SAIFULLAH PARACHA'S GITMO FILE CONTAINS SUSPECT DETAILS, BUT HIS DEFENSE ATTORNEY CAN'T POINT THEM OUT

I'm going to be in transit for another half day yet, but I wanted to comment on this motion David Remes, Gitmo detainee Saifullah Paracha's attorney, filed to request emergency access to the Detainee Assessment Brief on his client released by WikiLeaks on Monday. (h/t Benjamin Wittes) Remes describes the implications of the protection order he works under, noting specifically the warning DOJ sent out the other day.

> For example, because the government considers the documents classified, and counsel holds a "secret" security clearance, he is concerned that if he views the documents online, the government might revoke his clearance. Losing his clearance will disable him from continuing to represent his current or future detainee clients and jeopardize his ability to obtain further clearances. Counsel is concerned that the government may even prosecute him. To avoid any potential sanctions, undersigned counsel errs on the side of extreme caution and refrains from viewing the documents.
>
> The only place undersigned counsel can view these documents and fear no potential sanctions is at a Secure Facility the Justice Department has provided in the Washington area for counsel with "secret" level clearances. **To the best of counsel's knowledge, the Secure Facility contains no secure computer onto which the Wikileaks**

> **documents can be downloaded. Moreover, counsel is confident that the Justice Department will not ferry the documents to the Secure Facility for viewing and use by counsel**. Even if the leaked documents were made available for viewing and use by counsel at the Secure Facility, counsel located far from the Facility – some thousands of miles away – would have to journey to the Facility to view and use them. [my emphasis]

That is, Remes could view the documents in just one place without risking losing his clearance and his ability to defend his client, or even criminal sanctions—a DOJ Secure Facility. Yet DOJ is not going to make the documents accessible there. So he's SOL; he can't see them.

Remes goes on to describe how this prevents him from defending his client publicly, specifically because he can't comment for a big article the NYT did which (IMO) offered a credulous reading of Paracha's file. While that article contains a quote from ACLU National Security Project Director Hina Shamsi noting that the information in the files is uncorroborated, and while NYT admits much of the evidence derives from KSM whom they note was waterboarded, rather than point out obvious suspect details in Paracha's file, it simply repeats those details uncritically.

Here's just one reason why Remes needs to have access to the file to adequately represent his client and refute credulous readings of Paracha's file:

> (S//NF) The plan called for shipping explosives in containers that detainee used to ship women's and children's clothing to the US. Detainee agreed to this plan. **KU-10024 [Khalid Sheikh Mohammed] claimed in early March 2003, PK-10020 and PK-10018 [Ammar al-Baluchi, KSM's nephew] were arranging the details**

> **with detainee and his son Uzair**.
> KU-10024 stated detainee knew all the details of the plan. Uzair understood PK-10018 and PK-10020 were al-Qaida, but KU-10024 was unsure how much Uzair [Paracha's son] knew about the actual smuggling plan.8 [my emphasis]

There are, in general, just two kinds of evidence offered by KSM in March 2003: evidence the CIA itself claims was disinformation offered by KSM in his early days of captivity while he was still successfully resisting interrogation, and evidence offered up under torture, potentially one of the 183 waterboarding sessions KSM survived in March 2003.

It's unclear which category this piece of intelligence falls into, but the use of the verb "claimed" suggests there's something about the intelligence that may have led even the briefer on Paracha's file to doubt it.

The intelligence report cited for this detail (and therefore collected in March 2003), TD-314/16519-03, is cited three more times in Paracha's file, only one of which is corroborated by reports dated 2004 and 2005.

In other words, one of the claims against Paracha can be traced back to a March 2003 interrogation of KSM that no one should consider credible. The entire case against Paracha builds off this early interrogation.

There are a number of other reasons to doubt the "facts" laid out in Paracha's file. Notably, references to Aafia Siddiqui make no mention of her earlier reported detention by the US in Afghanistan, and instead claims "Siddiqui was detained in Afghanistan in mid-July 2008," thereby hiding a key detail as to the credibility of any intelligence Siddiqui may have offered (or, just as likely, making no mention of intelligence Siddiqui refuted during years of interrogation in US custody in Afghanistan).

Parts of Paracha's file reveal real weaknesses in the government's case against him. These are all very basic details Remes needs to point out, particularly if NYT reporters aren't going to read the file critically themselves. But given the way the protection order works, he can't do that.