MS. PRADHAN]: Well, it does, sir, if that summary we  
9 then find out later is contradicted by a different summary or  
10 by another piece of the discovery that the government has  
11 provided that casts aspersions on that summary, frankly, that  
12 makes it clear that there may be something very wrong with  
13 that summary.

14 So what -- the reason we're asking, right, for the  
15 underlying documents is to be able to tell what is wrong with  
16 the summaries, which the military commission had no ability to  
17 know at the time.

18 MJ [COL POHL]: Okay. I understand your point. Go ahead.

19 ADC [MS. PRADHAN]: Thank you, sir.

20 Now the -- I have three examples, Your Honor. Now,  
21 in 534B, I think we had something like 26 major examples of  
22 the complex discrepancies.

23 MJ [COL POHL]: Well, you're going to keep it to three.

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1 ADC [MS. PRADHAN]: I'm going to keep it to three.

2 MJ [COL POHL]: Because I can read it ----

3 ADC [MS. PRADHAN]: Given the option -- I can stand here  
4 in heels all day, but ----

5 MJ [COL POHL]: But I also can read the pleadings so ----

6 ADC [MS. PRADHAN]: I know sir.

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

8 ADC [MS. PRADHAN]: And so a lot of those are in the  
9 pleading, so I'll refer you to the brief on those, but I do  
10 want to highlight three, with your permission.

11 MJ [COL POHL]: Go ahead.

12 ADC [MS. PRADHAN]: This involves a few different  
13 documents. Would it be convenient or, I don't know, easier  
14 for Your Honor if I give you the references to the documents  
15 that I'm going to put up? Because I'm going to show you how  
16 we compared, for this first example, four different documents.

17 MJ [COL POHL]: I'm not sure what you're asking me to do.

18 ADC [MS. PRADHAN]: I'm asking you if -- so I have ----

19 MJ [COL POHL]: You want to display the documents, display  
20 the documents.

21 ADC [MS. PRADHAN]: I'd like to display the documents, but  
22 I'm going to tell you what I'm going to display first.

23 MJ [COL POHL]: Okay.

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1 ADC [MS. PRADHAN]: If that makes sense. So the first  
2 document I'm going to show you is the RDI index -- or  
3 Mr. al Baluchi's version of the RDI index that we filed in  
4 534B, which really just adds document reference numbers just  
5 for ease of reference. The second document is the chronology,  
6 the 2.a. chronology that we were given by the government,  
7 which is in the record at 534B, Attachment D. The third is a  
8 custodial report of Mr. al Baluchi's, which is in the record  
9 at 534 Attachment E. The fourth is the 2.d. profile of an  
10 individual code named X3L, which is in the record at 502Y,  
11 Attachment G. And the last one is a profile, another profile  
12 of SG1, which is in the record at AE 502Y again, Attachment G.

13 So I'm going to go through this kind of slowly. The  
14 summary itself is dated in the index as mid 2003.

15 May I have access to the document camera?

16 MJ [COL POHL]: Sure.

17 I think we need to get rid of the green. Okay.

18 ADC [MS. PRADHAN]: All right. And that's document number  
19 65.

20 MJ [COL POHL]: Okay.

21 ADC [MS. PRADHAN]:

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So Mr. al Baluchi's

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1 chronology -- which has disappeared -- okay. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 TC [MR. GROHARING]: Judge, if I could just ask counsel to  
9 let everyone know what the Bates number is on the document --  
10 the attachments that she references have a number of documents  
11 behind them -- that way parties could follow.

12 MJ [COL POHL]: Okay.

13 ADC [MS. PRADHAN]: I will be happy to. The custodial  
14 report itself is [REDACTED] and that's the report that is  
15 up right now.

16 TC [MR. GROHARING]: And part of which attachment?

17 ADC [MS. PRADHAN]: That's part of Attachment E to 534.

18 MJ [COL POHL]: To the base -- to the base motion?

19 ADC [MS. PRADHAN]: Yes. That's the base motion to 534.

20 MJ [COL POHL]: Go ahead. Okay. Next?

21 ADC [MS. PRADHAN]: That may be 534B, excuse me.

22 MJ [COL POHL]: Okay. It's 534B.

23 ADC [MS. PRADHAN]: Yes. So this -- the first paragraph

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1 of this states, "During the custodial interview conducted in  
2 mid 2003," custodial interview, "Ammar al Baluchi what told  
3 that if he did not make the decision to come forward with the  
4 truth, his situation was goes to change." He was then  
5 fingerprinted before the interview continued. And so again,

6 [REDACTED]  
7 [REDACTED]

8 So what is not clear about this is that [REDACTED]

9 [REDACTED] all right.

10 What's not clear is exactly who threatened him, right? This  
11 is a summary of a custodial interview. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 So regardless of who conducted the custodial

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 whatever. That's important.

23 In particular, the question of whether Mr. al Baluchi

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1 was interviewed at his point of capture by CIA personnel who  
2 were later involved in the application of torture techniques,  
3 that's crucial to evaluating the psychological effect on  
4 Mr. al Baluchi. And, in fact, the government spreadsheet, the  
5 RDI index, includes six further summaries of, quote, custodial  
6 interviews that -- that CIA officials -- that CIA personnel  
7 were apparently involved in.

8 Back. Now, when we go to X3L's 2.d. profile [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 And that was 502Y, Attachment G. It says, X3L was present --  
12 well, actually it first says that -- in the first paragraph,  
13 it states -- all right, in the first paragraph of this -- and  
14 I want to talk about the second page in a second -- in the  
15 first paragraph, [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 And so then on this second page, it talks about his  
22 involvement. [REDACTED]  
23 [REDACTED]

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2 MJ [COL POHL]: Just a second. Go ahead.

3 ADC [MS. PRADHAN]: It also says that he interacted with  
4 Ammar on 58 separate days while at Location Number 2 and he  
5 was involved in the application of all of these torture  
6 techniques on Ammar when he was in Location Number 2. Now,  
7 the profile itself actually conveniently skims over any role  
8 he may have had in his, quote, relevance to Mr. al Baluchi's  
9 interrogations in Pakistan. It also goes on -- you know, it  
10 goes on to talk about his involvement in Ammar's torture, but  
11 it doesn't talk about his involvement in interrogations in  
12 Pakistan.

13 MJ [COL POHL]: You are assuming that the original  
14 document does discuss that? Most of your assumptions you are  
15 making, it says the summaries are inadequate because it must  
16 be in the original document.

17 ADC [MS. PRADHAN]: The assumption, Your Honor, is that  
18 that custodial summary, that custodial report that we  
19 initially had, there must be a reason that the government  
20 assigned in the

21 Right? And so they have some way of knowing  
22 that these personnel are relevant to this summary that we  
23 don't have. I have no insight into why X3L, who we know is at

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That's what we don't know.

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Now, the situation actually gets more complicated than that because, as it turns out, when

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And let me see if I can zoom in a little bit. Right.

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So we -- it also, frankly, raises the question of how many CIA personnel were in Pakistan upon Mr. al Baluchi's capture. And we -- elsewhere in 534B, we talk about the fact that FBI agents were present in Pakistan upon Mr. al Baluchi's capture. We just have no idea how many U.S. agents were there

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1 and exactly what their involvement was, and this was a  
2 surprise. Because we had, as I said, we had been led to  
3 believe that his interrogations -- or his interviews in  
4 Pakistan were conducted solely by Pakistani officials, that he  
5 did not have interactions with CIA there. This is clearly  
6 relevant to creating a chronology of his detention and a  
7 chronology of his torture by the CIA.

8 I will move on to the second example, Your Honor,  
9 unless you have any questions.

10 MJ [COL POHL]: No, go ahead.

11 ADC [MS. PRADHAN]: Okay.

12 MJ [COL POHL]: And I'm looking at the pleading here, but  
13 I am listening to you, so don't ----

14 ADC [MS. PRADHAN]: Okay.

15 MJ [COL POHL]: Don't take the fact I'm not ----

16 ADC [MS. PRADHAN]: I always think you are listening to  
17 me, Your Honor.

18 MJ [COL POHL]: Okay.

19 ADC [MS. PRADHAN]: Okay. So the documents ----

20 TC [MR. GROHARING]: Your Honor, excuse me, Judge, if I  
21 could just interrupt. If the Military Judge is going to have  
22 questions for the government, it may be more efficient to ask  
23 them now example by example as opposed to at the end. I don't

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1 know if you are or not, but I would just suggest that if you  
2 are, I can answer those now.

3 MJ [COL POHL]: I'm good.

4 ADC [MS. PRADHAN]: Okay.

5 MJ [COL POHL]: Go ahead.

6 ADC [MS. PRADHAN]: The relevant documents to this next  
7 example are again the [REDACTED] Attachment B;  
8 the chronology of Mr. al Baluchi's detention, which is 534B,  
9 Attachment D; a medical report that is in the record at 502Y,  
10 Attachment H [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 So this is listed in the [REDACTED]

15 [REDACTED] I found my chronology. There's a lot of paper up here.

16 All right.

17 So document 109 is a summary -- let's see -- of a  
18 medical report. The index lists the date of mid 2003 for this  
19 summary while Mr. al Baluchi would have been at Location  
20 Number 2. Again, we have -- that's right -- and relatively  
21 close in time to his torture.

22 The summary itself, though -- sorry about that. I  
23 don't know how to make it go away, I apologize. Thanks. The

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1 summary itself is dated early 2004.

2 TC [MR. GROHARING]: I just ask, Judge, again which  
3 attachment and the Bates number for this document?

4 ADC [MS. PRADHAN]: I believe I just gave that, but the  
5 medical report is again 502Y, Attachment H, MEA-10018-3005.

6 MJ [COL POHL]: Ms. Pradhan, do you have examples where  
7 there's a contradiction between the summary and something  
8 other than the index?

9 ADC [MS. PRADHAN]: Yes, Your Honor. And I'd refer you to  
10 the brief.

11 MJ [COL POHL]: Okay.

12 ADC [MS. PRADHAN]: In 534B, we have examples where there  
13 are not just -- I mean, if you take the index complete --  
14 well, the problem is that you can't take the index out  
15 completely because then you would have no way of trying to  
16 compare any of this, right? Because the 2.d. profiles aren't  
17 attached or don't have any references to the custodial reports  
18 or the medical reports or anything like that; and vice versa,  
19 the medical reports don't list any personnel. And again, the  
20 only exception to that are things like X3L's profile which say  
21 that he was in Location Number 2 when Mr. al Baluchi was  
22 tortured. So that we can put together with the custodial  
23 reports or the interrogation reports that talk about

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1 Mr. al Baluchi's torture. But that's only really -- it's a  
2 handful of documents.

3 The vast majority now the government says they have  
4 given us hundred and hundreds and hundreds of documents, and  
5 that's true. That's true, right? We have, as I said in open  
6 session, roughly 17,000 pages of documents. Now, it's a small  
7 fraction of what I think we should have but that's a separate  
8 thing. 17,000 pages.

9 There is no way without using that index to put  
10 together the personnel profiles with the summaries.

11 But that said, right, there is -- there are a number  
12 of examples in 534B that, if you were to remove the index  
13 entirely, right, and just compare what the personnel profiles  
14 say with the -- what we believe the associated personnel  
15 profiles to say with the summaries, they don't match up at  
16 all. And it's not just personnel profiles, it's summary to  
17 summary, it's STA documents to medical records. There are a  
18 number of examples. And actually, my last example is one of  
19 those.

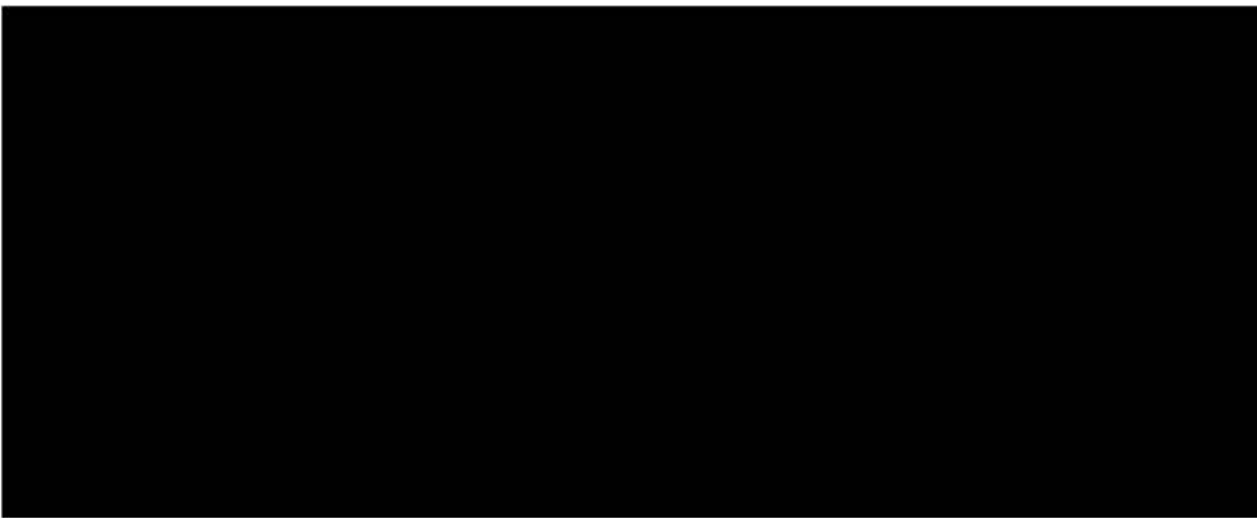
20 MJ [COL POHL]: Okay, go ahead.

21 ADC [MS. PRADHAN]: Okay. So the summary itself, as you  
22 can see, is dated early 2004. And it contains information  
23 from assessments conducted in late 2003. Okay, late 2003.

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9           So the potential difference is in conditions of  
10 confinement and, therefore,



13           Those differences can't be  
14 overstated, right? And this ties in with what I was saying  
15 yesterday about the difficulty of this early-mid-late  
16 construction of these dates.

17           There are many of these examples, again, 534B, where  
18 we simply can't assign a location to the custodial report  
19 because he could have been in any one of at least two places.  
20 The summary itself actually has no reference whatsoever in the  
21 entire summary to mid 2003. There's no reference that  
22 anything in here is from mid 2003. The mystery is actually  
23 complicated by the personnel who are listed. The index lists

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1 B47, I believe B47 is correct -- or B7F, excuse me -- who is a  
2 mid-level clinical psychologist as the relevant personnel  
3 generating Report Number 37, which is this -- this document.

4 I'm going to go now to B47's [sic] 2.d. profile, and  
5 that was in the record at -- that's MEA-2D-46 and -47. [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] It also  
9 says that, and explicitly, that during the period, I believe  
10 it says page -- yeah, says that during the period in which  
11 Mr. al Baluchi was being tortured at Location Number 2 years  
12 earlier, [REDACTED]

13 So there are two possibilities here, that that  
14 summary I just showed you is from mid 2003, and the  
15 government's assignment of B7F is wrong, and the actual dates  
16 on the summary [REDACTED] and the reference to [REDACTED] are  
17 wrong. The second possibility is that the summary is  
18 correctly dated early 2004 and the government's assignment of  
19 [REDACTED] which begs the question of  
20 where exactly Mr. al Baluchi was when the report was  
21 generated. And the third option is that [REDACTED]  
22 listed as the author of this report and both the date on the  
23 report and the government's profile of him, or her, are wrong.

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1 That's where that leaves us.

2 I have one more for you, sir.

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

4 ADC [MS. PRADHAN]: All right. The documents relevant to  
5 this are, again, [REDACTED]  
6 Mr. al Baluchi's chronology detention, 534B, Attachment D; a  
7 medical report in the record at 502Y, Attachment H, and that  
8 Bates number is MEA-10018-2972 -- I believe 2972; and the 2.d.  
9 profile of WU4, which is in the record at 502Y, Attachment G.  
10 The Bates is MEA-2D-39.

11 All right. So that is number 388 here that we're  
12 looking at MEA-10018-2972. So the entry in the RDI index --  
13 this is summary of a medical report. [REDACTED]

14 [REDACTED]  
15 [REDACTED] Okay.

16 [REDACTED]  
17 be [REDACTED]

18 [REDACTED]  
19 The medical report itself is dated early 2004, and it  
20 discusses Mr. al Baluchi's abdominal pains. There we go. I  
21 want to note that this medical report summary is specific to  
22 Mr. al Baluchi. This becomes important. And it doesn't  
23 contain any reference about any other detainees, it's just

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1 Mr. al Baluchi's medical report.

2 According to his chronology of detention, he was, in  
3 fact, at [REDACTED] so that could be  
4 correct. But there are two big discrepancies with this  
5 summary. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]. We don't know, right?

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 had oral arguments on 525 in October.

16 And the differences between the two sites, including  
17 differences in personnel, differences in treatment,  
18 differences in diet, differences in climate, et cetera, may  
19 have contributed to Mr. al Baluchi's abdominal pains. That's  
20 why it's important to know.

21 So because of this discrepancy, it's just impossible  
22 for us to determine exactly where the report was generated.  
23 But again, here the -- this early-mid-late construct

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1 accomplishes the confusion it, frankly, I think, it sets out  
2 to achieve; because the original report, I assume, would  
3 either include the specific date of the medical consultation  
4 or the actual location of the consultation or both, right?  
5 Which would allow a true analysis of this document.

6           So now I just want to take you to one last document,  
7 and that is, the listed personnel for this particular summary  
8 was WU4, right? It lists -- says there is -- this medical  
9 report talks about Mr. al Baluchi's abdominal pains and WU4 is  
10 the relevant person. And that's what the government has told  
11 us.

12           This is WU4's 2.d. profile. Again, that's 2D-39.  
13 Just zoom in on the first paragraph in particular. Now, the  
14 2.d. profile states, I think fairly clearly in that very first  
15 paragraph, that WU4, a junior-level employee, interacted with  
16 each of the accused except Ammar al Baluchi and Ramzi  
17 Binalshibh. So WU4 did, indeed, have a single interaction  
18 with Mr. al Hawsawi at Location Number 5 in mid 2004, which is  
19 described later. But it doesn't explain the massive factual  
20 discrepancy between the government's RDI index listing him as  
21 the relevant official for this particular medical report,  
22 which is an important medical report.

23           So we don't have an explanation for this. I know I

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1 gave a few options in our first example. We don't have an  
2 explanation for why this person is listed as the relevant  
3 official when it says clearly in his profile that he wasn't.  
4 And we don't know where the mistake is. So those are the  
5 three examples I had.

6 Elsewhere in 534, we talk about other problems with  
7 the index. The fact that there are personnel missing from 435  
8 of the 725 entries, there are just no personnel listed, no  
9 associated personnel. There are two personnel who are listed  
10 in the index itself for whom we haven't received 2.d.  
11 profiles, so we can't -- we can't do this kind of comparison.  
12 There are -- again, this is fully briefed in 534, there are  
13 many, many examples where documents are inserted, and I gave  
14 you one in open session yesterday, Your Honor, documents  
15 pertaining to Mr. al Baluchi's initial interrogations or  
16 application of torture techniques are listed in the index as  
17 completely different dates, right? Mid 2003 summaries, or  
18 what we believe are mid 2003 summaries listed in early 2006.  
19 Those examples are all in the brief.

20 And just as a last sort of bizarre note, there are 26  
21 DIMS records with [REDACTED]

22 [REDACTED]  
23 [REDACTED]

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4           You can imagine the number of questions that that  
5 raises.

6           So I will leave it at that unless -- pending further  
7 questions, Your Honor.

8           MJ [COL POHL]: No further questions, thank you.  
9           Trial Counsel?

10          TC [MR. GROHARING]: Very briefly, Your Honor, I reiterate  
11 mainly what I said yesterday. And when the government turns  
12 over discovery, we've got an obligation that it's accurate,  
13 and we acknowledge that. And to the extent that defense  
14 raises issues that they believe are inaccurate, we are happy  
15 to look at those issues and respond.

16          MJ [COL POHL]: So inaccurate as they put it in their  
17 brief, particularly dates or things like that, you intend to  
18 go double-check?

19          TC [MR. GROHARING]: Correct.

20          MJ [COL POHL]: Okay.

21          TC [MR. GROHARING]: And I think probably a very simple  
22 explanation to all of these matters, none of them have  
23 anything to do with the validity of the actual summaries that

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1 the Military Judge has approved. The 2.d. indexes were  
2 created by the government to help the defense understand and  
3 appreciate the folks that we have identified, and identified  
4 as a UFI, put them in proper context, understand who they may  
5 or may not want to talk to based on their view of the  
6 materials.

7           So they are not summaries of documents, they are  
8 information we pulled from many of the documents that are in  
9 the discovery materials. And to the extent there are errors  
10 in there, we're happy to, you know, clear that up. We are  
11 happy to answer the defense's questions in that regard.

12           So I will say again, you know, that throughout the  
13 534B, there were repeated claims of, you know, government  
14 intentionally editing documents to mislead the defense,  
15 deliberately obscuring information, verifiable falsehoods.  
16 They go on and on and on. We categorically reject any claims  
17 of that nature. At no point did anyone ever intentionally  
18 edit a document to mislead the defense.

19           And again, we're happy to look at what the defense  
20 has claimed and provide a response to them that will clear up  
21 any perceived discrepancies. So other than that, Your Honor,  
22 if you don't have any questions, I don't have any additional  
23 argument.

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1 MJ [COL POHL]: No questions. Thank you.

2 Ms. Pradhan, last word.

3 ADC [MS. PRADHAN]: Just very briefly, Your Honor; a  
4 couple of points. The first is I spoke a little bit yesterday  
5 and again I will rest on my brief on this, on the fact that,  
6 yes, there are a lot of problems with the dates in the RDI  
7 index, right? But it's not limited to those problems, right?  
8 And when we went through and we wrote 534B and we wrote that  
9 it was clear that the government intentionally changed  
10 information and obfuscated dates, that's because it is clear  
11 when you go through those examples that that is exactly what  
12 happened.

13 And one of the examples that I gave yesterday was the  
14 intentional stripping of torture from one particular document.  
15 Now, that example was the only example I could give in  
16 unclassified session and that was of Mr. Mohammad's summary  
17 for which we have the unclassified context for that cable.  
18 There are other examples of that contained in 534B, and we  
19 don't, frankly, know how many examples of that there are  
20 concerning Mr. al Baluchi's torture summaries or Mr. -- excuse  
21 me, Mr. al Baluchi's interrogation summaries. We simply don't  
22 know.

23 What we know as a fact, as a verifiable fact, is that

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1 a summary of Mr. Mohammad's interrogation intentionally  
2 stripped all context from that interrogation. It stripped the  
3 fact that he had been tortured, it stripped where the  
4 contributing information came from, and all that was left was  
5 a spontaneous declaration that sounds inculpatory.

6 Now, we have hundreds of statements like that from  
7 Mr. al Baluchi and we have no way of knowing how much  
8 information has been stripped from those.

9 The second point, which again we briefed, and it's at  
10 the very front of 534B, it's actually in the overview, is the  
11 [REDACTED]. This is an  
12 important point. It touches on a lot of the motions we have  
13 been arguing this week and it touches on the incoming motion  
14 to suppress the military commission has requested. Right,  
15 this is perhaps one of the key points.

16 MJ [COL POHL]: Ms. Pradhan, you are making rebuttal  
17 argument. Sounds like you are making new argument altogether.

18 ADC [MS. PRADHAN]: Not at all, Your Honor. What I'm  
19 trying to respond to is Mr. Groharing's assertion that this is  
20 a series of a couple of mistakes with dates and they can  
21 easily correct it. It's not the case.

22 MJ [COL POHL]: Okay.

23 ADC [MS. PRADHAN]: It is not the case. What we actually

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1 need to see are the original documents that would say who was  
2 in the room. That would say where it was. Right. That's the  
3 second part.

4 And the third is that, just to reiterate my real,  
5 very real confusion about the hundreds of mistakes that we  
6 document in 534B and the government's casual assertion that  
7 this can all be taken care of in a few minutes when they were  
8 the ones who provided this index to us.

9 Subject to your questions.

10 MJ [COL POHL]: I have none. Thank you.

11 Mr. Groharing, last word, if you have one.

12 TC [MR. GROHARING]: Briefly, Your Honor. Again, counsel  
13 doubled down on her claims of government misconduct in the  
14 performance of our duties in preparing the summaries. I again  
15 categorically reject those. Those comments are ridiculous and  
16 uninformed, frankly.

17 The example about Mr. Mohammad's summary comes from a  
18 SSCI report where they claim some summary that the Senate  
19 Select Service -- Select Committee on Intelligence used in  
20 their report is even the same document that we summarized,  
21 that we summarize and provided to the Military Judge. I think  
22 what we will find here that is obviously not the case.  
23 Different reports had different information. And so at no

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