

In the Matter Of:

JOE HOLCOMBE vs UNITED STATES

5:18-CV-00555-XR

LT. COLONEL ROBERT C. ROBERT BEARDEN

January 16, 2020



ESQUIRE
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1 IN THE UNITED STATES DISTRICT FOR
2 THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

3 JOE HOLCOMBE, et al.,) NO. 5:18-CV-00555-XR
4))
4 Plaintiffs,) Consolidated with:
5) 5:18-cv-00712-XR (Vidal)
5) 5:18-cv-00881-XR (Uhl)
6) 5:18-cv-00944-XR (Ramsey)
6 vs.) 5:18-cv-00949-XR (McNulty)
7))
7) 5:18-cv-00951-XR (Wall)
8 UNITED STATES OF) 5:18-cv-01151-XR (Amador)
8 AMERICA,) 5:19-cv-00184-XR (Brown)
9) 5:19-cv-00289-XR (Ward)
9) 5:19-cv-00506-XR (Workman)
10 Defendant.) 5:19-cv-00678-XR (Colbath)
10) 5:19-cv-00691-XR (Braden)
11) 5:19-cv-00706-XR (Lookingbill)
11) 5:19-cv-00714-XR (Solis)
12) 5:19-cv-00715-XR (McKenzie)
12) 5:19-cv-00805-XR (Curnow)
13) 5:19-cv-00806-XR (Macias)

14 VIDEOTAPED DEPOSITION OF
15 LIEUTENANT COLONEL ROBERT C. BEARDEN

17 PURSUANT TO NOTICE, the above-entitled
18 deposition was taken on behalf of the Plaintiffs at
19 Peterson Air Force Base, 135 Dover Street, Building
20 350, Suite 2068, Colorado Springs, Colorado, on
21 January 16, 2020, at 3:15 p.m., before Dawn Gage, a
22 Professional Court Reporter and Notary Public within
23 and for the State of Colorado.

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11 Also Present: Tom Rowles, Videographer

12
13 INDEX OF EXAMINATION

14 DEPONENT: LIEUTENANT COLONEL ROBERT C. BEARDEN
EXAMINATION PAGE
15 BY MR. ALSAFFAR: 9
16 BY MR. FURMAN: 211

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	Notice of Deposition Pages: 5	41
Exhibit 2	Biography United States Air Force, Lieutenant Colonel Robert C. Bearden Pages: 2	42
Exhibit 3	Work Paper on Interview of Lt. Col Robert Bearden, USAF Investigation of Devin Kelley Project 2018C004 Pages: 3	44
Exhibit 4	Duty Status Change Pages: 2	50
Exhibit 5	Biography Colonel Robert C. Bearden United States Air Force Pages: 2	43
Exhibit 6	(Not marked.)	--
Exhibit 7	Department of the Air Force Memorandum for 49 Logistics Readiness Sq From: AFOSI Detachment 225 Det 225 640 Delaware Ave (Bldg 293) Holloman AFB, NM 88330 Date: 15-Jun-2011 Bates: USA00014794	60
Exhibit 8	Department of the Air Force Memorandum for 49 LRS/CC AIC Devin Kelley From: 49th WG/CV Date: 21 October 2011 Bates: USA00014752-14753	66

EXHIBIT	DESCRIPTION	PAGE
Exhibit 9	Department of the Air Force Memorandum for AIC Devin Patrick Kelley From: 49 LRS/CC Date: 16 February 2012 Bates: USA00014743-14744	75
Exhibit 10	Department of the Air Force Memorandum for AIC Devin Patrick Kelley From: 49 LRS/CC Date: 17 April 12 Bates: USA00013387-00013388	107
Exhibit 11	Firearms Transaction Record Part I - Over-the-Counter Bates: USA00012908-12910	113
Exhibit 12	Firearms Transaction Record Part I - Over-the-Counter Bates: USA00012136-12140	113
Exhibit 13	Department of the Air Force Memorandum for 49 SFS From: 49 LRS/CCF Bates: USA00013372	117
Exhibit 14	Department of the Air Force Memorandum for 49LRS-CC-CCF From: 49 SFS/CC 750 First Street Holloman AFB NM 88330-8032 Bates: USA00014725-14730	123
Exhibit 15	Air Force Instruction 40-301 Date: 16 November 2015 Bates: USA00007575, 00007613-00007614, 00007579, 00007591-00007592	128
Exhibit 16	Letter from Barry Orlow to Shawn C. Simonton, SSA Date: None Bates: USA00005399-00005405	132

INDEX OF EXHIBITS (cont.)

EXHIBIT	DESCRIPTION	PAGE/ REFERENCED
Exhibit 17	MissionRecovery Bates: USA00013378	146
Exhibit 18	Department of the Air Force Memorandum for 49 WG/JA 49 WG/CC, PCRO IN TURN From: 49 LRS/CC Bates: USA00013374-00013377	150/ 156
Exhibit 19	Department of the Air Force Memorandum for 49 LRS/CC AIC Devin Kelley From: 49TH MSG/CC Bates: USA00013386	152
Exhibit 20	Charge Sheet Bates: USA00015086-00015089	167
Exhibit 21	Charge Sheet Bates: USA00015090-00015093	169
Exhibit 22	Report of Result of Trial Bates: USA00012947-00012948	173
Exhibit 23	Department of the Air Force Memorandum for SFS/S5/AV From: 49 LRS/CC Bates: USA00013324	180
Exhibit 24	Department of the Air Force Memorandum for 49 WG/CC From: 49 WG/JA Bates: USA00013318-00013319	193
Exhibit 25	Department of the Air Force Memorandum for Devin P. Kelley From: 49 WG/CC 490 First Street, Suite 1700 Holloman AFB NM 88330-8277 Bates: USA00013320-00013323	197

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS (cont.)

EXHIBIT	DESCRIPTION	PAGE
Exhibit 26	Review of Devin Kelley's Defense Manpower Data Center (DMDC) Installation Access Record Kelley Project 2018C004 Bates: USA00015641-00015643	200

(Exhibits 1 through 26 were attached to
the original transcript.)

1 DEPOSITION OF LIEUTENANT COLONEL ROBERT C. BEARDEN

2
3 January 16, 2020

4
5 THE VIDEOGRAPHER: Good afternoon. We 03:15
6 are now on the record. Here begins Video No. 1 in 03:15
7 the deposition of Colonel Robert Bearden testifying 03:15
8 in the matter of Joe Holcolmbe, et al., versus 03:15
9 United States of America for the United States 03:15
10 District for the Western District of Texas, San
11 Antonio Division.

12 Today's date is January 16, 2020, and the 03:15
13 time on the video monitor is 3:15. Your 03:15
14 videographer today is Tom Rowles and I'm 03:15
15 representing Esquire Deposition Solutions. 03:15

16 Will counsel and all present please 03:15
17 identify themselves and state whom you represent. 03:15

18 MR. ALSAFFAR: Jamal Alsaffar, for the 03:15
19 Plaintiffs. 03:15

20 MR. DEMERATH: Justin Demerath, for the 03:15
21 Plaintiffs.

22 MR. FURMAN: Austin Furman for the
23 Defendant, United States. 03:15

24 THE VIDEOGRAPHER: And on the phone. 03:15

25 MR. LeGRAND: George LeGrand for the

1 Plaintiffs. 03:16

2 MR. PEERY: Dennis Peery for the 03:16

3 Plaintiffs.

4 MR. BETTIS: Craig Bettis for the 03:16

5 Plaintiffs. 03:16

6 MS. GARZA: Chelsie Garza for the 03:16

7 Plaintiffs. 03:16

8 LT. COL PHILLIPS: Lt. Col Jeff Phillips 03:16

9 for the Air Force. 03:16

10 THE VIDEOGRAPHER: Okay. Thank you. The 03:16

11 court reporter today is Dawn Gage and she may now 03:16

12 swear in the deponent.

13 LIEUTENANT COLONEL ROBERT C. BEARDEN,
14 having been first duly sworn according to law, was
15 examined and testified under oath as follows:

16 EXAMINATION

17 BY MR. ALSAFFAR: 03:16

18 Q. Good afternoon, Colonel. How are you 03:16

19 doing? 03:16

20 A. Good, thanks. 03:16

21 Q. My name is Jamal Alsaffar. And we just 03:16

22 met today, didn't we? 03:16

23 A. Yes. 03:16

24 Q. Just so you know who I am, I represent 03:16

25 the families of the Sutherland Springs First Baptist 03:16

1 Church shooting that occurred on November 5th, 2017, 03:16
2 in Sutherland Springs, Texas. 03:16

3 A. Okay. 03:16

4 Q. And I want to ask you just a little bit 03:16
5 of background questions, and before I do, I just 03:17
6 want to go into a little bit about what a deposition 03:17
7 is. 03:17

8 Have you ever had a deposition taken before? 03:17

9 A. I have once. 03:17

10 Q. Okay. And what was that in? 03:17

11 A. It was a car accident that I was 03:17
12 involved in when I was a teenager. 03:17

13 Q. Okay. What I'd like to do is just make 03:17
14 sure you feel comfortable with some of the ground 03:17
15 rules.

16 A. Okay. 03:17

17 Q. And I'm sure Mr. Furman went over this a 03:17
18 little bit with you, as well, but -- but I want to 03:17
19 make sure that you feel comfortable with what those 03:17
20 are.

21 First of all, you just took an oath. And I 03:17
22 know we're sitting in a conference room, but I want 03:17
23 to make sure you understand the importance and
24 weight of that oath. 03:17

25 A. Yes. 03:17

1 Q. You understand that the oath that you 03:17
2 just took is the same oath that you would have taken 03:17
3 if we were in a court of law before a judge and jury 03:17
4 with the same penalties of perjury if you don't tell 03:17
5 the truth; do you understand that?

6 A. Correct, yes. 03:17

7 Q. Okay. And you're prepared to tell the 03:17
8 whole truth as you know it, under oath today, 03:17
9 correct? 03:17

10 A. Yes. 03:17

11 Q. Okay. Now, let me talk to you a little 03:17
12 bit about, you know, what a deposition is and some 03:17
13 of the ground rules. 03:18

14 Anytime you need a break, just let me know. 03:18
15 Generally, we take a break every hour or so at a 03:18
16 reasonable stopping point. Certainly, if you need 03:18
17 it for another reason, just let me know -- 03:18

18 A. Okay.

19 Q. -- and we'll come to a -- we'll come to 03:18
20 a stop. 03:18

21 A. Okay. 03:18

22 Q. We'll try to finish whatever area of 03:18
23 question I'm on, and then we'll -- we'll let you 03:18
24 have that. So you don't have to sit here for hours 03:18
25 at a time if you don't -- unless you want to. 03:18

1 Second, even though we have a court reporter 03:18
2 and even though we have a video -- videographer 03:18
3 videoing your testimony, please try to let me finish 03:18
4 my questions before you answer. Okay? 03:18

5 A. Okay. 03:18

6 Q. What I mean by that is, in your -- you 03:18
7 can -- in a normal conversation, you're going to 03:18
8 know what my question is before I'm really done with 03:18
9 it and you're ready to answer, and that'd be fine in 03:18
10 a normal conversation. 03:18

11 But in -- in this setting, we want to make 03:18
12 sure that your answers are accurate. And -- and to 03:18
13 do that, we need to make sure my question gets out 03:18
14 first. Okay? 03:18

15 A. I understand. 03:19

16 Q. And that helps our Madam Court Reporter, 03:19
17 because she can't take two conversations down at the 03:19
18 same time -- well, she probably could, but most 03:19
19 normal ones can't. Okay? Fair enough? 03:19

20 A. Fair. 03:19

21 Q. So if -- the reason I say that, too, is 03:19
22 that in a normal conversation, if I -- if I put my 03:19
23 hand out (indicating) and say, Let me finish, or 03:19
24 something along those lines, Boy, that's -- like, 03:19
25 that's a rude person. 03:19

1 In this setting, I might do that. And that's 03:19

2 not intended to be rude, it's actually intended to 03:19

3 make sure that your testimony is accurate. Okay? 03:19

4 So sometimes I may just put my hand out just
5 to say, Hey, I'm still -- let me finish. 03:19

6 There's another element at work here -- where 03:19
7 are you originally from, by the way? 03:19

8 A. I grew up in Oklahoma. 03:19

9 Q. Okay. Well, then you kind of 03:19
10 understand. I'm from Texas. We don't always talk 03:19
11 as fast as other people. And it can be sometimes 03:19
12 frustrating to wait for us to get done with our 03:19
13 question. 03:19

14 And so that may be an element, too. I may 03:19
15 just put my hand out, let you know, I'm almost done 03:19
16 (indicating) before you can answer. All right? 03:19

17 A. Okay. 03:19

18 Q. Along those same lines, I'll try not to 03:19
19 interrupt you. And if I do, or if you feel like I'm 03:19
20 cutting you off -- it's not intentional, by the 03:20
21 way -- but if you feel like I'm doing that, please 03:20
22 feel free to tell me, Hey, sir, I've still got a 03:20
23 little bit more to say and I will let you -- let you 03:20
24 talk. All right? 03:20

25 A. Okay. 03:20

1 Q. And if you don't understand a question 03:20
2 of mine, let me know. It's very important to me, 03:20
3 actually, that you understand these questions in 03:20
4 this case. And that you understand what I'm asking 03:20
5 you because this is a very important matter. 03:20

6 And your testimony is very important to me, 03:20
7 to these families and to the case. So if you don't 03:20
8 understand it, please let me know so I can make sure 03:20
9 you do. All right? 03:20

10 A. All right. 03:20

11 Q. By the same token, then, can we get an 03:20
12 agreement that I do ask you a question, you don't 03:20
13 ask me to rephrase it and you answer, I can assume 03:20
14 that you both understood my question and that the 03:20
15 answer you gave was as -- a full answer to that 03:20
16 question, so I can move on? 03:20

17 A. Yeah, that's fair. 03:20

18 Q. The only other thing is head nods and 03:20
19 uhs-huhs, right? There may be an occasion -- you're 03:21
20 doing a good job so far -- but there may be an 03:21
21 occasion were you just nod your head in agreement or 03:21
22 in disagreement, or you say uh-huh or yep or 03:21
23 something along those lines, and Madam Court 03:21
24 Reporter here will put down, Witness nods head or 03:21
25 "u-h, u-h" and -- and that's it. 03:21

1 And even though everyone in the room and the 03:21
2 video may understand what you mean, again, going 03:21
3 back to really caring about the accuracy of your 03:21
4 testimony, I may, from time to time, say, Colonel, 03:21
5 was that a yes? Was that a no? 03:21

6 And again, that would be rude normally, but 03:21
7 that's not my intention. It's to make sure that 03:21
8 I -- we get your testimony accurately down on paper. 03:21

9 A. That's fair. 03:21

10 Q. Is that fair? Okay? 03:21

11 A. Fair.

12 Q. Enough with that boring stuff. Let 03:21
13 me -- let me ask you a little bit about your 03:21
14 preparation, if you don't mind -- 03:21

15 A. Sure. 03:21

16 Q. -- for this deposition. Can you tell me 03:21
17 what you reviewed in preparation for this 03:21
18 deposition? 03:22

19 A. So, Mr. Furman and I went over some of 03:22
20 the documents yesterday, some of the memoranda that 03:22
21 I had signed, charge sheet that I had signed. Email 03:22
22 traffic from the legal office back to me. And those 03:22
23 kinds of things. 03:22

24 Q. Okay. And you said you -- you reviewed 03:22
25 these documents yesterday? 03:22

1 A. Yes. 03:22

2 Q. Did you review them in person with 03:22

3 Mr. Furman? 03:22

4 A. I did. 03:22

5 Q. Okay. Now, I'm not asking you to tell 03:22

6 me what you talked about because that's between you 03:22

7 and the attorney, but prior to that, had you been 03:22

8 sent any documents to look at via email or other 03:22

9 format to review in preparation for your deposition? 03:22

10 A. I had not. 03:22

11 Q. Okay. So the entire universe of 03:22

12 documents you reviewed was yesterday in person given 03:22

13 to you by Mr. Furman? 03:22

14 A. That's correct. 03:22

15 Q. Okay. In terms of people you met with 03:22

16 in preparation for your deposition, who did you meet 03:22

17 with? 03:22

18 A. I met with Mr. Furman. 03:22

19 Q. Anybody else? 03:22

20 A. No. 03:22

21 Q. Did you talk about anybody else in the 03:22

22 Air Force or otherwise, not including Mr. Furman, 03:22

23 about your deposition or about the case and your 03:23

24 involvement in it prior to taking this deposition? 03:23

25 A. I did. 03:23

1 Q. Okay. Can you tell me about that? 03:23

2 A. So the Air Force legal office originally 03:23
3 contacted me and said, Hey, we're going to need to 03:23
4 schedule a deposition. I shot a note to my 03:23
5 commander letting him know that I'll be doing a 03:23
6 deposition. 03:23

7 And I also shot one to our judge advocate 03:23
8 there at the Air Force academy. At the time, I 03:23
9 assumed it was going to occur there at the academy, 03:23
10 so I wanted him to be aware that it -- you know, if 03:23
11 it was going to be on his facility. 03:23

12 And then I had a conversation with, you know, 03:23
13 my commander, the chief and the director of staff, 03:23
14 our small group, that, Hey, I'm going to be out. 03:23
15 I've got to do this deposition, you know, so... 03:23

16 Q. In any of those conversations -- I'm 03:23
17 sorry, those communications, did you discuss the 03:23
18 factual matter that you'd be testifying on? 03:23

19 A. Only -- only that it was related to 03:24
20 Airman Kelley and that I was squadron commander at 03:24
21 the time when he was at Holloman. 03:24

22 Q. Okay. Did they respond to that in any 03:24
23 way relating to subject matter of the case or the 03:24
24 testimony? 03:24

25 A. No. 03:24

1 Q. Okay. And let me ask you -- 03:24

2 MR. ALSAFFAR: Actually, Austin -- or, 03:24

3 Mr. Furman, I'm sorry, can you just read into the 03:24

4 record for me the documents that you reviewed with 03:24

5 Colonel Bearden in preparation for his deposition? 03:24

6 MR. FURMAN: I can do that and I can give you 03:24

7 a copy of this was of the debarment request has a 03:24

8 DoD IG Bates of 180, but no USA Bates. 03:24

9 We also reviewed USA15086 through 92, the 03:24

10 Devin Kelley charge sheet. USA14963, letter to 49th 03:24

11 Wing Commander dated July 26th, 2012. 03:24

12 USA 14860, letter to 49th Wing Commander 03:25

13 dated August 15th, 2012. USA 13356 through -59, 03:25

14 Report of Result of Trial. 03:25

15 USA 13360, Recommendation Regarding Security 03:25

16 Clearance dated November 14th, 2012. A Duty Status 03:25

17 Change document that doesn't have a Bates. Here's a 03:25

18 copy. 03:25

19 (Document tendered.) 03:25

20 MR. ALSAFFAR: Do you know what -- this copy 03:25

21 you're handing me doesn't have a Bates or a DoDIG 03:25

22 number on it, so has this been produced? 03:25

23 MR. FURMAN: I'm sure it has, yes. 03:25

24 MR. ALSAFFAR: Okay. Do you know what it is? 03:25

25 What the production number is, Bates number is? In 03:25

1 other words, I know this one doesn't have one on it, 03:25

2 but do you know what the Bates number is? 03:25

3 MR. FURMAN: I don't. 03:25

4 MR. ALSAFFAR: Okay. 03:25

5 MR. FURMAN: He also reviewed USA14704 03:26

6 through -709, the Letter of Reprimand dated 03:26

7 April 17th, 2012. And lastly, USA 17623 through 03:26

8 -25, Pretrial Confinement memo. 03:26

9 MR. ALSAFFAR: Okay. 03:26

10 Q. (By Mr. Alsaffar) Is it okay to refer
11 to you as Colonel Bearden? 03:26

12 A. Sure.

13 Q. That's your current rank, correct? 03:26

14 A. That's correct. 03:26

15 Q. Okay. Colonel, can you tell us what
16 your current employment situation is with the Air
17 Force? 03:26

18 A. So, I'm the Vice Commander in the 10th
19 Air Base Wing at the United States Air Force
20 Academy. 03:26

21 Q. How long have you been there? 03:26

22 A. About 18 months. 03:26

23 Q. All right. And can you tell us what
24 time period you were stationed at Holloman Air Force
25 Base in New Mexico? 03:27

1 A. Sure. I was there from June of 2012 to 03:27
2 June of 2014. 03:27

3 Q. And what was your position while you 03:27
4 were at Holloman Air Force Base from June of 2012 to 03:27
5 June of 2014? 03:27

6 A. Correct. I was the commander of the 03:27
7 49th logistics readiness squadron. 03:27

8 Q. All right. And how would you describe 03:27
9 your job duties and responsibility as commander of 03:27
10 the Logistics Readiness Squadron at the 49th? 03:27

11 A. All right. So, I was responsible for 03:27
12 the morale, health, welfare of that unit. And that 03:27
13 unit -- that unit's mission, which was to provide 03:27
14 logistics support to the 49th Wing and it's units. 03:27

15 Q. And who was the person immediately above 03:27
16 you in your chain of command in terms of supervisory 03:27
17 authority?

18 A. That was Colonel Kevin Bennett. He was 03:27
19 the 49th Mission Support Group Commander. 03:27

20 Q. Kevin Bennett, 49th Mission Support 03:28
21 Group Commander? 03:28

22 A. Correct. 03:28

23 Q. And what was his rank? 03:28

24 A. Colonel. 03:28

25 Q. Colonel. Okay. And who was above him 03:28

1 in the chain of command? 03:28

2 A. Colonel Andy Croft, or Andrew Croft, is 03:28

3 the 49th Wing Commander. 03:28

4 Q. Who was above Colonel Croft in your 03:28

5 chain of command at the time you were at Holloman 03:28

6 Air Force Base?

7 A. I honestly don't remember. 03:28

8 Q. Okay. What was the position? 03:28

9 A. So, yeah. So he would have a numbered 03:28

10 Air Force commander, a three-star commander and a 03:28

11 four-star at Air Combat Command. 03:28

12 Q. So there would be a -- when you say 03:28

13 "numbered Air Force," I believe this number was 03:28

14 12th? 03:28

15 A. Right. 03:28

16 Q. So 12th Air Force. And you said that 03:28

17 would be a one-star general? 03:28

18 A. So typically, that's a three-star. Or, 03:28

19 I think -- I think then it was a three-star -- 03:29

20 Q. Okay.

21 A. -- and now it may not be. And then the 03:29

22 Air Combat Command Commander is a four-star. 03:29

23 Q. Okay. Air Combat Commander, ACC, would 03:29

24 be the one supervisory commander above the 12th Air 03:29

25 Force Commander? 03:29

1 A. Correct. 03:29

2 Q. And who's above the ACC? 03:29

3 A. So the chief of staff of the Air Force 03:29
4 and the Secretary of the Air Force. 03:29

5 Q. Secretary is over the chief of staff, 03:29
6 right? 03:29

7 A. Correct. 03:29

8 Q. And the Secretary of Air Force reports 03:29
9 to the President? 03:29

10 A. That's correct. 03:29

11 Q. Okay. All right. Thank you for taking 03:29
12 me through -- the chain of command is always 03:29
13 important for us to understand in these situations. 03:29

14 All right. Now, who was immediately below 03:29
15 you under your command in a supervisory level while 03:29
16 you were at Holloman Air Force Base? 03:29

17 A. So I had several subordinates. I had 03:29
18 several flight commanders. So squadron 03:30
19 organization, you have the commander and then you 03:30
20 have the flights. 03:30

21 For example, a fuels flight, a 03:30
22 material-management flight. A vehicle-management 03:30
23 flight. So there were four or five, I don't 03:30
24 remember, flight commanders that worked for me. 03:30

25 Q. Okay.

1 A. I had a senior enlisted leader, a chief, 03:30
2 E-9, that was the squadron chief that worked for me. 03:30
3 A major, who was the operations officer, squadron 03:30
4 operations officer that worked for me. 03:30

5 The First Sergeant, who was, you know, my 03:30
6 advisor on enlisted discipline and those kinds of 03:30
7 issues. And then my secretary. And I think that's 03:30
8 it for the subordinates that I had. 03:30

9 Q. Okay. Okay. Thank you for that. What 03:30
10 was the rank of the four or five flight commanders, 03:30
11 what was their rank generally? 03:31

12 A. They tend to be first lieutenants or 03:31
13 captains. 03:31

14 Q. And then, what is generally the rank of 03:31
15 the squadron chief? 03:31

16 A. Chief Master Sergeant, E-9. 03:31

17 Q. And then you said you had major -- a 03:31
18 major level of -- as a squadron's operations 03:31
19 officer, did I get that right? 03:31

20 A. Correct. 03:31

21 Q. Okay. And that was the rank of major? 03:31

22 A. Rank of major, duty title, operations 03:31
23 Officer. 03:31

24 Q. Okay. Thank you. Thank you for that. 03:31
25 And you were describing -- you described for me a 03:31

1 little bit -- well, I think you described fairly 03:31
2 what your -- your responsibilities were when you 03:31
3 were a commander of the -- can we just call it "LRS" 03:31
4 for Logistics Readiness Squadron for the rest of
5 this deposition? 03:31

6 A. Yes. 03:31

7 Q. Okay. Be on the same page, and I'll try 03:31
8 to do that and make sure we make it as efficient as 03:31
9 possible.

10 You've already given me a description of your 03:32
11 job responsibilities while you were a commander of 03:32
12 the 49th LRS at Holloman Air Force Base. So, what I 03:32
13 would like to do is just ask you a couple of quick 03:32
14 questions about your background. 03:32

15 First of all, while you were squadron -- 03:32
16 excuse me, while you were the commander of the LRS 03:32
17 49th division at Holloman Air Force Base, you 03:32
18 were -- you were at all times, a federal employee of 03:32
19 the federal government, correct? 03:32

20 A. Correct. 03:32

21 Q. And while you were a commander at 03:32
22 Holloman Air Force Base, you were working within the 03:32
23 course and scope of your employment for the federal
24 government, correct? 03:32

25 MR. FURMAN: Objection; legal conclusion. 03:32

1 You can answer.

2 MR. ALSAFFAR: You can answer. 03:32

3 A. Yes. 03:32

4 Q. (By Mr. Alsaffar) Oh, one thing I did 03:32
5 not tell you about deposition ground rules. We both 03:32
6 may object during the deposition, that's normal. 03:32

7 You are still required to answer the question. 03:32

8 And you -- normally, you'll hear an objection 03:32
9 sound like "objection; form," something along those 03:32
10 lines. And that's just some legal stuff we have to 03:32
11 do to preserve the record. 03:32

12 It doesn't mean that you cannot answer the 03:32
13 question; in fact, you still should answer the 03:33
14 question.

15 The only time you shouldn't answer a question 03:33
16 is if he specifically instructs you and says, 03:33
17 Colonel Bearden, I'm instructing you not to answer 03:33
18 that question. Does that make sense? 03:33

19 A. I understand. 03:33

20 Q. Okay. All right. And I apologize, I 03:33
21 didn't tell you that. 03:33

22 Now, can you tell -- can you give me your 03:33
23 understanding of why you're testifying today? 03:33

24 A. So, Airman Devin Kelley was assigned to 03:33
25 my unit subsequent to his service in the Air Force. 03:33

1 He committed some heinous crimes. 03:33

2 And now, you know, the various survivors and 03:33
3 families of those that were killed and injured are 03:33
4 suing in a civil proceeding for damages. 03:33

5 And being that I was his commander at the 03:33
6 time you-all are interested in, I'm sure, how I 03:33
7 handled that, what I did and why I did it. 03:34

8 Q. Okay. Well, that's pretty good -- 03:34
9 that's a pretty good summation. 03:34

10 And when did you first become aware of what 03:34
11 happened to these families in that little church in 03:34
12 Sutherland Springs, Texas?

13 A. So I think it was the day of, I got a -- 03:34
14 if I remember right, it was a text message from one 03:34
15 of my former folks, or an email, saying, Sir, wasn't 03:34
16 this Airman Kelley in our unit? And that's the way 03:34
17 I learned about it. 03:34

18 Q. Okay. And who was it that -- who did 03:34
19 you think it was that texted you? 03:34

20 A. I think it was Nathan McLeod-Hughes, who 03:34
21 was my operations officer at the time that I was the 03:34
22 commander. 03:34

23 Q. I got a chance to meet Major Hughes and 03:34
24 talk to him about this case, as well -- 03:34

25 A. Right. 03:34

1 Q. -- recently. Did you -- when -- when 03:34
2 Major Hughes contacted you after the shooting, did 03:34
3 he remember who Devin Kelley was? 03:35

4 A. So, as I recall, he sent something to me 03:35
5 saying, Hey, Sir, isn't this Airman Devin Kelley? 03:35
6 And then I shot a note to my former First Sergeant, 03:35
7 then Chief Wolfe, and said, Hey, isn't this Devin 03:35
8 Kelley, you know, our Devin Kelley? 03:35

9 Q. Yeah.

10 A. And then he said yes -- 03:35

11 Q. And your -- 03:35

12 A. -- the fact it was. 03:35

13 Q. See, I did it wrong. I interrupted you. 03:35
14 I apologize. You mentioned First Sergeant Wolfe, 03:35
15 that's First Sergeant Tracy Wolfe, correct?

16 A. That's correct. 03:35

17 Q. Okay. And First Sergeant Tracy Wolfe 03:35
18 was your First Sergeant at Holloman Air Force Base 03:35
19 while Devin -- when Devin Kelley was on that base, 03:35
20 correct? 03:35

21 A. That's correct. 03:35

22 Q. Okay. Did you have any -- did you have 03:35
23 a memory of Devin Kelley when you heard about this 03:35
24 shooting? 03:35

25 A. I did. So, I -- I remembered seeing him 03:35

1 in our holding cell there at Holloman. And I 03:35
2 remembered seeing him when he came back from prison 03:36
3 at Mira Mar and did, I guess, what you would call, 03:36
4 you know, the final exit interview with me. It was 03:36
5 my final chance to talk to him before he was 03:36
6 released from the Air Force. 03:36

7 Q. And I just want to make sure that the 03:36
8 record is clear is that, you remembered specifically 03:36
9 meeting in person with Devin Kelley at the holding 03:36
10 cell in Holloman Air Force Base in 2012? 03:36

11 A. That's correct. 03:36

12 Q. And you also remember meeting personally 03:36
13 with Devin Kelley when he was -- when he served -- 03:36
14 finished out his prison sentence at Mira Mar and was 03:36
15 returned back to Holloman Air Force Base for 03:36
16 out-processing; is that -- 03:36

17 A. That's correct. 03:36

18 Q. Okay. And when you were told about the 03:36
19 mass shooting that he committed in Sutherland 03:36
20 Springs at that church, did you immediately 03:36
21 remember, oh, I remember meeting with him on those 03:37
22 occasions and I remember who he was? 03:37

23 A. Yes. 03:37

24 Q. Okay. And did you remember anything 03:37
25 else about Devin Kelley, other than those two 03:37

1 in-person meetings that you had with him? 03:37

2 A. No. I mean, I remember his -- his case 03:37

3 and, you know, things associated with it. 03:37

4 Q. So that's what I want to know. I would 03:37

5 just like to know what your independent recollection

6 was of Devin Kelley's case and the things associated 03:37

7 with it, as you put it. Can you tell what that was? 03:37

8 A. Sure. I remembered that, you know, this 03:37

9 was an airman that we had -- after I took command 03:37

10 that, you know, I met with in the -- the holding 03:37

11 cell. 03:37

12 My -- my memory was flawed. I thought that 03:37

13 he had -- at the time, I was thinking that he had 03:37

14 previously been convicted, but after reviewing the 03:37

15 documents, I now remember that, no, I served him the 03:37

16 charges and then -- then he was convicted. 03:38

17 And that, you know, he went to Mira Mar, 03:38

18 served his prison sentence. Came back to the unit 03:38

19 and then was discharged and sent to the -- back to 03:38

20 civilian life. 03:38

21 Q. Um-hum.

22 A. The thing that -- your specific question 03:38

23 about, you know -- I think if I understand, 03:38

24 you're -- you're interested in what went through my 03:38

25 mind when I heard that this was him. 03:38

1 And that was that I remember him being in my 03:38
2 office and me telling him, essentially, Look, you've 03:38
3 paid your debt to society. 03:38

4 Q. Right. 03:38

5 A. And you're leaving the Air Force, but 03:38
6 you can go make something of yourself. And I don't 03:38
7 remember the -- the words, but that was the memory 03:38
8 that when I heard about this horrific incident. 03:38

9 That's what came to mind was me telling him 03:38
10 that on the day that we finally out-processed him 03:39
11 out of the Air Force. 03:39

12 Q. And what do you remember about the -- 03:39
13 the time period while you were commander of the 49th 03:39
14 LRS at Holloman, the time period when Devin Kelley 03:39
15 was actually being investigated and prosecuted on 03:39
16 your base; do you -- do you remember that period? 03:39

17 A. Actually, very little. So, you know, 03:39
18 I -- I took command on the 30th of June. I remember 03:39
19 that because that was my anniversary. 03:39

20 So I took command on my wedding anniversary 03:39
21 and then I relinquished command two years later on 03:39
22 my anniversary, so I remember those two dates. 03:39

23 But aside from that, my -- my association 03:39
24 with Airman Kelley at the time was really limited to 03:39
25 two in-person incidents, separated by a time that he 03:39

1 was in prison. 03:39

2 And so, you know, everything else, all my 03:39
3 other dealings were, you know, paperwork that First 03:40
4 Sergeant's working with the legal office, you know, 03:40
5 Hey, Sir, we need you to sign this, we need -- you 03:40
6 know, we need to -- legal office, Hey, Colonel 03:40
7 Bearden, you need to read, you know, these charges 03:40
8 to him. 03:40

9 That's the incident where I met him in the 03:40
10 holding cell, you know, those kinds of things. So 03:40
11 pretty limited interactions with him as an 03:40
12 individual.

13 Q. And when you say, Read these charges to 03:40
14 him, you're talking about the point at which he was 03:40
15 indicted with charges, but yet to be tried of those 03:40
16 charges? 03:40

17 A. That's correct, yes. So I had to -- 03:40
18 they gave me -- it's, essentially, a script that I 03:40
19 had to read to him saying, Hey, you're being charged 03:40
20 with the following. We had to sign it. And then, 03:40
21 you know, his court-martial followed those charges. 03:40

22 Q. And the time that you took command of 03:40
23 Holloman Air Force Base was June 30th, 2012, by that 03:40
24 time, you're aware that Devin Kelley had already had 03:41
25 multiple accusations of domestic abuse and assault 03:41

1 of -- of -- abuse of a child levied against him; you 03:41
2 knew that, right? 03:41

3 A. Actually, I -- I didn't. I knew that we 03:41
4 had an airman that was in the holding cell in 03:41
5 pretrial confinement, as we call it. And that there 03:41
6 was going to be charge -- a court-martial for him. 03:41

7 But the specificity of what he had done and 03:41
8 that kind of thing, no, at my change of command, I 03:41
9 wasn't aware of those details. 03:41

10 Q. How did you -- how were you made aware, 03:41
11 Colonel, of, when you came to the Holloman Air Force 03:41
12 Base command June 30, 2012, how were you made aware 03:41
13 of Devin Kelley's situation? 03:41

14 A. So, I don't remember for sure. 03:41

15 Q. Okay. 03:41

16 A. My turnover with my predecessor was 03:41
17 pretty limited, which isn't uncommon. Typically, 03:42
18 you know, we keep those fairly short, and tell -- 03:42
19 you tell the inbound commander, you know, Hey, this 03:42
20 is -- these are some of the big issues and that kind 03:42
21 of thing. 03:42

22 I assume -- I don't remember this, but I 03:42
23 assume that Frank Marconi, who was my predecessor, 03:42
24 you know, told me, Hey, you've got a -- an airman in 03:42
25 pretrial confinement and, you know, legal and the 03:42

1 First Sergeant will get you caught up on the 03:42
2 details, you know, but I honestly, I don't remember 03:42
3 how I got the specificity of what he had been 03:42
4 charged with. 03:42

5 Certainly, when it came to, you know, the day 03:42
6 where legal came and said, All right, sir, you need 03:42
7 to go to the holding facility and you need to read 03:42
8 him these charges; well, certainly, at that time, I 03:42
9 would have been aware of the details because I had 03:42
10 to read to him what he was charged with. 03:43

11 Q. Okay. So, you -- when we see the charge 03:43
12 sheet, those are the charges and the indicted and 03:43
13 specifications against Devin Kelley, that's what's 03:43
14 listed on there? 03:43

15 A. That's correct. 03:43

16 Q. Right? And so, we've gone through the 03:43
17 indictment process at that part. And the next step 03:43
18 is the trial process, right? 03:43

19 A. That's correct. 03:43

20 Q. So when you were doing that with Devin 03:43
21 Kelley at the point as the commander at Holloman Air 03:43
22 Force Base, you-all -- you knew and the base knew at 03:43
23 that point that you-all -- you had reasonable 03:43
24 grounds to believe that he had committed those 03:43
25 offenses so that they could now go to trial? 03:43

1 A. I would only correct a couple things: 03:43

2 One, you said that, you know, I was the commander of 03:43

3 Holloman Air Force Base, I -- I wasn't, of the LRS. 03:43

4 And that certainly I knew, but to go so far 03:43

5 as to say that the base knew, you know, I -- from me 03:43

6 doing that, I can't -- I don't think that's a -- a 03:43

7 logical leap to assume that the base knew that that 03:43

8 was the case. 03:44

9 Q. I think those are two fair points, so if 03:44

10 you don't mind, I'm going to correct my mistake so 03:44

11 that your testimony is clear. So I'll limit it 03:44

12 to -- to you -- 03:44

13 A. Okay.

14 Q. -- and I want to correct the way I 03:44

15 phrased your -- we've been taking so many folks at 03:44

16 various levels that when that happens, I want to 03:44

17 encourage you to correct me, and I appreciate when 03:44

18 you do because then I can actually get it more 03:44

19 accurate for the record. 03:44

20 A. Oh, absolutely. 03:44

21 Q. And I thank you for that. 03:44

22 So when -- so at that point when you were 03:44

23 meeting with Devin Kelley the first time, shortly 03:44

24 after June 30, 2012, you, as the commander of the 03:44

25 49th LRS at that point had reasonable grounds to 03:44

1 believe that he had committed those offenses charged
2 against him and you were -- you-all were getting 03:44
3 ready for the trial? 03:44

4 A. That's correct. 03:44

5 Q. Okay. And you had -- you had 03:44
6 mentioned -- I think you had mentioned just a minute 03:44
7 ago -- and it was going to be in my next question, 03:44
8 so I think you were just a step ahead of me -- was, 03:44
9 I think you stated that to get up to speed, so to 03:44
10 speak, on what Devin Kelley's situation was when you 03:45
11 were told that you had to go meet him in the 03:45
12 confinement facility, that you spoke with your First 03:45
13 Sergeant and -- and legal -- 03:45

14 A. Um-hum. 03:45

15 Q. -- to try to get up to speed; did I get 03:45
16 that correctly? 03:45

17 A. That -- so, close. Certainly, legal 03:45
18 came to me and, you know, and they said, All right. 03:45
19 Here's this -- this is how this is going to go. 03:45

20 You know, the unique thing is that, as a 03:45
21 squadron commander, this isn't something that you 03:45
22 would have normally done. In fact, that's the only 03:45
23 time in two separate times being in command that 03:45
24 I've ever done that. 03:45

25 And so the legal advice and guidance on how 03:45

1 this needs to go, the specificity of you have to 03:45
2 read every word to him, you know, this has to be 03:45
3 done in his presence, all of that. So -- so, they 03:45
4 came to me with this is -- this is how this needs to 03:45
5 happen. 03:46

6 Q. Okay. And when you say legal came to 03:46
7 you, you're talking about the staff judge 03:46
8 advocate -- 03:46

9 A. That's correct.

10 Q. -- office.

11 A. Yes. The staff judge advocate office at 03:46
12 49th Wing at Holloman, one of their lawyers came to 03:46
13 me and said, Okay. This is how this needs to 03:46
14 proceed. 03:46

15 Q. Do -- do you happen -- and by the way, 03:46
16 we have that document, it's right here (indicating) 03:46
17 in this horribly large-looking file, and we'll go 03:46
18 through it. 03:46

19 And -- but do you just happened to remember 03:46
20 from memory who that staff judge advocate was? 03:46

21 A. I don't. I -- I remember it being a 03:46
22 male. 03:46

23 Q. Okay. And the -- you said the -- I 03:46
24 think the other person who helped you with this was 03:46
25 the First Sergeant? 03:46

1 A. Right. 03:46

2 Q. Was it Tracy Wolfe? 03:46

3 A. Correct, yes. So, Sergeant Wolfe was my 03:46

4 First Sergeant. And -- in a -- in a squadron, that 03:46

5 First Sergeant is working back and forth with legal 03:46

6 getting things in order, bringing them to the 03:46

7 commander. 03:46

8 So, oftentimes, in legal situations where 03:46

9 you're dealing with something with an airman, that's 03:47

10 the person that's going between with. 03:47

11 If my memory serves, though, for this 03:47

12 specific, you know, incident where I'm going to meet 03:47

13 with him, if I remember right, legal actually came 03:47

14 to see me and say, Okay, sir, here's what you have 03:47

15 to do. This is -- you have to read every word. You 03:47

16 have to sign it in his presence, that kind of thing. 03:47

17 Q. Okay. And do you know what Tracy 03:47

18 Wolfe -- First Sergeant Tracy Wolfe's role was in 03:47

19 helping you get up to speed and what she -- what he 03:47

20 was doing to get you the information you needed? 03:47

21 A. Sure. So, he would have been 03:47

22 corresponding with legal, you know, working with the 03:47

23 secretary to get the time on my calendar to have 03:47

24 legal come in and speak to me, brief me up, 03:47

25 coordinate it with Security Forces on the time for 03:47

1 us to go over and -- and meet with Airman Kelley, 03:47
2 you know, all of those kinds of details. 03:48

3 He would, you know, speak to me about -- so 03:48
4 I'll fast forward a little bit -- 03:48

5 Q. Sure.

6 A. -- so when Airman Kelley was coming back 03:48
7 from prison, he said, Okay, sir, you know, you need 03:48
8 to be aware, he made threats against the unit prior 03:48
9 to you taking over the unit. We should take some 03:48
10 precautionary measures to make sure that we're -- we 03:48
11 keep the unit safe when he gets back. 03:48

12 So, those are examples of the kinds of things 03:48
13 that Sergeant Wolfe, as a -- as a First Sergeant, 03:48
14 would be doing for me as a commander. 03:48

15 Q. So in June -- the June 30th, 2012, time 03:48
16 frame when you were getting caught up to speed about 03:48
17 Devin Kelley's past, Tracy Wolfe was one of the 03:48
18 persons who let you know about his history on 03:48
19 Hollo -- at Holloman, correct? 03:48

20 A. So, certainly, Sergeant Wolfe let me 03:48
21 know about his history. As far as the timeline of 03:48
22 when he did that and, you know, the specific dates, 03:49
23 I don't remember. 03:49

24 Q. That's okay. We'll -- we'll try to get 03:49
25 the --

1 A. Okay.

2 Q. -- dates down with documents. This is 03:49
3 helpful just to get me a 35,000-foot view of what 03:49
4 was happening when you got there, because you got 03:49
5 there right in the middle of this Devin Kelley mess. 03:49
6 And -- and so it's helpful for me to understand how 03:49
7 you got caught up to speed going forward. 03:49

8 So, I think, generally, what you're telling 03:49
9 me is Tracy Wolfe communicated to you in some 03:49
10 fashion that, Hey, Colonel, you need to know, this 03:49
11 person, Devin Kelley. Was -- I believe you said 03:49
12 someone who made threats against the unit, and we 03:49
13 need to take precautions to protect the people in 03:49
14 our unit from Devin Kelley? 03:49

15 A. For clarity, he did do that when Airman 03:49
16 Kelley was coming back from Mira Mar. 03:49

17 Q. Okay.

18 A. And so you-all have a memo that I signed 03:49
19 asking for some specific debarment things and that 03:49
20 kind of thing.

21 So that's when he -- he told me, Hey -- I 03:50
22 remember for sure then, that he told me, Hey, 03:50
23 this -- this guy has threatened the unit before, 03:50
24 that kind of thing. I don't remember him telling me 03:50
25 anything like that shortly after my change of 03:50

1 command. 03:50

2 Q. That's helpful. Thank you. Okay. So 03:50

3 what you're telling me that this -- what you're 03:50

4 saying is that this communication about, Hey, 03:50

5 Colonel, Devin Kelley's made threats against the 03:50

6 unit and we need to protect the unit from Devin 03:50

7 Kelley was when he was being brought back to 03:50

8 Holloman after serving his sentence at Mira Mar? 03:50

9 A. That's correct. Yes. So I was trying 03:50

10 to offer that as examples of things, you know, 03:50

11 that -- where he's trying to, you know, guide or 03:50

12 advise -- 03:50

13 Q. Um-hum.

14 A. -- me as a commander. But, you know, at 03:50

15 the time when I got there, he wouldn't have had a 03:50

16 reason to do that because Airman Kelley was in 03:50

17 pretrial confinement, right, so he wouldn't be 03:50

18 telling me that he was a threat to the unit. 03:51

19 So that -- that's -- I was just trying to 03:51

20 give you the clarity that when he made me aware of 03:51

21 that, that I remember for sure, was when he was 03:51

22 coming back from Mira Mar. 03:51

23 Q. And -- and so what you're saying is that 03:51

24 when -- when you got to the base at Holloman, Devin 03:51

25 Kelley was in jail, so he wasn't a threat to anyone 03:51

1 because he was in jail? 03:51

2 A. That's correct. 03:51

3 Q. And did anyone at Holloman Air 03:51

4 Force Base -- around the time you arrived in the 03:51

5 June 12, 2012, time frame, try to get you up to 03:51

6 speed and inform you of what they knew about Devin 03:51

7 Kelley up to that point, end of June or early July

8 of 2012? 03:51

9 A. I honestly don't remember. 03:51

10 Q. That's okay. 03:51

11 A. I do remember legal talking to me about 03:51

12 the charge sheet and that kind of thing, but I don't 03:51

13 remember. 03:51

14 Q. Okay. Well, let's go through a couple 03:51

15 of things.

16 A. Okay.

17 Q. And we'll start -- we'll just start

18 rocking through these and -- and getting some more

19 specifics on the record.

20 First, let me just back up a little bit. I'm 03:51

21 going to hand you Deposition Exhibit No. 1. 03:52

22 (Deposition Exhibit 1 was marked for

23 identification.) 03:52

24 Q. (By Mr. Alsaffar) This is simply just 03:52

25 called a Deposition Notice. This is essentially,

1 the subpoena to appear. 03:52

2 And I don't know whether you've seen this 03:52

3 before. Have you ever seen this before? 03:52

4 A. I have not. 03:52

5 Q. Okay. I'm sorry, did you say, I have 03:52

6 not? 03:52

7 A. I have not. 03:52

8 Q. Okay. And very simple, we just ask you 03:52

9 to bring in your CV, which we have now, and any 03:52

10 documents you reviewed in preparation for the 03:52

11 deposition. And I think you've identify all those 03:52

12 already, correct? 03:52

13 A. Yes, sir. 03:52

14 Q. And just out of abundance of being 03:52

15 thorough, have you brought anything, document-wise, 03:52

16 with you to this deposition? 03:52

17 A. I just brought my biography. 03:52

18 Q. Okay. Great. Might was well look at it 03:52

19 since you brought, because I think I have it, but I 03:52

20 always like to compare. 03:52

21 (Document tendered.) 03:52

22 Q. (By Mr. Alsaffar) Colonel, I'm going to 03:52

23 hand you what's been marked as Deposition Exhibit 03:53

24 No. 2. 03:53

25 (Deposition Exhibit 2 was marked for 03:53

1 identification.) 03:53

2 Q. (By Mr. Alsaffar) Deposition Exhibit 03:53

3 No. 2 is actually the CV or biography of you that 03:53

4 was provided to us by the United States before 03:53

5 today. 03:53

6 A. Okay. 03:53

7 Q. And I believe it says that it's current 03:53

8 as of January 2017, correct? 03:53

9 A. That's correct. 03:53

10 Q. And -- and so this Exhibit No. 2 looks 03:54

11 like an accurate representation of your biography as 03:54

12 of January 2017, correct? 03:54

13 A. Yes, sir. 03:54

14 (Deposition Exhibit 5 was marked for
15 identification.) 03:54

16 Q. (By Mr. Alsaffar) All right. And then, 03:54

17 let's go ahead and I'm going to hand you Exhibit 03:54

18 No. 5, which is a biography that you provided to me 03:54

19 just today, correct? 03:54

20 A. Correct. 03:54

21 Q. That's a true and correct copy of your 03:54

22 biography? 03:54

23 A. Yes. 03:54

24 Q. And Exhibit 5 is current as of January 03:54

25 2019? 03:54

1 and then I'll ask you a question or two. 03:55

2 A. Okay. 03:55

3 Q. Just tell me when you're done. 03:55

4 (Deponent perused document.) 03:55

5 A. Okay. 03:58

6 Q. (By Mr. Alsaffar) Okay. And, 03:58

7 Colonel Bearden -- is Exhibit No. 3, correct? 03:58

8 A. That's correct. 03:58

9 Q. Is Exhibit No. 3 a -- a fair and 03:58

10 accurate representation of the statement that you 03:58

11 gave to the DoD IG investigators? 03:59

12 A. It is. 03:59

13 Q. And so is there -- everything in there 03:59

14 in terms of the restatement of your testimony, is it 03:59

15 true and correct and accurate? 03:59

16 A. It seems to be the -- the one thing it 03:59

17 talks about my -- I assumed command from Frank 03:59

18 Marconi, if I read this right, who provided the 03:59

19 information regarding Kelley being in confinement, 03:59

20 and then it goes into the two --

21 Q. Um-hum.

22 A. -- face-to-face interactions. So, 03:59

23 certainly, those two fact-to-face interactions, I 03:59

24 don't think, you know, Frank Marconi would have had 03:59

25 awareness of that, but maybe that's -- maybe I'm 03:59

1 just reading -- understanding the wording -- 03:59

2 Q. Yeah.

3 A. -- wrong, but... 03:59

4 Q. Other than that, is there anything in 03:59

5 here that you feel is misrepresenting what you told 03:59

6 the IG? 03:59

7 A. No, sir. 03:59

8 Q. Okay. Thank you for that. I notice on 03:59

9 Page 2 of your statement, Exhibit No. 3, you clarify

10 for the DoD IG that the threats that you had, been 04:00

11 informed about Kelley were of an 04:00

12 active-shooter-type-threat -- 04:00

13 A. Yes, sir.

14 Q. -- do you see that? That is an accurate 04:00

15 representation of what you told them? 04:00

16 A. Yes, sir. So, the -- you know, as I was 04:00

17 mentioning a minute ago, you know, the First 04:00

18 Sergeant prior to Kelley's return said he had made 04:00

19 threats about shooting up the unit and leadership. 04:00

20 So it wouldn't surprise me that when I was 04:00

21 talking to them, I'd used that language, an 04:00

22 active-shooter-type incident. 04:00

23 Q. And so, when we're talking about him, 04:00

24 this time frame in 2012 when you were at the command 04:00

25 LRS 49th when you were describing the threats that 04:00

1 Devin Kelley had made were of an active-shooter 04:00
2 type, we're talking about a mass-shooting-type 04:00
3 threat that he was making to the unit? 04:00

4 A. Right. So the First Sergeant had 04:00
5 advised me that he had made threats of shooting, you 04:00
6 know, leadership and the implication was, you know, 04:01
7 not against one person, multiple individuals, which 04:01
8 I think is to your point. 04:01

9 Q. Yes, it is. Thank you. All right. So, 04:01
10 at that time, you -- you knew, at least when you 04:01
11 were -- at this time in sort of the June/July 2012 04:01
12 time frame, and all the way throughout the time 04:01
13 Devin Kelley was convicted, you knew that -- that, 04:01
14 you know, you were dealing with a very dangerous 04:01
15 person? 04:01

16 A. Again, for clarity -- 04:01

17 Q. Yes, sir. 04:01

18 A. -- when Sergeant Wolfe let me know about 04:01
19 that, it was when he was coming back. I mean, 04:01
20 that's -- that's when I remember him saying, Hey, 04:01
21 sir, we need to take some precautions because he had 04:01
22 made these threats. 04:01

23 I don't remember if somebody told me about 04:01
24 those threats previously, but I definitely remember 04:01
25 it when he was coming back, because that's when we 04:01

1 took some additional precautions. 04:01

2 Q. And that would have been in the March 04:01

3 2013 time frame? 04:01

4 A. '13, yes, sir. 04:02

5 Q. Okay. So when -- from the time that 04:02

6 you -- whatever the time frame you were made aware 04:02

7 of these specific threats of Devin Kelley, that 04:02

8 Devin Kelley was making against the unit, these 04:02

9 active-shooter, mass-shooting-type threats, 04:02

10 certainly, by the end of March 2013, you were aware 04:02

11 that Devin Kelley was a very dangerous person who 04:02

12 was threatening to kill multiple people with guns, 04:02

13 correct? 04:02

14 A. That's correct. 04:02

15 Q. I see. 04:02

16 A. And that's -- you know, that's -- 04:02

17 you-all have a copy of that memo that I issued in -- 04:02

18 in direct response to the advise from my First 04:02

19 Sergeant that, you know, we had a reason to be 04:02

20 concerned with him coming back into the unit. 04:02

21 Q. So, at that -- that time, you were aware 04:02

22 that Devin Kelley proposed that -- I'm sorry. Let 04:02

23 me restate that.

24 At that time, so we'll say the March 2013 04:02

25 time frame, you specifically, as the commander of 04:03

1 LRS 49th, were aware that Devin Kelley presented a 04:03
2 specific risk of harm to the public, including your 04:03
3 unit? 04:03

4 MR. FURMAN: Objection to form; you can 04:03
5 answer. 04:03

6 A. So, to my unit. You said "to the 04:03
7 public." What I was made aware of is that he had 04:03
8 made threats against the prior leadership. 04:03

9 Q. (By Mr. Alsaffar) Right. 04:03

10 A. And so, I wanted to take steps to ensure 04:03
11 that nothing bad were to happen as he out-processed, 04:03
12 which is, you know, not uncommon as you're 04:03
13 out-processing folks, you know, that if they have a 04:03
14 beef with their leadership, you know, you want to 04:03
15 think through those kinds of things. 04:03

16 Q. (By Mr. Alsaffar) I'll -- I'll be happy 04:03
17 to rephrase it.

18 So, at that time, March 2013, as the 04:03
19 commander of the 49th LRS at Holloman, you -- you 04:04
20 knew specifically that Devin Kelley proposed an 04:04
21 increased risk of harm to people in your unit at the 04:04
22 base? 04:04

23 A. That's -- 04:04

24 MR. FURMAN: Objection to form; you can 04:04
25 answer. 04:04

1 A. That's correct. 04:04

2 Q. (By Mr. Alsaffar) Okay. Let me -- let 04:04
3 me take a step back, if I can. Mr. Furman provided 04:04
4 me with a document that doesn't have a Bates stamp 04:04
5 number on it, but I'm sure -- and I -- I think I've 04:04
6 seen this before, but this looks like a document 04:04
7 that was produced to us in this case. 04:04

8 But you had specifically said that you had 04:04
9 reviewed this document. And so, if you don't mind 04:04
10 looking at it and just tell me what it is. I'm 04:04
11 going to hand you Exhibit No. 4. 04:04

12 (Deposition Exhibit 4 was marked for
13 identification.) 04:04

14 A. Okay. So it's a Duty Status Change. 04:04

15 Q. (By Mr. Alsaffar) Um-hum.

16 A. So it's an electronically signed duty 04:04
17 status change changing Airman Devin Kelley's duty 04:04
18 status from military confinement as a sentenced 04:04
19 prisoner to present for duty. 04:05

20 So this would have likely been done in the 04:05
21 personnel system upon his return from the brig at 04:05
22 Mira Mar. 04:05

23 Q. Did -- does it -- what is the date of 04:05
24 this document, if you can tell me? It's got a 04:05
25 backside to it just so you know, Colonel. 04:05

1 A. Yes. So it is digitally signed. The 04:05
2 first digital signature is on 1 April 2013, and the 04:05
3 last digital signature is on 4 April 2013. 04:05

4 Q. Who are the digital signatures on that 04:05
5 document? 04:05

6 A. They are from Senior Airman Aviane, from 04:05
7 myself, Lieutenant Colonel then, Robert Bearden, 04:05
8 from Staff Sergeant Vargas. Senior Airman Aviane, 04:05
9 Staff Sergeant Vargas. 04:05

10 Civilian Denise Foley, Airman First Class 04:05
11 Lawrence, Staff Sergeant Ramirez. GS-7, civilian 04:05
12 Evelyn Kemp, Staff Sergeant Vargas, again. And then 04:06
13 a Tech Sergeant Shannon. 04:06

14 Q. What is the significance of this 04:06
15 document and why did you review it, if you know, in 04:06
16 preparation for your deposition? 04:06

17 A. So -- 04:06

18 (Mr. Demerath left the deposition room.) 04:06

19 MR. FURMAN: And I'm just going to instruct 04:06
20 you not to -- if I told you anything, not to repeat 04:06
21 that. It's your understanding of the document. 04:06

22 MR. ALSAFFAR: I agree.

23 THE DEPONENT: I understand. 04:06

24 A. So, I don't -- from preparation, I don't 04:06
25 have anything from preparation for deposition, but 04:06

1 by looking at it, it's a -- it's a military document 04:06
2 used to change an individual's status. 04:06

3 So I'd like to say just about every day in 04:06
4 your time on active duty is accounted for, you're 04:06
5 either in a leave status, present for duty, 04:06
6 et cetera, et cetera. 04:06

7 And so this is changing his status from 04:06
8 having been a prisoner to being present for duty. 04:07

9 Q. (By Mr. Alsaffar) Okay. 04:07

10 A. So my assumption, given the date of 31 04:07
11 March at 925 hours for the effective date of when 04:07
12 this happened, was this would be when he came back 04:07
13 from Mira Mar and is being out-processed, which is 04:07
14 likely why it's going through all the Air Force 04:07
15 personnel center and that kind of thing. 04:07

16 So it's -- it's my understanding -- I'm not 04:07
17 an Air Force personnel, it's my understanding, this 04:07
18 would be to change his status to, Okay, now he's 04:07
19 back in the unit -- 04:07

20 Q. Um-hum.

21 A. -- which then allows us as the unit to 04:07
22 work through our personnel flight, military 04:07
23 personnel flight to out-process him from the Air 04:07
24 Force. 04:07

25 Q. Okay. At this stage in the 04:07

1 out-processing process after he served his sentence, 04:07
2 he's released from prison, he's back on base to be 04:07
3 out-processed, what, if anything, did you do, either 04:08
4 your command or anyone under your command, do to 04:08
5 ensure that Devin Kelley's fingerprints were either 04:08
6 taken at that point, processed at that point, or 04:08
7 submitted to the FBI? 04:08

8 A. So, my -- my command, as the -- you 04:08
9 know, the LRS, Logistics Readiness Squadron, did not 04:08
10 have any responsibility for taking his fingerprints 04:08
11 or submitting his fingerprints in any kind of 04:08
12 database. That's outside our role. 04:08

13 So, you know, not unlike this duty status 04:08
14 change that has to go to other offices to be 04:08
15 processed, that would have been handled by another 04:08
16 office. 04:08

17 Q. Where -- would Devin Kelley, when he was 04:08
18 going through out-processing at Holloman Air Force 04:08
19 Base around April 2013, would he have been required 04:08
20 at Holloman Air Force Base to go to those other 04:09
21 squadrons, like the 49th Security Forces or the 04:09
22 AFOSI detachment to ensure that those things, 04:09
23 fingerprints, conviction reporting to the FBI were 04:09
24 done before you let him free? 04:09

25 A. So, I don't know. I -- it's unlikely to 04:09

1 me that he would have had to go to OSI and Security 04:09
2 Forces, because he had previously been convicted, he 04:09
3 had served his time and now he's out-processing. 04:09

4 There is a process so -- where we have an 04:09
5 out-processing checklist. And, typically, your 04:09
6 typical situation is that, you know, a member comes 04:09
7 back -- I say -- I say "typical" and I'll -- I will 04:09
8 give you some clarity on that here in a second -- a 04:09
9 member comes back from jail. 04:09

10 You assign an escort. You give them the 04:09
11 checklist and the escort makes sure they get around 04:10
12 to all of the locations on the checklist to be 04:10
13 properly out-processed from the base. 04:10

14 The specificity that I offered on "typical," 04:10
15 is what was atypical in this case, as you've seen in 04:10
16 the -- the memorandum I signed is that I asked the 04:10
17 Security Forces Squadron to provide a guard in 04:10
18 addition. 04:10

19 What is on that out-processing checklist and 04:10
20 all the agencies that they have to go see, I'm 04:10
21 unaware of, but I -- I do think it would be unlikely 04:10
22 that he would have had to go to see those agencies 04:10
23 unless there was something, you know, that he had to 04:10
24 pick up from them or something like that. 04:10

25 (Mr. Demerath returned to the deposition 04:10

1 room.) 04:10

2 Q. (By Mr. Alsaffar) Was there anything on 04:10
3 your out-processing checklist that would have drawn 04:10
4 your attention to anything related to 04:10
5 fingerprint-processing submission or conviction 04:10
6 reporting to the FBI to make sure that was done 04:10
7 before he was set free? 04:11

8 A. I don't know. 04:11

9 Q. You'd have -- you don't know -- 04:11

10 A. I don't know because I don't know what 04:11
11 was all on that out-processing checklist. 04:11

12 Q. Where can I find this out-processing 04:11
13 checklist (indicating) that was used -- 04:11

14 A. So -- 04:11

15 Q. -- that was used at Holloman Air Force 04:11
16 Base at the time that Devin Kelley was being 04:11
17 out-processed? 04:11

18 A. So, the out-processing checklist would 04:11
19 have likely been generated by our military personnel 04:11
20 flight -- 04:11

21 Q. Um-hum.

22 A. -- which was part of our Force Support 04:11
23 Squadron, so another squadron on base, would have 04:11
24 given, you know, the First Sergeant, and, Here's the 04:11
25 out-processing checklist. 04:11

1 He would have likely given it to the escort, 04:11
2 and then the escort would have been going around 04:11
3 with the individual, but the military personnel 04:11
4 flight is typically at -- I would go so far to say 04:11
5 at every Air Force Base I've been assigned to that I 04:11
6 can remember, that's who manages the out-processing 04:12
7 checklist. 04:12

8 Q. Okay. So the -- a good place to look -- 04:12

9 A. Yes, sir. 04:12

10 Q. -- to find this out-processing checklist 04:12
11 at Holloman Air Force Base would be the military 04:12
12 personnel flight? 04:12

13 A. Yes, sir. 04:12

14 Q. Now, it may be there, but that's a good 04:12
15 place to look for it -- 04:12

16 A. Correct. 04:12

17 Q. -- that's a start. Okay. Now, in this 04:12
18 particular situation with Devin Kelley because -- 04:12
19 and please correct me if I'm being inaccurate -- but 04:12
20 because of the specific threat that he posed to 04:12
21 people on base in your unit, you actually had a 04:12
22 specific Security Forces -- 49th Security Forces 04:12
23 person there at all times with Devin Kelley during 04:12
24 out-processing -- 04:12

25 A. Because -- 04:12

1 Q. -- first of all; is that correct? 04:12

2 A. That is -- I -- that is mostly correct. 04:12

3 I would just clarify. 04:12

4 Q. Go ahead.

5 A. Because Sergeant Wolfe made me aware of 04:12

6 prior threats he had made against our unit, so you 04:12

7 said the base, I'm not aware that he had made any 04:12

8 against the base.

9 Q. Well, the unit's in the base. 04:12

10 A. But the unit is -- 04:12

11 Q. Yes --

12 A. -- on the base -- 04:13

13 Q. Yes.

14 A. -- but, to me, there is a difference 04:13

15 there --

16 Q. Sure.

17 A. -- between having threatened to shoot 04:13

18 people up on the base versus the leadership in the 04:13

19 unit. 04:13

20 Because of that threat, yes, sir, you -- you 04:13

21 stated correctly that I asked the Security Forces 04:13

22 Squadron to provided an armed guard, in addition to 04:13

23 the escort, which would have been typical. 04:13

24 Q. Okay. So you had an escort, which is 04:13

25 typical. And then you had a -- specifically, had an 04:13

1 armed guard from the 49th Security Forces also 04:13

2 present, which is atypical for Devin Kelley? You 04:13

3 had that for Devin Kelley? 04:13

4 A. Yes, sir. 04:13

5 Q. All right. So, can you tell me the 04:13

6 process you went through to -- prior to Devin Kelley 04:13

7 getting there for out-processing to notify the 49th 04:13

8 Security Forces that you needed someone there, and 04:13

9 tell me how that happened. 04:13

10 A. So, I don't remember for sure. I likely 04:13

11 either called the fellow squadron commander, so the 04:13

12 commander of the Security Forces Squadron, or 04:13

13 emailed and made my request, one of those two. 04:13

14 Q. Okay. Let me make sure I understand 04:14

15 this correctly.

16 So, in order to get a Security Forces armed 04:14

17 guard to escort and be present with Devin Kelley at 04:14

18 the times during out-processing before he was 04:14

19 released into the public, you would have either 04:14

20 called or emailed the 49th Security Forces Squadron 04:14

21 commander at Holloman -- Holloman Air Force Base? 04:14

22 A. Yes, sir. That's correct. 04:14

23 Q. And it's okay if you don't remember at 04:14

24 the time when this was going on, do you know who -- 04:14

25 do you remember who the 49th Security Forces 04:14

1 commander was? 04:14

2 A. I didn't remember until yesterday and I 04:14
3 saw the documents. It was lieutenant Colonel Boyd. 04:14
4 And I think I knew him as Woody. 04:14

5 Q. Okay. Okay. And when you contacted the 04:14
6 49th Security Forces commander about Devin Kelley 04:14
7 needing an armed guard to protect his -- the unit, 04:14
8 what, if anything, did the 49th Security Forces 04:15
9 discuss with you about his fingerprint status, his 04:15
10 conviction reporting status to the FBI? 04:15

11 A. I don't remember any discussion about 04:15
12 that. 04:15

13 Q. Okay. And, at that time, in April 2013, 04:15
14 when the Security Forces was brought in to guard and 04:15
15 escort Devin Kelley to protect the unit, did they 04:15
16 provide you with any information, checklist or 04:15
17 any -- any other investigative from Security Forces 04:15
18 to check on whether those fingerprints and 04:15
19 convictions were submitted to the FBI? 04:15

20 A. No, sir. 04:15

21 Q. Okay. So let's go back to -- well, back 04:15
22 in time a little bit. I kind of want to reverse 04:15
23 engineer your knowledge and what was going on at the 04:15
24 49th during this time period that Devin Kelley was 04:15
25 being investigated for these various criminal acts 04:15

1 at Holloman Air Force Base. 04:15

2 Let's start in June 2011 -- are you doing 04:16

3 okay, by the way? 04:16

4 A. I'm doing fine. 04:16

5 Q. Okay. I'm going to hand you 04:16

6 Exhibit No. 7. 04:16

7 (Deposition Exhibit 7 was marked for

8 identification.)

9 A. Thank you.

10 Q. (By Mr. Alsaffar) Exhibit -- you're 04:16

11 welcome. Exhibit No. 7, Colonel, is marked USA 04:16

12 14794; do you see that at the bottom right? 04:16

13 A. Yes. 04:16

14 Q. And I -- I -- just so you know what that 04:16

15 is on the bottom right, that is a litigation number 04:16

16 that is specific to this case. 04:16

17 What -- when you see a USA followed by a 04:16

18 number, that means that the United States of America 04:16

19 provided this document to me? 04:16

20 A. Okay.

21 Q. And that they provided it in response to 04:16

22 a legal -- essentially, a legal subpoena for the 04:16

23 government to produce relevant documents to us. And 04:16

24 so whenever you see the word "USA," that's not 04:16

25 something I found or produced, that's something the 04:17

1 United States of America produced so that we could 04:17
2 look at it. 04:17

3 A. Okay.

4 Q. Okay? All right. So if you look at 04:17
5 this June 15, 2011, memorandum, do you see at the 04:17
6 top, it says it's "For 49 Logistics Readiness 04:17
7 Squadron," do you see that? 04:17

8 A. Yes, sir. 04:17

9 Q. And do you see at the top, there's a -- 04:17
10 it looks like an initial-type signature? And I 04:17
11 think it says August 2011 -- 04:17

12 A. Correct.

13 Q. -- or something like that. Do -- do you 04:17
14 see where I'm talking about? 04:17

15 A. Yes, I do. 04:17

16 Q. Do you know what that is? Is that
17 something you-all did just to notify to --

18 A. I do, so --

19 Q. Okay. Tell me what that is. 04:17

20 A. So the one with the diamond is a First 04:17
21 Sergeant stamp. 04:17

22 Q. Ah, that's what that is. That's the 04:17
23 first time anyone's told me that. Okay. 04:17

24 A. So -- so that's a First Sergeant stamp 04:17
25 with initials and a date. So I think the -- the 04:17

1 reasonable conclusion is that's the date that a 04:17
2 First Sergeant got this and looked at it. 04:17

3 Q. All right. So whoever the First 04:17
4 Sergeant was at the time of August 2011, when we see 04:17
5 a diamond like that with a signature, that means 04:18
6 some First Sergeant has received the document, 04:18
7 signed it, seen the document? 04:18

8 A. I think that's a reasonable conclusion. 04:18

9 Q. Okay. So going back to the actual 04:18
10 document, it's for the 49th Logistics Readiness 04:18
11 Squadron, which was the squadron that you were 04:18
12 commander of in the time period June 2012 through 04:18
13 2014, correct? 04:18

14 A. That's correct. 04:18

15 Q. That's your squadron. And this is from 04:18
16 AFOSI, Detachment 225, right? 04:18

17 A. Correct. 04:18

18 Q. Now, tell me, just -- just for the 04:18
19 record, what's AFOSI Detachment 225? 04:18

20 A. That's the Air Force Office of Special 04:18
21 Investigations at Holloman Air Force Base. 04:18

22 Q. All right. And the -- the AFOSI, those 04:18
23 are the -- the agents on base who investigate airmen 04:18
24 and air women who are involved in possible criminal 04:18
25 acts, correct? 04:18

1 A. Correct. 04:18

2 Q. Okay. And so this notification is from 04:18

3 James Hoy, Special Agent, Superintendent of 04:18

4 Detachment 20 -- 225, correct? 04:18

5 A. Correct. 04:18

6 Q. And, essentially, what this document 04:19

7 is -- is telling you, is as of June 15, 2011, it's 04:19

8 telling the 49th LRS at Holloman -- Holloman Air 04:19

9 Force Base that one of your airmen in your command 04:19

10 in -- in the LRS Squadron, Devin Kelley, is being 04:19

11 investigated for criminal -- potential criminal 04:19

12 conduct, correct? 04:19

13 A. That's correct, but I'd like to offer
14 some clarity. 04:19

15 Q. Please. 04:19

16 A. So, it's -- it's notifying the squadron 04:19

17 commander at the time that one of the airmen in his 04:19

18 command --

19 Q. Right.

20 A. -- is being investigated; I wasn't 04:19

21 there. 04:19

22 Q. And, at this time, June 15th, 2011, 04:19

23 would this be Lieutenant Colonel Marconi was the

24 commander of the LRS 49th at that time? 04:19

25 A. That's correct. 04:19

1 Q. All right. And then you were in his 04:19
2 position, June 2012 to June 2014? 04:19

3 A. That's correct. 04:19

4 Q. Okay. So, in any event, what this is -- 04:19
5 this is letting the commander -- and it says "FOR 04:19
6 THE COMMANDER" here at the bottom above James Hoy's 04:19
7 signature, this is a memorandum for the commander of 04:19
8 the 49th LRS at Holloman Air Force Base on 04:19
9 June 15th, 2011, notifying the 49th LRS that Devin 04:20
10 Kelley is under a criminal investigation? 04:20

11 A. Correct. The only additional clarity -- 04:20
12 and I apologize if I keep offering clarity -- where 04:20
13 it says "FOR THE COMMANDER," that doesn't mean that 04:20
14 it's for the squadron commander, that means that 04:20
15 James Hoy, who's the superintendent, is signing it 04:20
16 for the commander of the OSI detachment, that's what 04:20
17 "FOR THE COMMANDER" there means, but the memorandum 04:20
18 is addressed to the squadron.

19 Q. All right.

20 A. So it -- it would have gone to the 04:20
21 squadron. 04:20

22 Q. Okay. And -- and that's actually -- 04:20
23 something like that is helpful because no one's 04:20
24 telling us what any of these things mean -- 04:20

25 A. Right. 04:20

1 Q. -- unless you do or others do, so that's 04:20
2 helpful. 04:20

3 I guess my -- just the bottom line here is 04:20
4 the 49th Logistics Readiness Squadron was being 04:20
5 informed and it's been received, that as of June 15, 04:20
6 2011, Devin Kelley is being investigated by the 04:20
7 AFOSI Detachment 20 -- 225 for potential criminal 04:21
8 conduct? 04:21

9 A. That is correct. 04:21

10 Q. Okay. And -- by the way, did you know 04:21
11 James Hoy? Did you ever come across James Hoy? 04:21

12 A. I may have come across him. I don't 04:21
13 remember a James Hoy. 04:21

14 Q. Where is Detachment 225 on Holloman Air 04:21
15 Force Base in relation to where you worked at the 04:21
16 49th LRS at Holloman? 04:21

17 A. So, at the time, it was down the street. 04:21
18 I would -- I would hate to try to hazard a guess how 04:21
19 far. A separate building. 04:21

20 It's relatively close, but a slightly 04:21
21 different part of the base. You had to drive to get 04:21
22 there. 04:21

23 Q. Okay. So, down the road, short drive 04:21
24 from where you were located? 04:21

25 A. Correct. 04:21

1 Q. Okay. Let me hand you Exhibit No. 8. 04:21

2 (Deposition Exhibit 8 was marked for
3 identification.) 04:22

4 Q. (By Mr. Alsaffar) Now, Exhibit No. 8 is 04:22
5 a memorandum for 49 LRS/CC, and does that stand for 04:22
6 49th Logistics Readiness Squadron command? 04:22

7 A. Commander, yes, sir. 04:22

8 Q. Okay. And it's dated October 21st, 04:22
9 2011, correct? 04:22

10 A. Correct. 04:22

11 Q. And again, I think you -- this document 04:22
12 No. 8 is signed by Commander Marconi at the bottom; 04:22
13 do you see? 04:22

14 A. It is signed. I don't know that that's 04:22
15 Frank's signature, but there is a big M there. 04:22

16 Q. Okay. Well --

17 A. Wait, no, no. It is -- it's got his 04:22
18 stamp underneath it. Yes -- 04:22

19 Q. It does -- 04:22

20 A. -- I apologize. I apologize. Yes. 04:22
21 It's got his stamp so that's signed by Frank. 04:22

22 Q. I wouldn't have asked you to interpret 04:23
23 that -- the signatures, so I -- but I should have 04:23
24 alerted you to the electronic signatures.

25 So this is an elect- -- this is a -- this 04:23

1 October 21st, 2011, letter is signed by Commander 04:23

2 Marconi -- signed on -- on the same day, 04:23

3 October 21st, 2011, correct? 04:23

4 A. Correct. 04:23

5 Q. Okay. And this is a letter that was 04:23

6 sent from the 49th WG/CV, correct? 04:23

7 A. That's correct. 04:23

8 Q. And tell me what that is. 04:23

9 A. That is the 49th Wing Vice Commander. 04:23

10 Q. And I believe you told me early in the 04:23

11 deposition that that's a level above your command in 04:23

12 terms of supervisory review, correct? 04:23

13 A. That's correct. So, this would have 04:23

14 been the vice commander of the wing, then you have 04:23

15 the group, then you have the squadron. So two 04:23

16 levels up from the squadron. 04:23

17 Q. And the -- the subject of this relates 04:23

18 to -- it says, "Central Registry Board Incident 04:24

19 Determination," CRB for -- for -- for short. 04:24

20 Now, do you -- do you know what the CRB is? 04:24

21 A. Yes, sir. 04:24

22 Q. Tell me what your understanding of it 04:24

23 is. 04:24

24 A. So, the Central Registry Board is a 04:24

25 board that meets to consider primarily domestic 04:24

1 abuse cases. And it is a nondisciplinary and it's 04:24
2 not judicial, it's administrative in nature. 04:24

3 And we use it in the Air Force to determine 04:24
4 whether acts meet certain criteria. And if they 04:24
5 meet those criteria for, say, domestic abuse, then 04:24
6 there's a central registry database that those names 04:24
7 can be put in. 04:25

8 And then that -- what that allows for is, for 04:25
9 example, if I was an airman on active duty and I had 04:25
10 a case that meet, and then I'm separated, and I come 04:25
11 back and apply for a civilian position, for example, 04:25
12 at a child development center -- 04:25

13 Q. Right.

14 A. -- then if it -- if they -- when they 04:25
15 run the check, if it pops up in the central -- 04:25
16 the -- if I've got a central registry in a case that 04:25
17 met, then there's an alert that, for example, in the 04:25
18 case of domestic abuse, that might not be the person 04:25
19 you want working with children -- 04:25

20 Q. Right.

21 A. -- because they had a case that 04:25
22 previously met criteria for a central registry 04:25
23 board. 04:25

24 Q. Would that alert system or that system 04:25
25 you're talking about, be available to you, as a

1 commander of the 49th LRS, if you had someone in 04:25
2 your command who was put into that database? 04:25

3 A. No, not -- not really. So, you know, it 04:25
4 would be more if -- if I was in another squadron 04:25
5 that had workers in the child development center, so 04:26
6 in that case, like a Force Support Squadron, there
7 would be -- and I -- I don't know. I'm -- I'm 04:26
8 speaking out of my lane here, because I've 04:26
9 participated in the central registry board, I never 04:26
10 had to use the -- the registry itself -- 04:26

11 Q. Right. 04:26

12 A. -- but my understanding is that, you 04:26
13 know, the hiring process for, like, in the 04:26
14 civilian-personnel world, they have a way to check 04:26
15 that, but in my experience as a commander, I've 04:26
16 never had access to the database to check someone, 04:26
17 if that helps.

18 Q. Yes, that helps. So you served on a -- 04:26
19 on a central registry board before? 04:26

20 A. Yes. In fact, in my role now as a vice 04:26
21 commander, I chair it at the Air Force Academy. So 04:26
22 I do this once a month for all the cases that we 04:26
23 have.

24 Q. And my understanding in reading through 04:26
25 this sort of mandatory various instructions for the 04:26

1 Air Force on this kind of board is that the -- 04:26
2 the -- one of the commanders, whether it's from the 04:27
3 wing or from -- or from right below them, they put 04:27
4 together sort of a collection of individuals, 04:27
5 including this judge advocate's office, the -- the 04:27
6 squadron Security Forces and OSI to be on this board 04:27
7 and serve? 04:27

8 A. That's correct. The Air Force 04:27
9 instruction spells out specific members. And there 04:27
10 are voting and nonvoting members on the board. And 04:27
11 they hear cases like domestic abuse. 04:27

12 Q. Right. 04:27

13 A. And they go through a decision tree 04:27
14 that's provided by the Air Force, it's all 04:27
15 electronic. 04:27

16 And then the members vote whether or not they 04:27
17 believe that it meets individual criteria. And then 04:27
18 the computer system, at the end, will tell you, 04:27
19 based on all the individual criteria, whether the 04:27
20 case meets or does not meet criteria, or the other 04:27
21 option that the board has is to defer. 04:28

22 So just like on your Exhibit 8 -- 04:28

23 Q. Um-hum.

24 A. -- here, there's always a choice for 04:28
25 the -- the board president to sign -- to circle, 04:28

1 deferred, met or did not meet criteria. 04:28

2 Q. Okay. And -- and what -- what you're 04:28

3 talking about is is that the CRB, part of their job 04:28

4 is to participate in maintaining a central registry 04:28

5 of all reported domestic abuse and child 04:28

6 maltreatment incidents that might -- that meet 04:28

7 criteria for maltreatment at the installation CRB? 04:28

8 A. That's correct. 04:28

9 Q. Okay. And the -- let's go back to 04:28

10 Exhibit No. 8, so -- just to put a bow on it. 04:28

11 On October 21st, 2011, the 49th Wing Vice 04:28

12 Commander is sending a memo to the 49th LRS at 04:29

13 Holloman Air Force Base that -- that the CRB met, in 04:29

14 relation to Devin Kelley on October 21st, 2011, to 04:29

15 review incident involving Devin Kelley, correct? 04:29

16 A. Correct.

17 Q. And the allegation was child physical 04:29

18 maltreatment by Devin Kelley, correct? 04:29

19 A. Correct. 04:29

20 Q. And the board, the CRB board, determined 04:29

21 the incident "met criteria for child physical 04:29

22 maltreatment and entry into the DoD Central Registry

23 database," correct?

24 A. Yes, sir.

25 Q. Okay. So at that point, the CRB has 04:29

1 determined that there are reasonable grounds that -- 04:29

2 that Devin -- to believe that Devin Kelley had 04:29

3 committed child maltreatment at that time? 04:29

4 MR. FURMAN: Objection to form; you can 04:29

5 answer. 04:29

6 MR. ALSAFFAR: You can answer. 04:29

7 A. So, they would have determined -- so, if 04:29

8 I understood what you said -- 04:29

9 Q. (By Mr. Alsaffar) Right.

10 A. -- they would have determined that he 04:29

11 committed child maltreatment. So I think the way 04:29

12 the instruction would spell it out is they've 04:29

13 determined that it met criteria for child 04:30

14 maltreatment. 04:30

15 And I think that's -- matters because the 04:30

16 burden of proof -- 04:30

17 Q. Um-hum.

18 A. -- in a central registry board is 04:30

19 different because it is administrative. So I think 04:30

20 that's -- 04:30

21 Q. Right. And -- and that's sort of the 04:30

22 phrase is, I'm using, too, is not the elevated 04:30

23 phrase of conviction, either, by the way -- 04:30

24 A. Right, right.

25 Q. -- it's a totally different one. So you 04:30

1 said the criteria -- 04:30

2 A. It -- it would --

3 Q. What are the criteria to make a 04:30

4 determination that (indicating) -- it's okay. No, 04:30

5 no, no. You're -- again, I'm not being rude, I'm 04:30

6 doing the (indicating) rude thing, but I'm not meant 04:30

7 to be rude; I'm just letting you know I'm still -- 04:30

8 still working on the question. 04:30

9 So, I know, you -- as vice commander, you 04:30

10 actually sit on one of these boards. So what are 04:30

11 the actual criteria that would make the CRB, the 04:30

12 board, determine, yes, we -- we have someone here 04:30

13 like Devin Kelley who we believe meets the criteria 04:30

14 for child maltreatment; therefore we're reporting it

15 to the database? What's the level of standard? 04:30

16 A. So, it is -- what is the right legal 04:31

17 terminology? There is a legal level of proof, and I 04:31

18 cannot remember the term that the instruction uses. 04:31

19 Q. Is it probable cause -- 04:31

20 A. It is not -- it's not beyond reasonable 04:31

21 doubt. 04:31

22 Q. Is it probable cause? 04:31

23 A. I think it's probable cause. So the way 04:31

24 we always talked about it is, if you were greater 04:31

25 than 50 percent, if you're greater than 50 percent 04:31

1 confident that it happened, you know, 51 percent, 04:31
2 then -- then it likely happened. 04:31

3 To get back to your question, so that's -- I 04:31
4 think that -- that answers your question. That's 04:31
5 the criteria we use, is we use a probable cause, 51 04:31
6 percent criteria. 04:31

7 Q. Okay. 04:31

8 A. But the -- when you go through the 04:31
9 registry board, it takes you -- it's a decision 04:31
10 tree, it's a set of questions -- and it takes you -- 04:31
11 it asks you about something and then it gives you 04:32
12 a -- a long list of examples. 04:32

13 And so the board members are voting whether 04:32
14 they think it's likely that that happened, you know, 04:32
15 based on that. 04:32

16 And so I -- I guess -- all I'm trying to 04:32
17 offer, the clarity, is that you know don't walk away 04:32
18 from there saying that, you know -- you don't walk 04:32
19 away from there saying somebody committed a certain 04:32
20 act; you walk away from there with, it's more likely 04:32
21 than not that that happened. 04:32

22 And so we're going to put them in the central 04:32
23 registry for protection's sake in the future. 04:32

24 Q. Got it. So, to put a pin on that, on 04:32
25 October 21st, 2011, the CRB made a determination 04:32

1 that there was probable cause that Devin Kelley was 04:32
2 involved in child maltreatment, so the criteria for 04:32
3 the CRB reporting was met? 04:32

4 A. Yes, sir. 04:33

5 Q. All right. Let's move on to the next -- 04:33
6 the next date that I wanted to ask you about. And I 04:33
7 think that was the February -- so we're going to 04:33
8 skip forward a little bit, a few months, to February 04:33
9 2012. Give me a -- a beat here to get this on. 04:33

10 MR. ALSAFFAR: And while I do this, would you 04:33
11 mind going in and numbering about five or six more 04:33
12 just so we can stay head of the curve.

13 And I know we've been going -- how long have
14 we been, Justin, about?

15 MR. FURMAN: Hour, 15.

16 MR. ALSAFFAR: Hour, 15? Are you good? 04:33

17 THE DEPONENT: I'm good. 04:33

18 MR. ALSAFFAR: Okay. Are you good? 04:34

19 (Deposition Exhibit 9 was marked for
20 identification.)

21 Q. (By Mr. Alsaffar) Okay. Let me -- 04:34
22 Colonel, I handed you -- did I hand you -- I did 04:34
23 not.

24 I'm handing you Exhibit No. 9. Real quickly, 04:34
25 do you remember -- 04:34

1 MR. FURMAN: Do you want the highlighted one? 04:34

2 MR. ALSAFFAR: You know what, I should do 04:34

3 that. That's easier. Thank you, Austin. 04:34

4 MR. FURMAN: No problem.

5 MR. ALSAFFAR: It's been a long day. 04:34

6 MR. FURMAN: Agreed. We can agree for once. 04:34

7 Q. (By Mr. Alsaffar) Did you go to -- you 04:34

8 said you were from Oklahoma, Colonel. Please tell 04:34

9 me you didn't go to OU? 04:34

10 A. I did not. I went to the Oklahoma State 04:34

11 University. 04:34

12 Q. All right. Thank, God. That is 04:34

13 tolerable. I'm a UT Longhorn, so -- 04:34

14 A. Okay.

15 Q. -- when you said Oklahoma -- and I got 04:34

16 to admit, I got a little red. I got a little red 04:35

17 under the collar. 04:35

18 A. Okay.

19 Q. But I said, you know what, he probably 04:35

20 went to the better Oklahoma school where the mullet 04:35

21 controls and rides everything. 04:35

22 The mullet is the coach, Gundy, their 04:35

23 football coach. He's fantastic. Amazing. We tried 04:35

24 to get him but he wouldn't come. 04:35

25 All right. I'm handing you Exhibit No. 9. 04:35

1 It's a letter, memorandum, dated February 16th, 04:35
2 2012. And this one is actually a memorandum for 04:35
3 Devin Kelley, specifically, correct? 04:35

4 A. That's correct. 04:35

5 Q. And it's on the front and back. I'm 04:35
6 trying to save some trees. And it's from -- do you 04:35
7 see on the back that it says this letter, this 04:35
8 memorandum, is from John De Laura, 2d Lieutenant, 04:35
9 U.S. Air Force; do you know who that is? 04:35

10 A. Yes. 04:35

11 Q. Okay. Can you tell me who that is? 04:35

12 A. Yes. So we call him Art. So Art was -- 04:35
13 by the time I got there, I think he was a First 04:35
14 Lieutenant. And so he was one of the officers in 04:35
15 the squadron at the time.

16 Q. What's OIC Distribution? 04:36

17 A. Officer in Charge -- 04:36

18 Q. Okay.

19 A. -- of Distribution. So below the flight 04:36
20 level, you have elements -- 04:36

21 Q. Right.

22 A. -- and so that was an element within the 04:36
23 material management flight. 04:36

24 Q. Did you know that --

25 A. Or no, sorry. The distribution flight. 04:36

1 Q. Got it. Did you know Valorie Rowe? 04:36

2 A. Valorie Rowe does not ring a bell to me. 04:36

3 No, I don't think I knew Valorie Rowe.

4 Q. I'm just going to represent to you that 04:36

5 she was at some level, one of Devin Kelley's 04:36

6 supervisors when he was at the 49th LRS. 04:36

7 She was one of his -- well, one of his 04:36

8 supervisors, I just don't know what level, but -- 04:36

9 A. Right. 04:36

10 Q. -- but a supervisor had some kind of 04:36

11 responsibility for his job duties while he was at 04:36

12 the 49th LRS. 04:37

13 But let me direct your attention back to that 04:37

14 document. This is dated February 16th, 2012, a memo 04:37

15 for Devin Kelley. 04:37

16 And it's from -- again, from 49 LRS -- that's 04:37

17 the squadron, the Logistics Readiness Squadron -- 04:37

18 /LGRD; do you know what LGRD stands for? 04:37

19 A. The Deployment and Distribution Flight. 04:37

20 Q. Okay. The subject is a Letter of 04:37

21 Reprimand. Okay? I want to turn your attention to 04:37

22 that. I'm going to read some parts of it. 04:37

23 It states that, On February 3rd, 2012, you 04:37

24 were briefed by Ms. Valorie Rowe; do you see that? 04:37

25 A. Yes, sir. 04:37

1 Q. And I want you to go a little bit down 04:37
2 towards the bottom of Paragraph 1 where it says, 04:37
3 "You left the office"; do you see that? 04:37

4 A. I do. 04:37

5 Q. It states, You left the office and 04:37
6 disrespectfully stated, quote, I know, you told me 04:37
7 three times already!, end quote. After leaving the 04:37
8 office you stated, quote, She's a fucking bitch, end 04:37
9 quote; do you see that? 04:38

10 A. I do. 04:38

11 Q. Okay. And I apologize for the language, 04:38
12 I'm just reading, just for the record, directly 04:38
13 what's reported in this letter. Okay? 04:38

14 A. I understand. 04:38

15 Q. Okay. And so this is a reprimand letter 04:38
16 for Devin Kelley's conduct, February 16th, 2012, 04:38
17 towards one of his female supervisors, correct? 04:38

18 A. Correct. 04:38

19 MR. ALSAFFAR: And that's probably a good 04:38
20 time to take a break because we're about to go into 04:38
21 something around that time frame, so if you want to 04:38
22 take a few minutes just to go to the restroom, get 04:38
23 some water. Let's do it.

24 THE VIDEOGRAPHER: Okay. We're going off the 04:38
25 record. The time is 4:38. 04:38

1 (Recess taken.) 04:38

2 THE VIDEOGRAPHER: We're now back on the 04:46
3 record. The time is 4:46. 04:46

4 MR. ALSAFFAR: Okay, Colonel, you ready? 04:46

5 THE DEPONENT: Yes, sir. 04:46

6 Q. (By Mr. Alsaffar) We were -- we were 04:46
7 just talking about Exhibit No. 9. And one thing I 04:46
8 didn't ask you about, the other -- the other memos 04:46
9 that are all in front of you there that were to the 04:46
10 49th LRS and received by the 49 -- one thing I 04:46
11 didn't ask you is, where are these put? 04:46

12 Like what file do these memos that you get 04:46
13 from command or from other parts of the base 04:47
14 regarding your airmen or air women, especially ones 04:47
15 like this that regard serious issues, where do those 04:47
16 go at your command? 04:47

17 A. So, it -- it would depend. Like, this 04:47
18 letter of reprimand (indicating) would go into the 04:47
19 airman's personal information file or PIF. So -- 04:47
20 and then, that's where most of them would go. 04:47

21 At -- at certain points, a commander might 04:47
22 establish a UIF, an Unfavorable Information File, 04:47
23 and then documents would go into there. 04:47

24 And there's specific criteria that I can't 04:47
25 tell you off the top of my head about which ones go 04:47

1 into which file and how long they stay in those 04:47
2 files. 04:47

3 And, for example, when an airman changes to 04:47
4 another permanent station, do they stay in or do 04:47
5 they come out, that kind of thing. 04:48

6 But that -- those things are detailed out in 04:48
7 the regulations, but those -- those are examples of 04:48
8 where these would go. 04:48

9 Q. Okay. So the Personal Information File 04:48
10 or PIF and also unfavorable information file, as 04:48
11 well? 04:48

12 A. Correct. 04:48

13 Q. And I -- I know I have seen a 04:48
14 Unfavorable Information File that that -- for Devin 04:48
15 Kelley? 04:48

16 A. Okay. 04:48

17 Q. But I don't know if I have seen a PIF 04:48
18 file. Can you have both at the same time on an -- 04:48
19 an individual? 04:48

20 A. Yes. I -- I can't come up with a reason 04:48
21 why you couldn't. 04:48

22 Q. Okay. 04:48

23 A. And so I -- so the UIF, the Unfavorable 04:48
24 Information File is much more formal. That's a 04:48
25 formal way for a command to create just that, you 04:48

1 know, an unfavorable, a bad information file. 04:48

2 So usually, when you've got a UIF created, an 04:48
3 airman has got one or more bad things they've done, 04:48
4 but, you know, if you're just had kind of 04:49
5 run-of-the-mill letters of reprimand, you might not 04:49
6 have created a UIF yet, but you could later and then 04:49
7 you would have both. 04:49

8 And then, the UIF, again, is much more 04:49
9 formal, much more durable, it's going to stay around 04:49
10 longer. 04:49

11 PIF -- and we'd have to go look at the 04:49
12 instruction to get to the right language on this -- 04:49
13 but, to my knowledge, usually, a PIF goes away when 04:49
14 a member leaves a duty station. It's not permanent, 04:49
15 it doesn't have the permanency or the durability 04:49
16 that a UIF does. 04:49

17 Q. Okay. And does a UIF have a permanency 04:49
18 or more of a durability because it generally
19 involves more serious allegations about whoever that 04:49
20 file is made for? 04:49

21 A. It -- it does, or there's accumulation 04:49
22 of things to -- so they're maybe not the severity, 04:49
23 but it may be the accumulation makes you, as a 04:49
24 commander, want to have some more things on file. 04:49

25 Q. Okay. Thank you. And I apologize if 04:50

1 this sounds elementary, but it's important for us to 04:50
2 understand the architecture and structure of -- of 04:50
3 something that we're kind blind in, because we 04:50
4 don't -- we're not there at Holloman and -- and we 04:50
5 don't understand how things are organized. So this 04:50
6 is helpful. 04:50

7 So, in that regard, let's stick with the UIF 04:50
8 since we know -- and when I say UIF, sir, I'm sorry, 04:50
9 I'm referring to Unfavorable Information File. It 04:50
10 is okay if I refer to the UIF? 04:50

11 A. Absolutely. 04:50

12 Q. Okay. In terms of Devin Kelley's UIF, 04:50
13 would you be able to tell me just where would that 04:50
14 be? Where would we find that at Holloman Air Force 04:50
15 Base? 04:50

16 A. So, the Force Support Squadron, so a 04:50
17 different squadron on base, has in it -- 04:50

18 Q. I'm sorry, sir, did you say force -- 04:50

19 A. Force.

20 Q. -- or 4th? 04:50

21 A. Force. 04:50

22 Q. Okay.

23 A. Force. So, the FSS, the 49th FSS, Force 04:50
24 Support Squadron, has a -- a flight within it called 04:51
25 the Military Personnel Flight. 04:51

1 And when you established a UIF, again much 04:51
2 more formal than that, they retain the records of 04:51
3 UIFs and that's where documents are -- are put in. 04:51

4 Q. I want to make sure I understand this 04:51
5 correctly. And again, if I don't, please, tell me. 04:51

6 This flight within it that's called the 04:51
7 Military Personnel Flight, where this UIF is -- is 04:51
8 held, that's in the -- at Holloman, that would have 04:51
9 the 49th Security Forces -- 04:51

10 A. No --

11 Q. -- or the -- okay. Where? Where --

12 A. No, sir. 04:51

13 Q. Correct me. 04:51

14 A. It would have been the 49th Force 04:51
15 Support Squadron. 04:51

16 Q. Okay. And, to my knowledge, that's 04:51
17 where UIFs are maintained. And so, you know, if a 04:51
18 First Sergeant wants to go over there and review all
19 the UIFs, you have to go over, you've got to pull 04:52
20 them.

21 And then you can sit down and look at all of 04:52
22 what's in there for your -- your members, or if the 04:52
23 squadron commander wanted to, that kind of thing. 04:52

24 Q. In 2012, when Devin Kelley was at 04:52
25 Holloman Air Force Base, would this UIF file been a 04:52

1 hard copy file? 04:52

2 A. It would have been. 04:52

3 Q. Okay. And is the 49th Force Support 04:52

4 Squadron known as FSS? 04:52

5 A. Yes, sir. 04:52

6 Q. Okay. So I think I've seen that on 04:52

7 various documents -- 04:52

8 A. Yes. 04:52

9 Q. -- /FSS. When I see that, that's the 04:52

10 Force Support Squadron you're talking about, 04:52

11 correct? 04:52

12 A. Correct. 04:52

13 Q. Now, physically, where is that squadron 04:52

14 based on Holloman Air Force Base, vis-à-vis, the 04:52

15 49th LRS? 04:52

16 A. So a mile or two away. 04:52

17 Q. Okay. 04:52

18 A. A separate building, short drive. 04:52

19 Q. Okay. And how -- how do you, as -- if 04:52

20 you're a commander at Holloman Air Force Base, 04:52

21 June/July 2012, how do you know that one of your 04:53

22 airmen has an Unfavorable Information File if it's 04:53

23 not at your building? 04:53

24 A. So, in -- the most likely way is the 04:53

25 First Sergeant is going to brief you. If it's -- 04:53

1 you know, for example, if an airman has a UIF and 04:53
2 it's kind of low level, you know, the First Sergeant 04:53
3 may be aware of it and might not brief the commander 04:53
4 on it. 04:53

5 The other option is the commander can go to 04:53
6 the military personnel flight and say, Hey, I want 04:53
7 to review all the UIFs and see what's in them. 04:53

8 Q. Do you have a memory of whether or not 04:53
9 First Sergeant Wolfe told you that Devin Kelley had 04:53
10 a UIF? 04:53

11 A. I don't. 04:53

12 Q. Okay. Do you remember ever reviewing 04:53
13 his UIF at the 49th FSS? 04:53

14 A. I don't. 04:53

15 Q. Okay. And do you know whether the UIF 04:53
16 for Devin Kelley, that we know exists, actually was 04:54
17 held at the 49th FSS? 04:54

18 A. I don't. 04:54

19 Q. Okay. 04:54

20 A. Having not seen it, or at least not 04:54
21 remembering seeing it. 04:54

22 Q. That makes sense. I figured that much. 04:54
23 So -- and I apologize that this is also an 04:54
24 elementary question, but how would the First 04:54
25 Sergeant of the 49th LRS, which is Tracy Wolfe, how 04:54

1 would he have known there was a UIF at the 49th FSS, 04:54
2 how would that be communicated? 04:54

3 A. So, I don't know that it would be 04:54
4 communicated. As a commander, I assume that of my 04:54
5 First Sergeant --

6 Q. Um-hum.

7 A. -- I assume that's inherent in his 04:54
8 duties that he's looking at the UIFs. 04:54

9 Q. Can I ask you a question about that? 04:54
10 When you say you assume it's "inherent" of duty, 04:54
11 that might explain it is that, one of the job 04:54
12 duties, as I understand you're saying of a First 04:54
13 Sergeant, is to know there might be a UIF on our 04:54
14 airman in LRS -- 04:55

15 A. Right. 04:55

16 Q. -- so I've got to regularly check over 04:55
17 there at 49th FSS -- 04:55

18 A. FSS. 04:55

19 Q. -- to make sure and look at that file? 04:55

20 A. Right. So, you know, as I'm sure you're 04:55
21 aware, in the military, we -- we depend on a chain 04:55
22 of command. 04:55

23 And so a good example at -- at Holloman in my 04:55
24 squadron, we're talking about a 500-person 04:55
25 squadron --

1 Q. Um-hum.

2 A. -- right? So, if an individual at the 04:55
3 flight takes a -- an adverse action like writing a 04:55
4 letter of reprimand, and if things, you know, if 04:55
5 they get to the point where they're concerned and 04:55
6 they're talking to the First Sergeant about 04:55
7 establishing a UIF, you know, we're trusting those 04:55
8 leaders to work up the chain of command to make sure 04:55
9 things are documented and, you know, that a UIF is 04:55
10 established when required. 04:55

11 Q. Okay. Now, but don't look at that file 04:55
12 yet -- 04:55

13 A. Okay. 04:55

14 Q. I'm put a document on your screen. It's 04:55
15 from the -- the 49th Security Forces file 04:56
16 investigation into Devin Kelley while he was on 04:56
17 base. 04:56

18 Do you remember that the -- the Exhibit No. 9 04:56
19 that I showed you was dated February 16, 2012, 04:56
20 right? 04:56

21 A. Yes, sir. 04:56

22 Q. And relating to an incident with Devin 04:56
23 Kelley's supervisor that was reported as a reprimand 04:56
24 that occurred on February 6, 2012, correct? 04:56

25 A. Right. Yeah, 3rd -- 3rd and 6th, it 04:56

1 looks like, 3rd, 4th and 6th. 04:56

2 Q. I just wanted to orient you to that 04:56

3 time. 04:56

4 A. Yes, sir. 04:56

5 Q. And so, what I put up in front of you, 04:56

6 Colonel, this is the -- part of the Security Forces 04:56

7 investigative file called an SFMIS file on Devin 04:56

8 Kelley. And it's -- the page in front of you, I

9 believe, is Bates stamped 13339. Okay? 04:56

10 A. I didn't see -- 04:57

11 Q. That's okay. It's on the very bottom. 04:57

12 Do you see it there, on the very bottom right? 04:57

13 A. Oh -- 04:57

14 Q. Yeah. 04:57

15 A. Okay.

16 Q. Yeah, yeah. When we say "Bates stamp," 04:57

17 sir, this is one of those -- just like when you're 04:57

18 using your lingo in the Air Force, Bates stamps, 04:57

19 you -- it's always going to be on the bottom right. 04:57

20 A. I heard "date stamp." I was looking for 04:57

21 a date. I apologize. 04:57

22 Q. That's all right. That's all right. No 04:57

23 problem. 04:57

24 So this is a -- this is the -- from the 04:57

25 Security Forces 49th file. This is when Tessa 04:57

1 Kelley came in to report another incident of assault 04:57
2 on her by Devin Kelley to the Security Forces 04:57
3 division. 04:57

4 And I want to turn your attention to -- just 04:57
5 flip it to the next page. Sorry. I'm looking for 04:57
6 my pen here. There we go. 04:57

7 And -- and just tell me, can you read that 04:58
8 okay? Is that okay -- 04:58

9 (Deponent perused computer screen.) 04:58

10 A. I can. 04:58

11 Q. (By Mr. Alsaffar) Okay. And you see at 04:58
12 the top, it says, Report of Investigation. Ryan 04:58
13 Sablan or Sablan, Staff Sergeant, February 21st, 04:58
14 2012; do you see that? 04:58

15 A. I do -- ah, yes, I do. 04:58

16 Q. Okay. And at the top, right after that, 04:58
17 it says, Matters Investigated, Article 128 Assault. 04:58

18 A. Yes. 04:58

19 Q. Okay. And I want to show you the next 04:58
20 page. All right. Can you see that okay? I'm going 04:58
21 to make that a little bigger for you. 04:58

22 A. I appreciate it. 04:58

23 Q. Do you see it's under "Narrative," do 04:58
24 you see that word under "Narrative"? 04:58

25 A. I do. 04:58

1 Q. It says, Interview of Tessa Kelley, 04:58
2 February 17th, 2012, by Ryan Sablan or Sablan, 49 04:58
3 SFS; do you see that? 04:59

4 A. I do.

5 Q. So that's again, the 49th Security
6 Forces, correct? 04:59

7 A. Correct. 04:59

8 Q. All right. And I just want to go 04:59
9 through this investigation, or this letter, in light 04:59
10 of the letter of reprimand where I just showed you 04:59
11 where Devin Kelley had some pretty harsh words for 04:59
12 his supervisor, Valorie Rowe. Okay? 04:59

13 And do you agree, that characterization is
14 harsh words and inappropriate words to his 04:59
15 supervisor, female supervisor?

16 A. I agree. 04:59

17 Q. Okay. February 17th, 2012, Tessa Kelley 04:59
18 is report -- well, reporting a fairly serious 04:59
19 instance of physical abuse by Devin Kelley on her; 04:59
20 is that a -- fair to say? 04:59

21 A. Yes. It says that she stated he choked 04:59
22 her, in the first line. 04:59

23 Q. And I'll read that into the record. 04:59

24 Kelley -- Tessa Kelley -- states he -- Devin 04:59
25 Kelley -- choked her in the restroom and on several 04:59

1 occasions has choked her because she didn't want to
2 spend Christmas with his family. 04:59

3 On December 24th, Kelley stated he pushed her 05:00
4 against the wall, choked her and told her, You 05:00
5 better pack your bags or I'll choke you to the 05:00
6 ceiling and pass you out; do you see that? 05:00

7 A. I do. 05:00

8 Q. Okay. So February 17th, 2012, the 49th 05:00
9 Security Forces at Holloman Air Force Base is 05:00
10 getting an allegation that Kelley's threat -- is 05:00
11 choking his wife on more than one occasion, correct? 05:00

12 A. Correct. 05:00

13 Q. A couple of lines down, Tessa Kelley 05:00
14 stated Devin Kelley dragged her by her hair into the 05:00
15 bathroom and said, I'm going to water board you, and 05:00
16 stuck her head in the showerhead; do you see that? 05:00

17 A. I do. 05:00

18 Q. Okay.

19 (Outside disturbance of music.) 05:00

20 MR. FURMAN: It's going to go on for a little 05:00
21 bit. The National Anthem, too.

22 Mr. ALSAFFAR: Is it? Okay. The audio's
23 fine? As long as it -- are you fine? 05:01

24 MADAM COURT REPORTER: Yes.

25 THE VIDEOGRAPHER: Good. 05:01

1 MR. ALSAFFAR: Okay.

2 Q. (By Mr. Alsaffar) The couple lines 05:01
3 down, she says that Devin Kelley stated, You're 90 05:01
4 percent of our problem and you -- if you repeat what 05:01
5 I say, I'll kill you and drag your dead body and 05:01
6 desert it. 05:01

7 So Tessa Kelley is reporting on 05:01
8 February 17th, 2012, that Devin Kelley now has also 05:01
9 threatened to kill her and drag her body to desert 05:01
10 it, correct? 05:01

11 A. Correct. 05:01

12 Q. And next line, Tessa Kelley stated, On 05:01
13 multiple occasions, he has called her a bitch, 05:01
14 whore, slut, piece of shit, worthless and your 05:01
15 family doesn't love you. 05:01

16 And that -- that language right there -- and 05:01
17 I apologize again for using it, but that's what's 05:01
18 stated in her report, correct? 05:01

19 A. That's correct. 05:01

20 Q. The -- that language is similar to what 05:01
21 Devin Kelley's supervisor was reporting about a week 05:02
22 before, the type of language Devin Kelley was using 05:02
23 against his female supervisor, correct? 05:02

24 A. Correct. 05:02

25 Q. Okay. If you look about four or five 05:02

1 lines down from where we were just reading -- 05:02
2 actually, one, two, three, four -- you know, the 05:02
3 easiest thing for me to do is just highlight it for 05:02
4 you. Okay. 05:02

5 I highlighted the line for you where Tessa 05:02
6 Kelley is reporting that Devin Kelley said, quote, 05:02
7 My work is lucky. I'd take a shotgun and blow 05:02
8 everyone's head off; do you see that? 05:02

9 A. I do. 05:03

10 Q. Okay. So this is a report directed to 05:03
11 the 49th Security Forces at Holloman Air Force Base 05:03
12 on February 17th, 2012, where Devin Kelley is 05:03
13 threatening to engage in a mass shooting, right? 05:03

14 A. Right. Yeah, Tessa Kelley is saying 05:03
15 that that's what he said. 05:03

16 Q. Okay.

17 A. Yep, I agree. 05:03

18 Q. Okay. And -- and I know this sounds -- 05:03
19 seems obvious, but I think it's important to be very 05:03
20 specific here. 05:03

21 This is a report that -- by his wife to the 05:03
22 49th Security Forces that on February 17th, 2012, 05:03
23 that Devin Kelley is threatening to use a gun to 05:03
24 commit mass murder, correct? 05:03

25 A. Correct. 05:03

1 Q. Okay. 05:03

2 (Counsel conferred.)

3 Q. (By Mr. Alsaffar) Actually, this is
4 fine. 05:03

5 MR. ALSAFFAR: There's problem with the what? 05:03

6 MR. DEMERATH: The people on the phone lost
7 audio. Is there a mute button that might have been
8 inadvertently gotten hit or something? 05:04

9 MR. FURMAN: The only thing that might have
10 happened is the call might have ended, but I thought
11 it was... 05:04

12 MR. ALSAFFAR: Do you think they shut it off,
13 but the green light's on. 05:04

14 If there is anybody on the phone that can
15 hear me, can you unmute and just identify that
16 you're there? Maybe they can try calling back in. 05:04

17 Can you tell them to try calling back in? 05:04
18 I'd like to go forward. Okay. I want to keep going
19 here. Because I know -- I don't want to keep you
20 too long. Okay. 05:04

21 Q. (By Mr. Alsaffar) So, I'm sorry. We
22 were just talking about the -- the threats here that
23 Devin Kelley had -- had made. 05:04

24 So, first of all, the -- the letter of
25 reprimand where he called his female supervisor a 05:04

1 week before a bitch, sorry for using that language, 05:04
2 but that's -- that's what he used. 05:05

3 And then about a week and a half later, the 05:05
4 49th is getting another report that he's using that 05:05
5 kind of language on top of choking his wife and 05:05
6 threatening to commit mass murder against his people 05:05
7 at work, correct? 05:05

8 A. Correct. 05:05

9 Q. Okay. So, at that point, at least, the 05:05
10 49th at Holloman Air Force Base, you were aware of a 05:05
11 very unstable and dangerous person in Devin Kelley, 05:05
12 potentially, at least? 05:05

13 A. Potentially. I -- I wasn't there. 05:05

14 Q. Right. 05:05

15 A. So, you know, obviously, Security Forces 05:05
16 had gotten this threat. I think it's logical to 05:05
17 conclude -- we'd have to go back and look -- that 05:05
18 that's what led to the OSI investigation. 05:05

19 And, you know, I think it's logical that 05:05
20 that's when Sergeant Wolfe later warned me, Hey, 05:05
21 this guy's made threats. I'm guessing that's 05:05
22 probably what was in his mind. 05:05

23 Q. And -- and we'll go -- we'll keep going 05:05
24 through these so that we can identify them, but you 05:05
25 kind of made a reference. 05:05

1 So, actually, June 25th, 2011, is when the 05:05
2 AFOSI informed your squadron -- you weren't there 05:06
3 yet -- 05:06

4 A. Right. 05:06

5 Q. -- so -- but your squadron that, Hey, 05:06
6 we're already criminally investigating him. You get 05:06
7 the February letter of reprimand where he's -- he's 05:06
8 using very intemperate and inappropriate language 05:06
9 towards his female supervisor in your -- in -- in 05:06
10 LRS' command at 49th -- 05:06

11 A. Correct. 05:06

12 Q. -- correct? And then, a couple of weeks 05:06
13 after that, February 17th, 2012, his wife is 05:06
14 reporting yet another instance of abuse with very 05:06
15 specific -- would you agree, very specific, very 05:06
16 detailed, granular, disturbing details about both 05:06
17 his physical abuse of her and his threat to commit 05:06
18 mass murder against people at Holloman? 05:06

19 A. Yes, sir. 05:06

20 Q. Okay. And you would -- so we know AFOSI 05:06
21 had informed the LRS 49th Squadron about the 05:06
22 criminal investigation into Devin Kelley. 05:06

23 Now, we're talk -- now the Security Forces 05:06
24 knows, as well, that we've got somebody who's being 05:06
25 accused of some really disturbing behavior, correct? 05:07

1 A. Correct. 05:07

2 Q. Fair enough? So, my question to you is, 05:07
3 you experience as a commander at both the 49th at 05:07
4 Holloman and then your various other command-level 05:07
5 positions, how would you or -- expect -- or how 05:07
6 would you be informed by a Security Forces division 05:07
7 on your base that one of your people was being 05:07
8 looked into for pretty disturbing conduct? How 05:07
9 would you get to know about that? 05:07

10 A. So, I think there's -- like in this case 05:07
11 with this investigation, I would assume that the 05:07
12 Security Forces Squadron and that -- probably that 05:07
13 investigation's office would call the First Sergeant 05:07
14 and tell the First Sergeant, Hey, we've got this 05:07
15 report. We're investigating it. You might want to 05:07
16 keep an eye on this airman. 05:07

17 Q. Okay. 05:07

18 A. And then the First Sergeant would most 05:07
19 likely tell the commander. 05:08

20 Q. So, it would be a -- what you would 05:08
21 expect, at least, would be a phone call from 05:08
22 Security Forces to the First Sergeant at LRS, who 05:08
23 you would then hope would inform the commander of 05:08
24 the LRS about somebody like Devin Kelley? 05:08

25 A. That's exactly the way I would expect it 05:08

1 to go. 05:08

2 Q. Okay. Is there any kind of 05:08

3 documentation process where the Security Forces 05:08

4 would send a -- either an electronic message or some 05:08

5 kind of file note that can be accessed by the 05:08

6 commander at LRS or anyone in the LRS, so you-all 05:08

7 can sort of communicate more easily, so you're not 05:08

8 just relying or hoping that someone makes a phone, 05:08

9 and then that person who gets the phone and then 05:08

10 reports it up; do you see? 05:08

11 A. Right. So, when the Security Forces -- 05:08

12 sorry, I wanted to give you a moment there. 05:08

13 Q. Go. Ignore what we're doing over here. 05:08

14 A. When -- when the Security Force 05:08

15 completes an investigation, they refer that to a 05:08

16 squadron commander for action. 05:09

17 So if they find there's enough evidence for 05:09

18 that commander to take action, that's the -- so, 05:09

19 you've got the informal and formal. 05:09

20 And what you're asking for is, you know, is 05:09

21 there a formal process by which that gets handed 05:09

22 over for action? 05:09

23 Yes. When Security Forces investigation 05:09

24 closes out, the Security Forces Squadron refers that 05:09

25 investigation formally to the affected squadron 05:09

1 commander for action. So, that's that formal piece. 05:09

2 And then the informal piece, in my 05:09

3 experience, is, something like this comes across an 05:09

4 investigator's desk, they're calling that First 05:09

5 Sergeant to say, Hey, you got something you want to 05:09

6 keep an eye out on. 05:09

7 So, then the First Sergeant can tell 05:09

8 leadership; the leadership can tell other leaders in 05:09

9 the squadron to keep an eye out. 05:09

10 Q. So, let me turn your attention to the 05:09

11 next page of the investigation by the Security 05:10

12 Forces on -- relating to this abuse allegation 05:10

13 against Devin Kelley, along with the mass shooting 05:10

14 threat Devin Kelley made. 05:10

15 If you look at -- let me help you again. 05:10

16 There you go. 05:10

17 A. Thank you. 05:10

18 Q. You're welcome. If you look under 05:10

19 Section 5.1 here that I've highlighted for you. And 05:10

20 this is Bates No. 13342. 05:10

21 It lists exhibits under there. And it lists 05:10

22 that list of exhibits. And then it says, 05:10

23 "Investigation Status"; do you see that? 05:10

24 A. I do. 05:10

25 Q. And it says, Closed. So that's Security 05:10

1 Forces indicating that this is now a closed 05:10
2 investigation?

3 A. Correct. 05:10

4 Q. All right. And then it's reviewed by 05:10
5 Major David Boyd; do you see that, Commander? 05:10

6 A. Correct. 05:10

7 Q. -- do you see that? Now, do you know 05:11
8 who David Boyd is? 05:11

9 A. The Security Forces Squadron commander 05:11
10 at the time. 05:11

11 Q. Now, you had just indicated to me, I 05:11
12 believe -- and again, correct me if I'm not accurate 05:11
13 that, you know, when the Security Forces 05:11
14 investigation closes out, that's when there's a 05:11
15 transfer of information formally to the LRS -- 05:11

16 A. Right. 05:11

17 Q. -- the squadron commander where the 05:11
18 person is; is that right? 05:11

19 A. So, what I'm -- I'm a little out of my 05:11
20 lane here, but -- 05:11

21 Q. Okay. 05:11

22 A. -- so this looks like this is out of the 05:11
23 Security Forces database that they keep stuff in. 05:11

24 Q. It is. 05:11

25 A. What I'm used to seeing is -- that comes 05:11

1 to a commander is an ROI, Report of Investigation, 05:11
2 for a commander's action. That -- what I'm used to 05:11
3 seeing looks different than this (indicating). 05:11

4 Q. Okay.

5 A. So my assumption would be, is that there 05:11
6 would be a separate product that would go to the 05:11
7 squadron commander for action. I've seen those 05:11
8 before from OSI, for example, a -- a report of 05:11
9 investigation referred for action. 05:12

10 Q. So I -- I'm referring you back to the 05:12
11 first page of this document -- 05:12

12 A. Okay.

13 Q. -- that Commander Boyd signed and that
14 was from the SFMIS system. And it says, Report of 05:12
15 Investigation, right?

16 A. Yes, sir.

17 Q. All right. So is this what you're
18 thinking of when you say "Report of Investigation"?

19 A. What I'm -- what I'm thinking of 05:12
20 actually looks different, because it -- it actually 05:12
21 has language on it that it's from that commander to 05:12
22 another commander referred for action. 05:12

23 So, the -- the ones that I'm thinking of that 05:12
24 I've seen, it -- you know, it says Report of 05:12
25 Investigation. 05:12

1 They look different than this, much of the 05:12
2 same information, but then it's -- it'll have 05:12
3 language in it where it says, Refer to, you know, 05:12
4 Squadron Command for Action, or that kind of thing. 05:12

5 That's -- that's what I'm -- in my mind's 05:12
6 eye, I see it, but this just doesn't look like that. 05:12

7 Q. Okay.

8 A. This looks like it came out of their 05:12
9 database, so... 05:12

10 Q. Really, my -- my question really 05:12
11 ultimately is, is regardless of what the format's 05:12
12 supposed to look like, this, you know, this is 05:13
13 stating it's a Report of Investigation. It's got a 05:13
14 commander signature at the end from the Security 05:13
15 Forces with a statement that the investigation is 05:13
16 closed.

17 A. Right. 05:13

18 Q. At the point when the investigation is 05:13
19 closed with a commander's signature, is that when 05:13
20 you would expect it to be reported to your squadron, 05:13
21 if the person they're investigating is in your 05:13
22 squadron?

23 A. I would, yeah. 05:13

24 Q. Okay. And then how would that come to 05:13
25 you? What format would that come to you in? 05:13

1 A. I'm -- I'm used to seeing it in a -- a 05:13
2 document that says Report of Investigation, referred 05:13
3 to command -- 05:13

4 Q. Hard-copy documents? 05:13

5 A. It could be electronic. 05:13

6 Q. Electronic, you mean, emailed from a 05:13
7 commander to you, or is it like a system you access? 05:13

8 A. No, no, it's not in a system. So it's 05:13
9 not uncommon for them to be brought to you on a CD 05:13
10 or a hard copy. 05:13

11 So, I think either of those would be 05:13
12 reasonable. I don't recall seeing one having been 05:13
13 emailed before; that may happen. 05:14

14 Q. Who would bring it to you on a CD or a 05:14
15 hard copy? 05:14

16 A. So, likely the First Sergeant because 05:14
17 that's likely the conduit from -- 05:14

18 Q. Yeah. 05:14

19 A. -- Security Forces back to the unit. 05:14

20 Q. The First Sergeant seems to be an 05:14
21 important conduit, an important gatekeeper for you, 05:14
22 to get these types of cross-squadron communication 05:14
23 accurate? 05:14

24 A. Absolutely. 05:14

25 Q. Okay. So, if the Security Forces at the 05:14

1 49th had closed their investigation at the end of 05:14
2 February 2012 on Devin Kelley, like it states it 05:14
3 did -- 05:14

4 A. Right.

5 Q. -- you would expect, at that point, for 05:14
6 the 49th Security Forces to send either in hard copy 05:14
7 format or a CD of the investigation to file to your 05:14
8 First Sergeant at 49th LRS? 05:14

9 A. I would. The piece I don't know is the 05:14
10 extent to which the Security Forces would be talking 05:14
11 to the legal office there at -- at Holloman, as 05:14
12 well. 05:14

13 And if they felt that there was enough 05:14
14 evidence there to warrant the commander, you know, 05:15
15 taking either non-jurisdictional punishment or 05:15
16 referring the case to a higher authority for a 05:15
17 court-martial. 05:15

18 So, there would be some other coordination 05:15
19 going here, again, my assumption, from experience, 05:15
20 they would -- they would be coordinating with First 05:15
21 Sergeant, with legal, and then advising the 05:15
22 commander on appropriate action. 05:15

23 Q. If you look at what I just highlighted 05:15
24 on the bottom there, it looks like the coordination 05:15
25 was the staff judge (inaudible) this situation? 05:15

1 A. Right. 05:15

2 MADAM COURT REPORTER: I'm sorry,
3 coordination with? 05:15

4 Q. (By Mr. Alsaffar) -- staff judge 05:15
5 advocate at the 49th was done in this time period? 05:15

6 A. Yes, sir. 05:15

7 Q. Okay. Okay. So let's move off of this. 05:15

8 MR. DEMERATH: I think the line is -- 05:15

9 MR. ALSAFFAR: We just -- we're just going to 05:15
10 try to see if we can get ahold of everybody. Are
11 you asking me to ask if anybody's on the line? 05:15

12 MR. DEMERATH: No. I know they're on the 05:15
13 line. They're waiting for us to reconnect. 05:15

14 MR. ALSAFFAR: Do we reconnect or do they
15 reconnect?

16 MR. DEMERATH: We need to reconnect. There's
17 six people on the line and for some reason, our line 05:16
18 went dead so we need to dial back in. 05:16

19 MR. ALSAFFAR: Okay. Thanks. 05:16

20 MR. DEMERATH: Sure.

21 MR. ALSAFFAR: Is that what this meant 05:16
22 (indicating)? 05:16

23 MR. DEMERATH: Yes. Sorry. 05:16

24 MR. ALSAFFAR: That's what he was passing me. 05:16
25 That's all right. Okay. I'm really proud of them 05:16

1 for hanging in there. They must be enthralled. 05:17

2 (Phone connection re-established.) 05:17

3 MR. FURMAN: Guys, are you there? 05:17

4 MR. PHILLIPS: Yes, this is Phillips. 05:17

5 MR. FURMAN: All right. Back in business. 05:17

6 MR. ALSAFFAR: Hey, guys, we apologize. 05:17

7 We -- apparently, it was on our end. So we,
8 hopefully, re-established connection. If you don't
9 mind just putting yourselves back on mute and then 05:17
10 we'll -- we'll keep moving. 05:17

11 UNIDENTIFIED SPEAKER: Okay. 05:17

12 MR. ALSAFFAR: Thanks, everybody. 05:17

13 Q. (By Mr. Alsaffar) All right. So -- so, 05:17
14 we -- we've gone through the February 2012 incident. 05:17
15 And I want to move on to a -- a later date. 05:17

16 (Deposition Exhibit 10 was marked for
17 identification.)

18 Q. (By Mr. Alsaffar) And I'm going to hand
19 you, sir, Exhibit No. 10. Exhibit No. 10 is dated 05:17
20 April 17th, 2012, correct? 05:17

21 A. Yes, sir. 05:17

22 Q. Now, this is -- this is a memorandum 05:17
23 again for Devin Kelley specifically, right? 05:17

24 A. Correct. 05:17

25 Q. And it's from your -- the 49th LRS 05:17

1 command, correct? 05:18

2 A. Correct. 05:18

3 Q. And just, again, I hate to keep 05:18

4 reorienting everybody, but when we see 49 LRS/CC, 05:18

5 that means 49 Logistic Readiness Squadron command, 05:18

6 correct? 05:18

7 A. Commander. 05:18

8 Q. Commander? 05:18

9 A. Um-hum. 05:18

10 Q. And then, that's the position you held 05:18

11 from June 2012 to June 2014? 05:18

12 A. Yes, sir. 05:18

13 Q. Okay. At this time, April 17th, 2012, 05:18

14 the acting commander was Nathan McLeod-Hughes, Major 05:18

15 Nathan McLeod-Hughes, right? 05:18

16 A. Correct. 05:18

17 Q. And that's who this April 17th, 2012, 05:18

18 memo is from? 05:18

19 A. Yes, sir. 05:18

20 Q. And this is yet another letter of 05:18

21 reprimand, right? 05:18

22 A. Correct. 05:18

23 Q. And it states under the first paragraph 05:18

24 that "Investigation has revealed that you physically 05:18

25 assaulted Mrs. Tessa Kelley on or about February 17, 05:18

1 2012"; do you see that? 05:18

2 A. I do. 05:18

3 Q. "That on multiple occasions you 05:18

4 physically assaulted your spouse, on this occasion 05:18

5 you punched her in the arm and slapped her with an 05:18

6 open hand while you were involved in a 05:19

7 verbal/physical altercation"; do you see that? 05:19

8 A. I do. 05:19

9 Q. All right. Now, remember, the 05:19

10 February 17th, 2012, date, that's the same date we 05:19

11 were just looking at regarding the various 05:19

12 allegations of choking and mass shooting, mass 05:19

13 murder that Devin Kelley was threatening, correct? 05:19

14 A. Right. 05:19

15 Q. All right. So now, we've got 49th 05:19

16 Security Forces, February 2012. And now we have 05:19

17 Major Nathan McLeod-Hughes, as well, reporting and 05:19

18 being made aware of Devin Kelley's assault on his 05:19

19 wife, correct? 05:19

20 A. Right. 05:19

21 Q. Okay. And this is -- he states, "You 05:19

22 are hereby reprimanded! Your actions violated 05:19

23 Article 128 of the UCMJ-Assault," right? 05:19

24 A. Yes. 05:19

25 Q. Okay. So, this would have been another 05:19

1 instance where the Air Force, and specifically the 05:19
2 49th LRS, was aware of Devin's -- Devin Kelley's 05:19
3 reported violence, correct? 05:20

4 A. Correct. 05:20

5 Q. Now, this also would have been a 05:20
6 memorandum that would have been in the -- the UIF, 05:20
7 unfavorable file for Devin Kelley? 05:20

8 A. I think it's logical to assume it would 05:20
9 have been in there. 05:20

10 Q. Okay. And so -- and again, logistically 05:20
11 speaking, when this -- I guess is appropriate -- 05:20
12 when this was written and this was, you know, sent 05:20
13 to Devin Kelley, would -- would Major Nathan 05:20
14 McLeod-Hughes have known that this needs to -- the 05:20
15 First Sergeant needs to know to put this in that 05:20
16 49th FSS UIF file? 05:20

17 A. So, a couple -- 05:20

18 Q. How -- how does it get from A to B? 05:20

19 A. Yeah, yeah. So, you have to make a 05:20
20 decision to establish a UIF. 05:20

21 Q. Um-hum.

22 A. And so I don't know if the squadron had 05:20
23 made the decision to establish a UIF at that time or 05:20
24 not. 05:20

25 Q. Would the squadron also have wanted to 05:20

1 keep copies at the squadron of all these various 05:20
2 incidents that they're receiving, these reports, so 05:21
3 that they know there's continuity, that, Hey -- 05:21
4 A. Right. 05:21
5 Q. -- even though there may be a file that 05:21
6 this needs to go the UIF 49th -- 05:21
7 A. Right. 05:21
8 Q. -- we also need to make sure for other 05:21
9 commanders -- because he was acting at the time --
10 for Marconi, for Bearden when he gets here, that 05:21
11 they could just look at one place here in this 05:21
12 building and know who we're dealing with? 05:21
13 A. So, remember, earlier I was talking 05:21
14 about the PIF? 05:21
15 Q. Yes, sir. 05:21
16 A. It's -- that would be my assumption that 05:21
17 this would have gone in the PIF. Had the unit 05:21
18 decided to create a UIF -- and there should be some 05:21
19 record of when they decided to create a UIF on 05:21
20 Airman Kelley -- then it would have gone in there 05:21
21 as -- also. 05:21
22 Q. Okay. And I think you had told me that 05:21
23 you can have a Personnel Information File, PIF, and 05:21
24 also an Unfavorable Information File, you can have 05:21
25 both at the same time? 05:21

1 A. Correct. 05:21

2 Q. All right. Because we're seeing a lot 05:21
3 of the 49th LRS and the 49th Security Forces, and 05:21
4 even AFOSI knowing about these things, and I'm 05:22
5 trying to understand how they're all communicating 05:22
6 to each other -- 05:22

7 A. Right. 05:22

8 Q. -- and knowing about it. Okay? Now, 05:22
9 the -- this time frame, April 17th, 2012, that's 05:22
10 what's the date on the letter, correct? 05:22

11 A. Correct. 05:22

12 Q. Now, would you be -- I don't know if you 05:22
13 know this, and I'd be happy to show it to you. I'll 05:22
14 go ahead and do that, actually. 05:22

15 When you became commander of the 49th LRS in 05:22
16 June 30, 2012, what was the policy for carrying 05:22
17 fire -- firearms on -- on base at Holloman? 05:22

18 A. I don't remember. 05:22

19 Q. Can anyone carry a firearm on base? 05:22

20 A. No. So, typically, you're limited to 05:22
21 law enforcement personnel. Some bases allow retired 05:22
22 law enforcement personnel to carry on base, that 05:23
23 kind of thing. 05:23

24 What's typical would be that, like, to have 05:23
25 it stored in your home, you have to register to with 05:23

1 Security Forces so that they know you have firearms 05:23
2 in your home. 05:23

3 That -- that's typical, but carrying, no. So 05:23
4 you -- typically, you transport, you know, in your 05:23
5 car, in the trunk, on -- on or off of base, but 05:23
6 otherwise, it's locked up at home. 05:23

7 (Deposition Exhibits 11 & 12 were marked for
8 identification.)

9 Q. (By Mr. Alsaffar) All right. I'm 05:23
10 going -- I'm going to hand you Exhibits No. 11 and 05:23
11 No. 12, okay? 05:23

12 A. Okay. 05:23

13 Q. And I don't know if you're familiar with 05:23
14 these forms, but what I've handed you, Exhibit 05:23
15 No. 11 is a Firearms Transaction form, commonly 05:23
16 known as an ATF Form 4473. It's a form you fill out 05:23
17 when you want to buy a gun. 05:23

18 A. Okay. 05:23

19 Q. Are you familiar with this form at all? 05:23

20 A. Not -- I've purchased firearms before so 05:24
21 assume I filled one out before. 05:24

22 Q. I hope you did. If you purchased it at 05:24
23 the federal licensed firearm dealer, you would have. 05:24

24 A. Yes, but I -- I don't remember having 05:24
25 seen it before, but I'm sure I did. 05:24

1 Q. Now, the first exhibit, No. 11, that I 05:24
2 handed you, if you look on -- I've highlighted it 05:24
3 for you on the back -- remember when we were talking 05:24
4 about his two reports in February 2012, one from his 05:24
5 female supervisor where he had used that -- that 05:24
6 inappropriate language and then we'd seen one a week 05:24
7 and a half later, his wife reported him in 2012 05:24
8 threatening choking her, water boarding her, 05:24
9 threatening mass murder; do you remember that? 05:24

10 A. I do. 05:24

11 Q. That was about February 17th, 2012. Now 05:24
12 this, on that second page that you're looking at is 05:25
13 Devin Kelley is purchasing a weapon at -- around 05:25
14 February 11, 2012, correct? 05:25

15 A. 12th. 05:25

16 Q. Oh, February 12th, 2012, correct? 05:25

17 A. Correct. 05:25

18 Q. So this is right in between the time 05:25
19 frame right after -- after he made those remarks to 05:25
20 his female supervisor and just before his wife comes 05:25
21 in and says, This guy is choking me, water boarding 05:25
22 me and threatening to kill his leadership? 05:25

23 A. Correct. 05:25

24 Q. Okay. And if you noted that this was 05:25
25 purchased at Holloman Air Force Base Exchange? 05:25

1 A. I see that. 05:25

2 Q. Do you see that? Okay. All right. And 05:25

3 then, the second exhibit, Exhibit No. 12, remember 05:25

4 commander -- acting commander Nathan McLeod-Hughes' 05:25

5 letter was April 17th, 2012; is that correct? 05:25

6 A. Yes. 05:26

7 Q. All right. And what is -- this -- this 05:26

8 form is Devin Kelley purchasing another firearm at 05:26

9 Holloman Air Force Base Exchange. And what's the 05:26

10 date on the purchase there? 05:26

11 A. April 12th, 2012. 05:26

12 Q. Okay. So the -- just a few days before 05:26

13 this letter of reprimand from Commander Nathan 05:26

14 McLeod-Hughes --

15 A. Um-hum.

16 Q. -- Devin Kelley has purchased another 05:26

17 separate firearm at Holloman Air Force Base 05:26

18 Exchange, correct? 05:26

19 A. Correct. 05:26

20 Q. Okay. 05:26

21 MR. FURMAN: Do you want these? 05:26

22 MR. ALSAFFAR: Okay.

23 Q. (By Mr. Alsaffar) Now, do you agree 05:27

24 that people who are subjects of credible accusations 05:27

25 of violent abuse and folks who have threatened a 05:27

1 mass shooting should not have access to weapons? 05:27

2 MR. FURMAN: Objection to form; you can 05:27

3 answer. 05:27

4 A. So, my -- my personal opinion -- 05:27

5 Q. (By Mr. Alsaffar) Yes, your personal 05:27

6 opinion. 05:27

7 A. -- is that I would prefer them not to, 05:27

8 but, you know, if they purchase it legally, then 05:27

9 they made a legal purchase. 05:27

10 Q. Okay. And that's -- that's another 05:27

11 question. If an individual legally should be 05:27

12 reported for -- when prob- -- probable cause exists 05:27

13 that they committed a reportable crime like assault, 05:27

14 and the law prohibits that person at that point from 05:28

15 obtaining a weapon, that that person should not be 05:28

16 able to obtain a weapon, correct? 05:28

17 A. Right.

18 Q. You agree with that? 05:28

19 A. I agree. 05:28

20 Q. Okay. And one of the laws that we have 05:28

21 in place in this country is that if you have either 05:28

22 been credibly accused, via probable cause of a 05:28

23 crime, domestic violence or a felony assault, that 05:28

24 your fingerprints should be collected and they 05:28

25 should be reported to the FBI, which would then 05:28

1 prevent you from purchasing a firearm, right? 05:28

2 A. Right. 05:28

3 Q. And that rule is in place to keep -- 05:28

4 well, the public safe, right? 05:28

5 A. Yes, sir. 05:28

6 MR. FURMAN: Objection to form. 05:28

7 Q. (By Mr. Alsaffar) And that -- and when 05:28

8 we -- people like that who are supposed to be 05:28

9 reported to the FBI in order to prevent them from 05:28

10 getting firearms are allowed to purchase firearms, 05:28

11 that increases the risk of harm to the public; 05:29

12 doesn't it? 05:29

13 MR. FURMAN: Objection to the form. 05:29

14 A. I would agree with that. 05:29

15 Q. (By Mr. Alsaffar) Okay. And going back 05:29

16 to Devin Kelley here in his -- in the forms I was 05:29

17 showing you about his gun purchases, let's talk 05:29

18 about time -- so that time -- the second time frame 05:29

19 was about April 12, 2012, when he purchased his 05:29

20 second weapon at Holloman Air Force Base Exchange? 05:29

21 A. Correct. 05:29

22 Q. I want to show you Exhibit No. 13. 05:29

23 (Deposition Exhibit 13 was marked for
24 identification.)

25 Q. (By Mr. Alsaffar) Exhibit 13 is a copy 05:29

1 of a letter -- or a memorandum from Tracy Wolfe and 05:29
2 sergeant -- First Sergeant 49th LRS; do you see 05:29
3 that? 05:29

4 A. I do. 05:29

5 Q. This is the Tracy Wolfe we've been 05:29
6 talking about, correct? 05:29

7 A. Correct. 05:29

8 Q. And -- that's her -- his signature on -- 05:29
9 on this document; is that correct? 05:29

10 A. That's correct. 05:29

11 Q. And I'm sorry, this is dated April 26th, 05:29
12 2012? 05:29

13 A. Correct. 05:29

14 Q. And this is a memorandum for -- this is 05:29
15 the 49th Security Forces, correct? 05:30

16 A. Correct. 05:30

17 Q. All right. So this is the place that 05:30
18 had -- it was conducting the investigation, the 05:30
19 Security Forces of the -- of Devin Kelley on 05:30
20 February 17th, 2012, right? 05:30

21 A. That's correct. 05:30

22 Q. So two months later, your -- this was 05:30
23 your First Sergeant at Holloman, correct -- 05:30

24 A. Correct. 05:30

25 Q. -- when you came in command. So two 05:30

1 months after that February event, 2012, Tracy Wolfe 05:30
2 is sending this memo to the 49th Security Forces 05:30
3 telling them that, I've taken -- I'm in possession 05:30
4 of one of the firearms of Devin Kelley and storing 05:30
5 it at the base armory, correct? 05:30

6 A. It's asking -- it's asking the Security 05:30
7 Forces Squadron to store a firearm belonging to 05:30
8 Devin Kelley at the armory, base armory. 05:30

9 Q. All right. And -- and so what has 05:30
10 happened is First Sergeant Wolfe is in possession 05:30
11 and has taken the gun -- Devin Kelley's gun -- a gun 05:30
12 of Devin Kelley's? 05:30

13 A. I think that's a reasonable assumption. 05:30

14 Q. Okay. And so your -- First Sergeant 05:31
15 Wolfe, who was Marconi's First Sergeant at this 05:31
16 time --

17 A. Right.

18 Q. -- Commander Marconi's First Sergeant at 05:31
19 this time is asking the Security Forces of the 49th 05:31
20 at Holloman to store it and not let Devin Kelley get 05:31
21 this gun? 05:31

22 A. Correct. Yeah. He goes on to say, the 05:31
23 only people who are authorized to check it out are 05:31
24 him and the commander -- "him" being First Sergeant 05:31
25 Wolfe. 05:31

1 Q. And the commander of the 49th LRS at the 05:31
2 time, Colonel Marconi?

3 A. Marconi. 05:31

4 Q. And so, this is another document that 05:31
5 should make it into the UIF file, do you think, or 05:31
6 at least the PIF file?

7 A. I don't -- I don't think so, no. This 05:31
8 is just requesting storage of a firearm at the 05:31
9 armory. So it wouldn't -- in my estimation, it 05:31
10 wouldn't rise to being unfavorable information about 05:31
11 the airman. 05:31

12 Q. Okay.

13 A. So I wouldn't expect it to be stored in 05:31
14 a UIF. I don't think I'd even -- even expect it to 05:31
15 be stored in the PIF. 05:31

16 Q. Oh, okay. So this particular document 05:31
17 saying, Hey, we've got the firearm of Devin Kelley 05:32
18 and we're asking the Security Forces to store it and 05:32
19 not ever -- not allow Devin Kelley to get it back, 05:32
20 that's not a file that would have been kept in -- 05:32
21 anywhere in the LRS? 05:32

22 A. Not in my assumption -- or not in my 05:32
23 estimation. 05:32

24 Q. Where would this have gone, just to 05:32
25 Security Forces? 05:32

1 A. It would have gone to Security Forces. 05:32

2 Q. All right. And now, if you notice, it 05:32

3 says the firearm and it's got the -- the number and 05:32

4 the -- the description, .38 Special, right? 05:32

5 A. Right. 05:32

6 Q. Now, I just showed you two documents 05:32

7 where in the span of a couple of months, Devin 05:32

8 Kelley had purchased two guns at Holloman Air Force 05:32

9 Base, a .38 Special and a 9 millimeter

10 semiautomatic, correct?

11 A. Correct.

12 Q. All right. So this is only talking

13 about securing the .38 Special? 05:32

14 A. That's correct. 05:32

15 Q. So, at this point, we don't know what's 05:32

16 going on with the other gun? 05:32

17 A. I think that's a reasonable assumption. 05:32

18 Q. All right. Are you familiar with what 05:32

19 an HRVRT is? 05:32

20 A. A high risk -- I forget the V, but it's 05:32

21 a -- it's a team you called together if you think 05:33

22 that you've got an airman that isn't -- presents a 05:33

23 high risk. 05:33

24 So it's -- brings together several different 05:33

25 agencies on the base to consider, Okay, is this 05:33

1 person a risk to themselves or others? 05:33

2 Q. Is it, HRVRT stands for High Risk for 05:33

3 Violence Response Team? 05:33

4 A. That sounds correct. 05:33

5 Q. Okay. So there's a team that's put 05:33

6 together on the base when you have identified an 05:33

7 individual that is a high risk for violent conduct? 05:33

8 A. Right. 05:33

9 Q. Right. And an HRVRT team is put 05:33

10 together for Devin Kelley on Holloman Air Force 05:33

11 Base, are you aware of that? 05:33

12 A. No. 05:33

13 Q. All right. Well, I want to take you 05:33

14 through that.

15 A. Okay.

16 Q. You seem to know what it is based on 05:33

17 your --

18 A. Experience. 05:33

19 Q. -- experience? 05:33

20 A. Yes, sir. 05:33

21 Q. And based on your experience, what kind 05:33

22 of members or what kind of people from the base are 05:33

23 put together to serve on the High Risk for Violence 05:33

24 Response Team? 05:33

25 A. I don't remember. Likely, groups would 05:34

1 be the Office of Special Investigations, Security 05:34
2 Forces, that could be either/or, or both. 05:34

3 There's probably some kind of mental health 05:34
4 representation, as well. Potentially, family 05:34
5 advocacy. Those are the kinds of people that I 05:34
6 think are probably on it. The Air Force instruction 05:34
7 probably spells out those types of people that have 05:34
8 to be on it. 05:34

9 Q. I'll do you a favor and look at that 05:34
10 because that's a fair thing to do. I'm going to 05:34
11 hand you Exhibit No. 14. And it's another document 05:34
12 from this time frame. So I'm now moving from -- 05:34

13 MR. FURMAN: Do you have a copy for me? 05:34

14 MR. ALSAFFAR: Oh, yeah, I do. Sorry. 05:34

15 (Deposition Exhibit 14 was marked for
16 identification.) 05:34

17 Q. (By Mr. Alsaffar) I am now moving -- we 05:34
18 talked a lot about June 2011. We've moved you 05:34
19 through October 2011 with the CRB board, and the 05:34
20 child maltreatment criteria. 05:35

21 Now, we've moved you through February 2012 05:35
22 with the multiple reports of violence. And now -- 05:35
23 and then April 2012 with Commander McLeod's memo 05:35
24 about an assault. 05:35

25 The two gun purchases that Devin Kelley made 05:35

1 in April and in February 2012 on Holloman Air Force 05:35
2 Base. 05:35

3 And now we're in that May time frame. And I 05:35
4 want to talk to you about something you mentioned a 05:35
5 few minutes ago. 05:35

6 You said when you receive the Report of 05:35
7 Investigation from the 49th Security Forces about an 05:35
8 individual like Devin Kelley, you expect to see it 05:35
9 in a certain kind of format. And I've handed you 05:35
10 Exhibit No. 13 -- is it 13, sir?

11 A. 14.

12 Q. Ah, 14. Sorry. I should have written 05:35
13 it on my copy. Okay. I've done that. So Exhibit 05:35
14 No. 14, the front page says, Memorandum For -- and
15 then there's handwriting, 49 LRS-CC-CC -- looks like 05:36
16 F? 05:36

17 A. F. 05:36

18 Q. What is -- what does that mean? 05:36

19 A. So to the commander and the First 05:36
20 Sergeant. 05:36

21 Q. Okay. So this is a memo to 49th 05:36
22 Logistics Readiness Squadron Commander and -- and 05:36
23 CCF is what again? 05:36

24 A. First Sergeant. 05:36

25 Q. First Sergeant. So that would have been 05:36

1 Tracy Wolfe, probably? 05:36

2 A. Correct. 05:36

3 Q. All right. And this is from the 49th 05:36

4 Security Forces, correct? 05:36

5 A. From the commander. 05:36

6 Q. And the commander of the 49th Security 05:36

7 Forces signed here is David Boyd again? 05:36

8 A. Correct. 05:36

9 Q. And he's got -- in there, he's X'd a box 05:36

10 that says, "COMMANDER'S REPORT OF DISCIPLINARY 05:36

11 ADMINISTRATIVE ACTION IS REQUIRED...Upon completion, 05:36

12 please return the original form...with the action 05:36

13 annotated no later than" May 2nd, 2012; do you see 05:36

14 that? 05:36

15 A. I do. 05:36

16 Q. And then under No. 2, it states, "The 05:36

17 unit commander or designee must endorse all forms." 05:36

18 A. Correct. 05:36

19 Q. And then at the bottom there, it says, 05:36

20 "AF Form 3545/SFMIS," and it's got that case number, 05:37

21 and "ROI"; do you see that? 05:37

22 A. I do. 05:37

23 Q. Which, that stands for Report of 05:37

24 Investigation? 05:37

25 A. It does. 05:37

1 Q. And then attached to it is that document 05:37
2 I showed you earlier where -- from the file where 05:37
3 it's got the narrative of the interview with Tessa 05:37
4 Kelley with all the description of what Devin Kelley 05:37
5 was doing, including his threats for mass murder, 05:37
6 with the legal consultation with the SJA, and then 05:37
7 the Commander Boyd instruction? 05:37

8 A. Yes, sir. 05:37

9 Q. So it appears -- does it appear from 05:37
10 this document that around this time frame, so around 05:37
11 the end of April, May 2012, the Security Forces is 05:37
12 sending to the 49th LRS notification of the Security 05:37
13 Forces investigation of Devin Kelley? 05:37

14 A. Correct, and requiring from them some 05:37
15 kind of action. 05:37

16 Q. Okay. And so when the 49th LRS would 05:37
17 have received this form (indicating), would this 05:37
18 have gone where? 05:38

19 A. I don't know. So, likely, back to 05:38
20 the -- back to the Security Forces with the 05:38
21 endorsement of what was done. That's -- that's 05:38
22 likely, but I don't know where it's filed. I 05:38
23 apologize. 05:38

24 Q. That's okay. That's okay. And we're -- 05:38
25 we're kind of getting to a few weeks before you 05:38

1 get -- 05:38

2 A. Right.

3 Q. -- you know, about a month and a half
4 before you get to the base -- 05:38

5 A. Right.

6 Q. -- to -- to take over this command. So, 05:38
7 the -- when you got to Devin -- when you got to the 05:38
8 Holloman Air Force Base at the end of June 2012, do 05:38
9 you remember ever seeing the Security Forces Report 05:38
10 of Investigation on him? 05:38

11 A. I don't. 05:38

12 Q. Okay. All right. And now, we're -- 05:38
13 we're getting to what we were just discussing a few 05:38
14 seconds ago, which is the HRVRT -- 05:38

15 A. Okay. 05:39

16 Q. -- meeting. So now, we're talking about 05:39
17 mid-May 2012. The 49th LRS now has received the 05:39
18 notification of investigation from the Security 05:39
19 Forces into Devin Kelley with the various threats he 05:39
20 made. 05:39

21 And I want to talk now about the High Risk 05:39
22 for Violence Response Team that was formed for Devin 05:39
23 Kelley.

24 Now, you had mentioned the regulation 05:39
25 earlier. Now, there's a -- let me find it. I've

1 got it right here. There is an Air Force 05:39
2 Instruction, a mandatory instruction, actually, 05:39
3 relating to how the Air Force has to handle HRVRT 05:39
4 situations, correct? 05:39

5 A. I believe so. 05:39

6 Q. Okay. And I'm going to show it to you. 05:39

7 A. Okay.

8 Q. I'm not going to play hide and seek at 05:39
9 all. 05:39

10 A. Okay. 05:39

11 (Deposition Exhibit 15 was marked for
12 identification.) 05:39

13 Q. (By Mr. Alsaffar) All right. I'm 05:39
14 handing you Exhibit No. 15. This was produced to us 05:39
15 by the government.

16 A. Okay.

17 Q. It's Bates stamp 7575. And it's Air 05:40
18 Force Instruction 40-301. And from the Family 05:40
19 Advocacy Program. And you see that it states that 05:40
20 "COMPLIANCE OF THIS PUBLICATION IS MANDATORY," 05:40
21 correct? 05:40

22 A. I do. 05:40

23 Q. Okay. So no discretion involved, you 05:40
24 have to follow this instruction, right? 05:40

25 A. Correct. 05:40

1 Q. It's one of those. So let's talk 05:40

2 about -- let me flip you to Page 2, Section 2.2.8; 05:40

3 do you see that? 05:40

4 A. I do. 05:40

5 Q. Okay. And it's titled, "High Risk for 05:40

6 Violence Response Team, (HRVRT)," right? 05:40

7 A. It is. 05:40

8 Q. Correct? Okay. So, it states that, 05:40

9 "The HRVRT will be activated when there is a threat 05:40

10 of immediate and serious harm to family members, 05:40

11 unmarried intimate partners, or the FAP staff," 05:40

12 which is the Family Advocacy Program, correct? 05:41

13 A. Correct. 05:41

14 Q. Okay. So we know that the HRVRT, the 05:41

15 high risk for violence team is not even put together 05:41

16 unless there is a threat from someone of immediate 05:41

17 and serious harm to family members? 05:41

18 A. Correct. 05:41

19 Q. All right. The "HRVRT is activated at 05:41

20 the discretion of the FAO"; do you see that section 05:41

21 right underneath? 05:41

22 A. I do. 05:41

23 Q. All right. "Members are appointed in 05:41

24 writing by their CC," which stands for commander? 05:41

25 A. It does. 05:41

1 Q. All right. "And approved by the FAC. 05:41
2 Membership includes the FAO, the FAP clinician 05:41
3 working with the family, member's SQ/CC," and that 05:41
4 stands for? 05:41
5 A. Squadron commander. 05:41
6 Q. All right. So that would be the 49th 05:41
7 LRS in Devin Kelley's situation? 05:41
8 A. Correct. 05:41
9 Q. "JA," which stands for judge advocate? 05:41
10 A. Correct. 05:41
11 Q. "SFS," which stands for Security Forces, 05:41
12 correct? 05:41
13 A. Correct. 05:41
14 Q. "MH provider, AFOSI"? 05:41
15 A. Correct. 05:42
16 Q. "DAVA," do you know what that is? 05:42
17 A. DAVA, the -- I would need to look it up, 05:42
18 but it's -- they handle abuse cases. 05:42
19 Q. Domestic abuse -- 05:42
20 A. Domestic abuse, yes. 05:42
21 Q. Okay. And so, this is -- you had 05:42
22 mentioned this, they're kind of similar to the 05:42
23 CRB where it's a collection of -- HRVRT is a 05:42
24 collection of various members of squadron 05:42
25 commanders, judge advocates, Security Forces, family 05:42

1 advocacy folks, family advocacy clinicians, AFOSI 05:42
2 members in a group team to help assess the threat 05:42
3 risk of this person, right? 05:42

4 A. Right. 05:42

5 Q. So this type of group was put together 05:42
6 for Dev- -- I'm representing to you, this type of 05:42
7 group was put together for Devin Kelley in around 05:42
8 May 2012? 05:42

9 A. Okay. 05:42

10 Q. Okay? And so, the only way this happens 05:42
11 is if -- if it has been determined that Devin Kelley 05:42
12 posed a threat of immediate and serious harm to 05:42
13 family members in the May 2012 time frame, correct? 05:43

14 MR. FURMAN: Objection to form. 05:43

15 Q. (By Mr. Alsaffar) Is that your
16 understanding of how this thing was --

17 A. Yeah, that would --

18 MR. FURMAN: Same objection.

19 Q. (By Mr. Alsaffar) Is that your 05:43
20 understanding of how this team was formed? 05:43

21 MR. FURMAN: Same objection; you can answer. 05:43

22 A. That is -- I share your understanding 05:43
23 that if a HRVRT was formed, that would be the reason 05:43
24 why. 05:43

25 Q. (By Mr. Alsaffar) Okay. The reason 05:43

1 being that Devin Kelley would have posed a threat of 05:43
2 immediate and serious harm to family members? 05:43

3 A. Right. 05:43

4 Q. Okay. And let me -- let me turn you to 05:43
5 what I promised I would turn you to, which is the 05:43
6 proof that this actually happened for Devin Kelley. 05:43

7 A. Okay. 05:43

8 Q. So, I'm going to hand you Deposition 05:43
9 Exhibit No. 16. 05:43

10 (Deposition Exhibit 16 was marked for
11 identification.) 05:44

12 Q. (By Mr. Alsaffar) I hand you Deposition 05:44
13 Exhibit No. 16. It might look a little confusing 05:44
14 because it is -- 05:44

15 MR. FURMAN: Do you have a copy of that? 05:44

16 MR. ALSAFFAR: I do. Of course I do. I 05:44
17 always have multiple, triplicate copies. 05:44

18 MR. FURMAN: You're good. 05:44

19 Q. (By Mr. Alsaffar) This Exhibit 16 is 05:44
20 a -- at the top, it's titled "U.S. Department of 05:44
21 Justice, Bureau of Alcohol, Tobacco, Firearms and
22 Explosives from Chief Counsel"; do you see that? 05:44

23 A. I do. 05:44

24 Q. Okay. Now, this was produced to us by 05:44
25 the government, as well. And you -- can you read 05:44

1 the Bates stamp number on the bottom right for 05:44
2 everybody?

3 A. 5399. 05:44

4 Q. Okay. And it's got a USA Bates stamp 05:44
5 number, correct? 05:44

6 A. It does. 05:44

7 Q. All right. Now, let me flip your 05:44
8 attention to the -- it would be the third page. 05:44

9 A. Okay. 05:44

10 Q. Bottom of the third page where it states 05:44
11 May 14th to 15th, 2012; do you see that, on the 05:44
12 bottom of the third page. 05:45

13 A. Bottom of the third page. 05:45

14 Q. It's got the number 2 on the bottom -- 05:45

15 A. Oh.

16 Q. -- but it's the third page. 05:45

17 A. Oh, sorry. May 14th and 15th, got it. 05:45

18 Q. Do you remember when I told you a couple 05:45
19 of minutes ago that at Holloman Air Force Base, a 05:45
20 High Risk for Violence Team was put together for 05:45
21 Devin Kelley on May 14th, 2012, time frame? 05:45

22 A. I do. 05:45

23 Q. Okay. So this -- this establishes -- 05:45
24 this is where we get this information. 05:45

25 A. Okay. 05:45

1 Q. The Department of Justice is telling us 05:45
2 that on May 14th to 15th, 2012, at Holloman Air 05:45
3 Force Base, a High Risk for Violence Response Team 05:45
4 convened to discuss Devin Kelley's mental health 05:45
5 concerns; do you see that?

6 A. I do.

7 MR. FURMAN: Objection to the 05:45
8 characterization. You can answer.

9 MR. ALSAFFAR: Oh, what's -- okay. I'm 05:45
10 sorry?

11 MR. FURMAN: You said the Department of
12 Justice is telling us.

13 MR. ALSAFFAR: Okay. Well, this is from the 05:45
14 Department of Justice, isn't it?

15 MR. FURMAN: It's in their memo. I don't 05:45
16 know if they're telling us or -- 05:45

17 MR. ALSAFFAR: Well, it's their letter where 05:45
18 they're telling us -- 05:45

19 MR. FURMAN: It's included in the letter.

20 MR. ALSAFFAR: This would be followup RP 05:45
21 because we have not received any information about
22 this team from you guys, and there's supposed to be 05:46
23 a lot of documentation about an HRVRT team. 05:46

24 So, we'll followup on that, but I was -- this 05:46
25 is the only notification we got that this happened 05:46

1 for Devin Kelley was through this letter. 05:46

2 So that's why -- and that's their letter. 05:46

3 That's why I say that DOJ is telling us, but we'll 05:46

4 talk about that later -- later discovery. 05:46

5 Q. (By Mr. Alsaffar) Okay. Let me go back 05:46
6 to this.

7 So in this letter from the Department of
8 Justice, it states, May 14th to 15th, a high risk 05:46
9 for violence team has been put together for Devin 05:46
10 Kelley, correct? 05:46

11 A. I see that. 05:46

12 Q. At Holloman Air Force Base, right? 05:46

13 A. Yes, sir. 05:46

14 Q. So it's about a month and a half before 05:46
15 you arrive, okay; is that right? 05:46

16 A. That's correct.

17 Q. And it states further, "Kelley's
18 Squadron leadership and his mental health providers 05:46
19 feel that he is a major threat to commit an act of 05:46
20 violence, and is currently institutionalized for 05:46
21 mental and emotional instability." 05:46

22 A. It does. 05:46

23 Q. Do you see that? Okay. Now, where it 05:46
24 says "Kelley's Squadron leadership," would that be
25 the 49th LRS squadron, is that what that means -- 05:46

1 A. It would. 05:47

2 Q. -- "Squadron"? Okay. At the time, the 05:47

3 squadron leadership was Commander Marconi -- 05:47

4 A. Correct. 05:47

5 Q. -- right? And then his second in 05:47

6 command was Major McLeod-Hughes? 05:47

7 A. Correct. 05:47

8 Q. Okay. And so, at least we know through 05:47

9 the HRVR team that in May 14th-15th, the 49th LRS 05:47

10 Squadron has determined that he is, Devin Kelley, is 05:47

11 a major threat to commit an act of violence, 05:47

12 correct? 05:47

13 A. Correct. 05:47

14 Q. All right. And now, were you aware -- 05:47

15 let's see if I can find it. Were you aware when 05:47

16 you -- shortly after in a month or so, within a 05:47

17 month or so after you arrived at Holloman Air Force 05:47

18 Base as commander of the 49th LRS, that Devin Kelley 05:48

19 had -- by this time, May 14th-15th, 2012, had 05:48

20 actually already confessed on video to beating his 05:48

21 child. 05:48

22 A. I don't recall being aware of that. I 05:48

23 know that it's in the documentation that went along 05:48

24 with his trial, though. 05:48

25 Q. Okay. So, were you aware that it was 05:48

1 your First Sergeant, your First Sergeant Tracy Wolfe 05:48
2 who received the confession video, had a copy of it 05:48
3 on a disk? 05:48

4 A. I may have been. I don't -- I don't 05:48
5 remember anything about it. 05:48

6 Q. And -- and what I mean is, is that in 05:48
7 April 29th, 2012, First Sergeant Wolfe, who was your 05:48
8 First Sergeant when you got there, right? That's 05:48
9 correct, right?

10 A. Correct. 05:48

11 Q. So, in April 29th, 2012, First Sergeant 05:48
12 Wolfe, not only had possession of the confession 05:48
13 video, but also transferred that confession video to 05:49
14 the Air Force OSI, Detachment 225 Office, as well; 05:49
15 did you know that? 05:49

16 A. No. 05:49

17 Q. Okay. Did anybody make you -- so First 05:49
18 Sergeant Wolfe did not make you aware, at least at 05:49
19 the time shortly after you arrived at the base that 05:49
20 Devin Kelley had -- had all these incidents, had all 05:49
21 these threats, had violence and purchased guns, and 05:49
22 now officially confessed to the crime of abusing a 05:49
23 child, you weren't made aware of that -- 05:49

24 MR. FURMAN: Objection --

25 Q. (By Mr. Alsaffar) -- when you first 05:49

1 came in? 05:49

2 MR. FURMAN: -- misstates testimony. 05:49

3 MR. ALSAFFAR: You can answer. 05:49

4 A. Not that I recall. You know, so the -- 05:49

5 the difference -- I think the context that matters 05:49

6 there is that when I arrived, he was already in 05:49

7 pretrial confinement. 05:49

8 So, you know, that, likely, changes what the 05:49

9 First Sergeant is, you know, thinking about and 05:49

10 telling me about because the individual's in 05:49

11 pretrial confinement, getting ready to go to trial 05:49

12 by court-martial for what was committed. 05:50

13 So, you know, there's, probably in his mind, 05:50

14 there's a limit to what he needs to spin me up on 05:50

15 with regard to an airman that's already in 05:50

16 confinement, that's no longer a risk to the unit. 05:50

17 Q. (By Mr. Alsaffar) So do you -- do you 05:50

18 know who the 49th LRS Squadron commander had 05:50

19 appointed to be on the Devin Kelley High Risk for 05:50

20 Violence Response Team? 05:50

21 A. I do not. 05:50

22 Q. Okay. Where would I find that 05:50

23 documentation? 05:50

24 A. I don't know. 05:50

25 Q. You don't know? 05:50

1 A. I don't know if that's required to be in 05:50
2 paper, you know, as I -- you showed from the Air 05:50
3 Force instruction that -- that they have to appoint 05:50
4 them. 05:50

5 Q. Um-hum. 05:50

6 A. But I don't know -- you know, it doesn't 05:50
7 say that appoint them in writing, so it may have 05:50
8 just been a verbal, You're on it, go meet. 05:50

9 I don't know. The interesting thing for us 05:50
10 here, again, to give you context, is so, now, this 05:50
11 is another -- yet another squadron on base in the 05:51
12 family advocacy program over on the medical side. 05:51

13 Now we're in their expertise about what's 05:51
14 required. So I wouldn't know how they document or 05:51
15 if it's required, that kind of thing. 05:51

16 Q. So by -- what we know, based on the 05:51
17 Department of Justice, what we know is that by 05:51
18 May 5th -- 14-15, 2012, we've have got multiple 05:51
19 elements, multiple sections of the Holloman Air 05:51
20 Force Base, multiple outfits within the Holloman Air 05:51
21 Force Base that are aware of the high risk of 05:51
22 violence and threat that Devin Kelley poses to 05:51
23 members on base, correct? 05:51

24 MR. FURMAN: Objection to the 05:51
25 characterization.

1 Q. (By Mr. Alsaffar) Is that a fair
2 characterization?

3 MR. FURMAN: Same objection; you can answer. 05:51

4 A. So I -- I would offer with what you just 05:51
5 illustrated and kind of stepped through with -- 05:51

6 Q. (By Mr. Alsaffar) Yes, sir. 05:51

7 A. -- all these various things, it's clear 05:51
8 that there was a lot of activity between the LRS 05:51
9 squadron leadership and the various helping agencies 05:51
10 on base to get to a place where they were taking 05:51
11 action on what they were learning about Airman 05:52
12 Kelley.

13 And I think it's -- this shows that by that 05:52
14 point, they had taken a lot of action and to -- when 05:52
15 I arrived to that point, that he was in pretrial 05:52
16 confinement and being charged with crimes. 05:52

17 And so, yeah, it's obvious that there's a lot 05:52
18 of activity because they're concerned about this 05:52
19 individual. 05:52

20 And that they, obviously, had enough evidence 05:52
21 that they thought they could charge him with a crime 05:52
22 and put him in pretrial confinement. 05:52

23 Q. Right. And so, at that point, there's 05:52
24 doubt -- so, we're talking the April 29, 2012, 05:52
25 the -- Tracy Wolfe has possession of the confession 05:52

1 video.

2 The confession video he sends to the AFOSI, 05:52
3 so both AFOSI, your squadron are aware -- I'm sorry, 05:52
4 the 49th LRS Squadron is aware he's confessed to 05:52
5 child abuse. 05:52

6 May 2012, a High Risk for Violence Team has 05:53
7 been put together because he poses a specific major 05:53
8 threat to commit an act of violence. 05:53

9 At this time frame in Devin Kelley's point of 05:53
10 life at Holloman Air Force Base, there's no doubt 05:53
11 there's reasonable grounds, probable cause to 05:53
12 believe he's committed these violent acts, right? 05:53

13 MR. FURMAN: Objection to the form; you can 05:53
14 answer. 05:53

15 A. So, you made some statement there about 05:53
16 Sergeant Wolfe transferring a video. I haven't seen 05:53
17 anything, so I can't speak to that.

18 Q. (By Mr. Alsaffar) Okay.

19 A. I haven't seen anything that shows that
20 he took a confession and that he transferred it to 05:53
21 OSI, but I think to the point of your question, it's 05:53
22 clear that by this time, the squadron leadership has 05:53
23 determined that he, being Airman Kelley -- 05:53

24 Q. Um-hum. 05:53

25 A. -- there's probable cause that -- that 05:53

1 he did something illegal and that he was at risk for 05:53
2 violent acts. And that they were taking action to 05:53
3 protect the squadron and the -- the public against 05:54
4 those acts. 05:54

5 Q. Okay. And, you know, you -- you had 05:54
6 made a statement there about the April 29th 05:54
7 confession video, and so I want to show you -- I'm 05:54
8 sorry. You had asked -- you said, Well, I haven't 05:54
9 seen it -- 05:54

10 A. Right.

11 Q. And I -- I know you're not questioning 05:54
12 my -- my integrity at all, and I appreciate it, but 05:54
13 I'm -- also care about you understanding that I'm 05:54
14 not making stuff up, either. 05:54

15 A. Yep, so I take your word for it. 05:54

16 Q. Yeah, but I want to show it to you 05:54
17 because I don't -- you don't have to take my word 05:54
18 for it.

19 A. Okay.

20 Q. So, I'm showing you -- this is the USA 05:54
21 Bates stamp, I'll show you the Bates stamp on the 05:54
22 bottom, 13431; do you see that? 05:54

23 (Deponent perused computer screen.) 05:54

24 A. Not yet. 05:54

25 Q. (By Mr. Alsaffar) Okay. I'm sorry. 05:54

1 I'm sorry. At the bottom there? No, not yet?

2 A. 13431, I see it. 05:54

3 Q. You see it, okay. And this is -- let me 05:55
4 pull it up again. I'll highlight it for you. This 05:55
5 is a report from AFOSI dated April 29th, 2012, 05:55
6 correct? 05:55

7 A. Correct. 05:55

8 Q. And I want to show you the AFOSI. And 05:55
9 it's an interview of your First Sergeant by Special
10 Agent Holtz, correct? 05:55

11 A. Interview of Wolfe, Tracy A. I don't 05:55
12 see who did it. Sorry.

13 Q. The first page; do you see that? 05:55
14 Interview of Wolfe, April 29th -- 05:55

15 A. I do.

16 Q. -- 2012?

17 A. Yep.

18 Q. And then -- oh, I'm sorry. It's by
19 Clinton Mills --

20 A. Mills, Clinton. I see at the bottom.

21 Q. Clinton Mills is a Special Agent, AFOSI. 05:55

22 A. Okay. 05:55

23 Q. And it states that Tracy Wolfe, Holloman 05:55
24 Air Force Base, 49 LRS provided AFOSI Detachment 225 05:55
25 with a black external hard drive allegedly 05:55

1 containing a confession by subject, D. Kelley to 05:55
2 all of victim's injuries. Wolfe received the hard 05:55
3 drive from subject T. Kelley on the same day. 05:56

4 A. Correct. 05:56

5 Q. So, this is documenting the transferred 05:56
6 that I described.

7 A. Okay.

8 Q. Okay.

9 A. I agree. 05:56

10 Q. Yeah, okay. And -- and I just wanted to 05:56
11 make sure you knew -- 05:56

12 A. No, thank you. 05:56

13 Q. -- where I was getting it from. So 05:56
14 let's go back to the -- the HRVRT, high risk for 05:56
15 violence meeting and then the action subsequent to 05:56
16 that.

17 A. Okay. 05:56

18 Q. So, if you look on -- what exhibit 05:56
19 number was that again? 05:56

20 A. Exhibit 16. 05:56

21 Q. Exhibit 16. And it's Page No. 4, it's 05:56
22 No. 3 on the bottom. 05:56

23 A. Okay. 05:56

24 Q. June 8, 2012; do you see that? 05:56

25 A. I do. 05:56

1 Q. And actually, above it, June 7th, 2012, 05:56
2 the Department of Justice states that Kelley
3 "'escapes' from Peak Behavioral Health Services
4 where he is undergoing treatment"; do you see that? 05:56

5 A. I do. 05:56

6 Q. And are -- were you aware that he had 05:56
7 tried -- he had -- well, he had escaped the Peak
8 Mental Institution, right?

9 A. I was made aware; I don't remember when. 05:57

10 Q. Okay. And then the next day, June 8th, 05:57
11 Kelley's commander orders him into pretrial 05:57
12 confinement at the 49th Security Forces, 05:57
13 Building 35, right? 05:57

14 A. Correct. 05:57

15 Q. Now, where is that confinement facility 05:57
16 located, vis-à-vis, your 49 LRS? 05:57

17 A. Again, within probably a mile, short 05:57
18 drive on the base. 05:57

19 Q. Okay. And June 8, 2012, "Confinement 05:57
20 was deemed necessary because it was foreseeable he 05:57
21 would flee again and engage in serious criminal 05:57
22 misconduct"; do you see that? 05:57

23 A. I see that. 05:57

24 Q. And you have no reason to disagree with
25 that statement, correct?

1 A. I do not. 05:57

2 Q. Okay. And there's "evidence in the 05:57

3 record that Kelley attempted to purchase a handgun 05:57

4 before being placed into pretrial confinement 05:57

5 (June 7, 2012 entry)"; do you see that? 05:57

6 A. I do. 05:57

7 Q. No -- no reason to disagree with that, 05:57

8 correct? 05:57

9 A. None. 05:57

10 Q. Now, I want to show you specifically a 05:57

11 document that might elucidate that little section we 05:57

12 just went over. I'm going to hand you Exhibit No. 05:58

13 17. 05:58

14 (Deposition Exhibit 17 was marked for
15 identification.) 05:58

16 Q. (By Mr. Alsaffar) Exhibit No. 17 is 05:58

17 Bates stamped USA 13378, and it's from Xavier 05:58

18 Alvarez, Director of Military Affairs.

19 A. Okay. 05:58

20 Q. All right. MissionRecovery. Now, first 05:58

21 of all, do you know what "Director of Military 05:58

22 Affairs" is? 05:58

23 A. I don't. 05:58

24 Q. Okay. That's not important. This is 05:58

25 June 7, 2012; do you see that at the very front? 05:58

1 A. I do. 05:58

2 Q. "At approximately 2235 Nurse on unit 05:58

3 informed staff that a code three (elopement) had 05:58

4 been called onto Military Unit reference Devin 05:58

5 Kelley." All right?

6 So, this is a notification that he was 05:58

7 escaping from the mental institution, right? 05:58

8 A. Right. 05:58

9 Q. Now, you were -- your understanding was 05:58

10 he had escaped from that mental institution; he was 05:58

11 not allowed to; it was AWOL on his part, right? 05:58

12 A. Correct. 05:58

13 Q. And if you go a couple of lines down, 05:58

14 commander -- or sorry, Director Alvarez states,

15 "Computer results showed that DK had been searching 05:59

16 weapons, body armor, transport to San Antonio and 05:59

17 lodging. 05:59

18 "SM's (sic) reported to staff, that DK had 05:59

19 been working diligently in PT, to accomplish a 05:59

20 twelve mile run"; do you see that? 05:59

21 A. I do. 05:59

22 Q. Are you aware also that Devin Kelley was 05:59

23 wearing body armor when he shot those 26 people in 05:59

24 the church? 05:59

25 A. I -- I don't remember that, but I -- 05:59

1 Q. It's okay. 05:59

2 A. -- I believe you, absolutely. 05:59

3 Q. No, no. And I just didn't know if you 05:59
4 knew or not.

5 A. Yeah.

6 Q. And so, what we know is that he was 05:59
7 searching for weapons and body armor while he was in 05:59
8 a mental institution on the day or around the time
9 he was trying escape from the mental institution, 05:59
10 right?

11 A. Right. 05:59

12 Q. Okay. Now, if you go a little bit 05:59
13 farther down, do you see where it says "Greyhound 05:59
14 security and Police"? 05:59

15 A. I do. 05:59

16 Q. "Greyhound security and Police were 05:59
17 notified of the possible suspect heading downtown 05:59
18 and advised that he may be a danger as per his 05:59
19 recent 'death by cop' statements"; do you see that? 06:00

20 A. I do. 06:00

21 Q. So that was another kind of discrete 06:00
22 threat he's made about shooting people, correct? 06:00

23 A. Right. My understanding of the 06:00
24 death-by-cop statement is you're expecting to -- to 06:00
25 point a firearm at a police officer or shoot at them 06:00

1 in the hope that they shoot you and kill you. 06:00

2 Q. That's right. It's sort of suicide -- 06:00

3 A. Suicide -- 06:00

4 Q. -- by cop?

5 A. -- homicide/suicide situation. 06:00

6 Q. Exactly. So, in other words, this is 06:00

7 another kind of -- another different kind of threat 06:00

8 with weapons that Devin Kelley is making? 06:00

9 A. Right. 06:00

10 Q. All right. And the next sentence, 06:00

11 "Throughout" -- it says, "Throughout this process 06:00

12 Master Sergeant Wolfe," so that's Tracy Wolfe, 06:00

13 correct? 06:00

14 A. Correct. 06:00

15 Q. -- "and Major Nordin were in constant 06:00

16 communication with Director Alvarez."

17 So again -- first of all, do you know who

18 Major Nordin is? 06:00

19 A. I don't. 06:00

20 Q. Okay. So, in this situation, Director 06:00

21 Alvarez is stating that your First Sergeant Wolfe 06:01

22 is -- is communicating with them and is being made 06:01

23 aware of all this stuff, was actually working 06:01

24 closely and being made aware of what Devin Kelley 06:01

25 was doing? 06:01

1 A. Right, right. 06:01

2 Q. So -- so, your First Sergeant Wolfe 06:01
3 would have known about the -- these searching for 06:01
4 weapons, searching for body armor, his escape from 06:01
5 the mental institution and his threat -- his weapons 06:01
6 threat of death by cop? 06:01

7 A. Right. 06:01

8 Q. And that's June -- that's June 7, 2012, 06:01
9 right? 06:01

10 A. Correct. 06:01

11 (Deposition Exhibit 18 was marked for
12 identification.) 06:02

13 MR. FURMAN: Off the record for a second? 06:02

14 MR. ALSAFFAR: Yeah, do you need a break? 06:02

15 MR. FURMAN: I just want to chat for a
16 minute. 06:02

17 MR. ALSAFFAR: Yeah, sure. You bet. 06:02

18 THE VIDEOGRAPHER: We're going off the 06:02
19 record. The time is 5 -- 6:02. 06:02

20 (Pause in proceedings.) 06:02

21 THE VIDEOGRAPHER: We're back on the record. 06:12
22 The time is 6:12. 06:12

23 Q. (By Mr. Alsaffar) Colonel, there's one 06:12
24 more loop that I wanted to close on the HRVRT team 06:12
25 because we were talking about it in terms of sort of 06:12

1 the various installations or sections of Holloman 06:12
2 Air Force Base that by at least May 2012, were sort 06:12
3 of involved in the understanding of the risk of 06:12
4 violence that Devin Kelley posed. 06:12

5 A. Right. 06:12

6 Q. And part of that -- part of the reason I 06:12
7 said that is we -- we certainly, we've gone through 06:12
8 the Air Force Office of Special Investigation, the 06:13
9 LRS 49th was aware in June 2011, he was under 06:13
10 criminal investigation, right, you remember that 06:13
11 document? 06:13

12 A. Right. 06:13

13 Q. Then, of course, the Security Forces was 06:13
14 specifically investigating him for very serious, 06:13
15 violent threats -- 06:13

16 A. Correct. 06:13

17 Q. -- in February 2012. And then, you 06:13
18 know, we took you through the -- your own -- the 06:13
19 LRS's own reprimand letters about assaults and 06:13
20 violent from April 2012. 06:13

21 And then, of course, the -- the team, the 06:13
22 high risk violence team was put together in May 06:13
23 2012. 06:13

24 And as part of that putting together, 06:13
25 remember we -- I showed you the -- a mandatory 06:13

1 manual Air Force instruction about what constitutes 06:13
2 a team? 06:13

3 A. Right. 06:13

4 Q. And part of that was the -- someone from 06:13
5 the 49th JAG, someone from the 49th squadron 06:13
6 command, so the LRS? 06:13

7 A. Right. 06:13

8 Q. Someone from the Security Forces, 06:13
9 someone now from family advocacy, as well. So 06:14
10 that -- that right there is four different units 06:14
11 within the Holloman Air Force Base that were put 06:14
12 together specifically aware that Devin Kelley posed 06:14
13 a high risk of violence by May 2012, fair? 06:14

14 A. Fair. 06:14

15 Q. Okay. That's all I was -- that's all I 06:14
16 was saying. So now let's go to -- you can put that 06:14
17 aside. 06:14

18 Remember when we had talked briefly about the 06:14
19 CRB team that met back in October 2011 regarding 06:14
20 Devin -- you don't need to look at it, but that's -- 06:14
21 remember we had that discussion? 06:14

22 A. I do. 06:14

23 Q. I want to show you another thing related 06:14
24 to that, Exhibit No. 19. 06:14

25 (Deposition Exhibit 19 was marked for

1 identification.) 06:14

2 Q. (By Mr. Alsaffar) And this is dated May 06:14

3 17, 2012. Let me switch you on that -- actually, 06:14

4 you can have mine. That's okay. It makes it easier 06:14

5 for you. It makes it easier for you -- dated May 06:14

6 17, 2012. It's a memorandum for the 49th LRS 06:15

7 commander -- 06:15

8 A. Correct. 06:15

9 Q. -- correct? And it's about Devin 06:15

10 Kelley, right? 06:15

11 A. Right. 06:15

12 Q. And it's from the 49th MSG/CC, Mission 06:15

13 Support Group Commander, correct?

14 A. Correct. 06:15

15 Q. All right. And that is Colonel Cole, 06:15

16 right? 06:15

17 A. Right. And -- and just again, for 06:15

18 clarity, it's from -- it's to the LRS commander and 06:15

19 it's to Airman Kelley. So we call that an in-turn 06:15

20 memo. It goes to one and then the next. 06:15

21 Q. Okay. And, yeah, and we see Devin 06:15

22 Kelley's signature? 06:15

23 A. Yep. 06:15

24 Q. And we also see Commander Marconi from 06:15

25 the 49th LRS -- 06:15

1 A. Correct. 06:15

2 Q. -- as well, signed May 17, 2012, right? 06:15

3 A. Yes. 06:15

4 Q. And this is -- so this is another 06:15

5 notification that there's been a Central Registry

6 Board met on May 17th, 2012 -- 06:15

7 A. Correct. 06:15

8 Q. -- right? To review another incident 06:15

9 regarding Devin Kelley. And this allegation -- 06:15

10 remember the first allegation, October 2011 where 06:16

11 the CRB determined there was probable cause to meet 06:16

12 the criteria of child maltreatment? This one was 06:16

13 for adult maltreatment -- 06:16

14 A. Right. 06:16

15 Q. -- right? 06:16

16 A. Yep. 06:16

17 Q. Okay. And this one was specifically -- 06:16

18 the allegation was emotional and physical 06:16

19 maltreatment of Tessa Kelley, his wife -- 06:16

20 A. Yes. 06:16

21 Q. -- by Devin Kelley? And the board here 06:16

22 determined the incident met the criteria for adult 06:16

23 physical maltreatment, correct? 06:16

24 A. Correct. 06:16

25 Q. And again, entering the DoD Central

1 Registry database, right?

2 A. Correct. 06:16

3 Q. So May 17th, 2012, the CRB, Central 06:16

4 Registry Board, made that probable-cause 06:16

5 determination that Devin Kelley met the criteria for 06:16

6 adult physical maltreatment? 06:16

7 A. Right. 06:16

8 Q. All right. And did I ask you, would 06:16

9 this kind of document, a CRB document, would also go 06:16

10 into the UIF file or where would it go at the 49th 06:16

11 LRS? 06:16

12 A. So, because the CRB is a 06:16

13 nondisciplinary, it's an administrative board, it 06:17

14 would not go in the members's UIF or in their PIF. 06:17

15 The commander gives it -- I may be misspeaking 06:17

16 there.

17 So the commander has to give a copy to the 06:17

18 member. And I don't remember where the other copy 06:17

19 gets filed. 06:17

20 At the time end of the CRB, the commander 06:17

21 gets two copies -- 06:17

22 Q. Okay.

23 A. -- one to give to the member and one to 06:17

24 file, and I don't remember where that gets file. 06:17

25 Q. Fair. That's fair. 06:17

1 A. I don't -- but because it's 06:17

2 administrative and not disciplinary, I don't think 06:17

3 it would go in a UIF. 06:17

4 Q. Okay. So, now, let's go a few more 06:17

5 weeks later, this is a few weeks before you get to 06:17

6 the base as commander. 06:17

7 A. Okay. 06:17

8 Q. I'm going to show you Exhibit 18. 06:17

9 A. Okay.

10 Q. I'm sorry, it's a little bit out of
11 order. And this is -- this is the letter I gave you 06:17

12 before the break, so you have it. 06:17

13 Exhibit 18 is a memorandum from the acting 06:18

14 commander for 49th LRS, that's Nathan McLeod-Hughes, 06:18

15 Major Hughes, correct? 06:18

16 A. Correct. 06:18

17 Q. And on -- so on June 8th, 2012, Major 06:18

18 Hughes has put this memorandum together for the 49th 06:18

19 Wing, Judge Advocate, the 49th Wing Commander, 06:18

20 right? 06:18

21 A. Correct. 06:18

22 Q. And who -- what is PCRO, if you know? 06:18

23 A. I don't. 06:18

24 Q. Okay. 06:18

25 A. I'm not familiar with that acronym. 06:18

1 Q. That's okay. You are not the first one 06:18
2 who doesn't know what that is. We've asked a couple 06:18
3 of people, so, that's all right. Don't worry about
4 it.

5 Do you know why "IN TURN" is put there; do 06:18
6 you know? 06:18

7 A. Yes. So that means it's going from one 06:18
8 to the next to the next. 06:18

9 Q. Got it. 06:18

10 A. So it's going to the judge advocate, 06:18
11 then the Wing Commander and then PCRO. 06:18

12 Q. Now, this is a -- this is a memorandum 06:18
13 that the 49th LRS commanders put together approving 06:19
14 a pretrial confinement of Devin Kelley, June 8, 06:19
15 2012, correct? 06:19

16 A. Correct. 06:19

17 Q. Now, if you go -- let's just skip down 06:19
18 to No. 3. Commander Hughes states, "I conclude the 06:19
19 requirements for pretrial confinement...are met. 06:19
20 First, I have reasonable grounds to believe the 06:19
21 following offenses triable by court-martial were 06:19
22 committed and the confinee committed them"; do you 06:19
23 see that? 06:19

24 A. I do. 06:19

25 Q. And -- and the charged offenses that the 06:19

1 Commander Hughes has stated that he has reasonable 06:19

2 grounds to believe were committed were 1, Article 06:19

3 86, Absence without leave, June 7, 2012, right? 06:19

4 A. Right. 06:19

5 Q. So, that's being AWOL from the mental 06:19

6 health facility, right? 06:19

7 A. Yeah. It seems like those dates 06:19

8 probably match. 06:20

9 Q. Okay.

10 A. Yep. 06:20

11 Q. The second charge that Commander Hughes 06:20

12 has reasonable grounds to believe occurred is 06:20

13 Article 128, June 9th, 2011, assault on a child, 06:20

14 right? 06:20

15 A. Correct. 06:20

16 Q. And then he lists 130 -- Article 134, 06:20

17 Communicating a threat. And Article 134, Assault -- 06:20

18 A. Correct. 06:20

19 Q. Do you see that? 06:20

20 A. Correct. 06:20

21 Q. So, first, Commander Hughes believes 06:20

22 that -- or he's stating here he has reasonable 06:20

23 grounds to believe these offenses were committed, 06:20

24 which means he has probable cause to believe they 06:20

25 were committed, right?

1 A. Right. 06:20

2 Q. So, that's June 8, 2012, the 49th LRS 06:20
3 commander has probable cause to believe that -- that
4 these offenses were committed, right? 06:20

5 A. Correct. 06:20

6 Q. Now, underneath that, he states, 06:20
7 "Second, I have reasonable grounds to believe 06:20
8 continued pretrial confinement is necessary because 06:20
9 it's foreseeable that the confinee will not appear 06:20
10 at trial, and/or will engage in serious criminal 06:21
11 misconduct if confinement is not continued," 06:21
12 correct? 06:21

13 A. Correct. 06:21

14 Q. Commander Hughes here is stating that as 06:21
15 of June 8th, 2012, the 49th LRS has reasonable 06:21
16 grounds to believe that Devin Kelley will engage in 06:21
17 serious criminal misconduct, and that that is why he 06:21
18 has to be confined in a jail? 06:21

19 A. Correct. 06:21

20 MR. FURMAN: Objection to form. 06:21

21 Q. (By Mr. Alsaffar) All right. So, now, 06:21
22 at this time, June 8th, 2012, it was foreseeable 06:21
23 that Devin Kelley was a person that could engage in 06:21
24 serious criminal misconduct, right? 06:21

25 MR. FURMAN: Objection to form.

1 A. Can -- can you restate that? 06:21

2 Q. (By Mr. Alsaffar) Yeah. So June 8th, 06:21
3 2012, do you agree with the Commander Hughes here 06:21
4 that -- that it was foreseeable that Devin Kelley 06:21
5 was a person who could engage or will engage in 06:22
6 serious criminal misconduct? 06:22

7 MR. FURMAN: Objection to form. 06:22

8 A. So, per the memo on June 8th, Major 06:22
9 McLeod-Hughes is saying he has reasonable grounds to 06:22
10 believe that pretrial confinement is necessary 06:22
11 because he won't appear at trial and/or he will 06:22
12 engage in criminal misconduct if not confined. 06:22

13 So, it -- it could be the "or" -- 06:22

14 Q. (By Mr. Alsaffar) Um-hum.

15 A. -- or it could be the "and," but yes, 06:22
16 that's what it says on the memo. 06:22

17 Q. Okay. And do you -- and, you know, 06:22
18 we've looked through a lot of the evidence so far 06:22
19 that was available. And do you have any reason to 06:22
20 disagree with that assessment of "foreseeable"? 06:22

21 A. I don't. 06:22

22 Q. Okay. And if you flip the page to the 06:22
23 second page of -- of the memo, Commander Hughes is 06:22
24 documenting some more evidence of the kind of 06:22
25 evidence he's received to believe that he's -- that 06:22

1 Devin Kelley is a threat -- 06:22

2 A. Okay.

3 Q. -- to multiple people, not just a child, 06:23

4 not just his wife, but to others, as well. And I 06:23

5 want to go through those with you and see -- 06:23

6 A. Okay. 06:23

7 Q. -- just so that you've seen it. 06:23

8 So, the first is that in June 2011, he's 06:23

9 talking about the -- the 11-month-old child was 06:23

10 taken to the emergency room and the child had been 06:23

11 vomiting and he'd had a seizure, right? 06:23

12 A. Yes. 06:23

13 Q. There was -- the child was observed to 06:23

14 have a bruise on the cheek and ear, and x-rays 06:23

15 revealed a broken clavicle and subdural hematoma, 06:23

16 right? 06:23

17 A. Correct. 06:23

18 Q. And do you know what a "subdural 06:23

19 hematoma" is? 06:23

20 A. I think it's a bruise under the skin -- 06:23

21 Q. It is --

22 A. -- or a -- blood pooling under the skin. 06:23

23 Q. And -- and what this is -- he had a 06:23

24 subdural hematoma on his -- on his head, his brain; 06:23

25 did you know that? The child did? 06:23

1 A. I didn't. 06:23

2 Q. Okay. And that the medical authorities 06:23
3 at that time had actually notified -- medical
4 professionals had notified the authorities of 06:23
5 suspected child abuse, right? 06:23

6 A. Yes, I see that. 06:23

7 Q. Okay. And he notes on April 23rd, 2012, 06:23
8 Commander Hughes notes that "while driving to El 06:24
9 Paso," Kelley, Devin Kelley "took his gun out of his 06:24
10 holster and held it against her" -- Tessa 06:24
11 Kelley's -- "temple, stating 'do you want to die'; 06:24
12 do you see that? 06:24

13 A. I do. 06:24

14 Q. And then a little bit down, April 27th, 06:24
15 2012, Commander Hughes states, Tessa Kelley's 06:24
16 "mother contacted the unit concerned for the
17 physical and emotional safety of her 06:24
18 daughter...Kelly (sic) then posted on Facebook that 06:24
19 this hurts and is going to be so hard and scary. 06:24
20 But it must be done. I'm tired of hurting myself 06:24
21 and others. Maybe this is my last chance to redeem 06:24
22 myself for what I've done. I'm sorry"; do you see 06:24
23 that? 06:24

24 A. I do. 06:24

25 Q. Then, on that same day, April 27, 2012, 06:24

1 "Kelley confessed in a self-made video to the
2 assault that occurred regarding his stepchild"; do 06:24
3 you see that? 06:24

4 A. I do. 06:24

5 Q. And then, I showed you this document, 06:24
6 "following submission of the video confession to Air 06:24
7 Force Office of Special Investigations" on April 29, 06:24
8 2012; do you see that? 06:24

9 A. I do. 06:24

10 Q. So that -- do you remember that document 06:24
11 I showed you where your First Sergeant 06:25
12 transferred --

13 A. I do.

14 Q. -- that confession video to AFOSI? 06:25

15 A. I do remember that. 06:25

16 Q. All right. So that's getting --
17 communicating -- Commander Hughes is also 06:25
18 communicating that in this memo. 06:25

19 Let's go down to No. 5. Commander Hughes 06:25
20 states that, "Furthermore, investigation revealed 06:25
21 that while receiving inpatient mental health care,
22 the member made several threatening statements that 06:25
23 if he were picked up by Security Forces that he 06:25
24 would go for their guns"; do you see that? 06:25

25 A. I do. 06:25

1 Q. So, there, he's stating that -- all 06:25
2 right, we also know that Devin Kelley is now 06:25
3 threatening Security Forces if they come for him, 06:25
4 and specifically going for the Security Forces' 06:25
5 guns, too -- 06:25

6 A. Correct. 06:25

7 Q. -- right? Additionally, on June 7, 06:25
8 2012, Kelley contacted Holloman Air Force Base 06:25
9 Exchange and entered into an agreement to purchase a 06:25
10 9 millimeter handgun; do you see that? 06:25

11 A. I do. 06:25

12 Q. So this is when he's in a men- -- the 06:25
13 day he's in a mental facility, the day he escapes
14 the mental facility, he's trying to arrange for the 06:26
15 actual purchase of a gun from the Holloman Air Force 06:26
16 Base Exchange, right? 06:26

17 A. I see that. 06:26

18 Q. And do you remember when I showed you 06:26
19 earlier the two forms where he actually purchased 06:26
20 two guns in 2012 from that very same Holloman Air 06:26
21 Force Base Exchange, right? 06:26

22 A. Correct. 06:26

23 Q. All right. So, he knew how to get guns 06:26
24 from that Holloman Exchange, right? 06:26

25 A. Right. 06:26

1 Q. All right. Later that night, Kelley 06:26
2 climbed a fence and left the mental facility without 06:26
3 authorization.

4 You have no reason -- you see no evidence to 06:26
5 disagree that he left that facility without 06:26
6 authorization; is that fair? 06:26

7 A. That's fair. 06:26

8 Q. Okay. An examination of the computer he 06:26
9 had been using at the facility revealed that Kelley 06:26
10 searched for a map to the bus station, as well as 06:26
11 conducted research on the purchases of -- of weapons 06:26
12 and body armor. 06:26

13 And I showed you that documentation earlier, 06:26
14 as well; do you remember that? 06:26

15 A. You did. 06:26

16 Q. Okay.

17 A. I remember. 06:26

18 Q. Yeah. And so this is getting 06:26
19 communicated. So now we know Commander Hughes at 06:26
20 the LRS, the 49th LRS is also aware of all this 06:26
21 information.

22 And he's putting in here his support, his 06:27
23 statement that it's foreseeable, this is a very 06:27
24 dangerous person? 06:27

25 A. Right. 06:27

1 Q. Right? Okay. Paragraph 6, he says -- 06:27
2 Commander Hughes says, The course of conduct by 06:27
3 Kelley leads me to conclude that he will continue to 06:27
4 engage in serious criminal conduct if not confined. 06:27
5 So -- so here, Commander Hughes is saying 06:27
6 unless he's in jail, he's going to commit continued 06:27
7 serious conduct -- criminal conduct, right? 06:27
8 A. Right. 06:27
9 Q. And -- and so, the 49th LRS at Holloman 06:27
10 Air Force Base on June 2012 was certainly aware 06:27
11 that -- that Devin Kelley is -- has probable cause 06:27
12 to believe that he's a threat for serious violence 06:27
13 with weapons, right -- 06:27
14 A. Right. 06:27
15 Q. Okay. Is that -- do you agree with 06:27
16 that? 06:27
17 A. I agree. 06:27
18 Q. Okay. Let me show you -- let's move on 06:27
19 to -- a little bit after -- well, let's, actually, 06:28
20 jump -- jump ahead a little bit, if we could. 06:28
21 You -- you had June 30th, 2012, now, you 06:28
22 arrived as the commander of the 49th LRS at Holloman 06:28
23 Air Force Base, right? 06:28
24 A. Correct. 06:28
25 Q. And you remember earlier when we were -- 06:28

1 you were describing to me the charge sheet? 06:28

2 A. Yes. 06:28

3 Q. Okay. 06:28

4 (Deposition Exhibit 20 was marked for
5 identification.)

6 Q. (By Mr. Alsaffar) I'm going to hand you 06:29

7 Exhibit No. 20. And Exhibit No. 20 is a charge 06:29

8 sheet with your signature from July 26, 2012, 06:29

9 related to Devin Kelley. 06:29

10 But can you please look that over quickly and 06:29

11 confirm that that's your signature and I've 06:29

12 described it accurately? 06:29

13 A. You have and it is. 06:29

14 Q. Okay. So you were, earlier describing 06:29

15 for us that -- and this is Bates numbered 15086 -- 06:29

16 you were earlier describing that you were given this 06:29

17 charge sheet to go meet personally with Devin Kelley 06:29

18 in order to read him the charges specifically 06:29

19 against him; is that right? 06:29

20 A. Correct. 06:29

21 Q. Is this what you had with you -- what 06:30

22 you would have had with you when you met with Devin 06:30

23 Kelley?

24 A. It would have been. 06:30

25 Q. Okay. Would it -- do you think it was 06:30

1 on this date, as well, is that -- 06:30

2 A. I -- absolutely. I have no reason to 06:30
3 think it was on a different date. 06:30

4 Q. Okay. And it'd be fine if it was. I 06:30
5 don't know if maybe it was the charge was actually 06:30
6 set -- signed on July 26 -- 06:30

7 A. Yes --

8 Q. -- maybe you went a couple days later -- 06:30

9 A. Right --

10 Q. -- or, if you did, I just don't know. 06:30

11 A. I think it's reasonable to believe that 06:30
12 that's when I read the charge sheet to him. 06:30

13 Q. Okay. So this is July 26, 2012. So 06:30
14 this charge sheet, this document that we're looking 06:30
15 at, Exhibit No. 20, is -- certainly, by this point, 06:30
16 we also -- this is another instance where we -- we 06:30
17 know that the Air Force at this point had probable 06:30
18 cause to believe that he committed these offenses, 06:30
19 that they actually now have indicted him for? 06:30

20 A. Correct. 06:30

21 Q. Okay. And the other thing I wanted -- 06:30
22 and that's your signature both on the first page and 06:30
23 the back page? 06:30

24 A. Yes, sir, it is. 06:30

25 Q. It is, okay. And the charges here that 06:30

1 there was probable cause to believe that he 06:31
2 committed assault on his wife and assault on a minor 06:31
3 child, correct? 06:31

4 A. Correct. 06:31

5 Q. Article 128 violations? 06:31

6 A. Yes. 06:31

7 Q. Okay. And I'm not going to read through 06:31
8 the whole thing; that's not the purpose of it. 06:31

9 Let me show you a different -- the next 06:31
10 document. 06:31

11 (Deposition Exhibit 21 was marked for
12 identification.)

13 MR. FURMAN: This one here (indicating)?

14 MR. ALSAFFAR: No, you got it. This is 06:31
15 yours. 06:31

16 MR. FURMAN: Oh, it says August 15th.

17 MR. ALSAFFAR: Oh, no, no, no. You're right. 06:31
18 I gave you the wrong one. So, this is the one -- 06:31
19 the first I should have gave you is this. So take 06:31
20 it. And then here's the August one. 06:31

21 MR. FURMAN: Thank you. 06:32

22 MR. ALSAFFAR: All right. 06:32

23 Q. (By Mr. Alsaffar) I'm handing you 06:32
24 Exhibit No. 21. And I -- and Exhibit No. 21 is also 06:32
25 a charge sheet; is that correct? 06:32

1 A. That is correct. 06:32

2 Q. And this is dated, actually, August 15, 06:32

3 2012? 06:32

4 A. That is correct. 06:32

5 Q. Related to Devin Kelley, correct? 06:32

6 A. Yes, sir. 06:32

7 Q. Now -- so would this mean that you would 06:32

8 have also visited with him about this charge, as 06:32

9 well? 06:32

10 A. I would think so, but I don't remember 06:32

11 it. 06:32

12 Q. Okay. 06:32

13 A. I don't remember visiting twice to -- 06:32

14 per charges, but I would think I would have. 06:32

15 Q. Okay. And -- and that's okay. I know 06:32

16 it was years ago. But this charge sheet is 06:32

17 indicating an additional Article 128 charge of 06:32

18 assault, against Devin Kelley; correct? 06:32

19 A. That's correct. 06:32

20 Q. So this is a separate charge of assault 06:32

21 on Tessa Kelley his wife with a dangerous weapon, to 06:32

22 wit, a loaded firearm, right? 06:33

23 A. That's correct. 06:33

24 Q. All right. So this would be in 06:33

25 August 15, 2012, you would be presenting this charge 06:33

1 to Devin Kelley -- this additional charge to 06:33

2 Devin -- Devin Kelley, correct? 06:33

3 A. That's correct. 06:33

4 Q. All right. And so this would have 06:33

5 been -- by this time, as well, August 15, 2012, 06:33

6 probable cause, Air Force knew they had probable 06:33

7 cause to believe that Devin Kelley had committed 06:33

8 this additional assault charge because they had 06:33

9 indicted him for it? 06:33

10 A. Right. 06:33

11 Q. Okay. 06:33

12 A. And I -- I just noticed, there's a 06:33

13 second page. 06:33

14 Q. Right. 06:33

15 A. That's weird, though. It's dated -- 06:33

16 this is Patricia Encarnacion saying that she served 06:33

17 it. So maybe I didn't, but absolutely, this is an 06:33

18 additional charge being added to the court-martial. 06:33

19 Q. Okay. And regardless of who actually 06:33

20 served -- 06:33

21 A. Right. 06:33

22 Q. -- Devin Kelley on it, you're -- that's 06:33

23 your signature on the front and back -- 06:34

24 A. Yes, sir. 06:34

25 Q. -- August 15, 2012, indicating that, we 06:34

1 know also in this time the Air Force had probable 06:34
2 cause to believe he committed this assault on this 06:34
3 date, right? 06:34

4 A. Yes, sir. 06:34

5 Q. Okay. So that's all I wanted to know 06:34
6 about that. 06:34

7 All right. Where would -- where would the 06:34
8 charge sheet have been filed in the 49th LRS? 06:34

9 A. I don't think it would be. 06:34

10 Q. Okay.

11 A. So I think it would be on file with the 06:34
12 judge advocate office as part of the court-martial 06:34
13 documents. 06:34

14 Q. All right. Would the Security Forces or 06:34
15 Air Force OSI have been also informed of the 06:34
16 official charge sheet indictments, as well, or do 06:34
17 you know? 06:34

18 A. I don't know. 06:34

19 Q. Okay.

20 A. My -- my estimation is likely not. 06:34
21 Their -- their information is being fed to the judge 06:34
22 advocate to develop the additional charges. 06:34

23 Q. Um-hum. 06:34

24 A. I can't see why the judge advocate would 06:34
25 go back to them with, Hey, we -- these are the 06:35

1 additional charges. 06:35

2 Q. Right. 06:35

3 A. But I don't know. 06:35

4 Q. Okay. And I want to show you... 06:35

5 (Deposition Exhibit 22 was marked for
6 identification.) 06:35

7 Q. (By Mr. Alsaffar) I'm showing you
8 Exhibit No. 22. 06:35

9 A. Okay. 06:35

10 Q. And Exhibit No. 22 is what's called the
11 Air Force 1359 Report of Result of Trial. You --
12 you recognize that, correct? 06:35

13 A. I do. 06:35

14 Q. And what this is, is this is the form
15 that the Air Force uses to notify -- notify the
16 convicted person's command that this person has been
17 convicted of a crime? 06:35

18 A. Correct. 06:35

19 Q. And this Report of Result of Trial is
20 dated November 7, 2012, right? 06:35

21 A. Yes. 06:36

22 Q. And this is addressed to your command,
23 the 49 LRS commander, right? 06:36

24 A. Correct. 06:36

25 Q. And that's your address, your command 06:36

1 building address, correct? 06:36

2 A. Yes, sir. 06:36

3 Q. And so, this would have been actually 06:36
4 sent to you? 06:36

5 A. Correct. 06:36

6 Q. You were the commander of the 49th LRS 06:36
7 at the time this conviction report was sent, 06:36
8 correct? 06:36

9 A. Correct. 06:36

10 Q. All right. And he -- this is notifying 06:36
11 you as the commander of Devin Kelley that he's been 06:36
12 convicted of -- of these two assault charges -- 06:36

13 A. Correct. 06:36

14 Q. -- right? All right. And if you look 06:36
15 at the bottom, you see the distribution list, the 06:36
16 bottom left? 06:36

17 A. I do. 06:36

18 Q. And this is also a Report of Result of 06:36
19 Trial that's been distributed to your highest level 06:36
20 of command, ACC, right? 06:36

21 A. Right. 06:36

22 Q. The next highest level, 12th Air Force 06:36
23 Command, right? 06:36

24 A. Correct. 06:36

25 Q. And the next level highest -- the next 06:36

1 level command is still over your command, which is 06:36
2 the 49th Wing Command, right? 06:36

3 A. Right. 06:37

4 Q. The 49th Mission Group Command, as well, 06:37
5 has been informed? 06:37

6 A. Yeah. So, it's interesting. That's 06:37
7 says MDG. That's the medical group. 06:37

8 Q. Oh, okay.

9 A. I'm assuming that's a typo and that 06:37
10 should have been MSG, Mission Support Group. 06:37

11 Q. You know what's funny is I read it as 06:37
12 MSG just now -- 06:37

13 A. Right.

14 Q. -- because I just expected that to be --

15 A. Yeah.

16 Q. -- what it was. So you're right, it 06:37
17 says MDG. So -- but it was also sent to the 49th 06:37
18 FSS, do you remember, that's the group we talked 06:37
19 about earlier, Force Support, right? 06:37

20 A. (Inaudible.) 06:37

21 MADAM COURT REPORTER: I'm sorry?

22 THE DEPONENT: Force Support Squadron. 06:37

23 Q. (By Mr. Alsaffar) And I don't want to 06:37
24 go through each one of them, but it's also -- this 06:37
25 was also in addition to being sent to those others 06:37

1 we've identified, was also sent to the 49th Security 06:37
2 Forces and the Air Force OSI Detachment 225, as 06:37
3 well? 06:37

4 A. Correct. 06:37

5 Q. So all of those folks listed, including
6 your command, were notified on November 7, 2012, 06:37
7 that he's been convicted of two assault charges? 06:37

8 A. Correct. 06:37

9 Q. All right. Now, at this point in time,
10 did you get any communication from anybody from the 06:38
11 Air Force, whether it was the Security Forces, 06:38
12 AFOSI, your command above you, your command directly 06:38
13 below you that Devin Kelley's fingerprints and his 06:38
14 conviction now, that you know he's been convicted, 06:38
15 needed to be reported to the FBI? 06:38

16 A. I did not. 06:38

17 Q. Okay. Now, at this point, he's a 06:38
18 convicted felon, Devin Kelley is, right? 06:38

19 A. Correct. 06:38

20 Q. Okay. Now -- now, you -- we talked 06:38
21 about the law earlier, but -- but your understanding 06:38
22 is a convicted felon, these type of felons, so 06:38
23 domestic violence and child abuse, are reported to 06:38
24 the FBI so that they cannot legally obtain firearms; 06:38
25 you understand that, right? 06:38

1 A. Yes. 06:39

2 Q. So the -- so when a government agency 06:39
3 actually fails to report this criminal-conviction 06:39
4 data on felons, dangerous felons, like Devin Kelley, 06:39
5 that's unnecessarily exposing the public to a -- an 06:39
6 increased risk of harm, isn't it? 06:39

7 MR. FURMAN: Objection to form; you can 06:39
8 answer. 06:39

9 A. I would agree, yes. 06:39

10 Q. (By Mr. Alsaffar) Okay. And -- and the 06:39
11 reason is that what we're doing here is we know we 06:39
12 have a convicted felon who shouldn't get firearms, 06:39
13 so we need to prevent him from getting firearms 06:39
14 legally -- 06:39

15 A. Right. 06:39

16 Q. -- right? Okay. And, in -- in 06:39
17 particular with Devin Kelley, not only was he a 06:39
18 convicted felon who -- who had a felony that should 06:39
19 prevent him from legally obtaining firearms, but the 06:39
20 Air Force also knew by the time of his conviction 06:39
21 that he was also a convicted felon, he had a 06:39
22 particular -- a particular habit of threatening gun 06:39
23 violence and mass-shooting violence, right? 06:39

24 MR. FURMAN: Objection to form; you can 06:39
25 answer. 06:40

1 A. So, yes, there's -- there's clearly 06:40
2 evidence that he had made those kind of 06:40
3 mass-shooting threats. 06:40

4 Q. (By Mr. Alsaffar) Right. And so, by 06:40
5 November 11 -- November 2012, the Air Force -- and 06:40
6 all the commands that are listed here were aware 06:40
7 that, not only is he a convicted felon and the type 06:40
8 of charges which should prevent him from legally 06:40
9 buying a firearm, but this particular person, Devin 06:40
10 Kelley, has also made several forms of threats of 06:40
11 gun violence and mass-shooting gun violence prior to 06:40
12 the conviction, right? 06:40

13 A. Correct. 06:40

14 Q. Okay. And I think that you had told us 06:40
15 a little bit earlier about the sort of after his 06:40
16 conviction -- after his sentence was -- was ended 06:40
17 and your meeting with him. 06:40

18 Can you tell me where you met with Devin 06:40
19 Kelley, like, specifically the building or the area? 06:40

20 A. So, it was in my office. 06:40

21 Q. Where -- where's your office? 06:40

22 A. So, I don't remember, but I'm -- I'm 06:40
23 assuming this is correct. 280 Delaware Avenue. 06:40

24 Q. Okay. 06:40

25 A. Building 310. Building 310 does ring a 06:41

1 bell. So my office is right there on Holloman. 06:41

2 Q. And I just want to put a button on this 06:41

3 sort of communication so that I'm -- I -- so that we 06:41

4 all know -- 06:41

5 A. Okay. 06:41

6 Q. -- how that communication or how it was 06:41

7 going about -- about his conviction. So let me do 06:41

8 that real quickly. 06:41

9 When you met with him in person in your 06:41

10 office at the 49th LRS after he served his time -- 06:41

11 A. Yes, sir. 06:41

12 Q. -- so I guess this would have been 06:41

13 sometime end of March, early April 2013, right? 06:41

14 A. Correct. 06:41

15 Q. Did you -- did you have a discuss with 06:41

16 him about him not being allowed to purchase 06:41

17 firearms? 06:41

18 A. I don't know how to I ended that 06:41

19 discussion. 06:41

20 Q. Did you have a discussion with him, and 06:41

21 specifically -- or even generally -- about his -- 06:41

22 his exhibited propensity to make gun-violence 06:41

23 threats to people? 06:42

24 MR. FURMAN: Objection to form; you can 06:42

25 answer. 06:42

1 A. No. So, as I stated earlier, what I 06:42
2 remember telling him was, Look, you've paid your 06:42
3 debt to society. 06:42

4 Q. (By Mr. Alsaffar) Um-hum.

5 A. And now you can go make something of 06:42
6 yourself. But, you know, it's up to you to go do 06:42
7 that. That's what I remember telling him. 06:42

8 Q. Okay. So you don't remember 06:42
9 specifically having any kind of conversation about 06:42
10 his prior threats to people to commit gun violence 06:42
11 or his status of -- of obtaining weapons or whether 06:42
12 he could obtain weapons, none of that was discussed? 06:42

13 A. No, sir. 06:42

14 Q. Okay. 06:42

15 (Deposition Exhibit 23 was marked for
16 identification.) 06:43

17 Q. Okay. During -- about this time frame, 06:43
18 and I think this is one of the documents you 06:43
19 specifically reviewed prior to your deposition, but 06:43
20 I want to show you Exhibit No. 23 -- 06:43

21 A. Okay. 06:43

22 Q. -- which is Bates 13324. 06:43

23 A. Yes, sir. 06:43

24 Q. So, this is about a week before -- a 06:43
25 week or so before you meet with Devin Kelley upon 06:43

1 his release from jail, correct? 06:43

2 A. Yes, sir. 06:43

3 Q. And it's March 22, 2013. You sent this 06:43
4 memo to the Security Forces Division, correct? 06:43

5 A. Right. 06:43

6 Q. And can you tell me what it says, 06:43
7 memo -- Memorandum SFS/S5/AV. Can you tell me what 06:43
8 the "S5/AV" is? 06:43

9 A. So, that is a section within the 06:43
10 Security Forces Squadron. 06:43

11 Q. Okay. 06:43

12 A. And I can't recall what "the S5," what 06:43
13 that translates to -- 06:44

14 Q. Um-hum.

15 A. -- but that is a section within the 06:44
16 Security Forces Squadron. 06:44

17 Q. Okay. So this is -- and just so the 06:44
18 record's clear, you're sending this memorandum to
19 the 49th Security Forces Squadron at Holloman Air 06:44
20 Force Base? 06:44

21 A. Right, yeah, to a -- to a specific unit 06:44
22 within that squadron. 06:44

23 Q. And the subject is "Conditional Barment 06:44
24 Request for Devin Kelley," right? 06:44

25 A. Yes, sir. 06:44

1 Q. And I didn't -- I didn't even point this 06:44
2 out. This is a memo you wrote and that's your 06:44
3 signature at the bottom, Robert Bearden, Commander, 06:44
4 49th LRS, right? 06:44

5 A. So, I -- I signed it. I'm pretty sure 06:44
6 my First Sergeant wrote it for me --

7 Q. Okay.

8 A. -- but yes, that is my signature; it's 06:44
9 my memo. 06:44

10 Q. Okay. And -- and you were -- you were 06:44
11 agreeing with the content of this by signing it? 06:44

12 A. Correct. 06:44

13 Q. Okay. Can you tell me first what a 06:44
14 "conditional barment request" means? 06:44

15 A. So, you know, we have the authority to 06:44
16 bar individuals from the base. 06:44

17 Q. Um-hum. 06:44

18 A. And so, what I'm asking for here is that 06:44
19 essentially that he be barred from the base with a 06:45
20 very unique, discrete exception to be on the base to 06:45
21 be out-processed. 06:45

22 Q. Okay. Okay. And -- and are you asking 06:45
23 for barment for an indefinite period of time here, 06:45
24 other than the -- the carved-out out-processing -- 06:45

25 A. Right. 06:45

1 Q. -- exception? 06:45

2 A. Yes, essentially. So, what -- what I've 06:45
3 got in mind is when they -- when a member is finally 06:45
4 out-processed --

5 Q. Um-hum.

6 A. -- their ID card is taken. And then 06:45
7 they can't get access to the installation when we're 06:45
8 checking ID cards. And so, by conducting the 06:45
9 barment, then after he's got -- no longer has an ID 06:45
10 card -- 06:45

11 Q. Yeah.

12 A. -- what -- what I'm looking for here is 06:45
13 that the Security Forces has his name on file to 06:45
14 keep him off the base at the gate. 06:46

15 Q. Okay. 06:46

16 A. Because of the threats he previously 06:46
17 made against leadership. 06:46

18 Q. All right. And -- and, to that point, 06:46
19 is there -- is there an end date to this, meaning, 06:46
20 are you saying, Hey, in a year we can -- or is this 06:46
21 indefinite until you withdraw it or the position -- 06:46
22 the person in your position withdraws it? 06:46

23 A. I -- I don't designate an end date in 06:46
24 this. 06:46

25 Q. And that's why I'm asking. 06:46

1 A. Yeah. So -- and what I don't know is 06:46
2 within the Security Forces, how long they keep 06:46
3 something like that on file and on -- on the record. 06:46

4 The important thing, in my mind at the time, 06:46
5 though, was I didn't want him having access to the 06:46
6 base until I knew that they -- we had out-processed 06:46
7 him, got his ID card away from him so he couldn't 06:46
8 get back on. 06:46

9 Q. Is it fair to say that, at this point, 06:46
10 what you're trying to do is protect the people 06:46
11 inside the base from Devin Kelley? 06:46

12 A. Yes. Specifically, because he had 06:46
13 threatened to shoot squadron leadership, I felt like 06:47
14 we needed some extra protection. 06:47

15 Q. Okay. Would -- do you think it -- do 06:47
16 you think it's been fair also for the public to also 06:47
17 have been protected from Devin Kelley, not just 06:47
18 people inside the base, but people outside the base? 06:47

19 A. So -- 06:47

20 Q. And I'm not -- let me link -- let me 06:47
21 withdraw that and make sure you understand -- 06:47

22 A. Okay.

23 Q. -- what I'm getting at here, because I 06:47
24 understand you don't have any authority to tell 06:47
25 folks outside your base what to do. I don't -- 06:47

1 A. Right. 06:47

2 Q. -- and I understand that. And I know 06:47

3 what you're doing here is you have the ability to 06:47

4 protect your people on the base from Devin Kelley 06:47

5 and so you're doing that here, right? 06:47

6 A. Right. 06:47

7 Q. Okay. So what -- what I'm asking is, is 06:47

8 that you-all are certainly aware that he's -- 06:47

9 he's -- he is posing a specific threat to people 06:47

10 inside Holloman Air Force Base at this time, 06:47

11 correct, March 2013? 06:47

12 A. So, I'm certainly, at this time, I'm 06:47

13 concerned that because of threats he's previously 06:48

14 made. 06:48

15 Q. Yep. 06:48

16 A. But I think, kind of to your point, you 06:48

17 know, where my mind's at, as a commander here is, 06:48

18 I've got an airman that has been convicted and

19 served his time -- 06:48

20 Q. Sure.

21 A. -- so he's paid his debt to society, but 06:48

22 he had previously threatened unit leadership. And 06:48

23 I -- and you kind of illustrated it, you know, I 06:48

24 have to look at the fact that he's -- he's paid 06:48

25 his -- his debt to society, so by the law, you know, 06:48

1 he's free to go now. 06:48

2 Q. Yeah. 06:48

3 A. So my focus is that he's previously made 06:48
4 threats to our team, our leadership, and I'm trying 06:48
5 to protect them. 06:48

6 Q. Right. So even though he had served his 06:48
7 debt to society -- 06:48

8 A. Right. 06:48

9 Q. -- by law, he's free to go and he's 06:48
10 free -- free to run -- 06:48

11 A. Right. 06:48

12 Q. -- in public, you still felt it was 06:48
13 necessary that he should not be free, and not even 06:48
14 be allowed on base because you felt he still posed a 06:48
15 threat to people on base? 06:48

16 A. Because he had threatened them 06:48
17 specifically in the past. 06:49

18 Q. Right. So, that's the reason, but he -- 06:49
19 that's -- that's why, but you agree to that, that 06:49
20 you still, in March 2013, despite the fact that you 06:49
21 felt he served his debt to society -- 06:49

22 A. Right. 06:49

23 Q. -- that he -- he still shouldn't be 06:49
24 allowed on the base because he was a threat to 06:49
25 people on base, right? 06:49

1 A. He had threatened those folks on base. 06:49

2 Q. Now -- and you mentioned in this memo 06:49

3 that, specifically, that he not only threatened to 06:49

4 kill his leadership, he had threatened repeatedly to 06:49

5 kill his leadership? 06:49

6 A. Correct. 06:49

7 Q. And go -- also you state a little 06:49

8 farther down that -- I -- you state that, "What they 06:49

9 found was alarming," and you're referring to what he 06:49

10 was doing while he was in a mental institution?

11 A. Right. 06:49

12 Q. "He was searching the Internet for body 06:49

13 armor and guerilla tactics"; do you see that? 06:49

14 A. Yes, sir. 06:49

15 Q. Okay. And now, when we're talking about 06:49

16 searching for weapons, threatening to kill 06:49

17 leadership, searching for body armor, and now

18 guerilla tactics, body armor and guerilla tactics, 06:49

19 weapons, we're all -- this is putting a very 06:49

20 specific picture of mass-shooting-type conduct; fair 06:50

21 to say? 06:50

22 MR. FURMAN: Objection to form. 06:50

23 A. I think that's a fair characterization 06:50

24 of it. 06:50

25 Q. (By Mr. Alsaffar) Okay. And you were 06:50

1 worried about that? 06:50

2 A. Correct. 06:50

3 Q. Okay. And you state that you 06:50

4 "communicated my concerns" -- sorry, Paragraph 3. 06:50

5 "I have communicated my concerns to the SFS/" -- 06:50

6 command, "CC," which is the Security Forces 06:50

7 Commander, Lieutenant Colonel Boyd?

8 (Mr. Demerath left the deposition room.)

9 A. Correct.

10 Q. (By Mr. Alsaffar) "and he will be 06:50
11 providing the unit an armed escort during his

12 out-processing." Okay. 06:50

13 So you specifically communicated this concern 06:50

14 you had about the threat Devin Kelley put -- posed 06:50

15 in March 2013 to the Security Forces Commander Boyd, 06:50

16 right? 06:50

17 A. I asked him for an armed escort. 06:50

18 Q. So my statement is correct, you 06:50

19 specifically -- you specifically, according to this

20 memo, communicated those concerns directly to the

21 Security Forces commander that you had concerns that 06:50

22 Devin Kelley still posed a threat -- 06:51

23 A. Right. 06:51

24 Q. -- correct?

25 A. Right. 06:51

1 Q. Okay. And did you get -- you did get 06:51
2 that escort from the Security Forces? 06:51

3 A. I did. 06:51

4 Q. All right. Now, you -- you had 06:51
5 mentioned about two minutes ago -- and we're getting 06:51
6 close -- while you were explaining this -- the 06:51
7 various threats and then sort of the vis-à-vis, the 06:51
8 public versus the Holloman Air Force Base. 06:51

9 A. Right. 06:51

10 Q. I believe you mentioned that, you know, 06:51
11 you weren't -- at that point, at least, you weren't 06:51
12 aware of any threats he was making after he was 06:51
13 convicted and up to point where he was being 06:51
14 released, fair? 06:51

15 A. Well, I wasn't aware of any additional 06:51
16 threats. 06:51

17 Q. Okay. Now, were you made aware that he 06:51
18 made specific threats to former leadership after he 06:51
19 was released, after he served his prison time, that 06:51
20 he was making death threats to -- 06:51

21 A. No -- 06:51

22 Q. -- leaders? 06:51

23 A. -- so, prior to his return from Mira Mar 06:51
24 is when Sergeant Wolfe said, Hey, sir, you know, 06:51
25 this airman previously threatened leadership -- 06:52

1 Q. Yeah.

2 A. -- you know, and specifically to, you 06:52
3 know, to shoot leadership. We might ought to do 06:52
4 something, you know, as an extra measure of security 06:52
5 during his out-processing. 06:52

6 Q. Okay. Now -- so, my question was I -- I 06:52
7 think what I was asking you is whether or not you 06:52
8 were aware -- and -- and it's been -- it's been 06:52
9 testified to and it's part of this investigation -- 06:52
10 that -- that Devin Kelley actually had made specific 06:52
11 death threats to former Holloman Air Force Base 06:52
12 supervisors of his well after he was out-processed 06:52
13 and released to the community? 06:52

14 A. I was not aware of that. 06:52

15 Q. Nobody told you about that? 06:52

16 A. No. 06:52

17 Q. You remember -- 06:52

18 A. So you're -- 06:52

19 Q. Go ahead. Go ahead.

20 A. -- just for -- so I understand. 06:52

21 Q. Sure. 06:52

22 A. So you're saying that after he 06:52
23 out-processed, he continued to make threats against 06:53
24 folks back at Holloman? 06:53

25 Q. Yes. 06:53

1 A. If I was -- if I was aware of that, I 06:53
2 don't remember it. 06:53

3 Q. Okay. Okay. And I'm -- imagine that 06:53
4 would be something you'd remember. 06:53

5 MR. FURMAN: I'm going to object. I believe 06:53
6 it's one threat. 06:53

7 MR. ALSAFFAR: That's more than enough. 06:53
8 We're probably on threats 20 now.

9 Q. (By Mr. Alsaffar) Let -- let's -- I
10 think it was actually more than one threat. And 06:53
11 I'll -- actually, I know it was -- 06:53

12 A. Okay.

13 Q. -- but the reason I'm asking, is I'm 06:53
14 simply asking for your knowledge -- 06:53

15 A. Right.

16 Q. -- if you don't know, you don't know. 06:53

17 A. If I was aware of it, I don't remember. 06:53

18 Q. Okay. Did -- did you know -- do you 06:53
19 remember Valorie Rose, the supervisor where he used 06:53
20 that really harsh language to her and the letter of 06:53
21 reprimand? 06:53

22 A. Right. I remember you showing me. I 06:53
23 don't remember the individual. 06:53

24 Q. That's okay. So did anyone at Holloman 06:53
25 Air Force Base or anyone in the Air Force inform you 06:53

1 that in 2016, that Devin Kelley had reached out to 06:53
2 her personally through Facebook to -- and threatened 06:53
3 to kill her? 06:53

4 A. No, no one made me aware of that. 06:53

5 Q. And did -- did they make you aware that 06:54
6 he had actually threatened to kill her in that time 06:54
7 frame more than one time? 06:54

8 A. No. 06:54

9 Q. Okay. And I -- it sounds like you don't 06:54
10 know who Valorie Rowe is -- 06:54

11 A. Right.

12 Q. -- at the 49th LRS -- 06:54

13 A. If I saw a picture of her, I might 06:54
14 remember her. 06:54

15 Q. Okay. That's okay. That's okay. I 06:54
16 know there was a lot of people there. 06:54

17 A. 500 in the squadron. 06:54

18 Q. Right. What I'm trying to figure out 06:54
19 is, is sort of what happens when you've got a guy 06:54
20 you convicted of assault, a violent assault, a guy 06:54
21 that you haven't provided fingerprint or criminal 06:54
22 data to the FBI, he's threatened mass violence and 06:54
23 mass shootings -- 06:54

24 A. Right. 06:54

25 Q. -- he's threatened leaderships with gun 06:54

1 violence and he's purchased guns -- 06:54

2 A. Right. 06:54

3 Q. -- and -- and he's now threatening your 06:54

4 command -- or supervisors, again threatening to kill 06:54

5 them all before he commits a mass shooting in a 06:54

6 church, what the Air Force was doing about it when 06:54

7 they were getting made aware of all that stuff. And 06:54

8 so that's what I'm trying to figure out. 06:55

9 A. Okay. 06:55

10 Q. Now, what -- do you know what an 06:55

11 "Expulsion Order" is, not to reenter Holloman Air 06:55

12 Force Base, what that means? 06:55

13 A. So, that you -- you're being banded from 06:55

14 the base. 06:55

15 Q. Okay. How is that different than what 06:55

16 you ordered in March 2000 -- or asked to be ordered 06:55

17 in March 2015 about a barment? 06:55

18 A. I don't know. That's a good question 06:55

19 for the lawyers, what the distinction is between an 06:55

20 expulsion and a barment. 06:55

21 (Deposition Exhibit 24 was marked for 06:55

22 identification at which time, Mr. Demerath returned 06:55

23 to the deposition room.)

24 Q. (By Mr. Alsaffar) Okay. I'm going to 06:55

25 hand you Exhibit 24. 06:55

1 A. Okay. 06:55

2 Q. Okay. Exhibit 24 is dated a few days 06:55

3 after your letter -- 06:55

4 A. Okay.

5 Q. -- of March 22nd, 2013. Exhibit 24 is 06:55

6 March 27, 2013, "Request for Expulsion and Order Not

7 to Reenter Holloman Air Force Base for Devin 06:55

8 Kelley." 06:55

9 A. Okay. 06:55

10 Q. And this is for the 49th Wing Commander, 06:55

11 which is, I believe two levels above your command? 06:55

12 A. Correct. 06:55

13 Q. Okay. And it's from the 49th Wing Judge 06:55

14 Advocate, correct? 06:56

15 A. Correct. 06:56

16 Q. So, here we go. It might be, you know, 06:56

17 the lawyer you were talking about. If you look on 06:56

18 the back, it's signed by a legal assistant and also 06:56

19 signed by Stephen McQuillan, Captain McQuillan, from

20 the Chief of Civil Law. 06:56

21 A. I see that. 06:56

22 Q. All right. I want to take you through 06:56

23 this a little bit. 06:56

24 This seems consistent with what you were 06:56

25 saying in your letter a few days earlier, that, 06:56

1 essentially, we don't want this guy, Devin Kelley on 06:56
2 this base for an indefinite amount of time? 06:56

3 A. Right. 06:56

4 Q. And the reason we don't want him on this 06:56
5 base for an indefinite period of time is that he has 06:56
6 an extensive record of violence directing death 06:56
7 threats towards his leadership and spouse, correct, 06:56
8 you agree with that? 06:56

9 A. I do. 06:56

10 Q. Okay. And that's actually in this 06:56
11 letter, as well, written down, do you see that? 06:56

12 A. I do. 06:56

13 Q. Okay. And you have no dis -- no reason 06:56
14 to disagree with that assessment; in fact, I think 06:56
15 you said you agree with that assessment. 06:56

16 A. I do. 06:56

17 Q. Okay. 06:56

18 A. In fact, in the last paragraph -- 06:56

19 Q. Yeah. 06:56

20 A. -- last sentence of Paragraph 2, Due to 06:57
21 his extensive record of violence and directing death
22 threats towards his leadership and spouse, his
23 leadership has requested that you bar him from 06:57
24 Holloman; that's likely referring to me. 06:57

25 Q. That's right. And if you look even 06:57

1 further down on Paragraph 3, towards the bottom, so 06:57
2 under 3 b, Captain McQuillan is stating that 06:57
3 "Additional evidence of Kelley's high risk 06:57
4 unpredictable and criminal behavior includes his 06:57
5 history of mental health issues, his preoccupation
6 with weapons, his verbal declaration that he has 06:57
7 contemplated offensive attack strategies on both Air 06:57
8 Force personnel and organizations (including his
9 leadership and Security Forces), his online research 06:57
10 of body armor and guerilla warfare tactics while a 06:57
11 patient in a military mental health facility, his" 06:57
12 purchase of and purchase -- possession of weapons 06:57
13 "and his successful escaped from a military mental 06:57
14 health facility"; do you see that? 06:58

15 A. I do. 06:58

16 Q. I mean, fair enough. March 27, 2013, 06:58
17 the -- the 49th wing judge JAG -- judge advocate 06:58
18 command is painting a very, very specific picture of 06:58
19 Devin Kelley as a person who could commit mass -- a 06:58
20 mass shooting, violent act -- 06:58

21 MR. FURMAN: Objection to form. 06:58

22 Q. (By Mr. Alsaffar) -- do you agree with 06:58
23 that? 06:58

24 MR. FURMAN: Same objection. 06:58

25 Q. (By Mr. Alsaffar) Go ahead. 06:58

1 A. Can -- ah, yes, I agree. 06:58

2 Q. Okay. And do you -- do you have any 06:58

3 indication that this -- this kind of 06:58

4 communication -- well, let me -- let me go back. 06:58

5 Do you remember how we were talking about the 06:58

6 various sort of Air Force departments who had 06:58

7 specific knowledge of the variety of violent acts 06:58

8 and threats that Devin Kelley had made? 06:59

9 We talked about AFOSI Detachment 225; we 06:59

10 talked about the -- your squadron, 49 LRS, 49th 06:59

11 Security Forces, the Family Advocacy Program for the 06:59

12 high risk violence team, and now we know also the 06:59

13 49th Wing judge advocate also has evidence and 06:59

14 knowledge of the high risk for violence and the 06:59

15 potential for mass violence that Devin Kelley's 06:59

16 capable of, right? 06:59

17 A. Correct. 06:59

18 Q. Okay. I think there's another -- 06:59

19 there's another letter I want to show you that sort 06:59

20 of might, maybe help followup on what we were 06:59

21 talking about in regard to the permanence or length. 06:59

22 A. Okay. 06:59

23 (Deposition Exhibit 25 was marked for 06:59
24 identification.)

25 Q. (By Mr. Alsaffar) So a couple of days 06:59

1 later, so now we're a week after your letter or 06:59
2 request for -- for a barment is March 29th, 2013; do 06:59
3 you see that? 07:00

4 A. I do. 07:00

5 Q. Sorry. And it's -- it's actually 07:00
6 directed to Devin Kelley from the 49th Wing 07:00
7 Commander, correct? 07:00

8 A. Yes, sir. 07:00

9 Q. And it's -- states that it's signed by 07:00
10 Andrew Croft, Colonel Croft? 07:00

11 A. Correct. 07:00

12 Q. I believe you told me about him earlier? 07:00

13 A. Right, Wing Commander. 07:00

14 Q. Wing Commander. That's a command above 07:00
15 you, correct, when you were at Holloman -- 07:00

16 A. Yeah, two above me. 07:00

17 Q. I know it's not anymore, but when you 07:00
18 were at Holloman, it was two above you? 07:00

19 A. Yes, sir. 07:00

20 Q. Okay. And he states that effect -- in 07:00
21 Paragraph 2, "Effective immediately upon receipt of 07:00
22 this notice, you are ordered not to enter or reenter 07:00
23 or be found within the limits of the United States 07:00
24 military installation of Holloman Air Force Base, 07:00
25 New Mexico, for an indefinite period of time" -- 07:00

1 A. Yes, sir. 07:00

2 Q. -- is that right? Okay. So, now with 07:00
3 this order being in place would then -- essentially, 07:00
4 it would be at the discretion of the 49th or whoever 07:00
5 at Holloman to keep this order to never reenter in 07:00
6 as long as possible? 07:01

7 A. Yes, sir. Yeah. Paragraph 6 remains in 07:01
8 effect "indefinitely unless otherwise modified or 07:01
9 revoked in writing by myself." 07:01

10 Q. There you go. Okay. Thank you for that 07:01
11 clarification. So, at least as of March 29th, 2013, 07:01
12 several commanders now at Holloman Air Force Base
13 were saying, Devin Kelley, you're not allowed into 07:01
14 this space because you're a threat to -- to people 07:01
15 in this space, and we're -- we're not allowing you 07:01
16 here indefinitely? 07:01

17 A. Right. 07:01

18 Q. Okay. Now, there's -- I don't know if 07:01
19 you've ever seen this, and maybe you can help me on 07:01
20 this document, as well. 07:01

21 Now, remember I had told you that, you 07:01
22 know -- and we have a sworn statement here from 07:01
23 the -- Devin Kelley's former supervisor about the 07:01
24 multiple death threats she received -- 07:01

25 A. Okay. 07:01

1 Q. -- from Devin Kelley and before the mass 07:01
2 shooting -- within a year of the mass shooting -- 07:02

3 A. Okay. 07:02

4 Q. -- at Sutherland Spring? But we also 07:02
5 have this document that the government produced to 07:02
6 us and I want to show to you and see if you can help 07:02
7 me with it a little bit. 07:02

8 MR. ALSAFFAR: And I'm sorry if my voice is 07:02
9 going a little. Doing a lot of these lately. 07:02

10 (Deposition Exhibit 26 was marked for
11 identification.) 07:02

12 Q. (By Mr. Alsaffar) Handing you Exhibit 07:02
13 No. 26. And this is a "Defense Manpower Data Center
14 Installation Access Record" relating to Devin 07:02
15 Kelley. It's Bates numbered 15641. 07:02

16 And I want you to go to 15642, the second 07:02
17 page. So you don't have to read all this. Now, 07:02
18 this is relating to Devin Kelley and his ID card and 07:02
19 attempts to access the base -- the various bases,
20 Air Force Bases.

21 A. Okay.

22 Q. And my understanding is once the
23 debarment ordered was entered and once the -- the
24 order's also from Captain Boyd and -- regarding his 07:02
25 order never to reenter, that his -- his ID was taken 07:03

1 from him, right? 07:03

2 A. Correct. 07:03

3 Q. Okay. And the purp- -- I'm sorry. Go 07:03
4 ahead.

5 A. I say correct. I think so. I'm pretty 07:03
6 sure that's the -- the process. 07:03

7 Q. And -- and even if the ID was 07:03
8 accidentally not taken from him, would it -- would 07:03
9 it be the process for the base, if they enter a 07:03
10 barment order and an order not to enter, that they 07:03
11 would put an alert saying, this person, even if they 07:03
12 have an ID, is not allowed in? 07:03

13 A. Right. They would scan it and then get 07:03
14 a warning up that they weren't allowed. 07:03

15 Q. So if you look on No. 9, April 9th, 07:03
16 2013 -- let me read -- let me orient you real quick. 07:03
17 Sorry.

18 Look on the first page real quick. I want 07:03
19 you to know who this Ulrich guy is. 07:03

20 A. Okay.

21 Q. Okay? So, the first paragraph says, 07:03
22 January 24th, 2018 (sic), Scott Ulrich, Director, 07:03
23 Physical Security/Law Enforcement Defense Human
24 Resources Activity, Defense Manpower Data Center 07:04
25 provided the Department of Defense OIG a copy of 07:04

1 Installation Access Log Entries -- 07:04

2 A. Okay. 07:04

3 Q. -- associated to Devin Kelley. 07:04

4 A. Okay. 07:04

5 Q. So that's what this document is. If you 07:04

6 look on the second page, under April 9th, 2013, 07:04

7 "AGENT NOTE - Mr. Ulrich opined that Devin Kelley, 07:04

8 or someone using his assigned ID credential, 07:04

9 attempted to gain access to Holloman Air Force Base 07:04

10 and was subsequently denied due to the existing 07:04

11 barment"; do you see that? 07:04

12 A. I do. 07:04

13 Q. So, on April 9th, 2013, either Devin 07:04

14 Kelley or someone who somehow got access to his ID 07:04

15 card was trying to get back on the base -- 07:04

16 A. Right. 07:04

17 Q. -- right? Okay. Next -- No. 12, 07:04

18 August 26th, 2015, so we're two years later; do you 07:04

19 see that? No. 12? 07:04

20 A. Oh, yeah, I'm sorry. Yes, now I see it. 07:04

21 Q. This is San Antonio Air Force Base. 07:04

22 This is actually just about an hour outside of 07:04

23 Sutherland Springs, Texas, okay? Just so you know. 07:05

24 "AGENT NOTE -- Mr. Ulrich opined that Devin 07:05

25 Kelley, or someone using his assigned ID credential, 07:05

1 attempted to gain access to San Antonio Air Force 07:05
2 Base at the Visitor Center and was subsequently
3 denied due to the existing barment"; do you see 07:05
4 that? 07:05

5 A. I do. 07:05

6 Q. So we have an August 26th, 2015, either 07:05
7 Devin Kelley or someone who's -- again, somehow gets 07:05
8 ahold of the ID was trying to access the Air Force 07:05
9 base when they shouldn't have, right? 07:05

10 A. Right. 07:05

11 Q. Okay. And then if you look down, the 07:05
12 next entry, February 17, 2016, Records accessed 07:05
13 Holloman Air Force Base. AGENT NOTE - Mr. Ulrich 07:05
14 opined that Devin Kelley, or someone using his 07:05
15 assigned ID credential, attempted to gain access to 07:05
16 Holloman Air Force Base and was denied due to 07:06
17 debarment; do you see that? 07:06

18 A. I do. 07:06

19 Q. Okay. So we have three different 07:06
20 attempts with Devin Kelley, or somebody who got 07:06
21 ahold of his ID was trying to get -- get on base, 07:06
22 get on to a place he was barred from entering, 07:06
23 right? 07:06

24 A. Correct. 07:06

25 Q. All right. And you saw the order, he -- 07:06

1 he -- that order was to him and he got that order 07:06
2 that he's never allowed back on Holloman base, 07:06
3 right?

4 A. Yes, sir. 07:06

5 Q. Okay. So he's -- and that February 2016 07:06
6 is less than a year before the Sutherland Springs 07:06
7 shooting, correct? 07:06

8 A. I'm sorry. Can you repeat that?

9 Q. Sure. Sure. Did you know that the 07:06
10 Sutherland Springs church shooting occurred on
11 November 5th, 2017? 07:06

12 A. I don't remember that, but I absolutely 07:06
13 believe you. 07:06

14 Q. Okay. No, that's okay. That's okay. 07:06

15 MR. ALSAFFAR: Let's take a break. Let me 07:06
16 look at my -- look over my notes. I think we're 07:06
17 close to being done. 07:06

18 THE VIDEOGRAPHER: All right. We're going 07:06
19 off the record and the time the 7:06. 07:06

20 (Recess taken.) 07:07

21 THE VIDEOGRAPHER: We're back on the record. 07:12
22 The time is 7:12. 07:12

23 Q. (By Mr. Alsaffar) Colonel Bearden, I -- 07:12
24 I want to kind of take a step back because I know 07:12
25 we've been going through very granular, specific 07:12

1 stuff and -- and just sort of talk to you 07:12

2 straightforwardly. 07:12

3 First of all, let me ask you about any -- any 07:12

4 disciplinary repercussions that happened as a result 07:12

5 of the Devin Kelley situation. 07:13

6 And what I'm talking about is not only the 07:13

7 horrible thing that happened at our family's church 07:13

8 in Sutherland Springs, but, you know, what happened 07:13

9 when the Air Force when they discovered that, 07:13

10 goodness, gracious, we knew this person was really 07:13

11 violent. We convicted him, but we never reported 07:13

12 him to any law enforcement authority, to the FBI 07:13

13 like we should have. 07:13

14 Can -- so with that as a background, can you 07:13

15 tell me, are you aware, Colonel, of any kind of 07:13

16 reprimands or disciplinary conduct that was levied 07:13

17 to the 49th LRS division at Holloman Air Force Base 07:13

18 as a result of those failures? 07:13

19 A. I am not aware of any reprimands or 07:13

20 disciplines of the 49th. 07:13

21 Q. Okay. 07:13

22 A. I -- 07:13

23 Q. Go ahead. 07:13

24 A. I think you said of the 49th LRS. I -- 07:13

25 I'm not aware of any. 07:13

1 Q. Okay. And I -- I assume that you didn't 07:14
2 receive any, correct? 07:14

3 A. No. 07:14

4 Q. Okay. Are you aware of anybody above 07:14
5 you in the chain of command that received any kind 07:14
6 of disciplinary conduct, whether in reprimand form 07:14
7 or other, more serious disciplinary conduct for 07:14
8 these failures that occurred? 07:14

9 A. I am not. 07:14

10 Q. Are you aware of anyone else at Holloman 07:14
11 Air Force Base, whether it's 49th Security Forces, 07:14
12 the Detachment 225, that received any kind of 07:14
13 disciplinary or reprimand as a result of the 07:14
14 failures to report Devin Kelley, his conviction and 07:14
15 his fingerprints to the FBI? 07:14

16 A. I am not. 07:14

17 Q. Okay. So, let me just ask you, you 07:14
18 know, going through -- I put you through quite 07:14
19 the -- the history here of what was going on at the 07:14
20 Air Force base when Devin Kelley was there. 07:14

21 Just take me, just if you can, a 35,000-foot 07:14
22 view again, what do you think could have been done 07:14
23 and should have been done better at Holloman Air 07:15
24 Force Base while Devin Kelley was there, through his 07:15
25 conviction, and up to the point where he finished 07:15

1 his term, his prison term? 07:15

2 A. So -- 07:15

3 MR. FURMAN: Objection to form; speculation. 07:15

4 You can answer. 07:15

5 A. So, as you phrased that, during his time 07:15

6 there and through his conviction, I can't think of 07:15

7 anything. 07:15

8 As you, you know, as you go back through 07:15

9 this, you know, I see -- you know, granted, my -- my 07:15

10 experience and context is different, but as I see 07:15

11 this, I see a command that is doing all the right 07:15

12 things. 07:15

13 They're realizing that they've got an issue; 07:15

14 they're realizing that they've got criminal conduct. 07:15

15 They're getting the right legal opinions. They're 07:15

16 getting charges made. They're getting him convicted 07:15

17 and getting him off to prison. 07:15

18 So in that, you know, kind of that mosaic 07:16

19 that you've painted there, that's what I see as a 07:16

20 command that is doing all the right things to give 07:16

21 due process to a member, to protect the squadron and 07:16

22 to, you know, legally get them charged and convicted 07:16

23 and sent off to serve their time. 07:16

24 You asked beyond that, you know, upon their 07:16

25 return and then out-processing. Obviously, the 07:16

1 missing piece there is that the fingerprints weren't 07:16
2 entered in. 07:16

3 Q. (By Mr. Alsaffar) And his conviction, 07:16
4 as well? 07:16

5 A. That's -- 07:16

6 Q. I don't want you to forget the 07:16
7 conviction. That's also important, right? 07:16

8 A. I -- I would agree. You know, that's 07:16
9 not a responsibility. So you asked about, you know, 07:16
10 was the 49th LRS commander held -- that's not a 07:16
11 responsibility, that's not a system I had access to. 07:16

12 Q. Um-hum. 07:16

13 A. You know, and so, that wasn't something 07:16
14 for me to do. 07:16

15 Q. Um-hum. 07:16

16 A. But you -- as you phrased it, from the 07:17
17 35,000 foot, what could have been done better? 07:17
18 Certainly, that, right? 07:17

19 At a minimum, that could have been done 07:17
20 better, because that -- as you've indicated earlier, 07:17
21 you know, that then puts in protection for the 07:17
22 broader public beyond, like what I was trying to do, 07:17
23 which was respond to specific threats to leadership 07:17
24 and to my unit. So I think, that, for sure. 07:17

25 Q. Yeah. And -- And I think you hit a 07:17

1 point on that. And do you -- and I think we're on 07:17
2 the same page here, is that, those fingerprint 07:17
3 requirements to the FBI, and -- and conviction 07:17
4 reporting requirements to the FBI are not just 07:17
5 actually -- the primary purpose is to protect the 07:17
6 public from dangerous people? 07:17

7 A. Right. 07:17

8 MR. FURMAN: Objection to form; asked and 07:17
9 answered. 07:17

10 Q. (By Mr. Alsaffar) And -- and so, while 07:17
11 I think what you're saying is you did everything you 07:17
12 could within your -- your power to protect the 07:17
13 people at Holloman Air Force Base, because that's 07:18
14 what your job -- that's what you could do, that's 07:18
15 what you did -- 07:18

16 A. Right. 07:18

17 Q. -- that these things, making sure the 07:18
18 FBI was aware of this dangerous person -- 07:18

19 A. Right. 07:18

20 Q. -- both through fingerprint access and 07:18
21 also his convictions, that's designed to make sure 07:18
22 that when you guys released him to the public, which 07:18
23 you did, right? That's what you-all did, you had to 07:18
24 release him to the public? 07:18

25 A. Correct. 07:18

1 Q. This was the safety net for the rest of 07:18
2 us. Those of us out there in Texas, and Sutherland 07:18
3 Springs, as well, to protect those folks from Devin 07:18
4 Kelley, right? 07:18

5 A. I would -- I would agree with that 07:18
6 characterization. 07:18

7 Q. Okay. 07:18

8 A. You know, and again, what you -- what 07:18
9 you see is, you know, a lot of different 07:18
10 organizations and units on a base, all with discrete 07:18
11 responsibilities. And I don't know if it's OSI's 07:18
12 responsibility or Security Forces' responsibility -- 07:18

13 Q. Right.

14 A. -- like, which agency was responsible 07:18
15 for putting it in, but you see all these different 07:19
16 agencies within a wing working to make sure that 07:19
17 this was handled correctly. 07:19

18 Q. Um-hum. 07:19

19 A. And, you know, the -- not getting the -- 07:19
20 the prints in there, to -- to use your words, 07:19
21 prevents a safety net that would otherwise be in 07:19
22 place. 07:19

23 MR. ALSAFFAR: Okay. Okay. Thank you, 07:19
24 Colonel. I don't have any other questions. Pass 07:19
25 the witness. 07:19

1 MR. FURMAN: Okay. I'm going to first move 07:19
2 this monitor and hopefully, not to break it. 07:19

3 MR. ALSAFFAR: I'll help you. 07:19

4 MR. FURMAN: Thanks for your time, Colonel 07:19
5 Bearden. I hope to be quick. 07:19

6 EXAMINATION

7 BY MR. FURMAN:

8 Q. A few minutes ago, Mr. Alsaffar was 07:19
9 talking about whether anyone in the 49th Logistics 07:19
10 Readiness unit was reprimanded. 07:20

11 Did you have any obligation to submit Devin 07:20
12 Kelley's fingerprints or file his disposition report 07:20
13 to the FBI? 07:20

14 A. I do not. 07:20

15 Q. Did anyone in the 49th Logistics 07:20
16 Readiness Squadron? 07:20

17 A. No. 07:20

18 Q. So, can you think of why there might be 07:20
19 a reprimand for your squadron related to this 07:20
20 matter? 07:20

21 A. I can't. 07:20

22 Q. Under your command, did the Logistics 07:20
23 Readiness Squadron win any awards? 07:20

24 A. They did. 07:20

25 Q. What award?

1 A. So, we won the Daelalian award for the 07:20
2 best Logistics Readiness Squadron in the Air Force. 07:20

3 Q. So that's the whole Air Force? 07:20

4 A. We did. So, actually, Colonel Marconi, 07:20
5 under his leadership, they won it. And then the way 07:20
6 the rules work, you have to take a year off before 07:20
7 you can re-compete. And so then we took that year
8 off. And then we won it again. So essentially,
9 back to back. 07:20

10 Q. And about how many logistics readiness 07:20
11 squadrons are there in the Air Force? 07:21

12 A. Oh, about 100. 07:21

13 Q. So it's a pretty significant award? 07:21

14 A. It -- it is, very significant. 07:21

15 Q. And what do you attribute winning 07:21
16 back-to-back awards to? 07:21

17 A. Leadership. And not mine, we had great 07:21
18 leaders at that flight level and throughout the 07:21
19 squadron. They did a fantastic job. We had great 07:21
20 leaders; we had great airmen. 07:21

21 Q. And when you arrived at Holloman, we had 07:21
22 talked about -- and Devin Kelley was already 07:21
23 confined; is that right? 07:21

24 A. That's correct. 07:21

25 Q. And any information you received 07:21

1 regarding the criminal acts he had committed, that 07:21
2 was all secondhand knowledge? 07:21

3 A. That's correct. 07:21

4 Q. And then your limited interactions with 07:21
5 Devin Kelley, did you ever -- ever specifically 07:21
6 observe anything to indicate that he was potentially 07:22
7 violent? 07:22

8 A. I did not. 07:22

9 Q. Mr. Alsaffar talked about the debarment 07:22
10 letter in March 2013. And at the time he talked 07:22
11 about the threats that were made against members of 07:22
12 the Air Force, taking a shotgun; do you recall that? 07:22

13 A. Right, I do. 07:22

14 Q. At that time, were you aware of any 07:22
15 specific threats against anyone else? 07:22

16 A. I was not. 07:22

17 Q. And within your command, is there 07:22
18 anything else -- given that Devin Kelley had served 07:22
19 his time, is there anything else you could have done 07:22
20 within your power to protect the public from Devin 07:22
21 Kelley? 07:22

22 A. No, I don't think so. 07:22

23 Q. Earlier, Mr. Alsaffar talked about the 07:22
24 CRB board; do you recall that? 07:23

25 A. I do. 07:23

1 Q. Does the CRB board have any obligation 07:23
2 to take the fingerprints of the persons who are 07:23
3 brought up for discussion? 07:23

4 A. Not that I'm aware, no. 07:23

5 Q. So is it fair to say, there's no 07:23
6 obligation for the CRB board to submit fingerprints 07:23
7 to any criminal database? 07:23

8 A. That's correct; it's administrative. 07:23

9 MR. FURMAN: No further questions. 07:23

10 MR. ALSAFFAR: No further questions. 07:23

11 MR. FURMAN: Read and sign. Thank you. 07:23

12 THE VIDEOGRAPHER: That ends today's 07:23
13 deposition. The time is 7:23. 07:23

14 (WHEREUPON, the videotaped deposition was
15 concluded at 7:23 p.m.)

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VIDEOTAPED DEPOSITION ERRATA SHEET
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Case Caption: Holcombe
v.
United States of America

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I declare under penalty of perjury that I have read the entire transcript of my Videotaped Deposition taken in the above-captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the VIDEOTAPED DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 2020.

LIEUTENANT COLONEL ROBERT C. BEARDEN

STATE OF _____
COUNTY OF _____

SUBSCRIBED and SWORN to before me
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jurisdiction aforesaid.

My Commission Expires _____ Notary Public

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LIEUTENANT COLONEL ROBERT C. BEARDEN

	4848771 Lt.	5:10	4848771 Lt.	173:5,8, 10
Exhibits	.	113:14,15	.	
4848771 Lt.	Col Robert C. Bearden.	4848771 Lt.	Col Robert C. Bearden.	4848771 Lt.
.	EXHIBIT6	.	EXHIBIT17	.
Col Robert	4:14	Col Robert	6:3	Col Robert
C. Bearden.	4848771 Lt.	C. Bearden.	146:12, 13,14,16	C. Bearden.
EXHIBIT1	.	EXHIBIT12		EXHIBIT23
4:3	Col Robert	5:12	4848771 Lt.	6:15
41:21,22	C. Bearden.	115:3	.	180:15,20
4848771 Lt.	EXHIBIT7	4848771 Lt.	Col Robert	4848771 Lt.
.	4:15	.	C. Bearden.	.
Col Robert	60:6,7,11	Col Robert	EXHIBIT18	Col Robert
C. Bearden.	4848771 Lt.	C. Bearden.	6:5	C. Bearden.
EXHIBIT2	.	EXHIBIT13	150:11	EXHIBIT24
4:4	Col Robert	5:14	156:8,13	6:18
42:23,24,	C. Bearden.	117:22,	4848771 Lt.	193:21,25
25 43:2,	EXHIBIT8	23,25	.	194:2,5
3,10	4:20	124:10	Col Robert	4848771 Lt.
4848771 Lt.	66:1,2,4	4848771 Lt.	C. Bearden.	.
.	70:22	.	EXHIBIT19	Col Robert
Col Robert	71:10	Col Robert	6:8	C. Bearden.
C. Bearden.	4848771 Lt.	C. Bearden.	152:24,25	EXHIBIT25
EXHIBIT3	.	EXHIBIT14	4848771 Lt.	6:20
4:7 44:5,	Col Robert	5:17	.	197:23
8 45:7,9	C. Bearden.	123:11,15	Col Robert	4848771 Lt.
46:9	EXHIBIT9	124:13,14	C. Bearden.	.
4848771 Lt.	5:3	4848771 Lt.	EXHIBIT20	Col Robert
.	75:19,24	.	6:11	C. Bearden.
Col Robert	76:25	Col Robert	167:4,7	EXHIBIT26
C. Bearden.	80:7	C. Bearden.	168:15	7:3
EXHIBIT4	88:18	EXHIBIT15	4848771 Lt.	200:10, 12,13
4:10	4848771 Lt.	5:20	.	
50:11,12	.	128:11,14	Col Robert	
4848771 Lt.	Col Robert	4848771 Lt.	C. Bearden.	-
.	C. Bearden.	.	EXHIBIT21	
Col Robert	EXHIBIT10	Col Robert	6:12	-25
C. Bearden.	5:7	C. Bearden.	169:11,24	19:8
EXHIBIT5	107:16,19	EXHIBIT16	4848771 Lt.	-59
4:11	4848771 Lt.	5:23	.	18:13
43:14,17,	.	132:9,10, 13,19	Col Robert	-709
18,24	Col Robert	144:20,21	C. Bearden.	19:6
	C. Bearden.		EXHIBIT22	
	EXHIBIT11		6:14	

	23, 25	14th-15th	19:7	2011
1	124:10	136:9,19	91:2,17	60:2
	130	15	92:8 93:8	61:5,11
1	158:16	61:5 63:7	94:12,22	62:4
41:21,22	13324	65:5	97:13	63:7,22
51:2 79:2	180:22	75:15,16	107:20	64:9 65:6
158:2	13339	128:11,14	108:13,17	66:9
	89:9	170:2,25	109:10	67:1,3
10		171:5,25	112:9	71:11,14
107:16,19	13342	15086	114:11	74:25
	100:20	167:15	115:5	97:1
100	13356	15641	118:20	123:18,19
212:12	18:13	200:15	154:6	151:9
10th	13360	15642	155:3	152:19
19:18	18:15	200:16	18	154:10
11	13378	15th	19:22	158:13
44:23	146:17	18:13	150:11	161:8
113:7,10,	134	63:22	156:8,13	2012
15 114:1,	158:16,17	64:9	180	18:11,13,
14 178:5	13431	133:11,17	18:8	16 19:7
11-month-old	142:22	134:2	19	20:1,4
161:9	143:2	135:8	152:24,25	28:10
12	1359	169:16		31:23
41:5	173:11	16	2	32:12
113:7,11	14	88:19		34:24
115:3	123:11,15	132:9,10,	2	38:15
117:19	124:11,	13,19	42:24,25	41:5,8
202:17,19	12,14	144:20,21	43:3,10	46:24
128	14-15	16th	46:9	47:11
90:17	139:18	77:1	125:16	62:12
109:23	14794	78:14	129:2	64:2 75:9
158:13	60:12	79:16	133:14	77:2
169:5	14860	17	195:20	78:14,23
170:17	18:12	108:25	198:21	79:16
12th	14th	146:13,	2.2.8	84:24
21:14,16,	18:16	14,16	129:2	85:21
24	133:11,	153:3,6	20	88:19,24
114:15,16	17,21	154:2	63:4 65:7	90:14
115:11	134:2	203:12	167:4,7	91:2,17
174:22	135:8	17623	168:15	92:8 93:8
13		19:7	191:8	94:12,22
48:4		17th	2000	97:13
117:22,			193:16	105:2
				107:14,20
				108:11,
				13,17

109:1,10,	178:5	21st	26th	30th
16 112:9,	2013	66:8	18:11	30:18
16 114:4,	48:3,10,	67:1,3	118:11	31:23
7,11,14,	24 49:18	71:11,14	202:18	38:15
16 115:5,	51:2,3	74:25	203:6	166:21
11 117:19	53:19	90:13	27	31
118:12,20	59:13	22	162:25	52:10
119:1	179:13	173:5,8,	194:6	310
123:21,23	181:3	10 181:3	196:16	178:25
124:1	185:11	2235	27th	35
125:13	186:20	147:2	162:14	145:13
126:11	188:15	225	280	35,000
127:8,17	194:5,6	62:16,19	178:23	208:17
131:8,13	196:16	63:4	29	35,000-foot
133:11,21	198:2	65:7,14	140:24	39:3
134:2	199:11	137:14	163:7	206:21
136:19	201:16	143:24	29th	3545/SFMIS
137:7,11	202:6,13	176:2	137:7,11	125:20
139:18	213:10	197:9	142:6	38
140:24	2014	206:12	143:5,14	121:4,9,
141:6	20:2,5	22nd	198:2	13
143:5,16	62:13	194:5	199:11	3rd
144:24	64:2	23	2d	78:23
145:1,19	108:11	180:15,20	77:8	88:25
146:5,25	2015	23rd	2nd	89:1
150:8	193:17	162:7	125:13	
151:2,17,	202:18	24		
20,23	203:6	193:21,25	3	4
152:13	2016	194:2,5		
153:3,6	192:1	24th	3	4
154:2,6	203:12	92:3	3	50:11,12
155:3	204:5	201:22	44:4,5,8	51:3
156:17	2017	25	45:7,9	144:21
157:15	10:1	197:23	46:9	40-301
158:3	43:8,12	25th	144:22	128:18
159:2,15,	204:11	97:1	157:18	4473
22 160:3	2018	26	188:4	113:16
162:7,15,	44:23	147:23	196:1,2	49
25 163:8	201:22	167:8	30	61:6 66:5
164:8,20	2019	168:6,13	32:12	78:16
166:10,21	43:25	200:10,13	34:24	80:10
167:8	21		112:16	91:2
168:13	169:11,24			
170:3,25				
171:5,25				
173:20				
176:6				

108:4,5	107:25	4:38	150:22	159:15,22
124:15	109:15	79:25	6th	160:2,8
143:24	110:2,16	4:46	88:25	
145:16	111:6	80:3	89:1	9
173:23	112:3,15	4th		
197:10	118:2,15	83:20	7	9
49th	119:2,19	89:1		75:19,24
18:10,12	120:1		7	76:25
20:7,10,	124:7,21			80:7
14,19,20	125:3,6	5	60:6,7,11	88:18
21:3	126:12,16		146:5,25	121:9
24:12,17	127:17	5	150:8	164:10
30:13	130:6	43:14,18,	158:3	201:15
34:25	135:25	24 150:19	164:7	
36:12	136:9,18	163:19	173:20	90
46:25	138:18		176:6	93:3
49:1,19	141:4	5.1	7575	92
53:21	145:12	100:19	128:17	18:9
56:22	151:9	50	7:06	925
58:1,7,	152:5	73:25	204:19	52:11
20,25	153:6,12,	500	7:12	9th
59:6,8,24	25 155:10	192:17	204:22	158:13
62:10	156:14,	500-person	7:23	201:15
63:8,24	18,19	87:24	214:13,15	202:6,13
64:8,9	157:13	51	7th	
65:4,16	159:2,15	74:1,5	145:1	A
66:6	165:20	5399		
67:6,9	166:9,22	133:3	8	ability
69:1	172:8	5th		185:3
71:11,12	174:6	10:1	8	Absence
78:6,12	175:2,4,	139:18	66:1,2,4,	158:3
80:10	17 176:1	204:11	12 70:22	absolutely
83:23	179:10		71:10	34:20
84:9,14	181:19	6	144:24	83:11
85:3,15	182:4		145:19	104:24
86:13,17,	192:12		157:14	148:2
25 87:1,	194:10,13		159:2	168:2
17 88:15	196:17		86	171:17
89:25	197:10,13		158:3	204:12
91:5 92:8	198:6	6:02	8th	abundance
94:11,22	199:4	88:24	145:10	42:14
96:4,10	205:17,	166:1	156:17	abuse
97:10,21	20,24	199:7		
98:3	206:11	6:12		
105:1,6,8	208:10			
106:5	211:9,15			

31:25	accomplish	99:16,18,	added	advise
32:1	147:19	22 100:1	171:18	40:12
68:1,5,18	accounted	102:2,7,	addition	48:18
70:11	52:4	9,22	54:18	advised
71:5	accumulatio	103:4	57:22	47:5
91:19	n	105:22	175:25	148:18
97:14,17	82:21,23	125:11,12	additional	advising
100:12	accuracy	126:15	48:1	105:21
115:25	15:3	140:11,14	64:11	advisor
130:18,	accurate	142:2	170:17	23:6
19,20	12:12	144:15	171:1,8,	advocacy
141:5	13:3	actions	18 172:22	123:5
162:5	34:19	109:22	173:1	128:19
176:23	43:11	activated	189:15	129:12
abusing	45:10,15	129:9,19	196:3	131:1
137:22	46:14	active	Additionall	139:12
academy	101:12	52:4 68:9	y	152:9
17:8,9	104:23	active-	164:7	197:11
19:20	accurately	shooter	address	advocate
69:21	15:8	47:1 48:9	173:25	17:7
ACC	167:12	active-	174:1	36:8,11,
21:23	accusations	shooter-	addressed	20 106:5
22:2	31:25	type	64:18	130:9
174:20	115:24	46:22	173:22	156:19
access	accused	active-	administrat	157:10
69:16	97:25	shooter-	ive	172:12,
104:7	116:22	type-threat	68:2	22,24
116:1	acronym	46:12	72:19	194:14
183:7	156:25	activity	125:11	196:17
184:5	act	140:8,18	155:13	197:13
200:14,19	74:20	201:24	156:2	advocate's
202:1,9,	135:19	acts	214:8	70:5
14 203:1,	136:11	59:25	admit	advocates
8,15	141:8	62:25	76:16	130:25
208:11	196:20	68:4	adult	AF
209:20	accessed	141:12	154:13,22	125:20
accessed	99:5	142:2,4	155:6	Affairs
99:5	203:12	197:7	adverse	146:18,22
203:12	acting	213:1	88:3	affected
accident	108:14	actual	advice	99:25
10:11	111:9	62:9	35:25	AFOSI
accidentall	115:4	73:11	advise	53:22
y	156:13	164:15		
201:8	action			
	88:3			

62:16,19,	196:22	23 53:18,	171:6	120:11
22 65:7	197:1	20 55:15	172:1,15	121:22
97:2,20	208:8	56:5,11	173:11,15	138:15
112:4	210:5	58:21	174:22	140:11
130:14	Agreed	60:1	176:2,11	141:23
131:1	76:6	62:20,21,	177:20	153:19
141:2,3	agreeing	24 63:8	178:5	185:18
143:5,8,	182:11	64:8	181:19	189:25
21,24	agreement	65:14	185:10	airman's
163:14	14:12,21	68:3	189:8	80:19
176:12	164:9	69:21	190:11	airmen
197:9	ahead	70:1,8,14	191:25	62:23
afternoon	35:8	71:13	193:6,11	63:9,17
9:18	43:17	77:9	194:7	80:14
agencies	57:4	80:14	196:7	85:22
54:20,22	112:14	83:14	197:6	212:20
121:25	166:20	84:25	198:24	alarming
140:9	190:19	85:14,20	199:12	187:9
210:16	196:25	89:18	200:20	Alcohol
agency	201:4	92:9	202:9,21	132:21
177:2	205:23	94:11	203:1,8,	alert
210:14	ahold	96:10	13,16	68:17,24
Agent	106:10	110:1	205:9,17	201:11
63:3	203:8,21	114:25	206:11,	alerted
143:10,21	air	115:9,17	20,23	66:24
202:7,24	16:22	117:20	209:13	allegation
203:13	17:2,8	121:8	212:2,3,	71:17
agents	19:16,19,	122:10	11 213:12	92:10
62:23	24 20:4	123:6	airman	100:12
agree	21:6,10,	124:1	17:20	154:9,10,
51:22	11,13,16,	127:8	25:24	18
76:6	22,23,24	128:1,3,	26:16	allegations
91:13,16	22:3,4,8,	17 133:19	27:5 29:9	82:19
94:17	16 24:12,	134:2	30:24	109:12
97:15	17,22	135:12	32:4,24	allegedly
115:23	25:25	136:17	37:9	143:25
116:18,19	27:18	137:14	38:1,6	allowed
117:14	28:6,10,	139:2,19,	39:15	117:10
144:9	15 30:5,	20 141:10	40:16	147:11
160:3	11 31:23	143:24	50:17	179:16
166:15,17	32:11	151:2,8	51:6,8,10	186:14,24
177:9	33:21	152:1,11	68:9 81:3	199:13
186:19	34:3 41:3	163:6	82:3 86:1	
195:8,15	52:14,17,	164:8,15,	87:14	
		20	98:16	
		166:10,23	111:20	
		168:17		

201:12,14	16,19	America	79:11	151:20
204:2	134:9,13,	60:18	82:25	162:7,14,
allowing	17,20	61:1	86:23	25 163:7
199:15	135:5	amount	89:21	179:13
Alsaffar	137:25	195:2	93:17	201:15
9:17,21	138:3,17	and/or	107:6	202:6,13
18:2,20,	140:1,6	159:10	126:23	architectur
24 19:4,	141:18	160:11	apparently	e
9,10	142:25	Andrew	107:7	83:2
25:2,4	146:16	21:2	appears	area
41:24	150:14,	198:10	126:9	11:22
42:22	17,23	Andy	apply	178:19
43:2,16	153:2	21:2	68:11	arm
44:7,15,	159:21	anniversary	appoint	109:5
16 45:6	160:2,14	30:19,20,	139:3,7	armed
49:9,16	167:6	22	appointed	57:22
50:2,15	169:14,	annotated	129:23	58:1,16
51:22	17,22,23	125:13	138:19	59:7
52:9 55:2	173:7	answers	approved	188:11,17
60:10	175:23	12:12	130:1	armor
66:4	177:10	74:4	approving	147:16,23
72:6,9	178:4	Anthem	157:13	148:7
75:10,16,	180:4	92:21	approximate	150:4
18,21	187:25	Antonio	ly	165:12
76:2,5,7	188:10	147:16	147:2	187:13,
79:19	191:7,9	202:21	April	17,18
80:4,6	193:24	203:1	19:7	196:10
90:11	196:22,25	anybody's	51:2,3	armory
92:22	197:25	106:11	53:19	119:5,8
93:1,2	199:10	anymore	59:13	120:9
95:3,5,	200:8,12	198:17	107:20	arrange
12,21	204:15,23	anyone's	108:13,17	164:14
106:4,9,	208:3	61:23	112:9	arrive
14,19,21,	209:10	Anytime	115:5,11	135:15
24 107:6,	210:23	11:14	117:19	arrived
12,13,18	211:3,8	apologize	118:11	41:4
113:9	213:9,23	25:20	123:23	136:17
115:22,23	214:10	27:14	124:1	137:19
116:5	altercation	64:12	126:11	138:6
117:7,15,	109:7	66:20	137:7,11	140:15
25	Alvarez	Amazing	140:24	166:22
123:14,17	146:18	76:23	142:6	212:21
128:13	147:14		143:5,14	
131:15,	149:16,21			
19,25				
132:12,				

Art	assistant	78:13,21	Aviane	205:15,
77:12	194:18	90:4	51:6,8	19,25
Article	association	100:10	award	206:4,10
90:17	30:23	133:8	211:25	209:18
109:23	assume	attorney	212:1,13	213:14
158:2,13,	14:13	16:7	awards	214:4
16,17	32:22,23	attribute	211:23	awareness
169:5	34:7	212:15	212:16	45:25
170:17	87:4,7,10	atypical	aware	AWOL
asks	98:11	54:15	17:10	147:11
74:11	110:8	58:2	26:10	158:5
assault	113:21	audio	31:24	
31:25	206:1	95:7	32:9,10,	
90:1,17	assumed	audio's	12 33:9	B
109:18	17:9	92:22	38:8	back
116:13,23	45:17	August	40:20	15:3,22
123:24	assuming	18:13	48:6,10,	28:2,15
158:13,17	175:9	61:11	21 49:1,7	29:18,19
163:2	178:23	62:4	57:5,7	37:5
169:2	assumption	169:16,20	86:3	38:6,11
170:18,20	52:10	170:2,25	87:21	39:16
171:8	102:5	171:5,25	96:10	40:7,22
172:2	105:19	202:18	109:18	41:20
174:12	111:16	203:6	110:2	47:19,25
176:7	119:13	Austin	122:11	48:20
192:20	120:22	18:2 76:3	136:14,	50:3
assaulted	121:17	authorities	15,22,25	52:12,19
108:25	ATF	162:2,4	137:18,23	53:2
109:4	113:16	authority	139:21	54:7,9
assaults	attached	20:17	141:3,4	59:21
151:19	126:1	105:16	145:6,9	62:9
assess	attack	182:15	147:22	68:11
131:2	196:7	184:24	149:23,24	71:9 74:3
assessment	attempted	205:12	151:9	77:5,7
160:20	146:3	authorizati	152:12	78:13
195:14,15	202:9	on	165:20	80:2
assign	203:1,15	165:3,6	166:10	95:16,17
54:10	attempts	authorized	178:6	96:17
assigned	200:19	119:23	185:8	102:10
25:24	203:20	Avenue	189:12,	104:19
56:5	attention	178:23	15,17	106:18
202:8,25	55:4		190:8,14	107:5,9
203:15			191:1,17	114:3
			192:4,5	117:15
			193:7	120:19

126:19,20	201:10	115:9,17	21 204:2	beating
135:5	202:11	117:20	205:17	136:20
144:14	203:3	119:5,8	206:11,	beef
150:21	barred	121:9,25	20,24	49:14
152:19	182:19	122:6,11,	209:13	behavior
168:23	203:22	22 124:2	210:10	97:25
171:23	base	127:4,8	based	196:4
172:25	19:19,25	133:19	70:19	Behavioral
184:8	20:4 21:6	134:3	74:15	145:3
190:24	22:16	135:12	85:14	believes
194:18	24:12,17,	136:18	122:16,21	158:21
197:4	22 27:18,	137:19	139:16	bell
202:15	19 28:10,	139:11,	bases	78:2
204:2,21,	15 30:16	20,21,23	112:21	179:1
24 207:8	31:23	140:10	200:19,20	belonging
212:9	32:12	141:10	Bates	119:7
back-to-	33:22	143:24	18:8,17,	Bennett
back	34:3,5,7	145:18	21,25	20:18,20
212:16	40:24	151:2	19:2	bet
background	41:4	152:11	44:10,12	150:17
10:5	49:22	156:6	50:4	big
24:14	53:2,19,	164:8,16,	89:9,16,	32:20
205:14	20 54:13	21	18 100:20	66:15
backside	55:16,23	166:10,23	128:17	bigger
50:25	56:5,11,	181:20	133:1,4	90:21
bad	21 57:7,	182:16,	142:21	biography
49:11	8,9,12,18	19,20	146:17	42:17
82:1,3	58:21	183:14	167:15	43:3,11,
bags	60:1	184:6,11,	180:22	18,22
92:5	62:21,23	18,25	200:15	bit
banded	63:9 64:8	185:4,10	bathroom	10:4,6,18
193:13	65:15,21	186:14,	92:15	11:12
Baptist	71:13	15,24,25	Bearden	13:23
9:25	80:13	187:1	18:5	15:13
bar	83:15,17	189:8	19:11	24:1 38:4
182:16	84:25	190:11	25:17	41:20
195:23	85:14,20	191:25	31:7 45:7	59:22
barment	88:17	193:12,14	51:7	75:8 79:1
181:23	92:9	194:7	111:10	92:21
182:14,23	94:11	195:2,5	182:3	148:12
183:9	96:10	198:24	204:23	156:10
193:17,20	98:7	199:12	211:5	beat
198:2	112:17,	200:19	75:9	
	19,22	201:9		
	113:5	202:9,15,		
	114:25	21 203:2,		
		9,13,16,		

162:14	187:12,	211:2	107:5	car
166:19,20	17,18	briefed	button	10:11
178:15	196:10	78:24	95:7	113:5
194:23	boring	briefly	179:2	card
200:7	15:12	152:18	buy	183:6,10
bitch	bottom	brig	113:17	184:7
79:8	60:12,15	50:21	buying	200:18
93:13	64:6 65:3	bring	178:9	202:15
96:1	66:12	42:9		cards
black	79:2	104:14	<hr/>	183:8
143:25	89:11,12,	bringing	C	care
blind	19 105:24	37:6	<hr/>	142:13
83:3	125:19	brings	calendar	163:21
blood	133:1,10,	121:24	37:23	caring
161:22	12,13,14	broader	call	15:3
blow	142:22	208:22	24:3 28:3	carry
94:7	143:1,20	broken	32:5	112:19,22
board	144:22	161:15	77:12	carrying
67:18,24,	174:15,16	brought	95:10	112:16
25 68:23	182:3	40:7	98:13,21	113:3
69:9,19	196:1	42:15,17,	153:19	carved-out
70:1,6,	bow	19 59:14	called	182:24
10,21,25	71:10	104:9	41:25	case
71:20	box	214:3	58:11,20	14:4,7
72:18	125:9	bruise	83:24	16:23
73:12	Boy	161:14,20	84:6 89:7	17:23
74:9,13	12:24	building	93:13	26:24
92:15	Boyd	65:19	95:25	29:2,6
123:19	59:3	85:18,23	121:21	34:8 50:7
154:6,21	101:5,8	111:12	147:4	54:15
155:4,13	102:13	145:13	173:10	60:16
213:24	125:7	174:1	calling	68:10,16,
214:1,6	126:7	178:19,25	95:16,17	18,21
boarding	188:7,15	burden	100:4	69:6
114:8,21	200:24	72:16	capable	70:20
boards	brain	Bureau	197:16	98:10
73:10	161:24	132:21	Captain	105:16
body	break	bus	194:19	125:20
93:5,9	11:14,15	165:10	196:2	cases
147:16,23	79:20	business	200:24	68:1
148:7	150:14		captains	69:22
150:4	156:12		23:13	70:11
165:12	204:15			130:18

caught	chair	31:19	27:7	26:11
33:1	69:21	33:4,10	132:22	28:20
38:16	chance	35:1	194:20	147:24
39:7	26:23	140:16	child	193:6
CCF	28:5	157:25	32:1	204:10
124:23	162:21	207:22	68:12	205:7
CD	change	charges	69:5	circle
104:9,14	18:17	29:16	71:5,17,	70:25
105:7	32:8	31:7,13,	21 72:3,	civil
ceiling	39:25	15,16,21	11,13	26:4
92:6	50:14,17	33:8,12	73:14	194:20
cell	52:2,18	167:18	75:2	civilian
28:1,10	53:14	168:25	123:20	29:20
29:11	changing	170:14	136:21	51:10,11
31:10	50:17	172:22	137:23	68:11
32:4	52:7	173:1	141:5	civilian-
center	characteriz	174:12	154:12	personnel
52:15	ation	176:7	158:13	69:14
68:12	44:14	178:8	161:3,9,	clarificati
69:5	91:13	207:16	10,13,25	on
200:13	134:8	chat	162:5	199:11
201:24	139:25	150:15	169:3	clarify
203:2	140:2	check	176:23	46:9 57:3
central	187:23	59:18	children	clarity
67:18,24	210:6	68:15	68:19	39:15
68:6,15,	charge	69:14,16	chocking	40:20
16,22	15:21	87:16	114:8	47:16
69:9,19	18:10	119:23	choice	54:8
71:4,22	32:6	checking	70:24	63:14
72:18	33:11	183:8	choke	64:11,12
74:22	41:12	checklist	92:5	74:17
154:5,25	77:17	54:5,11,	choked	153:18
155:3	140:21	12,19	91:21,25	Class
cetera	158:11	55:3,11,	92:1,4	51:10
52:6	167:1,7,	13,18,25	choking	clavicle
chain	17 168:5,	56:7,10	92:11	161:15
20:16	12,14	59:16	96:5	clear
21:1,5	169:25	cheek	109:12	28:8
22:12	170:8,16,	161:14	114:21	34:11
87:21	17,20,25	chief	Christmas	140:7
88:8	171:1,8,	17:13	92:2	141:22
206:5	18 172:8,	22:3,5	church	181:18
	16	23:1,2,	10:1	
	charged	15,16		

Clearance	Colonel	40:1	24:3,11,	124:19,22
18:16	9:18 15:4	45:17	16,21	125:5,6,
climbed	18:5	46:24	26:5,22	17 126:7
165:2	19:11,15	53:4,8	30:13	129:24
clinician	20:18,24,	63:9,18	32:19	130:5
130:2	25 21:2,4	66:6	33:21	136:3,18
clinicians	25:17	67:11	34:2,24	138:18
131:1	31:6	69:2	35:21	145:11
Clinton	32:11	80:13,16	37:7	147:14
143:19,	39:10	81:25	38:14	153:7,13,
20,21	40:5	87:22	40:14	18,24
close	42:22	88:8	48:25	155:15,
35:17	44:7 45:7	97:10	49:19	17,20
65:20	50:25	103:4	58:11,12,	156:6,14,
150:24	51:7 59:3	104:3	21 59:1,6	19
189:6	60:11	108:1,5	62:12	157:11,18
204:17	63:23	118:25	63:17,24	158:1,11,
closed	75:22	127:6	64:5,6,7,	21 159:3,
100:25	76:8 80:4	136:6	13,14,16,	14 160:3,
101:1	89:6	152:6	17 66:7,	23 162:8,
103:16,19	120:2	173:16,	12 67:1,	15
105:1	150:23	22,25	9,14	163:17,19
closely	153:15	174:20,23	69:1,15,	165:19
149:24	188:7	175:1,2,4	21 71:12	166:2,5,
closes	198:10	176:6,12	73:9	22 173:23
99:24	204:23	188:6	80:21	174:6,11
101:14	205:15	193:4	82:24	182:3
coach	210:24	194:11	84:23	185:17
76:22,23	211:4	196:18	85:20	188:7,15,
code	212:4	198:14	86:3,5	21 194:10
147:3	Combat	206:5	87:4	198:7,13,
Cole	21:11,22,	207:11,20	98:3,19,	14 208:10
153:15	23	211:22	23 99:6,	commander's
collar	comfortable	213:17	16,18	102:2
76:17	10:14,19	command-	100:1	103:19
collected	command	level	101:5,9,	125:10
116:24	20:16	98:4	17 102:1,	commanders
collection	21:1,5,	commander	7,13,21,	22:18,24
70:4	11,22	17:5,13,	22 103:14	23:10
130:23,24	22:12,15	20 18:11,	104:7	70:2
	29:9	12 19:18	105:14,22	111:9
	30:18,20,	20:6,9,	108:7,8,	130:25
	21 31:22	19,21	14 112:15	157:13
	32:8,12	21:3,10,	115:4,13	199:12
	35:23	22,23,24,	119:18,24	
		25 22:19	120:1	commands
			123:23	

178:6	communicati	concerns	163:1	consistent
commit	ng	134:5	confession	194:24
94:24	112:5	188:4,5,	137:2,12,	constant
96:6	149:22	20,21	13 140:25	149:15
97:17	158:17	conclude	141:2,20	constitutes
135:19	163:17,18	96:17	142:7	152:1
136:11	communicati	157:18	144:1	consultatio
141:8	on	166:3	163:6,14	n
166:6	40:4	concluded	confident	126:6
180:10	104:22	214:15	74:1	contacted
196:19	149:16	conclusion	confined	17:3 27:2
commits	176:10	24:25	159:18	59:5
193:5	179:3,6	62:1,8	160:12	162:16
committed	197:4	conditional	166:4	164:8
26:1	communicati	181:23	212:23	contemplate
28:19	ons	182:14	confinee	d
33:24	17:17	conduct	157:22	196:7
35:1	community	63:12	159:9	content
72:3,11	190:13	65:8	confinement	182:11
74:19	compare	79:16	19:8	context
116:13	42:20	98:8	32:5,25	138:5
138:12	completes	122:7	35:12	139:10
141:12	99:15	166:2,4,7	40:17	207:10
157:22	completion	187:20	45:19	continue
158:2,23,	125:11	205:16	50:18	166:3
25 159:4	COMPLIANCE	206:6,7	138:7,11,	continued
168:18	128:20	207:14	16	159:8,11
169:2	computer	conducted	140:16,22	166:6
171:7	70:18	165:11	145:12,	190:23
172:2	90:9	conducting	15,19	continuity
213:1	142:23	118:18	146:4	111:3
commonly	147:15	183:8	157:14	controls
113:15	165:8	conduit	159:8,11	76:21
communicate	99:7	104:17,21	160:10	convened
communicate	concern	conference	confinement	134:4
d	188:13	10:22	...are	conversation
39:9	concerned	conferred	157:19	n
87:2,4	48:20	95:2	confirm	12:7,10,
165:19	88:5	confessed	167:11	22 17:12
188:4,5,	140:18	136:20	confusing	180:9
13,20	162:16	137:22	132:13	connection
	185:13	141:4	connection	107:2,8

conversatio	105:18,24	12,19,20,	19 116:16	164:6,22
ns	106:3	21 44:1	117:21	166:24
12:17		45:7,8,15	118:6,7,	167:20
17:16	cop	48:13,14	9,10,13,	168:20
	148:19	50:1	15,16,21,	169:3,4,
convicted	149:4	56:16,19	23,24	25 170:1,
29:14,16	150:6	57:1,2	119:5,22	4,5,18,
47:13	copies	58:22	121:10,	19,23
54:2	111:1	61:12	11,14	171:2,3
173:16,17	132:17	62:13,14,	122:4	173:12,
174:12	155:21	17,25	125:2,4,	18,24
176:7,14,	copy	63:1,4,5,	8,18	174:1,5,
18,22	18:7,18,	12,13,25	126:14	8,9,13,24
177:12,	20 43:21	64:3,11	128:4,21,	176:4,8,
18,21	48:17	65:9,25	25 129:8,	19
178:7	85:1	66:9,10	12,13,18	178:13,23
185:18	104:10,15	67:3,4,6,	130:8,10,	179:14
189:13	105:6	7,12,13	12,13,15	181:1,4
192:20	117:25	70:8	131:13	182:12
205:11	123:13	71:8,15,	133:5	185:11
207:16,22	124:13	16,18,19,	135:10,16	187:6
conviction	132:15	23 77:3,4	136:4,7,	188:2,9,
53:23	137:2	79:17,18	12,13	18,24
55:5	155:17,18	81:12	137:9,10	194:12,
59:10	201:25	84:13	139:23	14,15
72:23	correct	85:11,12	143:6,7,	195:7
174:7	11:6,9	88:24	10 144:4	197:17
176:14	16:14	91:6,7	145:14,25	198:7,11,
177:20	19:13,14	92:11,12	146:8	15 201:2,
178:12,16	20:6,22	93:10,11,	147:12	5 203:24
179:7	22:1,7,10	18,19,23,	148:22	204:7
206:14,25	23:20	24 94:24,	149:13,14	206:2
207:6	24:19,20,	25 96:7,8	150:10	209:25
208:3,7	24 27:15,	97:11,12,	151:16	212:24
209:3	16,20,21	25 98:1	153:8,9,	213:3
convictions	28:11,17	101:3,6,	13,14	214:8
59:19	31:17	12	154:1,7,	correctly
209:21	33:15,19	107:20,24	23,24	35:16
coordinate	34:1,10,	108:1,2,	155:2	57:21
37:25	14,17	6,16,22	156:15,	58:15
	35:4 36:9	109:13,19	16,21	84:5
coordinatin	37:3	110:3,4	157:15,16	210:17
g	38:19	112:1,10,	158:15,	
105:20	40:9 41:2	11	18,20	counsel
coordinatio	42:12	114:14,	159:5,12,	95:2
n	43:8,9,	16,17,23	13,19	132:22
		115:5,18,	161:17	

country	213:24	criminally	47:14	170:2
116:21	214:1,6	97:6	48:11	171:15
couple	create	criteria	96:11	173:20
24:13	81:25	68:4,5,22	165:24	194:2
34:1	111:18,19	70:17,19,	170:21	dates
41:14	created	20 71:1,	177:4	30:22
92:13	82:2,6	7,21	209:6,18	38:22
93:2	credential	72:13	data	39:2
97:12	202:8,25	73:1,3,	177:4	158:7
110:17	203:15	11,13	192:22	daughter...
121:7	credible	74:5,6	200:13	kelly
133:18	115:24	75:2	201:24	162:18
147:13	credibly	80:24	database	DAVA
157:2	116:22	123:20	53:12	130:16,17
168:8	crime	154:12,22	68:6	David
197:25	116:13,23	155:5	69:2,16	101:5,8
court	137:22	Croft	71:23	125:7
11:3	140:21	21:2,4	73:15	day
12:1,16	173:17	198:10	101:23	26:13
14:23	crimes	cross-	103:9	30:10
92:24	26:1	squadron	155:1	33:5 52:3
106:2	140:16	104:22	214:7	67:2 76:5
175:21	criminal	current	date	144:3
court-	59:25	19:13,16	50:23	145:10
martial	62:24	43:7,24	52:10,11	148:8
31:21	63:11	curve	61:25	162:25
32:6	64:10	75:12	62:1 75:6	164:13
105:17	65:7	cutting	89:20,21	days
138:12	97:22	13:20	107:15	115:12
157:21	145:21	CV	109:10	168:8
171:18	151:10	42:9 43:3	112:10	194:2,25
172:12	159:10,	<hr/>	115:10	197:25
CRB	17,24	D	168:1,3	
67:19,20	160:6,12	<hr/>	172:3	De
71:3,7,	166:4,7	Daelalian	183:19,23	77:8
13,20,25	192:21	212:1	dated	dead
73:11	196:4	damages	18:11,13,	93:5
74:25	207:14	26:4	16 19:6	106:18
75:3	213:1	danger	66:8 77:1	dealer
123:19	214:7	148:18	78:14	113:23
130:23	criminal-	dangerous	88:19	dealing
152:19	conviction	153:2,5	107:19	37:9
154:11	177:3		118:11	47:14
155:3,9,			143:5	
12,20				

111:12	defer	deposition	description	73:12
dealings	70:21	10:6,8	24:10	determined
31:3	deferred	11:12	44:21	71:20
death	71:1	15:16,18	121:4	72:1,7,
148:19	Delaware	16:9,16,	126:4	10,13
150:6	178:23	23,24	desert	131:11
189:20	Demerath	17:4,6,15	93:6,9	136:10
190:11	51:18	18:5 24:5	designate	141:23
195:6,21	54:25	25:5,6	183:23	154:11,22
199:24	95:6	25 42:11,	designed	Dev-
death-by-	106:8,12,	16,23,25	209:21	131:6
cop	16,20,23	43:2,14	designee	develop
148:24	188:8	44:5,12	125:17	172:22
debarment	193:22	50:12	desk	development
18:7	denied	51:16,18,	100:4	68:12
39:19	202:10	25 54:25	detachment	69:5
200:23	203:3,16	60:7 66:2	53:22	Devin
203:17	Denise	67:11	62:16,19	18:10
213:9	51:10	75:19	63:4	25:24
debt	Department	107:16	64:16	27:3,5,7,
30:3	44:22	113:7	65:7,14	8,19,23
180:3	132:20	117:23	137:14	28:9,13,
185:21,25	134:1,11,	123:15	143:24	25 29:6
186:7,21	14 135:7	128:11	176:2	30:14
December	139:17	132:8,10,	197:9	31:24
92:3	145:2	12 146:14	206:12	32:13
decided	201:25	150:11	detailed	33:13,20
111:18,19	departments	152:25	81:6	34:23
decision	197:6	167:4	97:16	35:10
70:13	depend	169:11	details	38:17
74:9	80:17	173:5	32:9	39:5,11,
110:20,23	87:21	180:15,19	33:2,9	14 40:5,
declaration	Deployment	188:8	38:2	6,24 41:6
196:6	78:19	193:21,23	97:16	47:1,13
deemed	deponent	197:23	determinati	48:7,8,
145:20	45:4	200:10	on	11,22
Defense	51:23	214:13,14	67:19	49:1,20
44:22	75:17	describe	73:4	50:17
200:13	80:5 90:9	20:8	74:25	53:5,17
201:23,	142:23	describing	155:5	55:16
24,25	175:22	23:25	determine	56:18,23
		46:25	68:3	58:2,3,6,
		167:1,14,		17 59:6,
		16		15,24

63:10	136:10,18	210:3	dis	discussed
64:9 65:6	137:20	211:11	195:13	180:12
71:14,15,	138:19	212:22	disagree	discussing
18 72:2	139:22	213:5,18,	145:24	127:13
73:13	141:9	20	146:7	discussion
75:1 77:3	147:4,22	Devin's	160:20	59:11
78:5,15	149:8,24	110:2	165:5	152:21
79:16	151:4	dial	195:14	179:19,20
81:14	152:12,20	106:18	disagreemen	214:3
83:12	153:9,21	diamond	t	disk
84:24	154:9,21	61:20	14:22	137:3
86:9,16	155:5	62:5	discharged	disposition
88:16,22	157:14	die'	29:19	211:12
89:7 90:2	159:16,23	162:11	disciplinary	disrespectf
91:11,19,	160:4	difference	y	ully
24 92:14	161:1	57:14	125:10	79:6
93:3,8,	162:9	138:5	156:2	distinction
21,22	164:2	digital	205:4,16	193:19
94:6,12,	166:11	51:2,3,4	206:6,7,	distributed
23 95:23	167:9,17,	digitally	13	174:19
96:11	22 170:5,	51:1	discipline	distributio
97:22	18 171:1,	diligently	23:6	n
98:24	2,7,22	147:19	disciplines	77:16,19,
100:13,14	174:11	direct	205:20	25 78:19
105:2	176:13,18	48:18	discovered	174:15
107:23	177:4,17	78:13	205:9	disturbance
109:13,18	178:9,18	directed	discovery	92:19
110:2,7,	180:25	94:10	135:4	disturbing
13 114:13	181:24	198:6	discrete	97:16,25
115:8,16	184:11,17	directing	148:21	98:8
117:16	185:4	195:6,21	182:20	division
118:19	188:14,22	directly	210:10	24:17
119:4,8,	190:10	79:12	discretion	90:3 98:6
11,12,20	192:1	176:12	128:23	181:4
120:17,19	194:7	188:20	129:20	205:17
121:7	195:1	director	199:4	DK
122:10	196:19	17:13	discuss	147:15,18
123:25	197:8,15	146:18,21	17:17	document
124:8	198:6	147:14	59:9	18:17,19
126:4,13	199:13,23	149:16,20	134:4	36:16
127:7,19,	200:1,14,	201:22	179:15	42:21
22 130:7	18 202:3,			
131:7,11	7,13,24			
132:1,6	203:7,14,			
133:21	20 205:5			
134:4	206:14,			
135:1,9	20,24			

45:4	16:8,12	drawn	126:2	99:4
50:4,6,9,	18:4	55:3	127:25	104:5,6
24 51:5,	29:15	drive	164:19	electronica
15,21	39:2	65:21,23	165:13	lly
52:1	42:10	85:18	166:25	50:16
60:19	44:10	143:25	167:14,16	element
62:6,7,10	59:3	144:3	175:19	13:6,14
63:6	60:23	145:18	176:21	77:22
66:11	80:23	driving	178:15	elementary
78:14	84:3 85:7	162:8	180:1	83:1
88:14	104:4	due	194:25	86:24
102:11	121:6	195:20	198:12	elements
104:2	172:13	202:10	208:20	77:20
118:9	180:18	203:3,16	213:23	139:19
120:4,16	Dod	207:21	early	elevated
123:11	18:8	durability	41:7	72:22
126:1,10	45:11	82:15,18	67:10	elopement
139:14	46:10	durable	179:13	147:3
146:11	71:22	82:9	easier	elucidate
151:11	154:25	duties	76:3	146:11
155:9	Dodig	20:9	153:4,5	email
163:5,10	18:21	78:11	easiest	15:21
168:14	DOJ	87:8,12	94:3	16:8
169:10	135:3	duty	easily	26:15
199:20	domestic	18:16	99:7	emailed
200:5	31:25	23:22	effect	58:13,20
202:5	67:25	50:14,16,	198:20	104:6,13
document-	68:5,18	17,19	199:8	emergency
wise	70:11	52:4,5,8	effective	161:10
42:15	71:5	53:13	52:11	emotional
documentati	116:23	68:9	198:21	135:21
on	130:19,20	82:14	efficient	154:18
99:3	176:23	87:10	24:8	162:17
134:23	doubt	<hr/>	either/or	employee
136:23	73:21	E	123:2	24:18
138:23	140:24	<hr/>	El	employment
165:13	141:10	E-9	162:8	19:16
documented	downtown	23:2,16	elect-	24:23
88:9	148:17	ear	66:25	Encarnacion
documenting	drag	161:14	electronic	171:16
144:5	93:5,9	earlier	66:24	
160:24	dragged	111:13	70:15	
documents	92:14			
15:20,25				

encourage	53:5,22	189:2	196:3	117:22,
34:17			197:13	23,25
	enter	essentially		123:11,15
end	198:22	30:2	examination	124:10,13
41:7	201:9,10	31:18	9:16	128:11,14
48:10		41:25	165:8	132:9,10,
70:18	entered	60:22	211:6	13,19
79:7,8	164:9	63:6		examples
103:14	200:23	182:19	38:12	144:18,
105:1	208:2	183:2	40:10	20,21
107:7	entering	195:1	74:12	146:12,
126:11	154:25	199:3	81:7	14,16
127:8	203:22	212:8		150:11
155:20			exception	152:24,25
179:13	enthralled	establish	182:20	156:8,13
183:19,23	107:1	80:22	183:1	167:4,7
	entire	110:20,23		168:15
ended	16:11	established	Exchange	169:11,24
95:10		84:1	114:25	173:5,8,
178:16	Entries	88:10	115:9,18	10
179:18	202:1		117:20	180:15,20
	entry	establishes	164:9,16,	193:21,25
endorse	71:22	133:23	21,24	194:2,5
125:17	146:5	establishin	excuse	197:23
endorsement	203:12	g	24:16	200:10,12
126:21		88:7		
	escape	estimation	exhibit	exhibited
ends	148:9	120:9,23	41:21,22	179:22
214:12	150:4	172:20	42:23,25	exhibits
	escaped	Evelyn	43:2,10,	100:21,22
enforcement	145:7	51:12	14,17,24	113:7,10
112:21,22	147:10		44:3,5,8	
201:23	196:13	event	45:7,9	existing
205:12		64:4	46:9	202:10
	escapes	119:1	50:11,12	203:3
engage	164:13	everyone's	60:6,7,	exists
94:13	escapes'	94:8	10,11	86:16
145:21	145:3	evidence	66:1,2,4	116:12
159:10,	escaping	99:17	70:22	
16,23	147:7	105:14	71:10	exit
160:5,12		140:20	75:19,24	28:4
166:4	escort	146:2	76:25	expect
	54:10,11	160:18,	80:7	98:5,21,
engineer	56:1,2	24,25	88:18	25 103:20
59:23	57:23,24	165:4	107:16,19	105:5
enlisted	58:17	178:2	113:14	120:13,14
23:1,6	59:15		114:1	124:8
	188:11,17		115:3	
ensure				
49:10				

expected		11 34:9	212:19	109:10,16
175:14	F	45:9	FAO	114:4,11,
expecting		91:20	129:20	14,16
148:24	FAC	98:2	130:2	118:20
experience	130:1	123:10	FAP	119:1
69:15	face-to-	140:1	129:11	123:21
98:3	face	152:13,14	130:2	124:1
100:3	45:22	155:25	farther	151:17
105:19	Facebook	165:6,7	148:13	203:12
122:18,	162:18	184:9,16	187:8	204:5
19,21	192:2	187:20,23	fashion	fed
207:10	facility	189:14	39:10	172:21
expertise	17:11	196:16	fast	federal
139:13	33:7	214:5	13:11	24:18,19,
explain	35:12	fairly	38:4	23 113:23
87:11	145:15	24:1	favor	feel
explaining	158:6	32:18	123:9	10:14,19
189:6	164:13,14	91:18	FBI	13:19,21,
Explosives	165:2,5,9	fairness	53:7,23	22 46:5
132:22	196:11,14	44:24	55:6	135:19
exposing	fact	familiar	59:10,19	fellow
177:5	25:13	113:13,19	116:25	58:11
expulsion	27:12	121:18	117:9	felon
193:11,20	35:22	families	176:15,24	176:18,22
194:6	69:20	9:25 14:7	192:22	177:12,
extensive	185:24	26:3,11	205:12	18,21
195:6,21	186:20	family	206:15	178:7
extent	195:14,18	92:2	209:3,4,	felons
105:10	fact-to-	93:15	18 211:13	176:22
external	face	123:4	February	177:4
143:25	45:23	128:18	75:7,8	felony
extra	factual	129:10,	77:1	116:23
184:14	17:18	12,17	78:14,23	177:18
190:4	fails	130:3,25	79:16	felt
eye	177:3	131:1,13	88:19,24	105:13
98:16	failures	132:2	90:13	184:13
100:6,9	205:18	139:12	91:2,17	186:12,
103:6	206:8,14	152:9	92:8 93:8	14,21
fair	fair	197:11	94:12,22	female
12:19,20	12:19,20	family's	97:7,13	79:17
14:17	14:17	205:7	105:2	91:15
15:9,10,	15:9,10,	fantastic	107:14	93:23
		76:23	108:25	95:25

97:9	113:21	206:25	flip	11 31:23
114:5,20	final	fire	90:5	32:11
fence	28:4,5	112:17	129:2	33:22
165:2	finally	firearm	133:7	34:3 41:4
figure	30:10	112:19	160:22	52:14,17,
192:18	183:3	113:23	focus	24 53:18,
193:8	find	115:8,17	186:3	20 55:15,
figured	55:12	117:1	Foley	22 56:5,
86:22	56:10	119:7	51:10	11 58:21
file	83:14	120:8,17	folks	60:1
36:17	99:17	121:3	26:15	62:20,21
80:12,19,	127:25	148:25	34:15	63:9 64:8
22 81:1,	136:15	170:22	49:13	65:15
9,10,14,	138:22	178:9	115:25	68:3
18,24	fine	firearms	131:1	69:6,21
82:1,20,	12:9 60:4	112:17	176:5	70:1,8,14
24 83:9	92:23	113:1,15,	184:25	71:13
84:25	95:4	20 117:10	187:1	77:9
85:1,22	168:4	119:4	190:24	83:14,16,
87:19	fingerprint	132:21	210:3	18,19,21,
88:11,15	59:9	176:24	follow	23 84:14,
89:7,25	192:21	177:12,	128:24	25 85:3,
99:5	209:2,20	13,19	followup	10,14,20
105:7	fingerprint	179:17	134:20,24	89:18
110:7,16	-processing	flawed	197:20	92:9
111:5,23,	55:5	29:12	foot	94:11
24 120:5,	fingerprint	flee	208:17	96:10
6,20	s	145:21	football	99:14
126:2	53:5,10,	flight	76:23	110:1
155:10,24	11,23	22:18,21,	force	114:25
172:11	59:18	22,23,24	16:22	115:9,17
183:13	116:24	23:10	17:2,8	117:20
184:3	176:13	52:22,23	19:17,19,	121:8
211:12	206:15	55:20	24 20:4	122:10
filed	208:1	56:4,12	21:6,10,	123:6
126:22	211:12	77:19,23,	13,16,25	124:1
155:19	214:2,6	25 78:19	22:3,4,8,	127:8
172:8	finish	83:24,25	16 24:12,	128:1,3,
files	11:22	84:6,7	17,22	18 133:19
81:2	12:3,23	86:6 88:3	25:25	134:3
fill	13:5	212:18	27:18	135:12
113:16	finished	flights	28:6,10,	136:17
filled	28:14	22:20	15 30:5,	137:14
				139:3,20,
				21 141:10
				143:24
				151:2,8

152:1,11	88:15	Forces'	formally	133:21
163:7	89:6,25	164:4	99:25	141:9
164:8,15,	90:2 91:6	210:12	101:15	180:17
21	92:9	foreseeable	format	192:7
166:10,23	94:11,22	145:20	16:9	Frank
168:17	96:15	159:9,22	103:25	32:23
171:6	97:23	160:4,20	105:7	45:17,24
172:1,15	98:6,12,	165:23	124:9	66:21
173:11,15	22 99:3,	forget	format's	Frank's
174:22	11,23,24	121:20	103:11	66:15
175:19,22	100:12	208:6	formed	free
176:2,11	101:1,9,	forgot	127:22	13:22
177:20	13,23	44:12	131:20,23	53:24
178:5	103:15	form	forms	55:7
181:20	104:19,25	25:9	113:14	186:1,9,
185:10	105:6,10	49:4,24	117:16	10,13
189:8	109:16	72:4	125:17	front
190:11	112:3	113:15,	164:19	77:5 80:9
191:25	113:1	16,19	178:10	89:5,8
193:6,12	118:15,19	115:8	forward	124:14
194:7	119:2,7,	116:2	38:4 39:7	146:25
196:8	19	117:6,13	75:8	171:23
197:6	120:18,25	125:20	95:18	frustrating
198:24	121:1	126:17	found	13:12
199:12	123:2	131:14	60:25	FSS
200:20	124:7	141:13	187:9	83:23
202:9,21	125:4,7	159:20,25	198:23	85:4,9
203:1,8,	126:11,	160:7	four-star	86:13,17
13,16	13,20	173:14	21:11,22	87:1,17,
205:9,17	127:9,19	177:7,24	frame	18 110:16
206:11,	130:11,25	179:24	38:16	175:18
20,24	145:12	187:22	41:5	fucking
209:13	151:13	196:21	46:24	79:8
212:2,3,	152:8	206:6	47:12	fuels
11 213:12	163:23	207:3	48:3,6,25	22:21
Forces	164:3	209:8	79:21	full
37:25	172:14	form...with	112:9	14:15
53:21	176:2,11	125:12	114:19	funny
54:2,17	181:4,10,	formal	117:18	175:11
56:22	16,19	81:24,25	123:12	Furman
57:21	183:13	82:9 84:2	124:3	10:17
58:1,8,	184:2	99:19,21	126:10	15:19
12,16,20,	188:6,15,	100:1	131:13	
25 59:6,	21 189:2			
8,14,17	196:9			
70:6 84:9	197:11			
	206:11			

16:3,13,		14:20	25:5	gun
18,22	G	26:8,9		94:23
18:3,6,23		56:8,14	grounds	113:17
19:3,5		75:16,17,	33:24	117:17
24:25	gain	18 79:19	34:25	119:11,21
44:14	202:9	87:23	72:1	121:16
49:4,24	203:1,15	92:25	141:11	123:25
50:3	gate	132:18	157:20	162:9
51:19	183:14	193:18	158:2,12,	164:15
72:4			23 159:7,	177:22
75:15	gatekeeper	goodness	16 160:9	178:11
76:1,4,6	104:21	205:10		180:10
92:20	gave	government	group	192:25
95:9	14:15	24:19,24	17:14	
107:3,5	31:18	44:9,20	20:19,21	gun-
115:21	44:22	60:23	67:15	violence
116:2	45:11	128:15	131:2,5,7	179:22
117:6,13	156:11	132:25	153:13	
123:13	169:18,19	177:2	175:4,7,	Gundy
131:14,		200:5	10,18	76:22
18,21	general		groups	guns
132:15,18	21:17	gracious	122:25	48:12
134:7,11,	44:23	205:10		121:8
15,19	generally	granted	GS-7	137:21
137:24	11:15	207:9	51:11	163:24
138:2	23:11,14		guard	164:5,20,
139:24	39:8	granular	54:17	23 193:1
140:3	82:18	97:16	57:22	
141:13	179:21	204:25	58:1,17	guy
150:13,15	generated	great	59:7,14	39:23
159:20,25	55:19	42:18	guerilla	114:21
160:7		44:2	187:13,18	192:19,20
169:13,	give	212:17,	196:10	195:1
16,21	18:6	19,20		201:19
177:7,24	25:22		guess	guy's
179:24	40:20	greater	28:3	96:21
187:22	54:8,10	73:24,25	65:3,18	
191:5	75:9	green	74:16	guys
196:21,24	99:12	95:13	110:11	107:3,6
207:3	139:10		179:12	134:22
209:8	155:17,23	grew		209:22
211:1,4,7	207:20	13:8	guessing	
214:9,11	God	Greyhound	96:21	
	76:12	148:13,16	guidance	H
future			35:25	
74:23	good	ground	guide	habit
	9:18,20	10:14	40:11	177:22
		11:13		

hair	handled	132:2	86:17	121:20,23
92:14	26:7	177:6	108:10	122:2,7,
	53:15		162:10	23 127:21
half	210:17	harsh	208:10	129:5,15
96:3		91:11,14		133:20
114:7	handwriting	191:20	helped	134:3
127:3	124:15		36:24	135:8
135:14		hate	helpful	138:19
hand	hanging	65:18	39:3,6	139:21
12:23	107:1	108:3	40:2	141:6
13:4,15	happen	hazard	64:23	144:14
41:21	36:5,15	65:18	65:2 83:6	151:22
42:23	49:11			152:13
43:17	104:13	head	helping	196:3
44:2		14:18,21,	37:19	197:12,14
50:11	happened	24 75:12	140:9	
60:5 66:1	26:11	80:25		higher
75:22	36:19	92:16	helps	105:16
107:18	52:12	94:8	12:16	highest
109:6	58:9	161:24	69:17,18	174:19,
113:10	74:1,2,			22,25
123:11	14,21	heading	hematoma	
132:8,12	95:10	148:17	161:15,	highlight
146:12	119:10	health	19,24	94:3
167:6	132:6	20:12	Hey	143:4
193:25	134:25	123:3	13:5,22	highlighted
	205:4,7,8	134:4	17:3,14	76:1 94:5
handed	happening	135:18	27:5,7	100:19
75:22	39:4	145:3	31:5,6,19	105:23
99:21		158:6	32:19,24	114:2
113:14	happy	163:21	39:10,21,	
114:2	49:16	196:5,11,	22 40:4	hiring
124:9	112:13	14	47:20	69:13
			86:6	
handgun	hard	hear	96:20	history
146:3	85:1	25:8	97:5	38:18,21
164:10	104:10,15	70:11	98:14	196:5
	105:6	95:15	100:5	206:19
handing	143:25	heard	107:6	
18:21	144:2	27:23	111:3	hit
75:24	162:19	29:25	120:17	95:8
76:25		30:8	172:25	208:25
128:14	Hard-copy	89:20	183:20	holding
169:23	104:4		189:24	28:1,9
200:12	harm	heinous		29:10
	49:2,21	26:1	hide	31:10
handle	117:11	held	128:8	32:4 33:7
128:3	129:10,17	84:8		
130:18	131:12		high	

Hollo	122:10	honestly	150:24	146:15
38:19	124:1	21:7 33:2	Hughes	150:12
Holloman	127:8	41:9	26:23	153:1
17:21	133:19	hope	27:2	167:5
19:24	134:2	98:23	156:15,18	169:12
20:4 21:5	135:12	113:22	157:18	173:6
22:16	136:17	149:1	158:1,11,	180:16
24:12,17,	139:19,20	211:5	21 159:14	193:22
22 27:18	141:10	hoping	160:3,23	197:24
28:1,10,	143:23	99:8	162:8,15	200:11
15 30:14	151:1	horrible	163:17,19	identified
31:23	152:11	205:7	165:19	122:6
32:11	164:8,15,	horribly	166:2,5	176:1
33:21	20,24	36:17	Human	identify
34:3	166:9,22	horrific	201:23	42:11
36:12	179:1	30:8	hurting	95:15
38:19	181:19	hour	162:20	96:24
40:8,24	185:10	11:15	hurts	IG
41:3	189:8	75:15,16	162:19	18:8
49:19	190:11,24	202:22	I	45:11
53:18,20	191:24	hours	ID	46:6,10
55:15	193:11	11:24	183:6,8,9	Ignore
56:11	194:7	52:11	184:7	99:13
58:21	195:24	Hoy	200:18,25	illegal
60:1	198:15,	63:3	201:7,12	142:1
62:21	18,24	64:15	202:8,14,	illustrated
63:8 64:8	199:5,12	65:11,13	25 203:8,	140:5
65:14,16	202:9	Hoy's	15,21	185:23
71:13	203:13,16	64:6	identificat	imagine
83:4,14	204:2	HRVR	ion	191:3
84:8,25	205:17	136:9	41:23	immediately
85:14,20	206:10,23	HRVRT	43:1,15	20:15
87:23	209:13	121:19	44:6	22:14
92:9	212:21	122:2,9	50:13	28:20
94:11	holster	127:14	60:8 66:3	198:21
96:10	162:10	128:3	75:20	implication
97:18	Holtz	129:6,9,	107:17	47:6
98:4	143:10	14,19	113:8	importance
105:11	home	130:23	117:24	10:23
112:17	112:25	131:23	123:16	important
114:25	113:2,6	134:23	128:12	14:2,5,6
115:9,17	homicide/	144:14	132:11	22:13
117:20	suicide			
118:23	149:5			
119:20				
121:8				

83:1	134:19	31:15	103:2	202:1
94:19	includes	33:12	111:23,24	installatio
104:21	130:2	168:19	120:10	ns
146:24	196:4	171:9	133:24	151:1
184:4	including	indictment	134:21	instance
208:7	16:22	33:17	165:21	91:19
in-person	49:2 70:5	indictments	172:21	97:14
29:1	126:5	172:16	212:25	110:1
30:25	176:5	individual	informed	168:16
in-turn	196:8	31:12	46:11	institution
153:19	increased	56:3	65:5	145:8
inaccurate	49:21	70:17,19	97:2,21	147:7,10
56:19	177:6	81:19	98:6	148:8,9
inadvertent	increases	88:2	147:3	150:5
ly	117:11	116:11	172:15	187:10
95:8	indefinite	122:7	175:5	institution
inappropria	182:23	124:8	inherent	alized
te	183:21	140:19	87:7,10	135:20
91:14	195:2,5	191:23	initial-	instruct
97:8	198:25	individual'	type	51:19
114:6	indefinitel	s	61:10	instructing
inaudible	y	52:2	initials	25:17
105:25	199:8,16	138:10	61:25	instruction
175:20	independent	individuals	injured	70:9
inbound	29:5	47:7 70:4	26:3	72:12
32:19	indicating	182:16	injuries	73:18
incident	12:23	inform	144:2	82:12
30:8 31:9	13:16	41:6	inpatient	123:6
37:12	36:16	98:23	163:21	126:7
46:22	55:13	191:25	inside	128:2,18,
67:18	73:4,6	informal	184:11,18	24 139:3
71:15,21	80:18	99:19	185:10	152:1
88:22	101:1	100:2	Inspector	instruction
90:1	102:3	information	44:23	s
107:14	106:22	37:20	instability	69:25
154:8,22	126:17	45:19	135:21	instructs
incidents	169:13	59:16	installatio	25:16
30:25	170:17	80:19,22	n	integrity
71:6	171:25	81:9,10,	71:7	142:12
111:2	indication	14,24	183:7	intemperate
137:20	197:3	82:1 83:9	198:24	97:8
included	indicted	85:22	200:14	
		101:15		

intended 13:2	investigati ng 97:6 98:15 103:21 151:14	89:7	166:6 181:1	168:6,13
intention 15:7		investigato r's 100:4	Jamal 9:21	jump 166:20
intentional 13:20		investigato rs 45:11	James 63:3 64:6,15 65:11,13	june 20:1,2,4, 5 30:18 31:23 32:12 34:24 38:15 41:5,7 60:2 61:5 62:12
interaction s 31:11 45:22,23 213:4	investigati on 64:10 88:16 90:12 91:9 96:18 97:22 98:11 99:15,23, 25 100:11,23 101:2,14 102:1,9, 15,18,25 103:13, 15,18 104:2 105:1,7 108:24 118:18 124:7 125:24 126:13 127:10,18 151:8,10 163:20 190:9	involved 10:12 62:24 75:2 109:6 128:23 151:3	January 43:8,12, 24 44:23 201:22	63:7,22 64:2,9 65:5 97:1 108:11 112:16 123:18 127:8 144:24 145:1,10, 19 146:5, 25 150:8 151:9 156:17 157:14 158:3,13 159:2,15, 22 160:2, 8 161:8 164:7 166:10,21
interested 26:6 29:24		involvement 16:24	job 14:20 20:9 24:11 71:3 78:11 87:11 209:14 212:19	
interesting 139:9 175:6		involves 82:19	John 77:8	
Internet 187:12		involving 71:15	judge 11:3 17:7 36:7,11, 20 70:5 105:25 106:4 130:9,25 156:19 157:10 172:12, 21,24 194:13 196:17 197:13	
interpret 66:22		issue 207:13		June/july 47:11 85:21
interrupt 13:19		issued 48:17		jury 11:3
interrupted 27:13		issues 23:7 32:20 80:15 196:5		Justice 132:21 134:1,12, 14 135:8 139:17 145:2
interview 28:4 91:1 126:3 143:9,11, 14		<hr/> J <hr/>		
intimate 129:11	investigati on's 98:13	JA 130:9		
investigate 62:23	Investigati ons 62:21 123:1 163:7	JAG 152:5 196:17	judicial 68:2	
investigate d 30:15 59:25 63:11,20 65:6 90:17	investigati ve 59:17	jail 40:25 41:1 54:9 159:18	July 18:11 41:7 167:8	

Justin	89:8	147:5,22	213:5,18,	26:3
75:14	90:1,2	149:8,24	21	kind
	91:1,11,	151:4		13:9
	17,19,24,	152:12	Kelley's	32:8,20
K	25 92:3,	153:10,19	29:6	37:16
	13,14	154:9,19,	32:13	39:20,24
Kelley	93:3,7,8,	21 155:5	35:10	41:12
17:20	12,22	157:14	38:17	52:15
18:10	94:6,12,	159:16,23	40:5	53:11
25:24	14,23	160:4	46:18	59:22
26:16	95:23	161:1	50:17	70:1
27:3,5,8,	96:11	162:9	53:5 78:5	78:10
19,23	97:22	163:1	79:16	81:5 82:4
28:9,13,	98:24	164:2,8	83:12	83:3
25 30:14,	100:13,14	165:1,9	88:23	84:23
24 31:24	105:2	166:3,11	92:10	86:2
33:13,21	107:23	167:9,17,	93:21	96:5,25
34:23	108:25	23 170:5,	109:18	99:2,5
38:1,6	109:13	18,21	110:2	103:4
39:5,11,	110:7,13	171:1,2,	119:11,12	112:23
14,16	111:20	7,22	130:7	122:21,22
40:7,16,	114:13	174:11	134:4	123:3
25 41:7	115:8,16	176:18	135:17,24	124:9
45:19	117:16	177:4,17	141:9	126:15,25
46:11	118:19	178:10,19	145:11	130:22
47:1,13	119:4,8,	180:25	153:22	139:15
48:7,8,	20	181:24	162:11,15	140:5
11,22	120:17,19	184:11,17	176:13	148:21
49:1,20	121:8	185:4	196:3	149:7
53:17	122:10	188:14,22	197:15	155:9
55:16	123:25	190:10	199:23	160:24
56:18,23	124:8	192:1	211:12	178:2
58:2,3,6,	126:4,13	194:8	Kemp	180:9
17 59:6,	127:19,23	195:1	51:12	185:16,23
15,24	131:7,11	196:19	Kevin	197:3
63:10	132:1,6	197:8	20:18,20	204:24
64:10	133:21	198:6	kill	205:15
65:6	135:1,10	199:13	48:12	206:5,12
71:14,15,	136:10,18	200:1,15,	93:5,9	207:18
18 72:2	137:20	18 202:3,	114:22	kinds
73:13	138:19	7,14,25	149:1	15:23
75:1 77:3	139:22	203:7,14,	187:4,5,	23:6
78:15	140:12	20 205:5	16 192:3,	31:10
81:15	141:23	206:14,	6 193:4	38:2,12
84:24	144:1,3	20,24	killed	49:15
86:9,16	145:2	210:4		123:5
88:16	146:3	212:22		

knew	lastly	141:22	25:10	195:11
32:2,3	19:7	183:17	31:4,6	197:19
33:22	late	184:13	32:25	198:1
34:4,5,7	44:11	185:22	33:6	213:10
41:6	Laura	186:4	35:13,17,	letters
47:10,13	77:8	187:4,5,	25 36:6	82:5
49:20	law	17	37:5,8,	151:19
59:4 78:3	11:3	189:18,25	13,22,24	letting
144:11	112:21,22	190:3	41:11	17:5 64:5
148:4	116:14	195:7,22,	60:22	73:7
164:23	176:21	23 196:9	73:16,17	level
171:6	185:25	208:23	105:11,21	22:15
177:20	186:9	212:5,17	116:9	23:18
184:6	194:20	leaderships	126:6	67:11
205:10	205:12	192:25	194:18	73:15,17
knowing	Lawrence	leads	207:15	77:20
112:4,8	51:11	166:3	legally	78:5,8
knowledge	laws	leap	116:8,11	86:2
59:23	116:20	34:7	176:24	174:19,
82:13	lawyer	learned	177:14,19	22,25
84:16	194:17	26:17	178:8	175:1
191:14	lawyers	learning	207:22	212:18
197:7,14	36:12	140:11	length	levels
213:2	44:20	leave	197:21	34:16
<hr/>	193:19	52:5	letter	67:16
L	leader	158:3	18:10,12	194:11
<hr/>	23:1	leaves	19:6	levied
lane	leaders	82:14	67:1,5	32:1
69:8	88:8	leaving	77:1,7	205:16
101:20	100:8	30:5 79:7	78:20	LGRD
language	189:22	led	79:13,15	78:18
46:21	212:18,20	96:18	80:18	licensed
79:11	leadership	left	88:4	113:23
82:12	46:19	51:18	91:9,10	lieutenant
93:16,20,	47:6	79:3,5	95:24	51:7 59:3
22 96:1,5	49:8,14	165:2,5	97:7	63:23
97:8	57:18	174:16	108:20	77:8,14
102:21	100:8	188:8	112:10	188:7
103:3	114:22	legal	115:5,13	lieutenants
114:6	135:18,24	15:22	118:1	23:12
191:20	136:3	17:2	134:17,19	life
large-	140:9	24:25	135:1,2,7	29:20
looking			156:11	
36:17			191:20	
			194:3,25	

141:10	loaded	longer	97:21	LRS/CC
light	170:22	82:10	98:22, 24	66:5
91:9	located	138:16	99:6	108:4
light's	65:24	183:9	101:15	lucky
95:13	145:16	Longhorn	105:8	94:7
limit	locations	76:13	107:25	_____
34:11	54:12	looked	110:2	M
138:14	locked	62:2 98:8	112:3, 15	_____
limited	113:6	160:18	118:2	Madam
30:24	lodging	loop	120:1, 21	12:16
31:11	147:17	150:24	126:12, 16	14:23
32:17	Log	lost	127:17	92:24
112:20	202:1	95:6	130:7	106:2
213:4	logical	lot	135:25	175:21
limits	34:7	112:2	136:9, 18	made
198:23	96:16, 19	123:18	138:18	32:10, 12
lines	110:8	134:23	140:8	38:8
12:24	Logistic	140:8, 14,	141:4	39:12
13:18	108:5	17 160:18	143:24	40:5, 20
14:23	logisticall	192:16	145:16	46:18
25:10	y	200:9	151:9	47:1, 5, 22
92:13	110:10	210:9	152:6	48:6
93:2 94:1	logistics	love	153:6, 18,	49:7, 8
147:13	20:7, 10,	93:15	25 155:11	57:5, 6, 7
lingo	14 24:4	low	156:14	58:13
89:18	53:9 61:6	86:2	157:13	74:25
link	62:10	LRS	159:2, 15	82:20
184:20	65:4 66:6	24:3, 12,	165:20	95:23
list	78:17	16 30:14	166:9, 22	96:21, 25
74:12	124:22	34:3, 25	172:8	100:14
100:22	211:9, 15,	46:25	173:23	109:18
174:15	22 212:2,	49:1, 19	174:6	110:23
listed	10	53:9	179:10	114:19
33:14	long	63:8, 10,	182:4	116:9
176:5	19:21	24 64:8, 9	192:12	123:25
178:6	74:12	65:16	197:10	127:20
lists	75:13	69:1	205:17, 24	137:23
100:21	76:5 81:1	71:12	208:10	141:15
158:16	92:23	78:6, 12,	LRS'	142:6
litigation	95:20	16 80:10	97:10	145:9
60:15	184:2	85:15	LRS's	148:22
	199:6	86:25	151:19	149:22, 24
		87:14	LRS-CC-CC	155:4
			124:15	163:22
				178:2, 10

183:17	110:19	151:25	marked	mass-
185:14	111:8	Manpower	41:22	shooting-
186:3	120:5	200:13	42:23,25	type
189:17,18	137:17,18	201:24	43:14	47:2 48:9
190:10	144:11	manual	44:3,5	187:20
192:4	179:22	152:1	50:12	Master
193:7	180:5	map	60:7,11	23:16
197:8	184:21	165:10	66:2	149:12
207:16	190:23	Mar	75:19	match
213:11	192:5	28:3,14	107:16	158:8
maintained	209:21	29:17	113:7	material
84:17	210:16	39:16	117:23	77:23
maintaining	makes	40:8,22	123:15	material-
71:4	54:11	50:22	128:11	management
major	82:23	52:13	132:10	22:22
23:3,17,	86:22	189:23	146:14	matter
18,21,22	99:8	March	150:11	14:5
26:23	153:4,5	48:2,10,	152:25	17:18,23
27:2	making	24 49:18	167:4	211:20
101:5	47:3 48:8	52:11	169:11	matters
108:14	142:14	179:13	173:5	72:15
109:17	149:8	181:3	180:15	90:17
110:13	189:12,20	185:11	193:21	138:5
135:19	209:17	186:20	197:23	McLeod's
136:6,11	male	188:15	200:10	123:23
141:7	36:22	193:16,17	mass	McLeod-
149:15,18	maltreatment	194:5,6	28:19	hughes
156:15,17	71:6,7,	196:16	94:13,24	26:20
160:8	18,22	198:2	96:6	108:14,15
make	72:3,11,	199:11	97:18	109:17
10:13,19,	14 73:14	213:10	100:13	110:14
23 12:11,	75:2	Marconi	109:12	115:14
13 13:3	123:20	32:23	114:9	136:6
14:8 15:7	154:12,	45:18,24	116:1	156:14
24:8	13,19,23	63:23	126:5	160:9
25:18	155:6	66:12	192:22,23	193:5
28:7 30:6	management	67:2	196:19,20	197:15
38:10	77:23	111:10	200:1,2	McLeod-
55:6	manages	120:2,3	mass-	hughes'
58:14	56:6	136:3	shooting	115:4
73:3,11	mandatory	153:24	177:23	Mcquillan
84:4	69:25	212:4	178:3,11	194:19
87:19	128:2,20	Marconi's		196:2
88:8		119:15,18		
90:21				

MDG	178:17	153:20	164:13,14	middle
175:7,17	meetings	160:8,16,	165:2	39:5
meaning	29:1	23 163:18	187:10	mile
183:19	meets	181:4,7	196:5,11,	85:16
means	67:25	182:2,9	13	145:17
60:18	70:17,20	187:2	mentioned	147:20
62:5	73:13	188:20	27:14	military
64:14,17	member	memoranda	35:6	50:18
108:5	54:6,9	15:20	124:4	52:1,22
135:25	82:14	memorandum	127:24	55:19
157:7	155:18,23	54:16	130:22	56:3,11
158:24	163:22	61:5	187:2	83:25
182:14	183:3	64:7,17	189:5,10	84:7 86:6
193:12	207:21	66:5	mentioning	87:21
meant	member 's	77:1,2,8	46:17	146:18,21
73:6	130:3	107:22	mess	147:4
106:21	members	110:6	39:5	196:11,13
measure	70:9,10,	118:1,14	message	198:24
190:4	16 74:13	124:14	26:14	millimeter
measures	84:22	153:6	99:4	121:9
38:10	122:22	156:13,18	met	164:10
medical	129:10,	157:12	9:22	Mills
139:12	17,23	181:7,18	16:15,18	143:19,
162:2,3	130:24	memory	29:10	20,21
175:7	131:2,13	27:23	31:9	mind
meet	132:2	29:12	68:17,22	15:14
16:16	139:23	30:7	71:1,13,	29:25
26:23	213:11	36:20	21 72:13	30:9
35:11	members 's	37:11	75:3	34:10
37:12	155:14	86:8	152:19	44:17,18
38:1	Membership	memos	154:6,22	50:9
68:4,5,10	130:2	80:8,12	155:5	75:11
70:20	memo	men-	157:19	96:22
71:1,6	19:8	164:12	167:22	107:9
139:8	39:18	mental	178:18	138:13
154:11	48:17	123:3	179:9	183:3
167:17	71:12	134:4	Mexico	184:4
180:25	78:14	135:18,21	19:25	mind's
meeting	108:18	145:8	198:25	103:5
28:9,12,	119:2	147:7,10	MH	185:17
21 34:23	123:23	148:8,9	130:14	mine
127:16	124:21	150:5	mid-may	14:2
144:15	134:15	158:5	127:17	153:4
		163:21		212:17

50:5	207:3	74:25	26:21	option
60:15,18	209:8	123:19	77:17	70:21
121:3	obligation	152:19	148:25	86:5
125:20	211:11	154:10	officers	order
133:1,5, 14 144:19	214:1,6	offenses	77:14	37:6
numbered	observe	33:25	offices	58:16
21:9,13	213:6	35:1	53:14	117:9
167:15	observed	157:21,25	official	156:11
200:15	161:13	158:23	172:16	167:18
numbering	obtain	159:4	officially	193:11
75:11	116:16	168:18	137:22	194:6
Nurse	176:24	offensive	oftentimes	199:3,5
147:2	180:12	196:7	37:8	200:25
	obtaining	offer	OIC	201:10
	116:15	40:10	77:16	203:25
O	177:19	63:13	OIG	204:1
	180:11	74:17	201:25	order's
oath	obvious	140:4	Oklahoma	200:24
10:21,24	94:19	offered	13:8	ordered
11:1,2,8	140:17	54:14	76:8,10, 15,20	193:16
object	occasion	offering	15,20	198:22
25:6	14:19,21	64:12	office	200:23
191:5	92:11	office	15:22	orders
objection	109:4	17:2 30:2	17:2 30:2	145:11
24:25	occasions	31:4,6	one's	organizatio n
25:8,9	28:22	36:10,11	64:23	22:19
44:14	92:1	44:23	one-star	organizatio ns
49:4,24	93:13	53:16	21:17	196:8
72:4	109:3	62:20	online	210:10
116:2	occur	70:5	196:9	organized
117:6,13	17:9	79:3,5,8	open	83:5
131:14, 18,21	occurred	98:13	109:6	orient
134:7	10:1	105:11	operations	89:2
137:24	88:24	123:1	23:3,4, 18,22	201:16
139:24	158:12	137:14	26:21	original
140:3	163:2	151:8	opined	125:12
141:13	204:10	163:7	202:7,24	originally
159:20,25	206:8	172:12	203:14	13:7 17:2
160:7	October	178:20,21	opinion	OSI
177:7,24	66:8	179:1,10	116:4,6	54:1
179:24	67:1,3	officer	opinions	
187:22	71:11,14	23:3,4, 19,23	207:15	
196:21,24				

64:16		participate	49:21	81:4
70:6	p	71:4	56:21	82:14
96:18		participate	57:18	
102:8		d	95:6 96:6	person
137:14	p.m.	69:9	97:18	12:25
141:21	214:15		98:7	16:2,12
172:15	pack	partners	106:17	20:15
176:2	92:5	129:11	115:24	28:9
OSI's	pages	parts	117:8	36:24
210:11	44:19	78:22	119:23	37:10
OU	paid	80:13	122:22	39:11
76:9	30:3	Paso	123:5,7	47:7,15
out-process	180:2	162:9	147:23	48:11
52:23	185:21,24	pass	148:22	56:23
out-	painted	92:6	157:3	68:18
processed	207:19	210:24	161:3	96:11
30:10	painting	passing	179:23	99:9
49:11	196:18	106:24	180:10	101:18
52:13	paper	past	184:10,18	103:21
53:3	15:8	38:17	185:4,9	116:14,15
54:13	139:2	186:17	186:15,25	122:1
55:17	paperwork	patient	192:16	131:3
182:21	31:3	196:11	199:14	159:23
183:4	paragraph	Patricia	209:6,13	160:5
184:6	79:2	171:16	percent	165:24
190:12,23	108:23	pause	73:25	173:16
out-	166:1	150:20	74:1,6	178:9
processing	188:4	PCRO	93:4	179:9
28:16	195:18,20	156:22	period	183:22
49:13	196:1	157:11	19:24	196:19
53:1,18	198:21	Peak	30:13,14,	201:11
54:3,5,19	199:7	145:3,7	16 59:24	205:10
55:3,11,	201:21	pen	62:12	209:18
12,18,25	part	90:6	106:5	person's
56:6,10,	33:17	penalties	182:23	173:16
24 58:7,	55:22	11:4	195:5	personal
18 182:24	65:21	people	198:25	80:19
188:12	71:3 89:6	13:11	perjury	81:9
190:5	147:11	16:15	11:4	116:4,5
207:25	151:6,24	39:13	permanence	personally
outfits	152:4	48:12	197:21	28:12
139:20	172:12		permanency	167:17
	190:9		82:15,17	192:2
			permanent	personnel
				50:21

52:15,17,	picked	116:14	68:11	42:10
22,23	163:23	121:15	108:10	51:16,24,
55:19	picture	140:14,	183:21,22	25
56:3,12	187:20	15,23	positions	prepared
83:25	192:13	141:9,21	98:5	11:7
84:7 86:6	196:18	148:25	possession	presence
111:23	piece	168:15,17	119:3,10	36:3
112:21,22	93:14	176:9,17	137:12	37:16
196:8	100:1,2	182:1	140:25	present
persons	105:9	183:18	196:12	50:19
38:18	208:1	184:9	posted	52:5,8
214:2	PIF	185:16	162:18	58:2,17
perused	80:19	189:11,13	potential	presented
45:4 90:9	81:10,17	206:25	63:11	49:1
142:23	82:11,13	209:1	65:7	presenting
Phillips	111:14,	points	197:15	170:25
107:4	17,23	34:9	potentially	presents
phone	120:6,15	80:21	96:12,13	121:22
95:6,14	155:14	police	123:4	preserve
98:21	pin	148:14,	213:6	25:11
99:8,9	74:24	16,25	power	president
107:2	place	policy	209:12	22:9
phrase	56:8,15	112:16	213:20	70:25
72:22,23	111:11	pooling	precautiona	pretrial
phrased	116:21	161:22	ry	19:8
34:15	117:3	pops	38:10	32:5,25
207:5	118:17	68:15	precautions	40:17
208:16	140:10	posed	39:13	138:7,11
physical	199:3	56:20	47:21	140:15,22
71:17,21	203:22	131:12	48:1	145:11
91:19	210:22	132:1	predecessor	146:4
97:17	play	151:4	32:16,23	157:14,19
154:18,23	128:8	152:12	prefer	159:8
155:6	point	186:14	116:7	160:10
162:17	11:16	188:14,22	preoccupati	pretty
201:23	31:14	poses	on	26:8,9
physically	33:21,23	139:22	196:5	31:11
85:13	34:22,25	141:7	preparation	32:17
108:24	41:7 47:8	posing	15:14,17	91:11
109:4	53:6	185:9	16:9,16	98:8
pick	71:25	position	18:5	182:5
54:24	88:5 96:9	20:3 21:8		201:5
	103:18	64:2		
	105:5			

212:13	116:12	18:22	184:10	58:19
prevent	probable	50:7	185:4	117:4,11
117:1,9	73:19,22,	60:25	186:5	142:3
177:13,19	23 74:5	61:1	207:21	177:5
178:8	75:1	128:14	209:5,12	184:16
prevents	116:12,22	132:24	210:3	186:12
210:21	141:11,25	200:5	213:20	189:8
previously	154:11	product	protected	208:22
29:14	158:24	102:6	184:17	209:6,22,
47:24	159:3	production	protection	24 213:20
54:2	166:11	18:25	184:14	PUBLICATION
68:22	168:17	professiona	208:21	128:20
183:16	169:1	ls	protection'	pull
185:13,22	171:6	162:4	s	84:19
186:3	172:1	program	74:23	143:4
189:25	probable-	128:19	proud	punched
primarily	cause	129:12	106:25	109:5
67:25	155:4	139:12	provide	punishment
primary	problem	197:11	20:13	105:15
209:5	76:4	prohibits	54:17	purchase
prints	89:23	116:14	59:16	115:10
210:20	93:4 95:5	promised	provided	116:8,9
prior	proceed	132:5	43:4,18	117:10
16:7,24	36:14	proof	44:8,11,	146:3
38:8	proceeding	72:16	17 45:18	164:9,15
46:18	26:4	73:17	50:3	179:16
49:8 57:6	proceedings	132:6	57:22	196:12
58:6	150:20	propensity	60:19,21	purchased
178:11	process	179:22	70:14	113:20,22
180:10,19	33:17,18	properly	143:24	114:25
189:23	53:1 54:4	54:13	192:21	115:16
prison	58:6	proposed	201:25	117:19
28:2,14	69:13	48:22	provider	121:8
29:18	99:3,21	49:20	130:14	137:21
31:1 38:7	149:11	prosecuted	providers	164:19
53:2	201:6,9	30:15	135:18	193:1
189:19	207:21	protect	providing	purchases
207:1,17	processed	39:13	188:11	117:17
prisoner	53:6,15	40:6	PT	123:25
50:19	produce	59:7,15	147:19	165:11
52:8	60:23	142:3	public	purchasing
prob-	produced		49:2,7	114:13
				115:8

117:1	187:19	9 94:6	78:17	62:1,8
purp-	210:15		108:5	72:1
201:3		R	124:22	73:20
purpose	Q		211:10,	104:12
169:8		Ramirez	16,23	119:13
209:5	question	51:11	212:2,10	121:17
pushed	11:23	rank	reading	141:11
92:3	12:8,13	19:13	44:18	157:20
put	13:13	20:23	46:1	158:1,12,
12:22	14:1,12,	23:10,11,	69:24	22 159:7,
13:4,15	14,16	14,21,22	79:12	15 160:9
14:24	25:7,13,		94:1	168:11
29:7	14,15,18	re-compete	ready	recall
44:10,12	29:22	212:7	12:9 35:3	27:4
68:7 69:2	35:7 45:1	re-	80:4	104:12
70:3	73:8	established	138:11	136:22
71:10	74:3,4	107:2,8	real	138:4
74:22,24	86:24	reached	75:24	181:12
80:11	87:9 98:2	192:1	179:8	213:12,24
84:3	103:10	read	201:16,18	receipt
88:14	116:11	18:3	realizing	198:21
89:5	141:21	31:7,13,	207:13,14	receive
110:15	190:6	19 33:7,	reason	124:6
122:5,9,	193:18	10 36:2	11:17	206:2
23 129:15	questioning	37:15	received	62:6 65:5
131:5,7	142:11	44:25	12:21	80:10
133:20	questions	45:18	40:16	126:17
135:9	10:5 12:4	78:22	48:19	127:17
140:22	14:3	90:7	81:20	134:21
141:7	24:14	91:23	106:17	137:2
151:22	74:10	132:25	131:23,25	144:2
152:11,16	210:24	167:18	145:24	160:25
156:18	214:9,10	168:12	146:7	199:24
157:5,13	quick	169:7	151:6	206:5,12
179:2	24:13	175:11	160:19	212:25
188:14	201:16,18	200:17	165:4	
201:11	211:5	201:16	168:2	receiving
206:18	quickly	214:11	177:11	111:2
puts	44:25	readiness	186:18	163:21
208:21	75:24	20:7,10	191:13	recent
putting	167:10	24:4 53:9	195:4,13	148:19
107:9	179:8	61:6	reasonable	recently
151:24	quote	62:10	11:16	27:1
165:22	79:6,7,8,	65:4 66:6	33:23	
			34:25	

recess	193:11	regulation	114:19	164:18
80:1	194:7	127:24		165:14,17
204:20	198:22	regulations	21:7	166:25
recognize	199:5	81:7	22:24	170:10,13
173:12	200:25	related	26:14	175:18
recollectio	refer	17:19	27:3	178:22
n	19:10	55:4	28:12,21,	180:2,7,8
29:5	83:10	152:23	22,24	190:17
Recommendat	99:15	167:9	29:2,15	191:2,4,
ion	103:3	170:5	30:1,7,	17,19,22,
18:15	reference	211:19	12,16,18,	23 192:14
reconnect	96:25	relates	22 32:14,	197:5
106:13,	147:4	67:17	22 33:2	199:21
14,15,16	referred	relating	36:19,21	204:12
record	102:9,22	17:23	37:13	remembered
18:4	104:2	88:22	38:23	27:25
25:11	referring	100:12	39:22,24	28:2,8
28:8	83:9	128:3	40:21	29:8
34:19	102:10	200:14,18	41:9,11,	remembering
41:19	105:16	relation	13 47:20,	86:21
62:19	187:9	65:15	23,24	reorienting
79:12,25	195:24	71:14	56:6	108:4
80:3	refers	release	58:10,23,	repeat
91:23	99:24	181:1	25 59:2,	51:20
111:19	regard	209:24	11 65:13	93:4
146:3	80:15	released	75:25	204:8
150:13,	83:7	28:6 53:2	86:12	repeatedly
19,21	138:15	58:19	88:18	187:4
184:3	197:21	189:14,19	109:9	repercussio
195:6,21	register	190:13	111:13	ns
200:14	112:25	209:22	112:18	205:4
204:19,21	registry	relevant	113:24	rephrase
record's	67:18,24	60:23	114:3,9	14:13
181:18	68:6,16,	relinquishe	115:3	49:17
records	22 69:9,	d	122:25	report
84:2	10,19	30:21	127:9	18:14
203:12	71:4,22	relying	133:18	90:1,12
red	72:18	99:8	137:5	91:18
76:16	74:9,23	remains	145:9	93:18
redeem	154:5	199:7	147:25	94:10,21
162:21	155:1,4	remarks	151:10,25	96:4
reenter	regularly	152:18,21	152:18,21	98:15
	87:16	154:10	154:10	102:1,8,

14,18,24	reports	181:24	210:11	28:15
103:13	22:8	182:14	responsibil	54:25
104:2	99:10	194:6	ity	193:22
124:6	111:2	198:2	20:9	revealed
125:10,23	114:4	requested	53:10	108:24
127:9	123:22	195:23	78:11	161:15
143:5	represent	requesting	208:9,11	163:20
173:11,19	9:24 78:4	120:8	210:12	165:9
174:7,18	representat	required	responsible	reverse
177:3	ion	25:7	20:11	59:22
206:14	43:11	53:19	210:14	review
211:12	45:10	88:10	rest	16:2,9
reportable	46:15	139:1,14,	24:4	51:15
116:13	123:4	15	210:1	67:12
reported	represented	REQUIRED...	restate	71:15
71:5	44:20	UPON	48:23	84:18
79:13	representin	125:11	160:1	86:7
88:23	g	requirement	restatement	154:8
103:20	131:6	s	45:14	reviewed
110:3	reprimand	157:19	restroom	15:17,24
114:7	19:6	209:3,4	79:22	16:12
116:12,25	78:21	requiring	91:25	18:4,9
117:9	79:15	126:14	result	19:5
147:18	80:18	research	18:14	42:10
176:15,23	82:5	165:11	173:11,19	50:9
205:11	88:4,23	196:9	174:18	101:4
reporter	91:10	Resources	205:4,18	180:19
12:1,16	95:25	201:24	206:13	reviewing
14:24	97:7	respond	results	29:14
92:24	108:21	17:22	147:15	86:12
106:2	115:13	208:23	retain	revoked
175:21	151:19	response	84:2	199:9
reporting	191:21	48:18	retired	rides
53:23	206:6,13	60:21	112:21	76:21
55:6	211:19	122:3,24	return	ring
59:10	reprimanded	127:22	46:18	78:2
73:14	109:22	129:6	50:21	178:25
75:3	211:10	134:3	125:12	rise
91:18	reprimands	138:20	189:23	120:10
93:7,21	205:16,19	responsibil	207:25	risk
94:6	request	ities	returned	49:2,21
97:14	18:7	24:2,11		117:11
109:17	58:13			
209:4				

121:20,23	Rowe	safety	127:14	112:3
122:1,2,	78:1,2,3,	162:17	secretary	113:1
7,23	24 91:12	210:1,21	22:4,5,8	118:15,19
127:21	192:10	sake	23:7	119:2,6,
129:5,15	RP	74:23	37:23	19
131:3	134:20	San	section	120:18,25
133:20		147:16	100:19	121:1
134:3	rude	202:21	129:2,20	123:1
135:8	12:25	203:1	146:11	124:7
138:16,19	13:2 15:6	save	181:9,15	125:4,6
139:21	73:5,6,7	77:6	sections	126:11,
141:6	rule	scan	139:19	12,20
142:1	117:3	201:13	151:1	127:9,18
144:14	rules	scary	securing	130:11,25
151:3,22	10:15	162:19	121:13	145:12
152:13	11:13	schedule	security	148:14,16
177:6	25:5	17:4	18:15	151:13
196:3	212:6	school	37:25	152:8
197:12,14	run	76:20	53:21	163:23
road	68:15	scope	54:1,17	164:3,4
65:23	147:20	24:23	56:22	172:14
Robert	186:10	Scott	57:21	176:1,11
51:7	run-of-the-	201:22	58:1,8,	181:4,10,
182:3	mill	screen	12,16,20,	16,19
rocking	82:5	88:14	25 59:6,	183:13
41:18	Ryan	90:9	8,14,17	184:2
ROI	90:12	142:23	70:6 84:9	188:6,15,
102:1	91:2	script	88:15	21 189:2
125:21	S	31:18	89:6,25	190:4
role	S5	searched	90:2 91:5	196:9
37:18	181:12	165:10	92:9	197:11
53:12	S5/av	searching	94:11,22	206:11
69:20	181:8	147:15	96:15	210:12
room	Sablan	148:7	97:23	Security/
10:22	90:13	150:3,4	98:6,12,	law
15:1	91:2	187:12,	22 99:3,	201:23
51:18	safe	16,17	11,14,23,	seek
55:1	38:11	secondhand	24	128:8
161:10	117:4	213:2	100:11,25	seizure
188:8		seconds	101:9,13,	161:11
193:23			23 103:14	self-made
Rose			104:19,25	163:1
191:19			105:6,10	semiautomat
			109:16	ic

121:10	36:25	207:23	131:22	shortly
send	37:3,4,5,	served	sheet	34:23
99:4	18 38:13,	28:13	15:21	39:25
105:6	20 46:18	29:15,18	18:10	136:16
sending	47:4,18	53:1 54:3	33:12	137:19
71:12	48:19	69:18	41:12	shot
119:2	51:8,9,	171:16,20	167:1,8,	17:4,7
126:12	11,12,13	179:10	17	27:6
181:18	55:24	185:19	168:12,14	147:23
sends	57:5	186:6,21	169:25	shotgun
141:2	61:21,24	189:19	170:16	94:7
senior	62:2,4,6	213:18	172:8,16	213:12
23:1	84:18	serves	shit	show
51:6,8	85:25	37:11	93:14	90:19
sense	86:2,9,25	service	shoot	112:13
25:18	87:5,13	25:25	57:17	117:22
86:22	88:6	Services	148:25	128:6
sentence	90:13	145:3	149:1	142:7,16,
28:14	96:20	servng	184:13	21 143:8
29:18	98:13,14,	40:8	190:3	146:10
40:8 53:1	18,22	set	shooting	152:23
149:10	100:5,7	55:7	10:1	156:8
178:16	104:16,20	74:10	27:2,24	166:18
195:20	105:8,21	168:6	28:19	169:9
sentenced	110:15	setting	46:19	173:4
50:18	118:2,23	12:11	47:5	180:20
separate	119:10,	13:1	94:13	197:19
35:23	14,15,18,	severity	100:13	200:6
65:19	24	82:22	109:12	showed
85:18	124:20,	SFMIS	116:1	88:19
102:6	24,25	89:7	148:22	91:10
115:17	137:1,7,	102:14	193:5	121:6
170:20	8,11,18	SFS	196:20	126:2
separated	138:9	91:3	200:2	139:2
30:25	141:16	130:11	204:7,10	147:15
68:10	143:9	188:5	shootings	151:25
sergeant	149:12,21	SFS/S5/AV	192:23	163:5,11
23:5,16	150:2	181:7	short	164:18
27:6,14,	163:11	Shannon	32:18	165:13
15,17,18	182:6	51:13	65:23	showerhead
33:1	189:24	share	67:19	92:16
35:13	Sergeant 's		85:18	showing
	31:4		145:17	117:17
	serve			142:20
	70:7			
	122:23			

173:7	125:7	83:8,18	205:5	sound
191:22	154:2	84:12	situations	25:9
shows	168:6	85:5	22:13	sounds
140:13	182:5	88:21	37:8	83:1
141:19	194:18,19	89:4,17	128:4	94:18
shut	198:9	97:19	SJA	122:4
95:12	significanc	102:16	126:6	192:9
sic	e	106:6	skin	space
147:18	51:14	107:19,21	161:20,22	199:14,15
162:18	significant	108:12,19	skip	span
201:22	212:13,14	111:15	75:8	121:7
side	signing	117:5	157:17	speak
139:12	64:15	122:20	slapped	35:10
sign	182:11	124:10	109:5	37:24
31:5,20	similar	126:8	slightly	38:3
37:16	93:20	135:13	65:20	141:17
70:25	130:22	140:6	slut	SPEAKER
214:11	simple	168:24	93:14	107:11
signature	42:8 44:2	170:6	SM's	speaking
51:2,3	simply	171:24	147:18	69:8
61:10	41:24	172:4	small	110:11
62:5 64:7	191:14	174:2	17:14	Special
66:15	sir	179:11	society	62:20
103:14,19	13:22	180:13,23	30:3	63:3
118:8	26:15	181:2,25	180:3	121:4,9,
153:22	27:5 31:5	187:14	185:21,25	13 123:1
167:8,11	33:6	189:24	186:7,21	143:9,21
168:22	37:14	198:8,19	sort	151:8
171:23	38:7	199:1,7	47:11	163:7
182:3,8	42:13	204:4	69:25	specific
signatures	43:13	sit	70:4	29:22
51:4	46:7,13,	11:24	72:21	37:12
66:23,24	16 47:17,	73:10	99:7	38:22
signed	21 48:4	84:21	149:2	39:19
15:21	56:9,13	sitting	150:25	48:7 49:2
39:18	57:20	10:22	151:2	56:20,22
50:16	58:4,22	situation	178:15	60:16
51:1	59:20	19:16	179:3	70:9
54:16	61:8 66:7	32:13	189:7	80:24
62:7	67:21	35:10	192:19	94:20
66:12,14,	71:24	54:6	197:6,19	97:15
21 67:1,2	75:4	56:18	205:1	141:7
102:13	78:25	105:25		181:21
	80:5	130:7		
		149:5,20		

185:9	speculation	55:23	207:21	78:18
187:20	207:3	57:22	211:16,	122:2
189:18	speed	58:11,12,	19,23	125:23
190:10	35:9,15	20 61:7	212:2,19	129:24
196:18	37:19	62:11,15	squadron's	130:4,9,
197:7	38:16	63:10,16	23:18	11
204:25	39:7 41:6	64:14,18,	squadrons	start
208:23	spell	21 65:4	53:21	41:17
213:15	72:12	66:6	212:11	56:17
specificall	spells	67:15,16	staff	60:2
y	70:9	69:4,6	17:13	state
25:16	123:7	70:6	22:3,5	76:10
28:8	spend	77:15	36:7,11,	187:7,8
48:25	92:2	78:17	20 51:8,	188:3
49:20	spin	83:16,17,	9,11,12	stated
50:8	138:14	24 84:15,	90:13	35:9
57:25	spoke	23 85:4,	105:25	57:21
77:3	35:12	10,13	106:4	79:6,8
107:23	spouse	87:24,25	129:11	91:21
110:1	109:4	97:2,5,21	147:3,18	92:3,14
146:10	195:7,22	98:12	stage	93:3,12,
151:14	Spring	99:16,24,	52:25	18 158:1
152:12	200:4	25 100:9	stamp	180:1
154:17	Springs	101:9,17	44:10	statement
164:4	9:25 10:2	102:7	50:4	44:22
167:18	26:12	103:4,20,	61:21,24	45:10
178:19	28:20	22 108:5	66:18,21	46:9
179:21	202:23	110:22,25	89:16,20	103:15
180:9,19	204:6,10	111:1	128:17	141:15
184:12	205:8	119:7	133:1,4	142:6
186:17	210:3	124:22	142:21	145:25
187:3	SQ/CC	130:5,24	stamped	148:24
188:13,19	130:3	135:18,	89:9	165:23
190:2	squadron	24,25	146:17	188:18
213:5	17:20	136:2,3,	stamps	199:22
specificati	20:7,10	10 138:18	44:13	statements
ons	22:18	139:11	89:18	148:19
33:13	23:2,3,15	140:9	stand	163:22
specificity	24:4,15	141:3,4,	66:5	states
32:7 33:3	35:21	22 142:3	standard	43:4
36:1	37:4 53:9	152:5	73:15	60:18
54:14	54:17	175:22	stands	61:1
specifics		181:10,		78:23
41:19		16,19,22		
		184:13		
		192:17		
		197:10		

79:5	81:1,4	stuck	subsequent1	83:16,24
91:24	82:9	92:16	y	84:15
105:2			202:10	85:3,10
108:23	step	stuff	203:2	153:13
109:21	33:17	15:12		165:22
125:16	35:8 50:3	25:10	successful	175:10,
128:19	204:24	101:23	196:13	19,22
129:8	stepchild	142:14	suicide	supposed
133:10	163:2	149:23	149:2,3	103:12
135:8,17	Stephen	193:7	suing	117:8
143:23	194:19	205:1	26:4	134:22
145:2		subdural		
147:14	stepped	161:15,	summary	surprise
157:18	140:5	18,24	44:21	46:20
159:6	steps	subject	summation	survivors
162:15	49:10	17:23	26:9	26:2
163:20		67:17		
198:9,20,	stick	78:20	superintend	suspect
23	83:7	144:1,3	ent	148:17
stating	stop	181:23	63:3	suspected
103:13	11:20		64:15	162:5
149:21	stopping	subjects	supervisor	Sutherland
158:22	11:16	115:24	78:10	9:25 10:2
159:14		submission	88:23	26:12
162:11	storage	55:5	91:12,15	28:19
164:1	120:8	163:6	93:21,23	200:4
196:2	store	submit	95:25	202:23
station	119:7,20	211:11	97:9	204:6,10
81:4	120:18	214:6	114:5,20	205:8
82:14	stored	submitted	191:19	210:2
165:10	112:25	53:7	199:23	
stationed	120:13,15	59:19	supervisors	switch
19:24			78:6,8	153:3
status	storing	submitting	79:17	sworn
18:16	119:4	53:11	190:12	199:22
50:14,17,	straightfor	subordinate	193:4	system
18 52:2,	wardly	s	supervisory	50:21
5,7,18	205:2	22:17	20:16	68:24
53:13	strategies	23:8	21:24	70:18
59:9,10	196:7	subpoena	22:15	102:14
100:23	street	42:1	67:12	104:7,8
180:11	65:17	60:22	support	208:11
stay	structure	subsequent	20:14,19,	
75:12	83:2	25:25	20 55:22	
		144:15	69:6	

	31:14	Tech	154:19	81:5
T	36:7	51:13	162:10,15	84:23
	41:11	teenager	170:21	94:3 95:9
tactics	46:21,23	10:12	testified	103:4
187:13,18	47:2	telling	190:9	112:23
196:10	61:14	30:2,9	testifying	123:10
	68:25	39:8,24	17:18	131:16
takes	71:3 80:7	40:3,18	25:23	139:9,15
74:9,10	85:10	63:7,8	testimony	152:23
88:3	87:24	64:24	12:3 13:3	168:21
taking	88:6	119:3	14:6	169:8
16:24	95:22	134:1,12,	15:4,8	184:4
22:11	105:10	16,18	17:24	205:7
34:15	111:13	135:3	34:11	things
38:9	114:3	138:10	45:14	15:23
53:10	118:6	180:2,7	138:2	29:3,6
105:15	121:12	temple	Texas	31:10
140:10	127:16	162:11	10:2	34:1 37:6
142:2	140:24	tend	13:10	38:12
213:12	150:25	23:12	26:12	39:19
talk	161:9	tendered	202:23	40:10
11:11	187:15	18:19	210:2	41:15
13:10,24	194:17	42:21	text	49:15
16:21	197:5,21	term	26:14	53:22
26:24	205:6	73:18	texted	64:24
28:5	211:9	207:1	26:19	81:6
97:23	talks	terminology	that'd	82:3,22,
117:17	45:17	73:17	12:9	24 83:5
124:4	team	terms	themselves	88:4,9
127:21	121:21	16:15	122:1	112:4
129:1	122:3,5,	20:16	thing	140:7
135:4	9,24	45:14	14:18	207:12,20
205:1	127:22	67:12	25:4	209:17
talked	129:6,15	83:12	29:22	thinking
16:6	131:2,20	150:25	32:8,21	29:13
73:24	133:20	Tessa	35:20	102:18,
123:18	134:3,22,	89:25	37:16	19,23
152:18	23 135:9	91:1,17,	39:20,24	138:9
175:18	136:9	24 92:13	41:12	thought
176:20	138:20	93:7,12	45:16	29:12
197:9,10	141:6	94:5,14	52:15	95:10
212:22	150:24	108:25	73:6	140:21
213:9,10,	151:21,22	126:3	80:7,10	threat
23	152:2,19			40:18,25
talking	186:4			47:3
	197:12			

56:20	193:3,4	24,25	148:8	today
57:20	threats	31:22,24	150:19,22	9:22 11:8
92:10	38:8	33:8	155:20	25:23
96:16	39:12	34:23	159:22	43:5,19
97:17	40:5	35:23	162:3	today's
100:14	46:10,19,	37:23,25	171:5	214:12
129:9,16	25 47:5,	38:15	172:1	token
131:2,12	22,24	40:15	174:7	14:11
132:1	48:7,9	41:4,5	176:9	told
135:19	49:8 57:6	46:24	177:20	28:18
136:11	95:22	47:10,11,	179:10	32:24
139:22	96:21	12 48:3,	180:17	35:11
141:8	126:5	5,6,21,	182:23	39:21,22
148:22	127:19	24,25	184:4	46:5,15
149:7	127:19	49:18	185:10,	47:23
150:5,6	137:21	52:4 54:3	12,19	51:20
158:17	151:15	55:16	189:19	61:23
161:1	178:3,10	58:24	192:6,7	67:10
166:12	179:23	59:13,22,	193:22	79:6 86:9
185:9	180:10	24 61:23	195:2,5	92:4
186:15,24	183:16	62:4,12	198:25	111:22
188:14,22	185:13	63:17,22,	204:19,22	133:18
191:6,10	186:4	24 65:17	207:5,23	178:14
199:14	189:7,12,	72:3	211:4	190:15
threatened	16,18,20	77:13,15	213:10,	198:12
39:23	190:11,23	79:20,21,	14,19	199:21
57:17	191:8	25 80:3	214:13	tolerable
93:9	195:7,22	81:18	timeline	76:13
115:25	197:8	89:3	38:21	top
184:13	199:24	101:10	times	61:6,9
185:22	208:23	106:5	24:18	80:25
186:16	213:11,15	108:13	35:23	90:12,16
187:1,3,4	three-star	110:23	56:23	96:5
189:25	21:10,18,	111:9,25	58:18	132:20
192:2,6,	19	112:9	79:7	totally
22,25	time	114:18	tired	72:25
threatening	11:25	117:18	162:20	Tracy
48:12	12:18	119:16,19	title	27:15,17
94:13,23	15:4	120:2	23:22	37:2,17,
96:6	17:8,21	123:12	titled	18 38:17
109:13	19:24	124:3	129:5	39:9
114:8,9,	21:5	126:10	132:20	86:25
22 163:22	25:15	131:13	Tobacco	118:1,5
164:3	26:6,21	133:21	132:21	119:1
177:22	29:13	136:2,19		
187:16	30:13,14,	137:19		
		141:9,22		

125:1	173:11,19	54:5 56:4	Ulrich	11:1,5
137:1	174:19	112:20	201:19,22	12:15
140:25	triplicate	113:4	202:7,24	13:10
143:11,23	132:17	typo	203:13	14:1,3,4,
149:12	true	175:9	ultimately	8 15:2
traffic	43:21	_____	103:11	22:13
15:22	44:15	U	Um-hum	25:19
Transaction	45:15	_____	29:21	29:23
113:15	trunk	u-h	35:14	39:6
transfer	113:5	14:25	40:13	51:23
101:15	trusting	U.S.	45:21	58:14
transferred	88:7	77:9	50:15	79:14
137:13	truth	132:20	52:20	83:2,5
141:20	11:5,8	UCMJ-	55:21	84:4
144:5	turn	ASSAULT	70:23	87:12
163:12	78:21	109:23	72:17	112:5
transferrin	90:4	uh-huh	87:6 88:1	176:25
g	100:10	14:22	108:9	184:21,24
141:16	132:4,5	uhs-huhs	110:21	185:2
translates	157:5	14:19	115:15	190:20
181:13	turnover	UIF	139:5	understandi
transport	32:16	80:22	141:24	ng
113:4	twelve	81:23	160:14	25:23
147:16	147:20	82:2,6,8,	172:23	46:1
treatment	type	16,17	180:4	51:21
145:4	47:2	83:7,8,	181:14	52:16,17
tree	93:22	10,12	182:17	67:22
70:13	131:5,6	84:1,7,25	183:5	69:12,24
74:10	176:22	86:1,10,	208:12,15	131:16,
trees	178:7	13,15	210:18	20,22
77:6	types	87:1,13	unaware	142:13
triable	104:22	88:7,9	54:21	147:9
157:21	123:7	110:6,16,	uncommon	148:23
trial	typical	20,23	32:17	151:3
18:14	54:6,7,14	111:6,18,	49:12	176:21
33:18,25	57:23,25	19 120:5,	104:9	200:22
35:3	112:24	14	undergoing	understood
136:24	113:3	155:10,14	145:4	14:14
138:11	typically	156:3	underneath	72:8
159:10	21:18	UIFS	66:18	unfavorable
160:11	32:17	84:3,17,	129:21	80:22
		19 86:7	159:6	81:10,14,
		87:8	understand	23 82:1
			10:23	83:9
				85:22

110:7	198:23		view	213:7
111:24		v	39:3	vis-à-vis
120:10	units		206:22	85:14
	20:14			
UNIDENTIFIED	152:10	Valorie	violated	145:16
D	210:10	78:1,2,3,	109:22	189:7
107:11		24 91:12		
unique	universe	191:19	violations	visited
35:20	16:11	192:10	169:5	170:8
182:20	University		violence	visiting
	76:11	Vargas	110:3	170:13
unit		51:8,9,12	116:23	
20:12,13	unlike		122:3,23	Visitor
25:25	53:13	variety	123:22	203:2
26:16		197:7	127:22	
29:18	unmarried		129:6,15	voice
38:8,9,11	129:11	vehicle-	133:20	200:8
39:12,14,		management	134:3	vomiting
23 40:6,	unmute	22:22	135:9,20	161:11
18 46:19	95:15		136:11	
47:3	unnecessari	verbal	137:21	vote
48:8,20	ly	139:8	138:20	70:16
49:3,6,21	177:5	196:6	139:22	voting
52:19,21	unpredictab	verbal/	141:6,8	74:13
56:21	le	109:7	144:15	
57:6,10,	196:4	versus	151:4,22	
19 59:7,		57:18	152:13	W
15 104:19	unstable	189:8	166:12	
	96:11		176:23	
111:17	USA	vice	177:23	wait
125:17	18:8,12,	19:18	178:11	13:12
138:16	13,15	67:9,14	180:10	66:17
147:2,4	19:7	69:20	192:22	waiting
162:16	60:11,17,	71:11	193:1	106:13
181:21	24 133:4	73:9	195:6,21	
185:22	142:20	victim's	197:12,	walk
188:11	146:17	144:2	14,15	74:17,18,
208:24				20
211:10	USA14704	video	violent	wall
	19:5	12:2 15:2	115:25	92:4
unit's	USA14963	136:20	122:7	
20:13	18:10	137:2,13	141:12	wanted
57:9		141:1,2,	142:2	17:10
	USA15086	16 142:7	151:15,20	49:10
United	18:9	163:1,6,	192:20	75:6
19:19		14	196:20	84:23
43:4	UT		197:7	89:2
60:18	76:13	videoing	205:11	99:12
61:1		12:3		

110:25	198:1	198:6,13,	Woody	157:3
144:10	weeks	14 210:16	59:4	worthless
150:24	97:12	winning	word	93:14
168:21	126:25	212:15	36:2	writing
172:5	156:5	wit	37:15	88:3
warfare	weight	170:22	60:24	129:24
196:10	10:24	withdraw	90:24	139:7
warned	weird	183:21	142:15,17	199:9
96:20	171:15	184:21	wording	written
warning	welfare	withdraws	46:1	110:12
201:14	20:12	183:22	words	124:12
warrant	WG/CV	Wolfe	19:1 30:7	195:11
105:14	67:6	27:7,14,	91:11,14	wrong
water	whore	15,17	149:6	27:13
79:23	93:14	37:2,3,18	210:20	46:3
92:15	wife	38:13,17,	work	169:18
114:8,21	92:11	20 39:9	13:6	wrote
weapon	94:21	47:18	52:22	182:2,6
114:13	96:5	57:5	88:8 94:7	
116:15,16	97:13	86:9,25	96:7	
117:20	109:19	96:20	212:6	X
170:21	114:7,20	118:1,5	worked	
weapons	154:19	119:1,10,	22:24	X'D
116:1	161:4	15,25	23:2,4	125:9
147:16	169:2	125:1	65:15	x-rays
148:7	170:21	137:1,7,	workers	161:14
149:8	win	12,18	69:5	Xavier
150:4,5	211:23	140:25	working	146:17
165:11	wing	141:16	24:22	
166:13	18:11,12	143:11,	31:4	Y
180:11,12	19:19	14,23	37:5,22	
187:16,19	20:14	144:2	68:19	year
196:6,12	21:3	149:12,21	73:8	183:20
wearing	36:12	150:2	130:3	200:2
147:23	67:9,14	189:24	147:19	204:6
wedding	70:3	Wolfe's	149:23	212:6,7
30:20	71:11	37:18	210:16	
week	156:19	women	world	years
93:21	157:11	62:24	69:14	30:21
96:1,3	175:2	80:14	worried	170:16
114:6	194:10,13	won	188:1	202:18
180:24,25	196:17	212:1,5,8	worry	yesterday
	197:13			15:20,25

16:12

59:2

you-all

26:6

33:22, 23

35:2

39:18

48:17

61:17

99:6

185:8

209:23