

Dispatch from GTMO

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Today's testimony was a continuation of yesterday's, and witnesses for both sides answered questions regarding the defense teams' inability to work over a secure e-network.

A senior Defense Department official, Air Force Colonel Karen Mayberry, testified that using the Internet at a Starbucks was probably a safer bet for the defense team than using the government's server. Colonel Mayberry stated that using the Internet at Starbucks was "the best option we had." She reiterated that she ordered defense teams in April to stop using the government server, citing the ABA rules of confidentiality and the need to protect the attorney-client privilege. The defense once again asked Colonel Mayberry questions regarding defense files that had been lost, stolen and altered and about third-party monitors that allegedly tracked the defense teams' research history.

In their cross, the prosecution argued that the defense is using these allegations as a means to delay the military commissions, especially since re-securing the system could take almost four months. On redirect, when defense counsel Cheryl Bormann asked Colonel Mayberry whether other agencies had experienced similar "tanking," the commission learned that these e-security issues were only happening to Guantánamo defense teams. Bormann noted that while in an average shoplifting case, the tanking issue might be bad, in "the most complicated case in a U.S. jurisdiction, losing several hundreds of thousands of pages is outrageous." Colonel Mayberry noted that this case is different than other high-profile cases, such as the recent one against Bradley Manning, because of the structure of the commission and the complexity of holding it at Guantánamo Bay.

According to Guantánamo-based Internet technology supervisor Scott Parr, files went missing as a result of a quick shutdown that happened right before the replication process. He explained to the commission that when the defense closed their servers without saving documents, they caused a "dirty shutdown," a term that the prosecution used to several times to emphasize that, in their view, the defense teams brought these problems upon themselves. One of today's witnesses, Wendy Kelly, the Guantánamo Operations Chief, was stopped short by Judge Pohl when counsel asked her how much a new, secure server would cost.

Perhaps the most shocking testimony came in the afternoon, when defense counsel David Nevin asked Brent Glover, of the Department of Defense's Washington Headquarters Services Identity Protection Management Team, about the purported monitoring of defense files. Glover told Nevin that the NSA, the same agency that looks at enemy combatants, has limited access to the defense teams' e-information. He explained that NSA can view the "To" field, the "From" field, the date, and the subject of the email. "Don't you think that's problematic?" Nevin asked Glover. "Well," Glover said, "defense teams could leave the subject line of their emails blank, so that they don't relay privileged information . . . so that [NSA] won't know what's in the email."

Today's events shed light on the importance of the attorney-client privilege and the need to ensure a fair

trial, one in which the defense teams are not at the mercy of the government's server. It also shed light, however, on the problems that technology may cause in general. During the evening, our NGO group debated back and forth: are these the types of problems that anyone might experience using any server? Is it possible that someone *not* using a government server could experience massive amounts of data loss? Is this something that the defense teams should be complaining about? If they established a viable work-around, should this issue be taking up Judge Pohl's time? What kinds of things did the defense teams likely have on those missing files? Strategy? Communications with clients?

Mr. Mohammed, Mr. al-Balucci, and Mr. bin-Attash were all present in the courtroom during today's proceedings. I was interested to see that the three men were all conversing with one another. Occasionally, the three detainees looked back at us sitting in the observer gallery.