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8 [The court-martial was called to order at 1606, 7 August 2013.]

9 MJ: Court is called to order.

10 Let the record reflect all parties present in the Court
11 last recessed are again present in court. The witness is on the
12 witness stand.

13 Major Fein, this is a closed session, please describe it
14 for the record what is occurring.

15 TC [MAJ FEIN]: Yes, ma'am, this is a closed session classified
16 at the SECRET level. Present, other than the parties the Court is
17 reference, is the Court's paralegal, bailiff, court security officer,
18 members of the prosecution and defense teams and security. Also, the
19 court security officer completed a closed hearing checklist which
20 will be filed with the post-trial allied documents. Additionally,
21 Your Honor, during this last recess, and could be restated on the
22 open record, the government filed a unclassified and redacted version

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1 of Appellate Exhibit 642. It has been labeled--or marked as 642b and
2 then the classified one has been marked as 642a.

3 MJ: All right. And, that will be announced in the next open
4 session, right?

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

6 MJ: Proceed.

7 **ADAM PEARSON, civilian, already on the witness stand, was reminded of**
8 **his oath, and testified as follows:**

9 **DIRECT EXAMINATION**

10 **Questions by the assistant trial counsel [CPT von ELTEN]:**

11 Q. You testified

12 A.

13

14 Q. And,

15 A.

16 Q.

17 A.

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21 Q.

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1 A.

2

3 Q. What are some examples of those networks?

4 A.

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9 Q. What was your position at JIEDDO?

10 A. I was the cyber counter IED analysis team lead.

11 Q. What did you do in that position?

12 A.

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1 Q. Let's backup for a moment?

2 A. Sure.

3 Q.

4 A.

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12 Q. What did you do as a

13

14 A. I basically made sure that everybody was following all the
15 protocols and then I trained the new people that we had on the team.

16 Q. What did you do for quality assurance?

17 A. I would review everything that would go into an RFS support
18 and just make sure it was accurate--that the analysis was sound.

19 That it answered the question that was being asked. And, I did them
20 myself as well, you know, as an active participant.

21 Q. What kind of analysis did you perform?

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1 A.

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8 Q.

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10 A.

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16 Q. What are some examples of the websites you visit?

17 A.

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1 MJ: What was the person's name?

2 WIT:

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8 MJ: Yes?

9 TC[MAJ FEIN]: Ma'am I am sorry to interrupt, if we could please
10 ask the witness to spell all of those for the court reporters.

11 WIT: Sure.

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14

15 Q.

16

17 A.

18 Q.

19 A.

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22 Q.

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1 A.

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5 Q.

6 A.

7 Q. Thank you.

8 A.

9 Q.

10 A.

11 Q.

12 A.

13

14 Q.

15 A.

16 Q. Mr. Pearson, you just mentioned an RFS, can you please

17 explain what RFS is?

18 A. An RFS is a Request For Support. Other places may call it
19 an RFI, Request For Information. It is generally the same thing. At

20 . We had a different liaison

21 there from various agencies. So, what would happen was they would be

22 a request from a Combatant Commander downrange and that would come

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1 through a vetting process to where it was then divvied to the
2 appropriate team;

3

4

5 Q. After the request came down to your team, what happened
6 next?

7 A. I would take a look at it and then I would assign it to the
8 right person if it was something we could do.

9 Q. After the request was assigned to someone what would the
10 person do?

11 A.

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19 Q. You just mentioned a moment ago, "fusion center". What is
20 a fusion center?

21 A. Yes,

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Q. What would the person responding to the RFS do after conducting research; how would it be memorialized?

A.

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1 Q.

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4 A.

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9 MJ:

10 WIT: Oh, a pink team is essentially a first look at a product to
11 say, "Okay, you are on track. Fix this." Then they would come back
12 two days later and there would be a red team and the red team would
13 say, "Okay, this needs to be perfect, so this is what is not perfect
14 on it." So, after the red team, when it would it would come back, it
15 should be ready to go. So it was just different layers to go
16 through.

17 Q. Where would this request for support be placed?

18 A. Oh, there is and RFS tracker that was on our portal page.

19 Q. Who had access to it?

20 A. Everybody at the . I think
21 other people would have access to it as well downrange. I mean,
22

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3 Q. Let us talk a little bit about WikiLeaks and one particular
4 request for support.

5 Q. When did you first learn about WikiLeaks?

6 A. I first heard about it with the collateral murder video. I
7 remember seeing it on, I believe it was YouTube. And, it was a 17
8 minute version and I think, like most people, I was pretty disturbed
9 by it but with my background in information operations and video
10 editing, and stuff like this, I knew that it was missing something.
11 So, when I saw--I found the 39 minute version and I think I may be
12 one of the few people that sat there and watched everything all over
13 again right after that. And, I noticed some various things that were
14 missing from the 17 minute video in this. That is when I first heard
15 about it.

16 Q. We will talk about that in a moment. Did you ever conduct
17 any research related to WikiLeaks while you were at JIEDDO?

18 A. Yes.

19 Q. I am retrieving Prosecution Exhibit 203 for identification.
20 I am handing Prosecution Exhibit 203 for identification to the
21 witness----

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1 ADC[MAJ HURLEY]: Captain von Elten, if I can take a quick look
2 at that.

3 ATC[CPT von ELTEN]: I'm sorry.

4 ADC[MAJ HURLEY]: I am know we talked about it yesterday.

5 [Prosecution Exhibit 203 was reviewed by the defense and then given
6 to the witness.]

7 Q. Please take a look. [Pause] Do you recognize that?

8 A. I do.

9 Q. What is it?

10 A. It is the
11

12 Q. How do you recognize it?

13 A. I am the one who put it together.

14 Q. When did you write it?

15 A. The first draft was in November of 2010.

16 Q. Why did you write it?

17 A.
18
19
20
21

22 Q. And, where did you publish it?

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1 A. This was published under normal channels on our sharepoint
2 page and was sent out to a couple of combatant commands. I don't
3 recall which ones.

4 Q. How often did you create products like this?

5 A. Oh, it was ongoing. I mean, one or two a week.

6 Q. And, can you tell me--can you tell the Court a little about
7 what this Request Fort Support discusses?

8 A. Well,

9

10

11

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15 ATC[CPT von ELTEN]: You Honor, the United States offers
16 Prosecution Exhibit 203 for identification into evidence.

17 ADC[MAJ HURLEY]: Ma'am, the defense objects as to hearsay.

18 MJ: What is hearsay about it?

19 ADC[MAJ HURLEY]: It is an out of court statement. Its--from
20 Mr. Pearson's testimony, it is an out of court statement of Mr.
21 Pearson or someone who worked directly for him in formulating this
22 report.

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1 MJ: May I see it, please?

2 WIT: Sure.

3 [Prosecution Exhibit 203 for identification was given to the military
4 judge.]

5 MJ: Government, what is----

6 ATC[CPT von ELTEN]: Your Honor, we are offering that under
7 803(8) as a public record. Mr. Pearson detailed how JIEDDO created
8 records like this and he created it as part of his official duties
9 and went through normal channels used by JIEDDO to find the
10 information, memorialized it in accordance with their normal
11 procedures.

12 MJ: All right. Defense?

13 ADC[MAJ Hurley]: Ma'am, the first thing--part of the foundation
14 which we don't know about is , "Who was the requestor of this
15 information----

16 MJ: Hold on.

17 [The military judge asked that counsel move closer to a microphone.]

18 MJ: You have got to speak so----

19 ADC[MAJ Hurley]: Ma'am, I will come up here.

20 MJ: Okay.

21 ADC[MAJ HURLEY]: Can I be heard now?

22 MJ: Yes.

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1 ADC[MAJ HURLEY]: Great. The first part of the foundation that
2 is lacking is--law enforcement function, is--from the foundation that
3 we don't know whether or not that this was done pursuant to a law
4 enforcement request. Certainly that possibility has not been
5 excluded. And, ma'am, we don't believe it is a proper public record
6 or a proper record to be able to be admitted under 803(8).

7 MJ: If it not a law enforcement record, why is it improper?

8 CDC:[MAJ HURLEY]: If it is not a law enforcement record, ma'am,
9 it is improper--I guess to answer your question under 803(8), we
10 don't believe it is proper because it is essentially just a request--
11 It is an assemblage of information and pushing it out as a request,
12 as an ad hoc request. This isn't part of an ongoing function that
13 JIEDDO performs. It is a response to one thing, a RFS.

14 RFS stands for, Mr. Pearson?

15 WIT: Request For Support.

16 ADC[MAJ HURLEY]: It is a response to a specific request.
17 Furthermore, ma'am, failing that, we would say two more things. The
18 first is it is 403, that Mr. Pearson is capable of talking about the
19 contents of this document and laying out what he----

20 MJ: What is the unfair prejudice under 403?

21 ADC[MAJ HURLEY]: Ma'am, the unfair prejudice is that this is
22 going to go back with the sentencing authority, that is to say, you,

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1 when you are making your determinations, unlike the overwhelming
2 majority, if not all, of the testimonial evidence that you receive in
3 your capacity as the sentencing authority.

4 MJ: And, how is that unfairly prejudicial?

5 ADC[MAJ HURLEY]: Ma'am, that you get to refresh--Well, I guess
6 it is not--It is the position of the defense that it is unfairly
7 prejudicial because you get to review this at your leisure. That it
8 is not something that you would have to look at your notes or call to
9 your memory.

10 MJ: Okay.

11 Government, at this point, the Court is going to sustain
12 the objection unless you develop further foundation.

13 ATC[von ELTEN]: Retrieving Prosecution Exhibit 203 for
14 identification.

15 **DIRECT EXAMINATION (continued):**

16 Q. Mr. Pearson, you testified that Requests For Support came
17 from Combatant Commanders?

18 A. That's true, yes.

19 Q. Do you remember where the Request For Support came for this
20 document?

21 A. If I had access to our sharepoint page right now, I could
22 tell you, but I do not.

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1 Q. Where else do Requests For Support come from?

2 A.

3

4

5 Q.

6 A. I don't believe so, no.

7 Q. From any law enforcement agency?

8 A.

9

10 Q. So,

11

12 A. No, they did not. No.

13 ATC[CPT von ELTEN]: Now, Your Honor, the United States would

14 offer into evidence Prosecution Exhibit 203 for identification.

15 MJ: Did any other law enforcement entity request support for

16 this, do you remember that much?

17 WIT: I don't believe they did, no.

18 MJ: All right, the Court finds it is admissible as a public

19 record under M.R.E. 803(8).

20 ATC[CPT von ELTEN]: Permission to publish, ma'am?

21 MJ: Let me admit it, first.

22 TC[MAJ FEIN]: Ma'am, while you do that, may we have a moment?

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1 MJ: Yes.

2 CDC[MR. COOMBS]: And ma'am, just for the record, is that under
3 803(8)(a), the activities of the office and agency or is that a
4 different provision, so the defense understands why it was admitted?

5 MJ: I believe I admitted it under (b) for certain, but let me
6 look here; (a) and (b).

7 CDC[MR. COOMBS]: Thank you, ma'am.

8 TC[MAJ FEIN]: Ma'am, if I may, just to clarify so there is no
9 confusion, this was in 2010. Later, Your Honor, in 2011, I think a
10 year later, the prosecution in this case did request, separate and
11 apart from this document, that JIEDDO conduct a review. It was
12 unrelated to this topic and was a year later, it was not part of
13 this. So, that did occur a year later, Your Honor.

14 MJ: So, you are setting, for the record, that there was
15 something else that occurred but it is not this?

16 TC[MAJ FEIN]: That is correct, ma'am, it is after this that it
17 was pursuant to a direct request for me actually, but it was not that
18 document, Your Honor, nor was it during that timeframe.

19 MJ: Okay.

20 ATC[CPT von ELTEN]: Permission to publish, ma'am?

21 MJ: Go ahead.

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1 [The document was published by means of electronic overhead
2 projector.]

3 **DIRECT EXAMINATION (continued):**

4 Q. Can you read that, Mr. Pearson?

5 A. Yes. It is a little--there you go, that is pretty good.

6 Q. Is that better?

7 A. Yes.

8 Q. Now, Mr. Pearson,

9 A.

10 Q. Is that the user you testified about earlier?

11 A. No, this is a different one.

12 Q. Can you describe this user, please?

13 A.

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18 ATC[CPT von ELTEN]: One moment, please. [Pause]

19 Q. Can you please describe what we are looking at?

20 A.

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3 Q.

4 A.

5 Q.

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7 A.

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10 Q.

11 A.

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13 MJ: Hold on. Yes?

14 ADC[MAJ HURLEY]: Mr. Pearson, pardon me.

15

16

17

18 MJ: All right, Government?

19 ATC[CPT von ELTEN]: 803(3) statement of impression, present

20 mind, and in this case, plan.

21 MJ: Plan?

22 ATC[CPT von ELTEN]: May I, Your Honor?

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1 MJ: Yes.

2 Q.

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4 A.

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9 Q. Can you please read----

10 MJ: Well wait a minute, I have not ruled on the objection yet.

11 What is the Government's----

12 ATC[CPT von ELTEN]: sorry, I am developing a little more for
13 the plan, Your Honor.

14 MJ: Well, he does not--what is your, the government's position
15 on why this is a plan; why this falls under 803(3)?

16 ATC[CPT von ELTEN]: Your Honor,

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22 MJ: All right, the government believes it is hearsay?

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1 ATC[CPT von ELTEN]: Yes, ma'am.

2 MJ: Okay. And your exception is 803(3), then?

3 ATC[CPT von ELTEN]: Yes, ma'am.

4 MJ: All right, Major Hurley, why would this not be admissible
5 under M.R.E. 803(3)?

6 ADC[MAJ HURLEY]: All of the bullets, ma'am?

7 MJ: Yes.

8 ADC[MAJ HURLEY]: All right, then, if I may use this, it will
9 make it a little easier for me, ma'am.

10 MJ: Certainly.

11 ADC[MAJ HURLEY]: Can you hear me?

12 MJ: Yes.

13 ADC[MAJ HURLEY]: So, ma'am, with respect to the first bullet,
14 it is a rundown and we would reiterate this objection to the
15 testimony that he rendered--that Mr. Pearson rendered with respect to
16 the previous slide, that that is not a plan, it is a rundown of,
17 "here is the information." There is no--it is just giving the
18 information out.

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1 WIT:

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4 ADC[MAJ HURLEY]: All right. Well, sir--well, ma'am, again, my
5 general----

6 MJ: So, these are--before I get there, let me just make sure I
7 understand this. The English bullets come from WikiLeaks?

8 WIT: Yes.

9

10

11 MJ: All right, then what is the objection then?

12 ADC[MAJ HURLEY]: Ma'am, our objection would be the same thing
13 because it is still hearsay within hearsay.

14 MJ: All right. Is it hearsay or not?

15 ATC[CPT von ELTEN]: Which part, ma'am, I am sorry?

16 MJ: You think there is a distinction between the bullets?

17 ATC[CPT von ELTEN]: I think certain--there is a distinction
18 between some bullets, ma'am.

19 MJ: All right. Let us see, let us look at bullet one.

20 ATC[CPT von ELTEN]: Bullet one, ma'am--

21 MJ: All right, government, if you cannot figure it out, what
22 your theory is, the objection is sustained.

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1 ATC[CPT von ELTEN]: May I highlight particular bullets, ma'am,
2 with the part of the plan under the 803(3) theory?

3 MJ: Do you have a theory to argue?

4 ATC[CPT von ELTEN]:

5

6

7

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9 MJ: So, based on that, one or more--is one or more bullet
10 admissible under M.R.E. 803?

11 ATC[CPT von ELTEN]: There are admissible bullets, ma'am.

12 MJ: So, you only want to admit some of the bullets?

13 ATC[CPT von ELTEN]: Yes, ma'am.

14 MJ: Did you have a redacted copy of that?

15 ATC[CPT von ELTEN]: I do not, ma'am.

16 MJ: Do you want to make one?

17 TC[MAJ FEIN]: Yes, ma'am. We will--the United States requests
18 a recess and we will make that.

19 MJ: Let me--let me see it. I have already admitted that,
20 right?

21 ATC[CPT von ELTEN]: Yes, ma'am.

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

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1 MJ: Then, let me see. I have admitted it under M.R.E. 803(3),
2 right?

3 ATC[CPT von ELTEN]: 803(8), ma'am.

4 MJ: All right, 803(8). So now we have hearsay within hearsay?

5 ATC[CPT von ELTEN]: Also ma'am, the United States would offer
6 it for the non-hearsay purpose-----

7 MJ: Why don't we take a brief recess. How long will it take
8 you to articulate a theory on this that you can talk to me about?

9 ATC[CPT von ELTEN]: I could talk to you about one more theory
10 right now, ma'am. Which is, that we are not offering for the truth
11 that the contents are true but just simply that they are talking
12 about them.

13 MJ: That is why I asked you if it was hearsay a long time ago.

14 ATC[CPT von ELTEN]: Yes, ma'am, I misspoke. Yes, ma'am.

15 MJ: So what are you offering? If you are offering it for that
16 purpose, I will overrule the objection.

17 ATC[CPT von ELTEN]: I am offering it just for the statements
18 being made, ma'am, not for the truth of the matter.

19 MJ: All right. Major Hurley?

20 ADC[MAJ HURLEY]: Ma'am, first we would ask you to reconsider
21 admitting that document under M.R.E. 803(8). We do not believe that

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1 they are--the defense does not believe--or at least would request the
2 Court to identify which part of the prongs under----
3 [The court reporter indicated that counsel needed to move closer to a
4 microphone.]

5 MJ: He can't hear you.

6 ADC[MAJ HURLEY]: Yes, ma'am. Which part of 803(8)(a) and (b)
7 you believe this qualifies as evidence under. And then, ma'am, we
8 would also object to this information under our ongoing 1001(b)(4)
9 objection.

10 MJ: Okay, well, the 1001(b)(4) objection is noted for the
11 record. All right, the Court has already identified M.R.E. 803(8)(a)
12 and (b) and the Court has looked through the exhibit any finds that
13 none of it is admissible for the truth of the matter asserted. It is
14 admissible for the fact that it was said. So, overruled.

15 ADC[MAJ HURLEY]: Ma'am, finally if we would ask the court to do
16 a 403 analysis now that the probative value is not for the truth of
17 the matter asserted but for something less.

18 MJ: That the fact that it is there, the Court sees no unfair
19 prejudice to the admission of that document.

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

21 MJ: Captain von Elten?

22 ATC[CPT von ELTEN]: Thank you, ma'am.

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1 **DIRECT EXAMINATION (continued):**

2 Q. Mr. Pearson, what are we looking at on this page?

3 A. This is a continuation from the previous page.

4 Q.

5 A.

6

7

8

9 Q.

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11 A.

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16 Q.

17 A.

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21 ADC[MAJ HURLEY]: Ma'am, again we renew our 1001(b)(4) objection
22 and just a generalized relevance objection to this information.

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1 MJ: All right, noted.

2 ATC[CPT von ELTEN]: Your Honor, this is talking explicitly about
3 the information----

4 MJ: Excuse me?

5 ATC[CPT von Elten]: I thought you asked me to speak, ma'am.

6 MJ: I said, "noted".

7 ATC[CPT von ELTEN]: Oh, sorry, ma'am.

8 MJ: I assume you are putting this all in writing for tomorrow,
9 like the usual procedure.

10 ADC[MAJ HURLEY]: Yes, ma'am. And, so what we will do is
11 1001(b)(4) and then in addition to that, our relevance objection to
12 this line of testimony in the submission that we make to the Court.

13 MJ: Okay.

14 **DIRECT EXAMINATION (continued):**

15 Q. Mr. Pearson, what does this page say about

16 A. It says that,
17
18
19

20 Q. Thank you. Mr. Pearson, if you could please read the first
21 bullet?

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1 A.

2

3

4 Q. And, the second bullet--or, the second English bullet?

5 A.

6

7

8

9 Q. Now, Mr. Pearson, you talked about----

10 ADC[MAJ HURLEY]: Captain von Elten, if I could interrupt.

11 Ma'am, the 1001(b)(4) objection. And, if we could understand how Mr.

12 Pearson knows that this is a statement of WikiLeaks.

13 MJ: Well, you can explore that on cross.

14 ADC[MAJ Hurley]: Yes, ma'am.

15 Q. Mr. Pearson, you testified about a video, two different

16 versions of it. Did you ever see this video on any of these

17 websites?

18 A. Yes. I saw links to the video, yes.

19 Q. Can you please describe the contents of this page

20 generally, please?

21 A.

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Q. Who did that translation?

A. Whoever posted the video.

Q. No, who did the translation?

A.

ADC[MAJ HURLEY]: Again ma'am, 1001(b)(4) objection especially given the common nature of YouTube. And, it's not--

, I hope, and so that would be the basis of the defense's objection.

MJ: You testified earlier you searched YouTube using, what keywords?

WIT:

MJ: Your objection is noted. Put it in writing.

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1 **DIRECT EXAMINATION (continued):**

2 Q. What version of the video did they----

3 A. When I--from what I had seen, it was only the 17 minute
4 version, which is the heavily edited version.

5 Q. How often did you see the full version?

6 A. I only saw it once, and that was when WikiLeaks originally
7 put out the video, they had the 17 minute, and then as a--I believe
8 they called it a research version, was the 39, but that wasn't
9 propagated anywhere near as much.

10 Q. How often did you see the 39 minute version when you
11 searched for WikiLeaks using Arabic script?

12 A. I didn't see it at all.

13 Q.

14

15 A.

16 ADC[MAJ HURLEY]: Ma'am, again, our relevance objection and
17 specifically relevance if it is not offered for the truth.

18 MJ: All right.

19 ATC[CPT von ELTEN]: Returning Prosecution Exhibit 203 to the
20 court reporter. That is all, Your Honor.

21 MJ: Cross examination?

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1 ADC[MAJ HURLEY]: Yes, ma'am. May we--could we leave the
2 prosecution exhibit out for a second? Thanks. And I'll only speak
3 when near a microphone.

CROSS-EXAMINATION

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

6 Q. Mr. Pearson, good afternoon.

7 A. Good afternoon.

8 Q. Let's talk about the YouTube posting first, all right?

9 A. Sure.

10 Q. So, when it came to the YouTube postings, you don't know
11 who was making those posts, correct?

12 A. Which ones?

13 Q. Yes.

14 A. Do I know them, personally or from a--no, I don't know who
15 they were, necessarily, no.

16 Q. And it--with respect to those posting the comments, it
17 could have been anyone that speaks Arabic?

18 A. It could have been anyone that speaks Arabic, yes.

19 Q. It could have been an insurgent?

20 A. It could have been.

21 Q. It could have been a student?

22 A. I would actually rather it was an insurgent than a student.

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1 Q. Right.

2 A.

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6 Q. But it could've been anybody?

7 A. Yes, it could have been anybody.

8 Q.

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10 A.

11 Q.

12 A.

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14 Q.

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17 A.

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19 Q.

20

21 A.

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SECRET

1 Q.

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3 A.

4 Q.

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6 A.

7 Q.

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9 A.

10 Q.

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13 A.

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15 Q.

16

17 A.

18 Q.

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20 A.

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5 Q.

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7 A.

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11 Q.

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13 A.

14 Q.

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16 A.

17 Q.

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20 A.

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1 Q. And you--in our previous conversation today and the
2 previous conversations we've had, Mr. Pearson--you said that you,
3 essentially, saw three groups of information that were released by
4 WikiLeaks and discussed?

5 A. Yes.

6 Q. The first thing--not necessarily a group, but the first
7 thing--was

8 A. That's correct.

9 Q. And the second thing was --and
10 we just use the expression,

11 A. Yes, correct.

12 Q. And the third thing was the

13 A. That's correct.

14 Q. By far, the biggest reaction was to the video?

15 A. Yes.

16 Q. After that,
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19 A.
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Q.

A.

Q.

A.

Q. And you, personally, didn't report, in this report that we've been talking about, on any GTMO files, right?

A. No, I never looked into GTMO files.

Q. So there was--as we indicated before, there was some discussion around

A.

Q.

A. Okay.

Q. There was some discussion?

A. There was a lot of discussion.

Q. And that discussion included IED information?

A. Yes.

Q. And

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1 A.

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8 Q. And that's how they captioned it?

9 A. I don't believe--that's not the title of it, but that was
10 the analysis given by the person.

11 Q. Speaking of analysis, when the information was translated
12 back and forth, there was no--in the threads that you saw, there was
13 no analysis conducted on the information in Arabic, correct?

14 A. No,

15 . Then, right below that,
16 the person offered his analysis of what this shows.

17 Q. But that was cable by cable?

18 A.

19

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1 Q.

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3 A.

4 Q. And there may be other reasons that people--that traffic
5 is--it goes to the war logs, for instance?

6 A. I think it was general interest, yes, but there could be
7 other reasons, I'm sure.

8 Q. One of those reasons could be to check to--to check on
9 members of your family that have been missing as a result of these
10 conflicts?

11 A. I had never heard of any discussion of that, but I suppose
12 that's possible.

13 Q. Now, let's talk about the Department of State cables.

14

15

16 A. Absolutely.

17 Q. But,

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19 A.

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21 Q.

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1 A. That would be a good hypothesis, yes.

2 Q. And then--and that hypothesis is supported by your analysis

3

4 A.

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9 Q.

10 A. Right.

11 Q. So, when it came to the videos like, for instance, the
12 suite of YouTube videos that we saw posted--do you recall that image
13 that we--that you just looked at?

14 A. Uh-huh.

15 Q. Do you want me to put it back up?

16 A. Depends on what you're going to ask.

17 Q. Well, we'll just--I'll ask the question, we'll see where it
18 goes.

19 A. Okay.

20 Q. Did you watch the entire video with each one of those
21 posts, or did you just assess how long the video was?

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1 A. Well, some would be actually shorter. Some were 9 minutes
2 long, where they would actually take out--they would make it worse.
3 In fairness to the 17-minute version, there was some context--not as
4 much context as the 39-minute version, but there was some context.
5 They would actually shorten it to where there was even less context
6 as to what troops were doing there, so it was actually-----

7 Q. These--I'm sorry to cut you off. Go ahead.

8 A. Pardon me?

9 Q. These YouTube posters would cut that amount of information
10 off?

11 A. Yes. They can't add anything to it, they can only post as
12 is or they can take the original footage and splice it down.

13 Q. And these YouTube posters that would shrink that
14 information, they could often be members of the media?

15 A. Could they be members of the media? That's--if they were
16 and that did happen--for example, *Al Jazeera*, they would say that
17 they were with *Al Jazeera*. In fact, some of those Arabic versions
18 were used in *Al Jazeera* footage.

19 Q. In *Al Jazeera's* reporting on the information?

20 A. Yes, where they just showed the--I remember one was where
21 they just showed the moment that the group of men, which I assessed
22 to be the two Reuters journalists, and then a group of insurgents,

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1 there, with them--when they were gunned down; that instance. So, for
2 example, they would talk about it and then show just that part and
3 then nothing else.

4 Q. And that's consistent with your own experiences watching
5 American journalism? They would just use certain bits of footage?

6 A. True, but it's much--I mean, it's worse over in the Middle
7 East. When you're talking about *Al Jazeera*, it's certainly worse.

8 Q. There's a lot of discussion whether it was about the cables
9 or about the video or about the war log, right, that you observed a
10 lot of discussion?

11 A. Yes.

12 Q. Did anyone take responsibility in these discussion or was
13 it just a discussion of--a responsibility for any particular act, or
14 was it just a discussion of what had occurred.

15 A.

16

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21 Q. Yes.

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1 A. When it came to a group in Iraq or Afghanistan, I do
2 believe seeing them say that there--that this is us doing this.

3 Q. So, claims of responsibility for the information--for the--
4 on the data that was disclosed?

5 A. Which--exactly. Which wasn't surprising because they would
6 film their--they would film them making the bomb, the suicide bomber
7 hugging everybody, pictures of him smiling. They would have--sorry
8 for the term, but--a cheesy expression of him and his face in the
9 cloud and it was kind of a happy thing and then it would show them
10 loading up the car or truck and then a far off video and two or three
11 different camera angles of him blowing himself up and showing,
12 literally, this is who did this. So, they weren't trying to hide
13 anything. They'd be more than willing to prove that they had done
14 something; that was the way to do it--was to film it.

15 Q. Were there any other claims for responsibility for matters
16 not in the disclosures--for any other matters?

17 A. There was claims of responsibility for other things. As
18 far as specifically for what was in the cables or within the war
19 logs, I did see people who would make comments about, "Oh, this group
20 did this or this group did that,"

21

22 I know there was another claim about them

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1 executing somebody that couldn't be proved--that they executed
2 somebody because of the names that were released. I never found that
3 either. But they--there was talk of that. There was talk of, you
4 know, "We did this, we did that. Look, see."

5 Q. "Look, see," based on what was in the cables----

6 A. Yes.

7 Q. "Look, see," based on what was in the war logs?

8 A. Yes.

9 ADC[MAJ HURLEY]: Just one second, sir. Nothing further, sir.
10 Thank you.

11 Captain Von Elten, are you going to use this on redirect?

12 ATC[CPT VON ELTEN]: I don't believe so.

13 ADC[MAJ HURLEY]: All right.

14 [The assistant defense counsel returned PE 203 for identification to
15 the court reporter.]

16 **REDIRECT EXAMINATION**

17 **Questions by the assistant trial counsel [CPT VON ELTEN]:**

18 Q.

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20 A.

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4 Q.

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6 A.

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9 Q.

10 A.

11 Q.

12 A.

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1 Q.
2 you captured in PE 203?

3 A.

4

5 Q.

6 A.

7 Q.

8 A.

9 Q.

10 A.

11 Q.

12 Q.

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17 ATC[CPT VON ELTEN]: Retrieving Prosecution Exhibit 203.

18 Permission to publish?

19 MJ: Go ahead.

20 [The assistant trial counsel published PE 203 for identification on
21 the projected screen.]

22 [Examination of the witness continued.]

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1 Q.

2 A.

3 Q.

4 A.

5 Q.

6 A.

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10 Q.

11 A.

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21 Q. On cross-examination, you mentioned a "fence-sitter."

22 A. Yes.

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1 Q. What is a

2 A.

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16 Q.

17 A.

18 Q.

19 A.

20 ATC[CPT VON ELTEN]: Nothing further.

21 MJ: Anything further from the defense?

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

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1 ATC[CPT VON ELTEN]: Returning Prosecution Exhibit 203.

2 MJ: I just have one question.

3 **EXAMINATION BY THE COURT-MARTIAL**

4 **Questions by the military judge:**

5 Q.

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8 A.

9 Q.

10 A.

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12 Q.

13 A.

14 Q.

15 A.

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21 MJ: Any follow-up based on that?

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

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1 ATC[CPT VON ELTEN]: Just one question, ma'am.

2 **REDIRECT EXAMINATION**

3 **Questions by the assistant trial counsel [CPT VON ELTEN]:**

4 Q. What do you mean by "Google translation"?

5 A. If you go to Google Translate, you can translate a word, a
6 phrase; you can translate an entire website. And

7

8

9

10 Q.

11 A.

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14 ATC[CPT VON ELTEN]: Thank you.

15 MJ: I'm sorry, I do have one more question I forgot to ask you.

16 **EXAMINATION BY THE COURT-MARTIAL**

17 **Questions by the military judge:**

18 Q.

19

20 A. Yes, ma'am.

21 Q.

22

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1 A.

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4 Q.

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6 A.

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11 Q.

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13 A.

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15 Q.

16 A.

17 MJ: Any follow-up based on that?

18 ATC[CPT VON ELTEN]: No, Your Honor.

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

20 MJ: Okay. Temporary or permanent excusal?

21 ATC[CPT VON ELTEN]: Temporary, ma'am.

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

3 MJ: All right. Are we ready to proceed with the next witness?

4 TC[MAJ FEIN]: Ma'am, if we could have a brief comfort break and
5 then we'll have Mr. McCarl ready.

6 MJ: All right. How long do you need?

7 TC[MAJ FEIN]: Just 10 minutes, ma'am.

8 MJ: That fine for the defense?

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

10 MJ: All right. Court is in recess until 10 minutes after 1700
11 or 5 o'clock.

12 **[The court-martial recessed at 1658, 7 August 2013.]**

13 **[The court-martial was called to order at 1710, 7 August 2013.]**

14 MJ: Court is called to order. Let the record reflect all
15 parties present when the court last recessed are again present in
16 court. Anything we need to address before we call the witness?

17 TC[MAJ FEIN]: No, ma'am.

18 MJ: Please call the witness.

19 CDC[MR.COOMBS]: Actually, Angel----

20 ATC[CPT OVERGAARD]: Captain Von Elten is absent and----

21 TC[MAJ FEIN]: Thank you.

22 ATC[CPT OVERGAARD]: -----Captain Overgaard is present.

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1 TC[MAJ FEIN]: And, once again, I screwed that up, Your Honor.

2 MJ: I thought something looked different. Okay.

3 TC[MAJ FEIN]: Yes. All parties when the court last recessed
4 are not all present, ma'am. Captain Von Elten and Captain Overgaard
5 switched out.

6 MJ: All right. Mr. Coombs, thank you.

7 ATC[CPT OVERGAARD]: So the United States recalls for redirect,
8 Mr. McCarl.

9 **MR. JAMES MCCARL, civilian, was recalled as a witness for the**
10 **prosecution, was reminded of his previous oath, and testified as**
11 **follows:**

12 **REDIRECT EXAMINATION**

13 **Questions by the assistant trial counsel:**

14 Q. Sir,

15

16 A.

17 Q.

18

19 A.

20 Q.

21 A.

22 Q.

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1 A. Yes.

2 Q. Now, you talked on cross about the literacy problem at the
3 tactical level in both Iraq and Afghanistan. Was there a literacy
4 problem in either theater with the research and development folks?

5 A. No. That's not where you're going to find your literacy
6 problem.

7 Q. And

8

9 A.

10

11

12

13

14 Q. So,

15 A. They will not be the guys who employ the IEDs, themselves,
16 they will be the guys who are in some research environment where they
17 can think through how to reconfigure, how to improve a particular
18 type of IED.

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1 Q.

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3 A.

4 Q.

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7 A.

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10 Q.

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13 A.

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Q.

A. They were.

Q.

A.

Q. And, sir, based on your multiple years of experience

, would you, as the enemy, find the information released by WikiLeaks useful?

ADC[MAJ HURLEY]: Objection, ma'am, leading. And it's also--it also requires speculation from the witness.

MJ: Well, this falls within--rephrase that question.

[Examination of the witness continued.]

Q. As the enemy, sir, would you, based on your experience, find the information----

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1 MJ: You phrased it the same way.

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3 Q.

4

5 MJ:

6 Q. Okay, sir--or ma'am.

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8 A.

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

3 MJ: Got it.

4 [Examination of the witness continued.]

5 Q. And would that information make the enemy more effective
6 against U.S. forces?

7 A. Well, I think the answer is, clearly, yes.

8 ATC[CPT OVERGAARD]: One moment, please. No further questions.

9 MJ: Any re-cross?

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

11 **RE-CROSS EXAMINATION**

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

13 Q. Let's talk about the for a second.

14

15

16

17 A. I think it's more than that.

18 Q. And that includes the detailed information you're going to

19 see

20 A. You will find all of that in there.

21

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1 Q. The SIGACT isn't an _____, is it?

2 A. It is not, it is

3

4 Q. It's a--

5

6 A. A _____, that is correct.

7 Q. So--and I guess I just--in your mind right now, sir,

8

9

10 A. Well,

11

12

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14

15

16 Q. Sir, on that topic, the military is jargon-heavy, correct?

17 A. Right.

18 Q. And, even inside the military, it can be difficult for us

19 to understand each other if there isn't an understanding of the

20 jargon that we're using with each other?

21 A. I agree with that.

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1 Q. And, sometimes, it's even harder for military people, sort
2 of like yourself, a military man for 30 years, to communicate with
3 civilians if you use the jargon specific--that we, in the military,
4 have a tendency to use?

5 A. That's true.

6 Q. And that jargon would be like,

7 A. Could be.

8 Q.

9 A. Yep.

10 Q. And, if you didn't have the basis of information of that,
11 you would be left wondering as to what exactly that really meant?

12 A. But, of course, all of that is readily available on open
13 source. You can find all of that jargon, you can find all of those
14 explanations if you are interested in doing so.

15 Q. Did you include that open source analysis in--as you are
16 were doing this greater analysis for this particular information that
17 was disclosed, did--was there--for your open source team, did they
18 ever say, "Okay, what's really out there? Like, is this jargon out
19 there that's easily determinable?"

20 A. We did not ask that question.

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2 So, we did not ask them that question. I could, but I didn't.

3 Q. And, likewise,

4

5 A. That's correct.

6 Q. Now, you talked about,

7

what you could do

8 with certain bits of information, right? You talked about that, just

9 now, with Captain Overgaard?

10 A. Yes.

11 Q. And

12 A. It is, yes.

13 Q. And if you

14

15 A. Yes.

16 Q. As much as you could process?

17 A. Within the time limits that I have, yes.

18 Q. News reports--

19

20 A.

21 Q. Friendly forces field manuals?

22 A. In the time allotted, yes.

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1 Q. Friendly forces reports?

2 A. If it were germane to the question I was asked, yes.

3 ADC[MAJ HURLEY]: Thank you, sir. Nothing further.

4 MJ: Any last redirect?

5 ATC[CPT OVERGAARD]: No, ma'am.

6 MJ: All right. Mr. McCarl, I have a few questions.

7 **EXAMINATION BY THE COURT-MARTIAL**

8 **Questions by the military judge:**

9 Q. I believe you testified earlier

10

11 , is that correct?

12 A.

13

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18 Q. So you wouldn't--three in 2009 to 112 in----

19 A. 188.

20 Q. 188 in 2012?

21 A. Correct.

22 Q. Do you have the 2010 and 2011 statistics?

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1 A. I have them but I don't have them--

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3

4

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6 Q.

7 A. Yes.

8 Q.

9

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11 A. Rephrase your question. I'm not sure I understand.

12 Q. Did you testify as to when--I mean, when you were doing
13 your analysis, did you know when the--WikiLeaks released the----

14 A. Yes, we did.

15 Q.

16 A. Yes.

17 Q. And when was that, do you remember?

18 A. I believe it was--we understood, I think--we understood,
19 '09 where I think we were, but it may have been earlier.

20 Q. Well, assume the release was later,

21

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1 , I believe your testimony on direct was there was a correlation-

2 ---

3 A. Right.

4 Q. ----but not a causation?

5 A. That's correct. We said--what I said was that would--that
6 trend was already going up. That trend was already going up and we
7 already had--

8

9 Q. So, '09 was about when we first started seeing it.

10 Q. For you were asked to do the analysis of the impact of the
11 WikiLeaks releases,

12

13

14 A. No. The way we would say it was this:

15

16

17 Q. And a CCIR is?

18 A. A Commander's Critical Information Requirement because that
19 would, then, in turn, allow him to make decisions as to whether he
20 needed to affect a material change or whatever, from his perspective.
21 And so we were tracking it from that perspective all ready and
22 continued to do so, now.

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1 Q. I guess that's where the questions I have are going. If

2

3

4

5 A. We are.

6 Q. So you opined that the WikiLeaks releases may have--is your
7 opinion just that it occurred at the same time or it somehow caused
8 it?

9 A. No, what I said was we believed that it contributed to and
10 it seems to have a correlation with that rise.

11 Q. Why?

12 A. Because it's moving increasing numbers at the same--over
13 those years an increased number, and so a variety of factors would
14 cause the threat to do this.

15

16

17 Q. Do you believe they are--do you think that they already
18 knew that?

19 A.

20

21

22

so----

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1 Q.

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4 A.

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7 Q. Do you know what the body of evidence there was X-ing out
8 the WikiLeaks releases?

9 A. I can't cite a particular article or a particular--any
10 other thing other than the evidence that they had already begun
11 working on that particular concept.

12

13

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15 Q.

16 A.

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20 Q.

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1 A.

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8 Q.

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11 A.

12 Q.

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14 A.

15 Q. And you also testified--I'd just like to clarify your

16 testimony

17 A.

18 Q.

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21 A.

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3 Q.

4 A.

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Q. With the WikiLeaks releases, was there anything

A.

Q.

A. I did, but I--if you need me to repeat it, I will

Q. Maybe I just wrote something down. Let me look at my notes. Okay, if you would?

A.

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1 Q. And did you have an example of that one?

2 A. Of a----

3 Q.

4 A.

5

6

7 MJ: All right. Thank you. Any follow-up based on that?

8 ADC[MAJ HURLEY]: Yes, ma'am, I have some questions--or the
9 defense has questions.

10 MJ: Okay. Government, you go first.

11 ATC[CPT OVERGAARD]: Yes, ma'am. One moment, please. Thank
12 you.

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REDIRECT EXAMINATION

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Questions by the assistant trial counsel [CPT OVERGAARD]:

Q. Just to clear up the date, when did you first become aware--with--of the alleged release of the U.S. government information?

A. Well, when it came out on the news is when I became aware of it, but the first time we put our hands on it, we began to work the problem; it was in December of 2010.

Q. December 2010? And do you--

A. That was the

Q. And then how about the

A. That was in January of--

Q. Okay.

MJ: January of '11?

WIT: Yes, January of '11.

[Examination of the witness continued.]

Q. And you talked

A. To.

Q.

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1 A. Well, the information

2

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6 ATC[CPT OVERGAARD]: One moment. No further questions, ma'am.

7 MJ: Defense?

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

9

RE CROSS EXAMINATION

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

11 Q. So, as you recall,

12

13

14 A. Yes.

15 Q.

16

17 A.

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21 Q.

22

SECRET

SECRET

1 A.

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4 Q. Sometimes euphemisms don't translate very well, you would
5 understand--or do you agree with that proposition--that English
6 euphemisms or American euphemisms don't translate to other languages?

7 A. It may, yeah.

8 Q. All right. And I just want to make sure that we're
9 operating with the same definition from 2009 to 2012 about these--the
10 data that you reported to Colonel Lind.

11

12

13 A.

14

15 Q. So, during that time--and I believe you indicated this
16 before,

17 A.

18 Q.

19 A.

20 Q. All right.

21 MJ: Now--I'm sorry. That last--you said--the last----

22 WIT:

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1 [Examination of the witness continued.]

2 Q. Is there any way, in the--in any of those years, to know
3 how many were found or how many were exploded, or were they all just
4 grouped together?

5 A. Yes, but I can't break them out for you right now. We
6 could go back and look into the different reports and break those
7 into different groups.

8 A. And that's true for every one of those years that you
9 talked about? 2009, 2010, 11, and 12?

10 A. Yeah.

11 ADC[MAJ HURLEY]: Thank you, sir. Nothing further.

12 MJ: Anything else from the government?

13 ATC[CPT OVERGAARD]: No, ma'am.

14 MJ: All right. Temporary or permanent excusal?

15 ATC[CPT OVERGAARD]: Temporary, ma'am.

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

18 MJ: All right.

19 TC[MAJ FEIN]: Ma'am, just for the record, you accidentally said
20 Mr. Pearson not Mr. McCarl.

21 MJ: Apologize for me when you see him. Is there anything else
22 we need to address before we recess the court until 0930 tomorrow?

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1 TC[MAJ FEIN]: No, ma'am.

2 ADC[CPT TOOMAN]: One moment, ma'am.

3 TC[MAJ FEIN]: I'm sorry, one second.

4 [Counsel for both sides conferred.]

5 TC[MAJ FEIN]: Ma'am, based off today's testimony, the
6 government is assessing whether we still intend to call tomorrow
7 morning's witness at all. We've already notified the defense prior
8 to now and we're meeting with the prospective witness after this so,
9 we'll notify the Court. If we don't, Your Honor, the United States
10 recommends we reconvene at 9:30 because that's when we told the
11 public and then we'll figure out the next time to call the following
12 witness.

13 MJ: Okay. We can do that. So, we'll reconvene at 0930 anyway?

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

15 MJ: Okay. Anything else we need to address before we recess
16 the court?

17 ADC[MAJ HURLEY]: Not from the defense, ma'am.

18 TC[MAJ FEIN]: No, ma'am.

19 MJ: All right. I would like to see counsel for both sides with
20 Mr. Parra, just briefly before we leave tonight just for future
21 scheduling.

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

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1 MJ: All right. Court is in recess until 0930 tomorrow morning.

2 [The court-martial recessed at 1744, 7 August 2013.]

3 [END OF PAGE]

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