

Attachment 7

Deposition of Jamie Scott Brady

Key to Objections

AR	Argumentative
CS	Calls for speculation
IR-PT	Irrelevant, personal testimony of the witness
IR-PE	Irrelevant, post-enactment developments
LF	Lack of foundation
VA	Vague

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LOG CABIN REPUBLICANS, :
Plaintiff, :
v. : CA No. CV04-8425
: (VAP) (Ex)
UNITED STATES OF AMERICA AND :
ROBERT GATES, Secretary of :
Defense, :
Defendants. :

Washington, D.C.

Friday, April 16, 2010

30(b)(6) Deposition of
COLONEL JAMIE SCOTT BRADY, called for
examination by counsel for Plaintiff, pursuant to
notice, at the Law Offices of White & Case, 701
13th Street, NW, Washington, D.C., commencing at
11:34 a.m., before Barbara A. Huber, Notary Public
in and for the District of Columbia, when were
present on behalf of the respective parties:

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1	APPEARANCES:	1	CONTENTS
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1 PROCEEDINGS
 2 Whereupon,
 3 COLONEL JAMIE SCOTT BRADY, 30(b)(6),
 4 was called as a witness by counsel for Plaintiff,
 5 and having been duly sworn by the Notary Public,
 6 was examined and testified as follows:
 7 EXAMINATION BY COUNSEL FOR PLAINTIFF
 8 BY MR. WOODS:
 9 Q Would you state your full name for the
 10 records, please?
 11 A Jamie Scott Brady.
 12 Q And I understand you're a colonel?
 13 A Lieutenant colonel.
 14 Q And which branch of our service?
 15 A United States Air Force.
 16 Q And how long have you been in the Air
 17 Force?
 18 A Twenty-one years and two months.
 19 Q And what is your current assignment?
 20 A I'm assigned to the office of Secretary
 21 of Defense personnel and readiness as the
 22 assistant director of assignments, separations,

Page 7

1 and evacuations policies.
 2 Q And in that position, what are your
 3 duties and responsibilities?
 4 A In that position, I'm responsible for
 5 the day-to-day management of policies that deal
 6 with assignments, separations, and evacuations.
 7 Q And what does the term "assignment" mean
 8 in this context?
 9 A Military assignments, permanent changes
 10 of stations for military members.
 11 Q Is separations sort of a
 12 self-explanatory term?
 13 A Yes, sir. Discharges, separations.
 14 Q And evacuations?
 15 A If we do what's called a noncombatant
 16 evacuation from, say, the Republic of Georgia,
 17 which we did, we'll get noncombatants out of their
 18 civilians that are dependents or DOD personnel.
 19 Q And how long have you been in the
 20 position you currently hold?
 21 A Nearly two years.
 22 Q And to whom do you report in that

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1 position?
 2 A Currently I report to Mr. Mike Pachuta.
 3 Q How do you spell that?
 4 A P-A-C-H-U-T-A.
 5 Q Okay. Was there someone else that you
 6 reported to?
 7 A Yes, sir.
 8 Q Who is that?
 9 A Mr. Sam Retherford, R-E-T-H-E-R-F-O-R-D.
 10 Q And you describe both of them as
 11 mister.
 12 Are they officers in the military, or
 13 not?
 14 A No, sir. They are both civilians.
 15 Q And how were you assigned prior to
 16 having this assignment about two years ago?
 17 A Can you repeat that?
 18 MR. GARDNER: Objection, vague.
 19 BY MR. WOODS:
 20 Q Sure.
 21 Prior to this assignment, how were you
 22 assigned or stationed?

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1 A I was assigned to the Air Force's staff
 2 at the Pentagon.
 3 Q And what position did you have there?
 4 A Initially my position was as the chief
 5 of retirements and separations policy. And then I
 6 assumed the duties of chief of promotions and
 7 evaluations policy.
 8 Q How long did you hold each of those
 9 positions?
 10 A Approximately a year for the retirements
 11 and separations position, and about two years for
 12 the promotions and evaluations position.
 13 Q Colonel, you understand that you have
 14 been designated to appear today on behalf of the
 15 United States to testify as the person most
 16 qualified under certain specified topics?
 17 A Yes, sir.
 18 MR. GARDNER: Objection,
 19 mischaracterizes the requirement to be most
 20 knowledgeable.
 21 BY MR. WOODS:
 22 Q And you understand that you're here

Page 10

1 pursuant to a court order as well?
 2 A Yes, sir.
 3 Q And we're going to cover a variety of
 4 topics throughout the day. And as we get to each
 5 of them, I'm going to ask you what you did, if
 6 anything, to prepare to testify today on those
 7 subjects.
 8 But let me ask you first, have you,
 9 yourself, ever written anything about homosexuals
 10 in the military or Don't Ask, Don't Tell?
 11 A Are you asking from a personal
 12 standpoint or from a professional standpoint?
 13 Q Either.
 14 A Okay. I definitely know not personal I
 15 have not. And if I have written something from a
 16 professional basis, it would have been in response
 17 to a question on the Don't Ask, Don't Tell policy,
 18 my current position.
 19 Q Okay.
 20 A Yeah.
 21 Q You haven't authored any reports or
 22 studies about Don't Ask, Don't Tell --

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1 A No, sir.
 2 Q -- have you?
 3 A No, sir.
 4 Q Have you testified in any case
 5 previously to this one about gays in the military
 6 or Don't Ask, Don't Tell?
 7 A No, sir.
 8 Q In your career in the Air Force, have
 9 you been involved in any way in discharge
 10 proceedings under Don't Ask, Don't Tell?
 11 A No.
 12 Q One of the subjects that you're here to
 13 testify about is category number one.
 14 And do you have -- let me show you
 15 Exhibit 65, which is the deposition notice.
 16 I'm going to start by asking in the
 17 first category, which involves the application of
 18 Don't Ask, Don't Tell policy to women service
 19 members.
 20 In respect to this category, what, if
 21 anything, did you do to prepare to testify here
 22 today?

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1 A I met with counsel. And I also reviewed
 2 the statute and duty policies in respect to this,
 3 in respect to the statute. And I spoke to
 4 Mr. Retherford.
 5 Q Can you please tell me about your
 6 conversation with Mr. Retherford?
 7 A I was just -- in talking with him, I was
 8 just, as I reviewed the -- the Department of
 9 Defense instruction, just to ensure that I was
 10 interpreting it correctly. He's a -- he has been
 11 in military personnel policy for a long time. And
 12 I just wanted to make sure that I was interpreting
 13 it as I read it.
 14 Q Okay. And how long have you been
 15 involved in military personnel policy? Four
 16 years, five years or so?
 17 A You're going to have to define military
 18 personnel. I work in an office called military
 19 personnel policy. But are you talking about
 20 military personnel policy at large?
 21 Q Let me ask you this then.
 22 How long have you worked in the office

Page 13

1 called military personal policy?
 2 A It's about two years.
 3 Q Okay. Maybe it would be easier if I
 4 just ask you to go through your entire service
 5 record, please?
 6 MR. GARDNER: Trust me, that won't be
 7 easier.
 8 THE WITNESS: Okay.
 9 BY MR. WOODS:
 10 Q I take it you graduated from college in
 11 1998 from Valdosta State?
 12 A Yes, sir. You want me to start there?
 13 Q Yes.
 14 A I was commissioned ROTC from Valdosta
 15 State, and had about a ten-month wait before I
 16 came on active duty. And when I came on active
 17 duty, I was in pilot training. From March of --
 18 these dates are going to be approximate -- from
 19 March of 1989 to approximately June of 1989 I was
 20 eliminated from pilot training. Kept getting
 21 sick.
 22 And from that point, I was assigned,

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1 from the summer of '99 until approximately I
 2 believe the summer of '92 --
 3 Q I'm sorry, did you say --
 4 A It's '89. I'm sorry. The summer of --
 5 this is a long history, so -- the summer of '89
 6 through the summer of '92 I was at Minot. And
 7 while I was there, was -- I had three jobs. One
 8 initially was squadron section commander of a
 9 security forces squadron. I did that for
 10 approximately a year.
 11 Then I became a headquarters squadron
 12 section commander and a group executive officer
 13 for a support group, for about a year. And then I
 14 finished my assignment at Minot as a squadron
 15 section commander for a security police squadron
 16 for the final year.
 17 Q Let me just stop you there.
 18 A Yes, sir.
 19 Q Can you tell us what Minot is for the
 20 record?
 21 A Minot is Minot Air Force Base, which is
 22 in the outskirts of the city of Minot, North

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1 Dakota. Very cold.
 2 Q Please continue.
 3 A Okay. So in the summer of '92, I was
 4 reassigned to Maxwell Air Force Base, Alabama, in
 5 Montgomery. Was initially assigned for
 6 approximately the first year of that, from '92 to
 7 '93, as the group executive officer for a combined
 8 logistics and operations group.
 9 And after about a year, I transferred to
 10 the officer training school. So in the summer of
 11 '93, went to the officer training school, and
 12 remained there until approximately the summer of
 13 '96.
 14 From -- in the summer of '96, I was
 15 transferred to Robins Air Force Base, Georgia, in
 16 Warner Robins, Georgia. My initial assignment
 17 there was as the chief of social actions, for
 18 approximately 18 months. And I was reassigned
 19 on -- to a different duty on Robins after that
 20 point to become the chief of the military
 21 personnel flight. And I remained there until the
 22 summer of '99.

Page 16

1 Q Let me stop you there.
 2 A Yes, sir.
 3 Q What does it mean to be chief of social
 4 actions?
 5 A Okay. I knew you'd probably ask that.
 6 Q I assume it was more than party
 7 planning?
 8 A Yes, sir, it is. That position is no
 9 longer called that today. It's called the chief
 10 of military equal opportunity office. So that
 11 gives you a more of a flavor as exactly what it
 12 is.
 13 But in that capacity, if someone had a
 14 claim of sexual harassment or harassment based on
 15 their race, they would come to my office and
 16 initially make that claim. And then my office was
 17 responsible -- on the military side, my office was
 18 then responsible for looking into that.
 19 Q Okay. What did it mean to be chief of
 20 military personnel flight?
 21 A In that capacity, I was responsible for
 22 all of the military personnel processes on base,

Page 17

1 whether that's deployment, identification cards,
 2 assignments, or stuff of that nature.
 3 Q All right. Thank you. All right.
 4 Please continue.
 5 A Okay. In the summer of '99, I was
 6 reassigned to Langley Air Force Base in southern
 7 Virginia, to be a member of the air combat command
 8 inspector general team. I remained there for two
 9 years.
 10 Q What did you do in that job?
 11 A I was the chief of mission support
 12 inspections. So my job was to -- as we went to
 13 basis, we would inspect units to make sure that
 14 they were complying with certain military
 15 personnel policies, which was one part of the job.
 16 We would also conduct inspections to -- to test
 17 their operational readiness, mainly to see if they
 18 could deploy people overseas.
 19 And another aspect of the job was
 20 responsible for inspecting bases that had
 21 nuclear -- a nuclear mission to ensure that they
 22 were doing what they were supposed to in that

Page 18

1 regard.

2 Q Okay. Please continue.

3 A Okay. I was there until the summer of

4 2001. Then I was reassigned to headquarters air

5 education and training command in San Antonio,

6 Texas. I was there from, again, the summer of

7 2001 to approximately the summer of 2003.

8 Q What did you do in that job?

9 A Initially was the chief of field

10 activities, which meant that I was the liaison

11 between the headquarters and the bases in the

12 field, the installations in the field. If they

13 had questions, like the military personnel flight

14 that I ran, those, they would come to me. And I

15 would try to help them with problems.

16 Q Okay.

17 A I did that for approximately a year, and

18 then moved to be the chief of promotions and

19 evaluations for air education training command.

20 And in that capacity, was just responsible for all

21 promotion matters, enlisted and officer promotion

22 matters, for the command. And I did that until

Page 19

1 the summer of 2003.

2 Q Okay. Where did you go next?

3 A Summer of 2003 I was transferred to

4 Edwards Air Force Base, California, and as the

5 commander of the 95th mission support squadron.

6 Q And what length of time did you stay in

7 that job?

8 A Exactly two years.

9 Q And what did you do in that job?

10 A In that job, I was responsible -- I was

11 the commander that was responsible for all

12 military personnel matters on the base, civilian

13 personnel matters on the base, family support

14 activities, education activities. That pretty

15 much sums it up.

16 Q And that was until about the summer of

17 2005?

18 A Yes, sir. I was there for two years,

19 for the summer of 2005.

20 Q And what was your next assignment?

21 A The next assignment was to the Pentagon,

22 in the summer of '05. And it was to the air

Page 20

1 staff, where I assumed the duties of chief

2 retirements and separations policy.

3 Q Okay. And how long did you have that

4 job?

5 A I was there for approximately a year.

6 Q And where did you go next?

7 A Stayed within the A-1 -- stayed within

8 air staff, and went to be the chief of promotions

9 and evaluations policy, where I stayed until the

10 summer of 2008.

11 Q Okay.

12 A And in the summer of 2008 I was assigned

13 my current duties.

14 Q Okay. All right. So going back to

15 category number one.

16 A Yes, sir.

17 Q Have you personally been involved in any

18 investigation of any women service members under

19 Don't Ask, Don't Tell?

20 A No.

21 Q Have you been involved in any separation

22 proceedings involving any women under Don't Ask,

Page 21

1 Don't Tell?

2 A No.

3 Q Can you tell me the number of women who

4 have been separated from service under the Don't

5 Ask, Don't Tell policy since it was enacted?

6 A [Witness examined documents]. Since it

7 was enacted in FY -- fiscal year 1993, I cannot.

8 I can tell you from fiscal year 1997 through

9 fiscal year 2008.

10 Q Now, you're -- you looked through a

11 folder and retrieved some document.

12 Can you show me what you're looking at,

13 please?

14 A Yes, sir.

15 [Handing document].

16 Q All right. So we're going to need to

17 get copies of these made --

18 A Yes, sir.

19 Q -- at a convenient time.

20 All right. So you're looking at two

21 documents. One is called, Homosexual separations

22 by service and reason. DOD official numbers.

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1 Fiscal year '97 through fiscal year '03, females
 2 only.
 3 Is that right?
 4 A Yes, sir.
 5 MR. GARDNER: Objection. You're looking
 6 at it.
 7 BY MR. WOODS:
 8 Q And then you were looking at a similar
 9 document for the fiscal years '04 to fiscal year
 10 '08; is that right?
 11 A Yes, sir.
 12 Q And so what do these charts you're
 13 looking at say about the number of discharges in
 14 those years?
 15 A So are you asking how many we had per
 16 year? Is that what you're asking?
 17 Q Yes. Yes.
 18 A In 1997 there were 224 females
 19 discharged. In 1998 there were 317 females
 20 discharged. 1999 the number was 316. In 2000 the
 21 number was 291. In 2001 the number was 373.
 22 2002, 249. 2003, 254. 2004, 216. 2005, 219.

Page 23

1 2006, 190. 2007, 239. And 2008, 209.
 2 Q And what is the source or sources of the
 3 information that are used to prepare the charts
 4 you're looking at?
 5 A This data I believe came from Defense
 6 Manpower Data Center.
 7 Q And do you have any other documents in
 8 your folder on this topic that we're talking about
 9 now, which is women service members?
 10 A [Witness examined documents]. Yes, sir.
 11 Q What else do you have?
 12 A A document entitled, Homosexual
 13 separations, DOD official numbers.
 14 Q Okay. And what years does that cover?
 15 A Fiscal year 2003 through fiscal year
 16 2008.
 17 Q Can I see that, please?
 18 A I'd like to correct that. Fiscal year
 19 1997 through 2008.
 20 MR. GARDNER: And for the record, we've
 21 produced these documents to you previously in this
 22 litigation.

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1 THE WITNESS: [Handing document].
 2 MR. GARDNER: As well as the previous
 3 charts.
 4 BY MR. WOODS:
 5 Q Now, these two documents that you just
 6 handed me, Colonel, have some handwriting at the
 7 bottom?
 8 A Yes, sir.
 9 Q Whose handwriting is that?
 10 A That's Captain Patrick Grant's
 11 handwriting.
 12 Q And can you explain who Patrick Grant
 13 is, first of all?
 14 A Captain Grant is in the room.
 15 Q Oh.
 16 A He is -- was one of the Army lawyers
 17 that was assigned to this case.
 18 Q Okay. And so he's done some annotations
 19 to the charts that were produced to us in this
 20 litigation; is that right?
 21 A Those annotations are his, yes, sir.
 22 Q Okay. All right. So let me give these

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1 back to you now.
 2 [Handing document].
 3 A Yes, sir.
 4 Q Do the numbers of women discharged from
 5 1997 to 2008 on those two pages that you just
 6 looked at match the numbers of women discharged on
 7 the other documents that you had looked at a
 8 moment ago?
 9 A [Witness examined documents]. Yes, they
 10 do.
 11 Q And his annotations also include a
 12 percentage figure; is that right?
 13 A Correct.
 14 Q Okay. And he's calculated, apparently,
 15 the percentage of discharges under Don't Ask,
 16 Don't Tell who happen to be female?
 17 A Compared to the overall discharges, yes,
 18 sir.
 19 Q All right. And he's done that for the
 20 years 1997 through 2008?
 21 A Correct.
 22 Q Okay. So can you just tell me the

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1 percentages of discharges under Don't Ask, Don't
 2 Tell who were women for each of those years,
 3 please?
 4 A Yes, sir. From fiscal year '97, the
 5 number was 22.4 percent. Fiscal year '98, 27.6
 6 percent. Fiscal year '99, 30.5 percent. Fiscal
 7 year 2000, 24 percent. Fiscal year 2001, 30.3
 8 percent. Fiscal year 2002, 28.13 percent. Fiscal
 9 year 2003, 32.98 percent. '04 was 33.07 percent.
 10 '05, 30.16 percent. '06, 31.04 percent.
 11 Q I'm sorry, what was that number again?
 12 A For '06?
 13 Q Yes.
 14 A 31.04.
 15 Q Thank you.
 16 A For '07, 38.11 percent. And '08 is
 17 33.76 percent.
 18 Q Okay. All right. Do you have any other
 19 documents in your folder relating to this topic of
 20 females?
 21 A No.
 22 Q I want a copy of those at a break.

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1 A Yes, sir.
 2 Q And can you explain why there are no
 3 statistics for years prior to 1997?
 4 A Prior to '97 the statistics were not
 5 reconciled with the services. So they're deemed
 6 untrustworthy.
 7 Q I'm sorry, can you explain that?
 8 A The -- the numbers -- the separations
 9 numbers are normally -- or for these, from 1997,
 10 they began to be vetted with the services to
 11 ensure that the data was reliable.
 12 Q Okay.
 13 A Prior to 1997, that did not happen. So
 14 the data's not reliable.
 15 Q Okay. Have you seen any other
 16 statistics about the number of separations of
 17 women under Don't Ask, Don't Tell besides the four
 18 pages that you've looked at?
 19 A Yes.
 20 Q What other statistics have you seen?
 21 A I reviewed a lot of -- I reviewed a lot
 22 of different documents in preparation for this. I

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1 vaguely remember that there were some -- a RAND
 2 report, I believe.
 3 Q Okay. And did you review a GAO report
 4 on separations of women, in preparation for your
 5 deposition today?
 6 A Yes, sir.
 7 Q And did you review any other documents
 8 in preparation for your testimony today on this
 9 subject in particular?
 10 A Again, I reviewed a lot of documents and
 11 have a lot of different issue areas that I'm
 12 testifying to today. I can't tell you with
 13 certainty which ones related specifically to this
 14 subject.
 15 Q Okay. Do you happen to know the
 16 percentage of women in the armed forces as a
 17 percentage?
 18 A Yes, sir, I do.
 19 Q Okay. I take it it varies slightly from
 20 year to year; is that correct?
 21 A Correct.
 22 Q And how would you estimate the current

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1 percentage?
 2 A The current percentage is a little bit
 3 more than 14 percent.
 4 Q And how has that changed or fluctuated
 5 from 1997 to the present?
 6 A It has remained fairly constant.
 7 Q Okay. So --
 8 A I can't testify as to how it fluctuated,
 9 though.
 10 Q Okay. When you say fairly constant,
 11 would it be 14 percent plus or minus a couple of
 12 percentage points each year from 1997 to the
 13 present?
 14 A That's probably a correct assumption,
 15 yes, sir.
 16 Q Okay. So, for example, in fiscal year
 17 2007, the percentage of women in the military was
 18 about 14 percent plus or minus a point or two?
 19 A Correct.
 20 Q And the percentage of women discharged
 21 under Don't Ask, Don't Tell was 38 percent?
 22 A In 2007?

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1 Q Yes.

2 A Yes, sir.

3 Q Okay. Can you explain any reason why a

4 higher percentage of women is discharged than men?

5 A No.

6 Q Are you aware of any reasons -- I'm

7 sorry.

8 Are you aware of any studies or reports

9 or analyses of the reasons why a higher percentage

10 of women are discharged under Don't Ask, Don't

11 Tell than men?

12 A Not that I'm aware.

13 Q As the person designated today to

14 testify on behalf of the Defendants on the subject

15 of the application of the policy to women service

16 members, your testimony is that our Government has

17 not done any study as to the reason why this

18 higher percentage of women is discharged under

19 Don't Ask, Don't Tell, correct?

20 A I'm not aware of any studies in that

21 matter, no.

22 Q All right. So we mentioned the GAO

Page 32

1 whether that number is or is not accurate?

2 A I would -- I would have to rely on the

3 data that was given to me by DMDC, and just add

4 them up to see if that's an accurate number.

5 Q Well, this GAO report covers fiscal

6 years 1994, 1995, and 1996, which were not

7 included in the material you --

8 A True.

9 Q -- received, right?

10 A True.

11 Q So that's why I have to ask the

12 question. I can add --

13 A Yes, sir.

14 Q -- '97 through 2003 just as well as you

15 can.

16 A Right.

17 Q But I don't want to spend our time doing

18 that.

19 But do you have any information about

20 whether the information is correct, with that in

21 mind?

22 MR. GARDNER: Objection, vague.

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1 report. So let me mark it as the next exhibit.

2 MR. WOODS: This is the February 2005

3 GAO report.

4 (Deposition Exhibit No. 84

5 marked for identification.)

6 BY MR. WOODS:

7 Q All right. Colonel, is this the GAO

8 report that you reviewed in preparation for your

9 testimony here today?

10 A Yes, sir. It's one of them, yes.

11 Q All right. And I would ask you to look

12 at page 10 of this report, please. This is the

13 chart, if you will, on separations for homosexual

14 conduct by gender, fiscal years 1994 through 2003.

15 Do you see that?

16 A Yes, sir, I do.

17 Q And do you see that, according to this

18 GAO report, during those years, 1994 through 2003,

19 the total number of females discharged was 2,586?

20 Do you see that number?

21 A I do.

22 Q Do you have any information as to

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1 BY MR. WOODS:

2 Q I'll just ask the question again.

3 Do you have any information, Colonel, as

4 to whether this number of separations for Don't

5 Ask, Don't Tell for women for these fiscal years

6 1994 through 2003, 2,586 discharges, is accurate

7 or inaccurate?

8 A No.

9 Q And it is identified in those years as a

10 27 percent percentage.

11 Do you see that?

12 A Yes.

13 Q Do you have any information as to

14 whether that's accurate or inaccurate?

15 A No.

16 Q Roughly double the number of -- or

17 percentage rather of women in the military, right?

18 A If the percentage is 14 percent give or

19 take for that time period, yes.

20 Q Okay. Let me show you next Exhibit 85,

21 which are Defendants' objections and responses to

22 Plaintiff's first set of requests for admission.

IR-PE

IR-PE

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1 (Deposition Exhibit No. 85
2 marked for identification.)
3 BY MR. WOODS:
4 Q All right. Have you ever seen this
5 before, Colonel?
6 A [Witness examined document]. Yes, I
7 have.
8 Q Okay. And did you see it in preparing
9 for your deposition here today?
10 A Yes.
11 Q Had you seen it before that?
12 A No, I had not.
13 Q Okay. Let me ask you to look at request
14 for admission number 48, which is on page 16.
15 The question was, Admit that between
16 1994 and 2003, servicewomen accounted for 27
17 percent of all separations pursuant to DADT.
18 Do you see that?
19 A Yes.
20 Q And then the response was -- and you
21 understand that the 27 percent figure matches the
22 figure in the GAO report, right?

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1 A Yes, I do.
2 Q All right. And the response was,
3 Defendants are unable to admit or deny this
4 request. The data maintained by the Department of
5 Defense prior to fiscal year 1997 does not permit
6 Defendants to say with precision which service
7 members were discharged under Don't Ask, Don't
8 Tell.
9 Is that your understanding?
10 A Yes, that is.
11 Q All right. And then it goes on to say,
12 Between 1997 and 2003, 4,385 women were discharged
13 under Don't Ask, Don't Tell, accounting for 40.36
14 percent of all separations under Don't Ask, Don't
15 Tell.
16 Is that an accurate statement?
17 A I believe it to be.
18 Q So if you were to add up the numbers
19 that are on those documents that you reviewed for
20 the years 1997 through 2003, we would get to 4,385
21 women discharged pursuant to Don't Ask, Don't
22 Tell?

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1 A That's my understand -- I haven't done
2 the math, but that's my understanding.
3 Q And we would get to 40.36 percent of all
4 separations; is that right?
5 A That's my understanding.
6 Q All right. And would you do the math,
7 please?
8 A Yes. I will.
9 MR. GARDNER: Do you have a calculator?
10 MR. WOODS: No.
11 MR. GARDNER: So you seriously -- just
12 to be clear on the record, do you want to waste
13 his time and have him add up what you can add up?
14 MR. WOODS: The numbers don't match,
15 sir. And I'm trying to find out why. I'm trying
16 to find out why your responses to request for
17 admissions appear to be an accurate.
18 MR. GARDNER: Why don't you just ask
19 him?
20 Would you like a calculator?
21 THE WITNESS: That would be good.
22 MR. GARDNER: Here you go.

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1 [Handing calculator].
2 THE WITNESS: [Witness complied].
3 So the answer is just the number?
4 BY MR. WOODS:
5 Q Yeah, the number first.
6 A The number I arrived at was 2,024.
7 Q Okay. So according to the documents
8 that you received from -- which entity was it?
9 Defense what? Defense --
10 A Defense Manpower Data Center.
11 Q Defense Manpower Data Center documents
12 told you that from fiscal year 1997 through fiscal
13 year 2003 the total number of women discharged
14 pursuant to Don't Ask, Don't Tell was 2,024,
15 correct?
16 A Based on my math, yes, sir.
17 Q Okay. And in this request for admission
18 response, we were told that between those same
19 years 4,085 women were discharged under Don't Ask,
20 Don't Tell.
21 Can you explain the discrepancy?
22 A No.

IR-
PE

IR-
PE

IR
PE

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1 Q Okay. And we were told in the request
 2 for admission that 40.3 -- sorry, 40.36 percent of
 3 all separations under Don't Ask, Don't Tell were
 4 for women, which is a higher percentage than on
 5 the charts that you received from the Defense
 6 Manpower Data Center, correct?
 7 A Correct.
 8 Q Can you explain that discrepancy?
 9 A No, I cannot.
 10 Q Do you know which set of figures is
 11 accurate and which is inaccurate?
 12 A No.
 13 Q All right. Now, the charts that you
 14 received from the Defense Manpower Data Center
 15 broke down the discharges of women pursuant to
 16 Don't Ask, Don't Tell by year, service branch, and
 17 reason, correct?
 18 A Are you talking about these documents
 19 [indicating]?
 20 Q Yes.
 21 A Correct.
 22 Q If I'm correct, they don't break it down

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1 by whether the woman was an officer or an enlisted
 2 person, do they?
 3 A [Witness examined document]. No, they
 4 do not.
 5 Q Have you seen any reports that make such
 6 a breakdown of the women discharged under Don't
 7 Ask, Don't Tell?
 8 A Again, I saw a lot of reports preparing
 9 for this, and none of them come to mind.
 10 Q Okay.
 11 A For that exact issue.
 12 Q Okay. Are you aware of any report or
 13 study of the number of women officers discharged
 14 under Don't Ask, Don't Tell?
 15 MR. GARDNER: Objection, beyond the
 16 scope of the 30(b)(6) topic one. This goes to
 17 topic 12, which the court expressly denied your
 18 request to give a deposition on.
 19 BY MR. WOODS:
 20 Q Go ahead.
 21 A Can you repeat the question, please?
 22 Q Sure.

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1 Are you aware of any report or study of
 2 the number of women officers discharged under
 3 Don't Ask, Don't Tell?
 4 MR. GARDNER: Same objection.
 5 THE WITNESS: No.
 6 BY MR. WOODS:
 7 Q I also understand that the charts you're
 8 looking at from the Defense Manpower Date Center
 9 don't chart the length of time the women were in
 10 service prior to the discharge, correct?
 11 A You're talking about these charts here
 12 [indicating]?
 13 Q Yeah. Yeah.
 14 A No, they do not.
 15 Q And are you aware of any study or report
 16 that does attempt to determine how long women in
 17 service were in service before they were
 18 discharged under Don't Ask, Don't Tell?
 19 A Again, I reviewed a lot of documents in
 20 preparation for this, and none come to mind to
 21 that issue.
 22 Q Are you aware of any studies or reports

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1 on the question of whether sexual harassment of
 2 women increased or decreased after the enact of
 3 Don't Ask, Don't Tell?
 4 MR. GARDNER: Objection, beyond the
 5 scope of topic one of the Rule 30(b)(6)
 6 deposition.
 7 You can answer if you know.
 8 THE WITNESS: No.
 9 BY MR. WOODS:
 10 Q Do you know whether the enactment of the
 11 Don't Ask, Don't Tell policy increased the
 12 instances or frequency of sexual harassment of
 13 women in the military?
 14 MR. GARDNER: Objection, beyond the
 15 scope of topic one of the Rule 30(b)(6)
 16 deposition.
 17 Answer if you know.
 18 THE WITNESS: I don't know.
 19 BY MR. WOODS:
 20 Q Do you have any information, even if
 21 it's just anecdotal information, about the number
 22 of women officers discharged under Don't Ask,

IR-
PE

IR-
PT

IR-
PT

IR-
PE,
PT

IR-
PT

IR-PT

IR-PT

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1 Don't Tell?

2 MR. GARDNER: Objection, beyond the

3 scope of topic one of the Rule 30(b)(6)

4 deposition. This clearly goes to topic 12, which

5 the magistrate precluded you from inquiring into.

6 THE WITNESS: Can you repeat the

7 question, please, sir?

8 BY MR. WOODS:

9 Q Sure.

10 Do you have any information, even if

11 it's just anecdotal information, about the number

12 of women officers discharged under Don't Ask,

13 Don't Tell?

14 MR. GARDNER: Same objection. Also

15 objection, lack of foundation. It calls for

16 speculation.

17 You can answer if you know.

18 THE WITNESS: No, I don't know.

19 BY MR. WOODS:

20 Q Do you have any information as to the

21 number of women of color discharged under Don't

22 Ask, Don't Tell?

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1 MR. GARDNER: Objection, beyond the

2 scope of topic one of the Rule 30(b)(6)

3 deposition. Objection, relevance.

4 You can answer if you know.

5 THE WITNESS: I don't know.

6 BY MR. WOODS:

7 Q Do you have any information about what

8 information, if any, was presented to Congress in

9 1993 or 1994 about the potential impact of a Don't

10 Ask, Don't Tell policy on women members of the

11 armed forces?

12 MR. GARDNER: Objection, beyond the

13 scope of topic one of the Rule 30(b)(6) deposition

14 notice.

15 You can answer if you know.

16 THE WITNESS: Can you restate the

17 question, please?

18 MR. WOODS: Sure.

19 Can I just ask you to read it back,

20 please?

21 (The reporter read the record

22 as requested.)

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1 MR. GARDNER: Same objection.

2 THE WITNESS: No.

3 BY MR. WOODS:

4 Q Can I see the documents you were looking

5 at, the org charts, please?

6 A [Handing documents].

7 Q I'm going to copy these at a convenient

8 break, and for the time being move on to a

9 different subject.

10 A Yes, sir.

11 Q One of the other categories that we

12 asked you to testify about today was category

13 number 17, which is, quote, The identity of the

14 person or persons primarily responsible for the

15 administration of the policy either for the United

16 States Government as a whole, the Department of

17 Defense, and/or each branch of the United States

18 armed forces.

19 Do you see that category, sir?

20 A Yes, I do.

21 Q And can you tell me, please, who is or

22 who are the persons primarily responsible for

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1 administering the policy?

2 A For the United -- yes, I can.

3 Q Okay.

4 A The -- for the United States Government

5 it's the President. For the Department of Defense

6 it would be the Secretary of Defense. And for

7 the -- each branch of the armed forces it would be

8 the secretaries of the military departments.

9 Q So the Secretary of the Army, the

10 Secretary of the Navy, and so on?

11 A Yes, sir. Secretary of the Army, the

12 Secretary of the Navy, and the Secretary of the

13 Air Force.

14 Q And do you know if the Secretary of

15 Defense has delegated responsibility for the

16 administration of the policy to anyone?

17 MR. GARDNER: Vague. Objection, vague.

18 THE WITNESS: Delegated within the

19 Department of Defense?

20 BY MR. WOODS:

21 Q Yes. Yes.

22 A The -- I do know that the -- each of the

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1 military departments have their own sets of
 2 regulations in doing this. And those are at the
 3 responsibility of the secretaries of the military
 4 department. So if that's delegation, yes.
 5 Q All right. Well, let's talk about the
 6 Air Force, because you're maybe more familiar with
 7 that one. Okay?
 8 A Okay.
 9 Q And you've told us that the Secretary of
 10 the Air Force is the person primarily responsible
 11 for administering this policy on behalf of the Air
 12 Force?
 13 A Correct.
 14 Q Now, I'm sure the Secretary of the Air
 15 Force is a very busy fellow and has primary or
 16 ultimate responsibility over many things.
 17 So to your knowledge, does the Secretary
 18 of the Air Force delegate responsibility for
 19 administering the Don't Ask, Don't Tell policy
 20 within the Air Force to any other individual or
 21 individuals?
 22 A The primary level of enforcement of the

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1 policy is commanders in the field.
 2 Q Okay. And are you aware of any training
 3 that is given to them on the application of the
 4 Don't Ask, Don't Tell -- or the application or
 5 administration of the Don't Ask, Don't Tell
 6 policy?
 7 MR. GARDNER: Objection, beyond the
 8 scope of topic 17 of the Rule 30(b)(6) deposition.
 9 You can answer if you know.
 10 THE WITNESS: I'm not a hundred percent
 11 positive, no.
 12 BY MR. WOODS:
 13 Q All right. Well, let me just take your
 14 experience then --
 15 A Yes, sir.
 16 Q -- in the Air Force.
 17 Have you received any training about the
 18 application or administration of the Don't Ask,
 19 Don't Tell policy?
 20 MR. GARDNER: Same objection.
 21 THE WITNESS: I can't positively testify
 22 that I have.

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1 BY MR. WOODS:
 2 Q Okay. Have you received any briefings,
 3 directives, or memos about Don't Ask, Don't Tell?
 4 MR. GARDNER: Objection, compound.
 5 Objection, beyond the scope of topic one of the
 6 Rule 30(b)(6) deposition topic 17. Objection,
 7 vague.
 8 You can answer.
 9 THE WITNESS: Briefings -- what was the
 10 other?
 11 BY MR. WOODS:
 12 Q Well, let me rephrase the question so
 13 it's clear.
 14 A Okay.
 15 Q Other than what you may have done in
 16 preparation for the deposition --
 17 A Right.
 18 Q -- did you receive any briefings,
 19 directives, memoranda, or other written materials
 20 from anyone about the application or
 21 administration of the Don't Ask, Don't Tell
 22 policy?

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1 MR. GARDNER: Same objections.
 2 THE WITNESS: Yes.
 3 BY MR. WOODS:
 4 Q Okay. And what do you recall receiving?
 5 A I recall receiving a memo soon after the
 6 policy was enacted in 1993.
 7 Q Okay.
 8 A But I can't positively state that I
 9 received a -- you know, someone giving me a
 10 briefing on the matter.
 11 Q Okay. So you got one document in 1993.
 12 Any other documents that you may have
 13 received since 1993 that you can recall?
 14 MR. GARDNER: Objection, beyond the
 15 scope of the Rule 30(b)(6) deposition topic 17.
 16 THE WITNESS: I don't remember. It's a
 17 long time ago.
 18 BY MR. WOODS:
 19 Q Okay. Have there been any seminars that
 20 you've attended on the subject?
 21 MR. GARDNER: Objection, beyond the
 22 scope of topic 17 of the Rule 30(b)(6) deposition.

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1 THE WITNESS: Not that I recall.
 2 BY MR. WOODS:
 3 Q Have you ever given any seminars on the
 4 subject?
 5 MR. GARDNER: Same objection.
 6 THE WITNESS: Define seminars.
 7 BY MR. WOODS:
 8 Q Well --
 9 A I'm not trying to be cute here, but when
 10 I was at officer training school, I was an
 11 instructor. And we had to teach this subject --
 12 Q Okay.
 13 A -- at officer training school.
 14 Q Okay. So I'm trying to use whatever
 15 term fits for what you do --
 16 A Yeah.
 17 Q -- in military practice.
 18 A Okay.
 19 Q If "seminar" is the wrong term, tell
 20 me --
 21 A Yeah, it --
 22 Q -- that's fine.

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1 A -- it's -- I -- it was in a classroom
 2 setting.
 3 Q Okay. And in the classroom setting,
 4 were you receiving information or were you
 5 instructing?
 6 MR. GARDNER: Objection, compound.
 7 Objection, beyond the scope of the Rule 30(b)(6)
 8 deposition topic 17.
 9 THE WITNESS: Instructing.
 10 BY MR. WOODS:
 11 Q Okay. And what materials, if any, did
 12 you use to provide this instruction?
 13 MR. GARDNER: Objection, beyond the
 14 scope of the Rule 30(b)(6) deposition topic 17.
 15 THE WITNESS: A lesson plan. Yeah, a
 16 lesson plan. And there were slides attached to
 17 that lesson plan.
 18 BY MR. WOODS:
 19 Q And where did you get the lesson plan?
 20 MR. GARDNER: Same objection.
 21 THE WITNESS: Officer training school.
 22 BY MR. WOODS:

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1 Q Who prepared the lesson plan?
 2 MR. GARDNER: Same objection.
 3 THE WITNESS: Actually, it was me that
 4 prepared the lesson plan.
 5 BY MR. WOODS:
 6 Q Okay. And what did you use to prepare
 7 the lesson plan?
 8 MR. GARDNER: Objection, beyond the
 9 scope of the Rule 30(b)(6) deposition.
 10 THE WITNESS: Quite honestly, 17 years
 11 ago, I -- I don't remember --
 12 BY MR. WOODS:
 13 Q Okay.
 14 A -- with -- with authority.
 15 Q So it was shortly after the enactment of
 16 the policy that you instructed people at the
 17 school about this?
 18 MR. GARDNER: Objection, vague.
 19 THE WITNESS: It was -- if by shortly
 20 after, '94/'95 time frame, yes.
 21 BY MR. WOODS:
 22 Q Okay. Any other documents you,

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1 yourself, prepared on the Don't Ask, Don't Tell
 2 subject since this lesson plan that you prepared
 3 in the '93, '94, '95 time frame?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition topic 17.
 6 THE WITNESS: No.
 7 MR. WOODS: Let's go off the record for
 8 a second.
 9 (Discussion off the record)
 10 MR. WOODS: It's about 12:30, so we're
 11 going to take a lunch break now.
 12 So how long would you like to take?
 13 MR. GARDNER: How long would you like?
 14 MR. WOODS: Why don't we say 45 minutes?
 15 MR. GARDNER: That should be fine.
 16 MR. WOODS: Does that make sense?
 17 MR. GARDNER: Yes.
 18 MR. WOODS: All right. And just for the
 19 record, I do want to say I'm not responding to
 20 your objections about the questions allegedly
 21 going beyond the scope of the Rule 30(b)(6)
 22 notice, because it's an unproductive use of time

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1 to respond. But let's just make it understood
 2 that I'm not agreeing with you.
 3 MR. GARDNER: No, and nor is the
 4 deposition an appropriate place to battle these
 5 out. It's for the court to resolve. We're
 6 preserving our objections.
 7 MR. WOODS: Fine.
 8 MR. GARDNER: The court will resolve
 9 them.
 10 MR. WOODS: All right. See you in 45
 11 minutes then.
 12 (Whereupon, at 12:33 p.m., a
 13 luncheon recess was taken.)
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1 AFTERNOON SESSION
 2 (1:17 p.m.)
 3 Whereupon,
 4 COLONEL JAMIE SCOTT BRADY, 30(b)(6),
 5 was recalled as the witness and, having been
 6 previously sworn, was examined and testified
 7 further as follows:
 8 EXAMINATION BY COUNSEL FOR PLAINTIFF
 9 CONTINUED
 10 BY MR. WOODS:
 11 Q Welcome back, Colonel.
 12 A Thank you.
 13 Q I did, over the lunch break, copy the
 14 four pages of documents that you showed us earlier
 15 where we were talking about the number of women
 16 who were discharged.
 17 MR. WOODS: And I'll mark copies of
 18 those as Exhibit 86.
 19 (Deposition Exhibit No. 86
 20 marked for identification.)
 21 BY MR. WOODS:
 22 Q Do you have any changes or additions to

Page 56

1 any of the testimony that you gave prior to our
 2 lunch break, Colonel?
 3 MR. GARDNER: We are looking into the
 4 discrepancy of the numbers. I can represent to
 5 you that. And when we get the answers, we will
 6 obviously provide that to you.
 7 BY MR. WOODS:
 8 Q All right. Let me move on to a
 9 different subject then, Colonel.
 10 A Okay.
 11 Q And that would be in the deposition
 12 notice category or topic number two, which is as
 13 follows. The application of the policy to
 14 medical, linguistic, administrative, or other
 15 noncombat- assigned service members.
 16 Do you have that category in mind now?
 17 A Yes, I do.
 18 Q All right. And what, if anything, did
 19 you do to prepare to testify on that subject
 20 today?
 21 A Conferred with counsel. I also
 22 conferred with Mr. Retherford, as I spoke of

Page 57

1 earlier, and reviewed the statute as well as
 2 current DOD policy.
 3 Q And do you recall anything about your
 4 discussion with Mr. Retherford about this
 5 particular subject?
 6 A No, I don't.
 7 Q Okay. Did you review any documents that
 8 pertained to this particular subject in
 9 preparation for your deposition today?
 10 A Again, I reviewed a lot of reports a lot
 11 of different reports on this. And I do know some
 12 of them discussed language capability. But I
 13 can't pinpoint exactly which one that was.
 14 Q Did you review anything that provided,
 15 for example, a list of all of the occupations for
 16 which people have been discharged pursuant to the
 17 Don't Ask, Don't Tell policy?
 18 A Not that I recall.
 19 Q Okay. For example, if you look at
 20 Exhibit 85, which is the set of responses to
 21 request for admissions.
 22 A Yes.

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1 Q A few of these asked about a few
 2 particular occupations in the military. And those
 3 are 73 through 78.
 4 And so 73, for example, asked the
 5 Defendants to admit that service members who have
 6 been separated from the United States armed forces
 7 under Don't Ask, Don't Tell include the
 8 translators. And the response was to admit.
 9 Okay?
 10 A Yes.
 11 Q Similarly, 75 asked about medical
 12 personnel. The response is admit. 76, dental
 13 care technicians, admit. 77, ophthalmologists,
 14 admit. And 78, members of the JAG Corps, admit.
 15 Okay?
 16 A Yes, I see that.
 17 Q So what I would like to know is there
 18 any document that you're aware of that lists all
 19 of the occupations that have had people discharged
 20 from them under Don't Ask, Don't Tell?
 21 A I'm not aware of one, no.
 22 Q All right. Have nurses been discharged

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1 under Don't Ask, Don't Tell?
 2 A I haven't seen the list, so I can't
 3 positively state that, but I would assume so.
 4 Q Engineers?
 5 A Same answer.
 6 Q Counselors?
 7 MR. GARDNER: Objection, vague.
 8 THE WITNESS: What kind of -- I'll say
 9 this. The policy is without regard to specialty.
 10 The policy's based on the statute from '93, which
 11 is without regard to specialty.
 12 BY MR. WOODS:
 13 Q All right.
 14 A So, therefore, I would -- I could assume
 15 that they have been.
 16 Q All right. So it would be doctors,
 17 dentists, ophthalmologists, lawyers, nurses,
 18 people in those kinds of occupations, right?
 19 A Yeah.
 20 MR. GARDNER: Objection, compound.
 21 THE WITNESS: It's without regard to
 22 specialty; so, yes, it could include them.

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1 BY MR. WOODS:
 2 Q And the military has its own court
 3 system, doesn't it?
 4 A Yes.
 5 Q It's called the court of military
 6 justice?
 7 A Well, it's the uniform code of military
 8 justice, which is what -- the set of laws that the
 9 military is governed by within the military.
 10 Q What's the court called, if you know?
 11 A I'm not a lawyer, so I have no idea.
 12 Q Okay. But within the military justice
 13 system, I presume there are judges?
 14 A Yes, there are.
 15 Q Are you they subject to Don't Ask, Don't
 16 Tell?
 17 A Yes, they are.
 18 Q Have they been discharged -- judges been
 19 discharged under Don't Ask, Don't Tell?
 20 A I can't -- I don't know.
 21 Q But the policy would apply equally to
 22 judges as it would to any other member of the

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1 armed forces?
 2 A Yes, sir, it would.
 3 Q Can you tell me what percentage,
 4 approximately, of members of our armed forces are
 5 at any given time deployed to combat areas?
 6 MR. GARDNER: Objection, to the extent
 7 it's beyond the scope of our 30(b)(6) deposition.
 8 Are you still on topic two?
 9 MR. WOODS: Yes.
 10 MR. GARDNER: Then beyond the scope of
 11 topic two of the Rule 30(b)(6) deposition notice.
 12 THE WITNESS: I don't know.
 13 BY MR. WOODS:
 14 Q Can you give me any estimate?
 15 MR. GARDNER: Objection, lack of
 16 foundation, calls for speculation, beyond the
 17 scope of the Rule 30(b)(6) deposition notice.
 18 THE WITNESS: No, sir, I don't know.
 19 BY MR. WOODS:
 20 Q Okay. Within the military system, how
 21 are different occupations coded or classified?
 22 MR. GARDNER: Objection, vague.

VA

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1 THE WITNESS: Each service has their own
 2 method of classification that fits their
 3 particular purposes.
 4 BY MR. WOODS:
 5 Q Okay. And in the Air Force, what is the
 6 method of classification?
 7 A It's called an Air Force specialty code.
 8 Q And is that a numerical code?
 9 A It's both. It's alphanumeric. It
 10 starts with a numeric. And then it can end with
 11 an alpha.
 12 Q Okay. So within that Air Force
 13 specialty code system, what, for example, would
 14 your code be?
 15 A It just changed. Mine is a 38 -- I
 16 believe it's 38 foxtrot 4, 38 F4.
 17 Q Okay. And limiting this question to the
 18 Air Force system.
 19 Are some of the Air Force specialty
 20 codes reserved for combat personnel and others for
 21 non-combat personnel?
 22 MR. GARDNER: Objection, compound.

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1 THE WITNESS: Can you say the question
 2 one more time, please?
 3 BY MR. WOODS:
 4 Q Sure. Are some of these Air Force
 5 specialty codes reserved for combat personnel?
 6 MR. GARDNER: Objection, vague.
 7 THE WITNESS: I don't know how -- if --
 8 if there is a coding for combat personnel, to be
 9 honest with you. So I couldn't testify to that
 10 assertively.
 11 BY MR. WOODS:
 12 Q Well, are some of the Air Force
 13 specialty codes different for combat or non-combat
 14 personnel?
 15 A Air Force specialty codes are different
 16 based on specialty. But I don't know if the Air
 17 Force then further delineates that as a combat or
 18 a non-combat specialty. Not that I'm aware of.
 19 But I have no knowledge of that.
 20 Q Are some of the occupations within the
 21 Air Force combat occupations as opposed to
 22 non-combat occupations?

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1 MR. GARDNER: Objection, vague.
 2 THE WITNESS: Again, I -- I don't know.
 3 Because I don't know if the Air Force -- this is
 4 not my area of specialty. But I'm not aware that
 5 the Air Force codes a specialty code combat or
 6 non-combat, so --
 7 BY MR. WOODS:
 8 Q Or I wasn't trying to really get at the
 9 code in that question, so let me try it a
 10 different way.
 11 A Okay.
 12 Q I mean, does the Air Force, just in the
 13 way it describes different occupations, describing
 14 them differently for combat and non-combat
 15 personnel?
 16 MR. GARDNER: Objection, vague.
 17 THE WITNESS: I'm not aware that the Air
 18 Force describes them in those terms, that says
 19 whether they're combat or non-combat personnel.
 20 But there are specialties that may have a higher
 21 propensity to serve in combat than others.
 22 BY MR. WOODS:

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1 Q Well, there are some occupations within
 2 the Air Force for people who are never going to
 3 see combat duty, right?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition.
 6 You can answer if you know.
 7 THE WITNESS: I believe so, yes.
 8 BY MR. WOODS:
 9 Q Okay. And can you give me some examples
 10 of those?
 11 A A chaplain is not supposed to be in
 12 combat or bear arms. And I'm not an expert in
 13 this, but I believe also some medical personnel
 14 also are not allowed to bear arms unless they are
 15 under attack.
 16 But that does not mean they may not
 17 participate in some type of action. Although they
 18 may not primary let be there for combat, if
 19 they're attacked, obviously they would defend
 20 themselves. Even a chaplain is authorized at that
 21 point. But those are two examples that I can
 22 think of.

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1 Q All right. Are chaplains subject to
 2 Don't Ask, Don't Tell?
 3 A Yes, sir, they are.
 4 Q Have any chaplains been discharged
 5 pursuant to Don't Ask, Don't Tell?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition.
 8 THE WITNESS: I haven't seen exact
 9 breakout of whether there's a chaplain. But they
 10 would be subject. And if they're to be found in
 11 violation, they would be discharged.
 12 BY MR. WOODS:
 13 Q Well, are you familiar with the phrase
 14 "military occupation specialty," or MOS?
 15 A I -- yes.
 16 Q And what is that?
 17 A That is the term that the Army and the
 18 United States Marine Corps uses for their
 19 classification specialties. They are the equals
 20 to the Air Force specialty code in the Air Force.
 21 Q Okay. And what does the Navy use?
 22 A Theirs is a little more diverse. They

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1 use ratings. And also -- I believe it's just they
 2 use rates, is what they call it. I'm a little
 3 less familiar with the Navy's.
 4 Q And when the Army uses its military
 5 occupations specialties codes, does it classify
 6 some people as combat personnel and some as
 7 non-combat personnel?
 8 A I don't know.
 9 Q Same question for the Marine Corps.
 10 A Same answer. I don't know.
 11 Q And when the Navy has what I think you
 12 described as rates for people in different
 13 occupations, do some of those rates fit for combat
 14 personnel and some for non-combat personnel?
 15 A I don't know how they do that.
 16 Q Do you have any information about any
 17 report, study, or analysis of how applying the
 18 Don't Ask, Don't Tell policy to members of the
 19 armed forces in non-combat positions furthers the
 20 purposes of Don't Ask, Don't Tell?
 21 MR. GARDNER: Objection, beyond the
 22 scope of the Rule 30(b)(6).

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1 THE WITNESS: No.
 2 BY MR. WOODS:
 3 Q For example, can you give me any help in
 4 understanding how discharging a judge, a military
 5 judge, under Don't Ask, Don't Tell furthers the
 6 stated purposes of the law?
 7 MR. GARDNER: Objection, beyond the
 8 scope of the Rule 30(b)(6) deposition topic.
 9 You can answer.
 10 THE WITNESS: Sure. In 1993, when the
 11 law was established, Congress had the opportunity
 12 to interview or have witness before them a number
 13 of professionals, two of which were General
 14 Powell, who at the time was the Chairman of the
 15 Joint Chiefs of Staff; the other being General
 16 Schwarzkopf, who was the -- at that time had just
 17 retired as the commander of Central Command.
 18 The Congress heard all of these
 19 witnesses and took all of that into consideration.
 20 And based on the extensive military history of
 21 both General Schwarzkopf and others, as well as
 22 other data that they received, decided that

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1 service of not only judges who were homosexual,
 2 openly homosexual, but also any specialty.
 3 Because it gives no favor to any specialty, or
 4 gender for that matter.
 5 They very explicitly state in their --
 6 one of their 15 findings that service is --
 7 service of open homosexuals or homosexual conduct
 8 in the service is against good order of
 9 discipline, morale, which then impacts unit
 10 cohesion and combat effectiveness. So I believe
 11 that would be what would give rise to it.
 12 BY MR. WOODS:
 13 Q All right. And so I take it you weren't
 14 present when anyone spoke before Congress; is that
 15 right?
 16 MR. GARDNER: Objection, relevance.
 17 THE WITNESS: Correct. I was not
 18 present.
 19 BY MR. WOODS:
 20 Q Okay. So have you read General Powell's
 21 testimony before Congress?
 22 A Yes, I have.

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1 Q And when did you read it?
 2 A I read it in the past two weeks.
 3 Q In preparation for the deposition here
 4 today?
 5 A Yes, sir. I had no reason to review it
 6 before then.
 7 Q So you hadn't read it before you knew
 8 that you were designated as the person most
 9 qualified on various subjects today?
 10 MR. GARDNER: Objection, relevance.
 11 Objection, misstates the obligation under Rule
 12 30(b)(6).
 13 You can answer.
 14 THE WITNESS: No, I had not read it
 15 before then, no, sir.
 16 BY MR. WOODS:
 17 Q And is the same true for General
 18 Schwarzkopf's testimony?
 19 MR. GARDNER: Same objection.
 20 THE WITNESS: The same is true.
 21 BY MR. WOODS:
 22 Q Okay. And the reason I'm asking these

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1 questions, Colonel, just so you understand, is
 2 that in his testimony General Powell talked about
 3 the importance of this policy, in his view at the
 4 time, for combat in particular.
 5 And so what I'm trying to find out is
 6 how the policy may or may not be furthered by its
 7 application to people in non-combat occupations?
 8 MR. GARDNER: Objection.
 9 BY MR. WOODS:
 10 Q That's what I'm trying to get at. So
 11 that's why I'm asking these questions. So I want
 12 to go back to the question I'd asked you before,
 13 to which you gave me that long answer about
 14 General Powell and such.
 15 Are you aware of any reports or studies
 16 that were done that show that application of the
 17 policy to non-combat personnel furthers the
 18 purposes of Don't Ask, Don't Tell?
 19 MR. GARDNER: Objection,
 20 mischaracterizes Colin Powell's testimony.
 21 Objection, asked and answered.
 22 THE WITNESS: I'm not aware of any

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1 studies, no.
 2 BY MR. WOODS:
 3 Q Okay. Now, you also mentioned, you
 4 know, the findings by Congress in your answer a
 5 moment ago.
 6 A Yes, sir.
 7 Q And again, what I'm trying to do and
 8 what this trial of this case is about is whether
 9 there's any basis for those findings. So that's
 10 why I'm asking you these questions again.
 11 Do you understand what I'm trying to get
 12 at?
 13 A Yes, I do.
 14 Q Now, you mentioned you looked at some
 15 materials about translators in preparation for
 16 your deposition.
 17 Do you remember what it was you looked
 18 at?
 19 A Well, it wasn't translators, per se. It
 20 was talking about folks with -- people with
 21 language specialties.
 22 Q Okay. So it could be linguists or

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1 translators, right?
 2 And do you recall that there were some
 3 questions raised at some point about what seemed
 4 to be to some people a large number of people with
 5 language specialties being discharged?
 6 MR. GARDNER: Objection, to the extent
 7 it mischaracterizes the document.
 8 THE WITNESS: May I see the document?
 9 BY MR. WOODS:
 10 Q Well, I don't know what document you
 11 reviewed.
 12 Do you have any document in your folder
 13 about --
 14 A Not related --
 15 Q -- this?
 16 A -- to that, no, sir.
 17 Q Okay. Well, let's go back to Exhibit
 18 84, which is the 2005 GAO report. It should be in
 19 that stack there.
 20 A [Witness examined document]. Here it
 21 is. Found it. Sorry.
 22 Q All right. Is this one of the documents

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<p>1 you reviewed on this subject in preparation for 2 your deposition? 3 A [Witness examined document]. Yes, sir, 4 it is. 5 Q Okay. All right. So if you look at 6 just page 1 of this report, page numbered 1 at the 7 bottom left, the report was addressed to the 8 members of Congress who requested it. And in the 9 first paragraph it says, in describing the number 10 of discharges for homosexual conduct under Don't 11 Ask, Don't Tell, is as follows. 12 Quote, In the post-September 11th 13 environment, questions have been raised about the 14 financial courses associated with the Department 15 of Defense's policy on homosexual conduct, 16 especially in light of concerns about the shortage 17 of personnel with skills in critical occupations 18 and foreign language training. 19 Would you agree with the GAO as of 2005 20 that there was a shortage of personnel in the 21 military with skills in critical occupations and 22 foreign language training?</p>	<p>1 A [Witness examined documents]. Can you 2 repeat the question, please? 3 Q Sure. I'm going to change the question. 4 A All right. 5 Q So don't worry about it. 6 A Okay. 7 Q As a member of our armed forces, as a 8 colonel and as the person here today designated to 9 testify on this subject, can you tell me what 10 military purpose is furthered by discharging 11 people who are not in combat-assigned occupations? 12 MR. GARDNER: Objection, beyond the 13 scope of the Rule 30(b)(6) topic two. 14 THE WITNESS: The purpose is laid out in 15 the '93 statute that -- as Congress laid out after 16 the testimony that I previously mentioned from a 17 host of people to include General Powell and 18 General Schwarzkopf that were concerned with unit 19 cohesion regardless of speciality, regardless of 20 gender, and how that unit cohesion or lack thereof 21 of unit cohesion could affect combat 22 effectiveness. And that's what led to the</p>
<p>Page 75</p> <p>1 MR. GARDNER: Objection, 2 mischaracterizes the document. 3 THE WITNESS: I don't know if there was 4 or not. I can't assert that there was or not. 5 BY MR. WOODS: 6 Q Was there a shortage of personnel in the 7 Air Force with people in critical occupations? 8 MR. GARDNER: Objection, beyond the 9 scope of the Rule 30(b)(6) deposition. 10 You can answer if you know. 11 THE WITNESS: Yeah, I don't know. 12 BY MR. WOODS: 13 Q Okay. And does the Air Force have in 14 its occupations people with language specialties? 15 A Yes, they do. 16 Q And what sort of occupations do those 17 people have within the Air Force? 18 A Linguists, there are linguists. 19 Q And do you know if the GAO report that 20 we're looking at, in its use of the term "critical 21 occupations," means to include or not include 22 combat versus non-combat occupations?</p>	<p>Page 77</p> <p>1 findings and the statute and the policy we have 2 today. 3 BY MR. WOODS: 4 Q Right. But how does discharging let's 5 just say someone with a language specialty promote 6 or contribute to combat effectiveness? 7 MR. GARDNER: Objection, asked and 8 answered. Objection, beyond the scope of the Rule 9 30(b)(6) topic 2. 10 You can answer again. 11 THE WITNESS: I would restate the same 12 thing. It enhances combat effectiveness because 13 the statute states that unit cohesion is a 14 critical part of combat effectiveness. And for 15 that, you must have good order and discipline 16 and -- 17 BY MR. WOODS: 18 Q I know what the statute says. 19 A Yeah, yeah. 20 Q I know what the statute says. But 21 that's not the question. 22 The question is what military purpose is</p>

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1 involved; in other words, how does discharging
 2 homosexual linguists or translators enhance combat
 3 effectiveness?
 4 MR. GARDNER: Objection, asked and
 5 answered for the third time now. Objection,
 6 beyond the scope of the Rule 30(b)(6) deposition
 7 notice.
 8 THE WITNESS: Yeah, I would restate my
 9 previous -- I'll stand by my previous answer.
 10 BY MR. WOODS:
 11 Q Well, we're going in circles because --
 12 A Yeah.
 13 Q -- you keep going back to Congress said
 14 so.
 15 A Yeah.
 16 Q Okay. I don't care what Congress said,
 17 for the purpose of this question. Okay. And I
 18 don't want you to care what Congress said. Forget
 19 Congress said anything it ever said about this.
 20 The question is to you as an officer of
 21 the Air Force and to you as the person designated
 22 on this subject, how does it enhance combat

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1 effectiveness to discharge homosexual members in
 2 the armed forces with language specialties?
 3 MR. GARDNER: Objection. I will object
 4 to that entire preamble. Colonel Brady is here as
 5 a representative of the United States. He has
 6 answered your question three times. I know you
 7 don't like the answer. Objection, asked and
 8 answered. Objection, beyond the scope of the Rule
 9 30(b)(6) deposition.
 10 Answer it a fourth time if you wish.
 11 THE WITNESS: Can you repeat the
 12 question one more time, please?
 13 BY MR. WOODS:
 14 Q How does it enhance combat effectiveness
 15 to discharge homosexual members of the armed
 16 forces with language specialties?
 17 MR. GARDNER: Same objections.
 18 THE WITNESS: Yeah, I would -- sir, I
 19 would repeat my same answer that I previously
 20 repeated.
 21 BY MR. WOODS:
 22 Q Okay. Well, for the record, what I'm

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1 doing is moving to strike your prior answers
 2 because they don't answer my question. Because --
 3 MR. WOODS: I'm sorry, there's nothing
 4 funny about this, Paul. And if you want to laugh
 5 during this deposition, I'm going to ask you to
 6 leave, because it's inappropriate.
 7 MR. FREEBORNE: No, it's inappropriate
 8 to move to strike testimony, but I'll leave it to
 9 Mr. Gardner to make the objections.
 10 MR. WOODS: Fine.
 11 BY MR. WOODS:
 12 Q What I'm trying to get at, sir, is when
 13 I ask you this question about military
 14 effectiveness, you keep going back to what
 15 Congress said 17 years ago. And I'm talking about
 16 what may or may not be underlying whatever
 17 Congress said years ago.
 18 So can you identify any way in which
 19 discharging homosexual members of the armed forces
 20 with language specialties in fact furthers or
 21 enhances combat effectiveness?
 22 MR. GARDNER: Objection, asked and

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1 answered four times now. Beyond the scope of the
 2 Rule 30(b)(6) deposition.
 3 You want to answer a fifth time, feel
 4 free to.
 5 THE WITNESS: I have nothing further to
 6 add to that response.
 7 BY MR. WOODS:
 8 Q So you have no answer other than --
 9 MR. GARDNER: Objection,
 10 mischaracterizes the witness's testimony. You may
 11 not like the answer, Mr. Woods, but he's provided
 12 you the answer.
 13 BY MR. WOODS:
 14 Q Can you identify any way in which
 15 discharging a homosexual military judge enhances
 16 combat effectiveness?
 17 MR. GARDNER: Objection, beyond the
 18 scope of the Rule 30(b)(6) deposition.
 19 THE WITNESS: I would rely on my
 20 previous statement as well, for the military judge
 21 as well.
 22 BY MR. WOODS:

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1 Q Can you identify any way or reason why
 2 discharging a homosexual ophthalmologist enhances
 3 combat effectiveness?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition.
 6 You can answer.
 7 THE WITNESS: I would stand by my
 8 previous statement for the ophthalmologist as
 9 well.
 10 BY MR. WOODS:
 11 Q Okay. And would you stand by that
 12 statement for any occupation I describe that was a
 13 non-combat occupation?
 14 MR. GARDNER: Objection, beyond the
 15 scope of the Rule 30(b)(6) deposition. Objection,
 16 hypothetical.
 17 THE WITNESS: Yes, sir, I would.
 18 BY MR. WOODS:
 19 Q Just so I'm clear and I understand it,
 20 your answer is to say that Congress made a
 21 decision based on testimony by Colin Powell and
 22 General Schwarzkopf and that's all that we need to

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1 know?
 2 MR. GARDNER: Objection, grossly
 3 mischaracterizes the witness's testimony.
 4 THE WITNESS: No, it was Congress made a
 5 decision to enact this law based on a lot of
 6 different testimony, two of -- you know, from a
 7 number of witnesses -- two of which were General
 8 Powell and General Schwarzkopf -- and after
 9 hearing that testimony, arrived at the current
 10 statute.
 11 BY MR. WOODS:
 12 Q All right. And are you aware of any
 13 testimony that was given to Congress about how
 14 applying the policy to individuals in non-combat
 15 occupations would enhance combat effectiveness?
 16 MR. GARDNER: Objection, beyond the
 17 scope of the Rule 30(b)(6) deposition notice.
 18 If you have personal knowledge, you can
 19 answer.
 20 THE WITNESS: I have no knowledge, sir.
 21 BY MR. WOODS:
 22 Q Since Don't Ask, Don't Tell was passed,

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1 are you aware of any studies, reports, analysis
 2 about how applying the policy to members of the
 3 armed forces in non-combat occupations enhances
 4 combat effectiveness?
 5 MR. GARDNER: Objection, beyond the
 6 scope of the Rule 30(b)(6) deposition notice.
 7 Objection, compound.
 8 THE WITNESS: I'm not aware of any such
 9 document, no, sir.
 10 BY MR. WOODS:
 11 Q Are you aware of any such study that is
 12 currently underway on that subject?
 13 A No, I'm personally not aware of any such
 14 study.
 15 Q Okay. I'm going to move now -- although
 16 I might come back to that topic or to other
 17 topics -- for the moment at least, to topic 15,
 18 which is the polls.
 19 And the topic reads, Polls conducted by
 20 or on behalf of the Defendants measuring public
 21 opinion regarding service by gay or lesbian
 22 individuals or persons who engage in the

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1 homosexual conduct in the United States armed
 2 forces, including both polls that measure public
 3 opinion within the United States Armed Forces and
 4 polls measuring public opinion among United States
 5 citizens.
 6 Are you with me?
 7 A Yes, sir, I'm with you.
 8 Q And did you do anything to prepare to
 9 testify today on that particular topic?
 10 A Yes, I did.
 11 Q What did you do?
 12 A I spoke with counsel. I also spoke with
 13 Dr. Tim Elig, who is -- who works at Defense
 14 Manpower Date Center. And he is in charge of
 15 polling, to a degree.
 16 Q How do you spell his last name?
 17 A I believe it's E-L-I-G.
 18 Q And is he a member of the armed forces?
 19 A I believe -- I talked to him on the
 20 telephone so I couldn't see him, but I believe he
 21 is a civilian.
 22 Q And what do you understand his position

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1 to be?

2 A I don't have his exact job title. But

3 he is -- he is in charge of polling and -- he's

4 knowledgeable in polling.

5 Q Okay. And who does he work for?

6 A Sir, I don't know.

7 Q Is he a Defense Department employee?

8 A That's my understanding, yes, sir.

9 Q All right. And how did you come to

10 contact him?

11 A During the preparation for this, we

12 looked at -- obviously we're looking at this, this

13 question. And during the prep, captain -- the

14 captain -- I'm sorry, I forget his last name

15 now -- Captain Grant, told me that he had been in

16 contact with Dr. Elig on this subject. And so we

17 reached him and had a teleconference.

18 Q And when did you talk to Tim Elig?

19 A It was not last week but the previous

20 week. I'm sorry, I went on leave between there.

21 So it was the week of -- I'd have to look at a

22 calendar, but it was about two weeks ago.

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1 Q Okay. And you only spoke to him on the

2 one occasion?

3 A Yes, sir, just that one occasion.

4 Q How long did you talk with him?

5 A We probably spoke for 20 minutes.

6 Q And after you spoke with him, did he

7 send you any documents?

8 A No, he did not.

9 Q Okay. And so can you tell me please the

10 substance of your conversation with Mr. Elig?

11 A Well, the substance was has there been

12 any polling done, conducted by or on behalf of the

13 department. And there was -- that was it. That

14 was the gist of the conversation.

15 Q And what did he tell you?

16 A Okay.

17 Q And I take it you called him because you

18 didn't know the answer to the question?

19 A True. Right. I did not know.

20 Q Okay. And it hadn't been part of your

21 job to know anything about polling; am I right

22 about that?

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1 A You're correct.

2 Q In your career with the Air Force, you'd

3 never been involved in any polling on behalf of

4 the Department of Defense, have you?

5 A Not that I can remember, no. No.

6 Q So someone asked you to come testify

7 today about the subject of polls; and so you

8 thought you ought to get some information about it

9 and you talked to Tim Elig?

10 A I thought that would be prudent, yes.

11 Q Because Captain Grant told you he was

12 the guy who knew something about polling?

13 A Yes, sir.

14 Q And so what did he tell you when you

15 asked him about whether there were polls that had

16 been done?

17 A He told me that with the exception of a

18 poll conducted I believe in 1992, late '92, by the

19 Air Force, there had been no poll.

20 Q All right. And did you ask him about

21 polls of military personnel or polls of civilian

22 personnel or both?

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1 MR. GARDNER: Objection, compound.

2 THE WITNESS: We did not make the

3 distinction between military or civilian, from my

4 recollection we did not.

5 BY MR. WOODS:

6 Q All right. Did you talk with him --

7 that is, Mr. Elig -- about what he does with

8 respect to polling?

9 MR. GARDNER: Objection, vague.

10 BY MR. WOODS:

11 Q In other words, you said he was, for

12 lack of a better term, in charge of polling?

13 A Yes.

14 Q But no polls have been done since 1992.

15 So what does this guy do?

16 MR. GARDNER: Objection,

17 mischaracterizes the testimony that he has not

18 done any polling.

19 THE WITNESS: He's done no polling on

20 this subject. However, he -- DMDC, by matter of

21 fact, does a lot of polling of both military and

22 civilian members.

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1 BY MR. WOODS:
 2 Q Okay. And what did he tell you about
 3 the 1992 poll?
 4 A That it was conducted by the Air Force
 5 prior to any action being taken by DOD. And I
 6 reviewed the -- and he walked me through just kind
 7 of the highlights of the poll, and it was a
 8 telephone poll, and the general results of the
 9 poll.
 10 Q Okay. Did you have a copy of the poll
 11 with you when you were speaking with him on the
 12 phone?
 13 A Yes, I did.
 14 Q And how would you describe the
 15 highlights of the poll?
 16 A It was a telephone poll. It was done
 17 very quickly. I think, according to the purpose
 18 page, in response to then-candidate Clinton's
 19 pledge while campaigning. The -- about 65 percent
 20 of the military personnel were against having open
 21 homosexuals in the unit. It ran about two --
 22 two-thirds of the respondents were that way.

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1 Q Okay.
 2 A That's what I can -- that's what I
 3 gather out of the report -- or the survey.
 4 Q And do you have the report with you?
 5 A No, I do not.
 6 Q And did he tell you how many people were
 7 polled?
 8 A No, he did not tell me. But it is
 9 contained within the survey.
 10 Q Okay. And what does it say in the
 11 survey?
 12 A I'd have to look at the survey. I don't
 13 remember the numbers.
 14 MR. GARDNER: For the record, we
 15 produced that to you in the course of the
 16 litigation.
 17 BY MR. WOODS:
 18 Q And do you remember whether the poll was
 19 of officers or enlisted men or both?
 20 A It was both.
 21 Q Do you recall whether it was men or
 22 women or both?

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1 A Both.
 2 Q Okay. And do you recall any breakdown
 3 of the findings other than this 65 percent or
 4 two-thirds/one-thirds number that you mentioned?
 5 A There was also -- it was a breakdown by
 6 commanders. And there was some further breakdown
 7 slides, but I can't testify to exactly what those
 8 were. I'd have to see the report -- or the
 9 survey.
 10 MR. WOODS: Do you have it with you?
 11 MR. GARDNER: No.
 12 MR. WOODS: Do you know the Bates -- the
 13 document number?
 14 MR. GARDNER: Are you asking me?
 15 MR. WOODS: Yeah, I'm asking you.
 16 MR. GARDNER: Oh, we produced the
 17 document to you in discovery.
 18 MR. WOODS: Yes, you said that. Do you
 19 have it with you, or do you have the number of the
 20 document?
 21 MR. GARDNER: I just answered your
 22 question. I did not bring it with me.

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1 MR. WOODS: Do you happen to know the
 2 number?
 3 MR. GARDNER: Not off the top of my
 4 head, Dan.
 5 MR. WOODS: Okay. Can any of your army
 6 of people find it, to save us some time?
 7 MR. GARDNER: I can't speak for anyone.
 8 I don't know. We know what we know. And we've
 9 given you all the documents we have, Dan.
 10 MR. WOODS: All right. I'm not going to
 11 argue with you.
 12 MR. GARDNER: I'm not arguing with you.
 13 BY MR. WOODS:
 14 Q Okay. Did Mr. Elig tell you what was
 15 done with the results of the 1992 poll?
 16 A Yes.
 17 Q What did he say about that?
 18 A He told me there was no action taken on
 19 the poll because DOD had not taken any action at
 20 that point.
 21 Q Did he tell you why there was no action
 22 taken on the poll?

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1 A Because the Air Force was presumptuous
 2 in taking the poll in the first place.
 3 Q And did he tell you that there were any
 4 problems with the poll; in other words, it was
 5 unreliable for some reason?
 6 A No. I don't recall him saying that.
 7 Q And did he explain any reason why no
 8 further poll has been done on the subject since
 9 1992?
 10 A No.
 11 Q Did he tell you that polls were
 12 suggested prior to the enactment of Don't Ask,
 13 Don't Tell that the Secretary of Defense asked
 14 them put the kibosh on them?
 15 MR. GARDNER: Objection, compound.
 16 THE WITNESS: I don't remember us having
 17 conversation to that.
 18 BY MR. WOODS:
 19 Q Does each branch of the armed forces
 20 have polling personnel or staff?
 21 A I don't know.
 22 Q Does the military employ outside firms

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1 to conduct polls?
 2 MR. GARDNER: Objection, vague as to
 3 time frame.
 4 THE WITNESS: I believe that to be true,
 5 but I'm -- I'm not a hundred percent positive.
 6 BY MR. WOODS:
 7 Q Do you know whether the 1992 Air Force
 8 poll was submitted to Congress when it considered
 9 Don't Ask, Don't Tell in 1993?
 10 MR. GARDNER: Objection, beyond the
 11 scope of the Rule 30(b)(6) deposition notice.
 12 THE WITNESS: I don't know.
 13 BY MR. WOODS:
 14 Q Are you aware of any poll that would --
 15 that has been done either by the Government itself
 16 or by outside vendors on its behalf to measure the
 17 effectiveness of Don't Ask, Don't Tell since it
 18 was enacted?
 19 A No, I do not.
 20 Q Are you aware of any poll that the
 21 Defense Department or any other branch of the
 22 Government has conducted, either itself or by a

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1 third party, since Don't Ask, Don't Tell was
 2 enacted to determine whether there is a
 3 correlation between the presence of openly gay
 4 service members in a unit and the unit's cohesion,
 5 quality, or combat readiness?
 6 MR. GARDNER: Objection, compound.
 7 THE WITNESS: I don't know.
 8 BY MR. WOODS:
 9 Q Are you aware of any polls that are
 10 currently underway in connection with the current
 11 review of Don't Ask, Don't Tell?
 12 A No, I'm not. I have no knowledge of
 13 that.
 14 Q Well, are you aware that Secretary Gates
 15 has said he's committed to soliciting views of men
 16 and women in uniform across the military?
 17 A I'm aware of that. He stated that in
 18 his testimony.
 19 Q And do you have any information about
 20 what he is planning to do to obtain such views?
 21 A No, sir, I do not.
 22 Q Do you know anybody other than Secretary

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1 Gates who might know the answer to that question?
 2 MR. GARDNER: Objection, calls for
 3 speculation, lack of foundation.
 4 THE WITNESS: General Carter Ham, who I
 5 know is one of the leads on the working group,
 6 possibly. But I'm not personally involved, so I
 7 don't know who all was on the working group.
 8 BY MR. WOODS:
 9 Q But you're the person who's been
 10 produced today as the person most knowledgeable
 11 about polls conducted by or on behalf of the
 12 Defendants. And Secretary Gates has said he's
 13 going to solicit views of men and women in
 14 uniform. And you don't seem to know what he's
 15 planning to do about it.
 16 Did you do anything to try to find out,
 17 before coming here today to testify?
 18 MR. GARDNER: Objection. To the extent
 19 you're asking about what the working group is
 20 doing, I will instruct the witness not to answer
 21 on deliberative process grounds.
 22 MR. WOODS: Now I'm going to laugh.

IR-PT, PE

IR-PT, PE

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1 BY MR. WOODS:
 2 Q Go ahead.
 3 MR. GARDNER: Laugh as you want. I'm
 4 instructing the witness not to answer if you're
 5 asking about the substance of what the working
 6 group is doing.
 7 MR. WOODS: Okay. If you want to lose
 8 your ninth motion in a row, I'm happy to beat you
 9 again.
 10 MR. GARDNER: Sir, if you're threatening
 11 me, it ain't gonna work. We're asserting
 12 deliberative process, to the extent you are asking
 13 about the internal workings of the working group.
 14 BY MR. WOODS:
 15 Q All right. Do you have any information,
 16 without even disclosing what the information is,
 17 about what Secretary Gates is doing to obtain the
 18 reviews of men and women in uniform across the
 19 military about Don't Ask, Don't Tell?
 20 A No, I do not.
 21 Q So you don't appear to me, sir, to be
 22 the most knowledgeable person on this subject.

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1 Is there somebody else that you
 2 understand to be more knowledgeable than you about
 3 the current polling that may be underway?
 4 MR. GARDNER: Objection. Again, we are
 5 not obligated to produce the most knowledgeable
 6 person, Mr. Woods. As you know, we are obligated
 7 to provided a person with knowledge. We have
 8 fulfilled that obligation. You may not like his
 9 answers, but those are the answers he's given.
 10 To the extent you want knowledge about
 11 the polling that is currently taking place, I will
 12 instruct the witness not to answer on deliberative
 13 process grounds, to the extent any polling is
 14 taking place currently.
 15 BY MR. WOODS:
 16 Q Do you know whether the Department of
 17 Defense has ever reviewed polls conducted by third
 18 parties of the views of members of the armed
 19 forces on service by homosexuals in the military?
 20 MR. GARDNER: Objection, beyond the
 21 scope of the Rule 30(b)(6) deposition notice.
 22 THE WITNESS: I don't know.

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1 BY MR. WOODS:
 2 Q So do you know one way or the other
 3 whether any members of the Defense Department have
 4 reviewed a poll that was done in 2006 called the
 5 Zogby poll?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition notice.
 8 THE WITNESS: I don't know.
 9 BY MR. WOODS:
 10 Q Do you know whether anybody in the armed
 11 forces or the military has reviewed a poll that
 12 was done in 2004 by a Professor Nathaniel Frank of
 13 veterans of the wars in Iraq and Afghanistan?
 14 MR. GARDNER: Objection, beyond the
 15 scope of the Rule 30(b)(6) deposition notice.
 16 THE WITNESS: I don't know.
 17 BY MR. WOODS:
 18 Q Do you know if anybody in the Defense
 19 Department has reviewed or considered polls done
 20 by third parties of the views of the general
 21 public on service of homosexuals in the military?
 22 MR. GARDNER: Objection, beyond the

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1 scope of the Rule 30(b)(6) deposition notice.
 2 You can answer if you know.
 3 THE WITNESS: No, I don't know.
 4 BY MR. WOODS:
 5 Q Would you agree that the polls -- the
 6 results of the polls have changed over time such
 7 that the current public view is more inclined to
 8 permit service by homosexuals in the military?
 9 MR. GARDNER: Objection, beyond the
 10 scope of the Rule 30(b)(6) deposition notice.
 11 Objection, vague. Are you asking about Government
 12 polls or private polls, Mr. Woods?
 13 MR. WOODS: That question, I would ask
 14 for either one. Public views. Public views.
 15 MR. GARDNER: All right. Then I will
 16 object. Beyond the scope of the Rule 30(b)(6)
 17 deposition to the extent you're asking about polls
 18 not conducted by the Department of Defense.
 19 THE WITNESS: I don't know.
 20 BY MR. WOODS:
 21 Q Are you aware of any polls that were
 22 done, either by the military or third parties,

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1 of -- I'm sorry. Strike that.
 2 Is it your understanding that the polls
 3 that have been done either by the military or
 4 third parties over time have showed that even
 5 members of the military are more inclined to
 6 welcome service in the military by homosexuals?
 7 MR. GARDNER: Objection, lack of
 8 foundation. Objection, to the extent you're
 9 asking about private polls or non-governmental
 10 polls, beyond the scope of the Rule 30(b)(6)
 11 deposition notice.
 12 You can answer if you know.
 13 THE WITNESS: Yeah, I don't know.
 14 BY MR. WOODS:
 15 Q Do you know -- since you looked at the
 16 congressional testimony, do you know if any polls
 17 were presented to Congress in the process by which
 18 it enacted Don't Ask, Don't Tell?
 19 MR. GARDNER: Objection, beyond the
 20 scope of the Rule 30(b)(6) deposition notice with
 21 respect to polling.
 22 You can answer if you know.

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1 THE WITNESS: I don't know.
 2 BY MR. WOODS:
 3 Q Okay. So you're not aware of any poll
 4 done by the military other than a 1992 U.S. Air
 5 Force poll, and as to that no action was ever
 6 taken because it was presumptuous of the Air Force
 7 to have conducted that poll, correct?
 8 MR. GARDNER: Objection, compound.
 9 But you can answer.
 10 THE WITNESS: Correct. Yes.
 11 BY MR. WOODS:
 12 Q And did you ever attempt to determine
 13 why no additional poll was ever done?
 14 A No.
 15 Q When the 1992 Air Force poll was
 16 conducted, were you among the people who were
 17 polled?
 18 A I don't believe so. I don't remember
 19 being -- now, that was 18 years ago, but I don't
 20 believe I was one of the ones called.
 21 Q Do you know how the people who conducted
 22 the poll selected who they would call?

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1 A No, sir, I do not.
 2 Q Do you know what questions were asked?
 3 A If the questions that were asked were
 4 the ones on the survey brief that I received,
 5 those are the only ones that I know of. But I
 6 don't know if those exact questions were asked.
 7 Q Okay. Do you have any information as to
 8 who conducted the Air Force poll?
 9 A Yeah, I don't recall who did it.
 10 Q Okay. And the report of the poll that
 11 you read is approximately how many pages?
 12 A I estimate about ten pages.
 13 MR. WOODS: We've been going for about
 14 an hour, so this is a probably a good time to take
 15 a short break. Let's take five minutes.
 16 (Recess)
 17 MR. GARDNER: Just for the record,
 18 Colonel Brady was able to determine the
 19 explanation for the discrepancy with respect to
 20 30(b)(6) deposition topic number one between the
 21 admission request responses and the documentation
 22 provided today. And Colonel Brady wanted to

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1 explain that discrepancy.
 2 THE WITNESS: I spoke to the Defense
 3 Manpower Date Center, who's in charge of getting
 4 that data. The bottom line is the numbers on the
 5 slides that I gave you were correct. So from
 6 fiscal year '97 through 2003 there were 2,024
 7 females that were separated under DADT.
 8 BY MR. WOODS:
 9 Q Okay. Who did you speak to?
 10 A Chris Hoffman.
 11 Q What is that person's position or title?
 12 A She is the chief of data analysis and
 13 programs division.
 14 Q And you simply were able to make a phone
 15 call to her to get that information?
 16 A Yes, sir.
 17 Q Can you explain why the request for
 18 admissions -- the responses to the request for
 19 admissions contain a different number?
 20 MR. GARDNER: Objection, beyond the
 21 scope of the Rule 30(b)(6) deposition. Objection,
 22 lack of foundation.

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1 THE WITNESS: No, sir, I cannot.
 2 BY MR. WOODS:
 3 Q Did the numbers that you got from the
 4 person you spoke to this afternoon include or not
 5 include members of the reserves?
 6 A If there are -- it would not include the
 7 members of the reserves. It would just be active
 8 duty personnel only, which is what that chart is,
 9 is active duty only.
 10 Q Does it include members of the Coast
 11 Guard?
 12 A No, sir, it does not.
 13 Q Do you know how many members of the
 14 reserves were discharged by reason of Don't Ask,
 15 Don't Tell during the years from 1997 to the
 16 present?
 17 A No, sir, I do not.
 18 Q Do you know how many members of the
 19 Coast Guard were discharged pursuant to that
 20 policy?
 21 A No, sir, I do not.
 22 Q And I'm sorry. In those last couple

1 But we'll deal with that in due course.
 2 MR. GARDNER: And of course we disagree
 3 with your characterization that the witness has no
 4 knowledge. You don't like the knowledge he
 5 possesses, but that doesn't take away from the
 6 fact that he has knowledge.
 7 BY MR. WOODS:
 8 Q All right. What knowledge do you have
 9 about the number of women members of the Coast
 10 Guard who have been discharged pursuant to Don't
 11 Ask, Don't Tell?
 12 Tell me everything you know on that
 13 subject.
 14 MR. GARDNER: Objection, vague.
 15 Objection, overbroad.
 16 THE WITNESS: I don't know.
 17 BY MR. WOODS:
 18 Q You don't have any information about the
 19 discharge of women from the Coast Guard under
 20 Don't Ask, Don't Tell, do you?
 21 A No, sir, do not.
 22 Q Okay. Do you have any information about

1 questions I mean to ask only about females.
 2 Do you have any --
 3 A Yeah, I understood it that way, yes,
 4 sir. I -- no, I do not.
 5 Q Do you know if there are any documents
 6 that would show those items of information?
 7 A Not that I've been made aware of, no,
 8 sir.
 9 Q So as the person designated as the most
 10 knowledgeable person to talk about the discharge
 11 of female service members, you have no information
 12 about female members of the reserves or female
 13 members of the Coast Guard, correct?
 14 MR. GARDNER: Objection, to the extent
 15 it mischaracterizes the obligation under Rule
 16 30(b)(6) to provide the most knowledgeable person.
 17 The obligation under Rule 30(b)(6) is to provide a
 18 person with knowledge.
 19 MR. WOODS: Well, a person with no
 20 knowledge is not a person with knowledge. And a
 21 person has an obligation, as we will point out to
 22 the court in a motion, to become knowledgeable.

1 the discharge of women who were in the reserves
 2 pursuant to Don't Ask, Don't Tell?
 3 A No, sir, I do not.
 4 Q Okay. Let me show you the next document
 5 I want to show you, which is Exhibit 87. We're
 6 still now back on the subject of polls.
 7 (Deposition Exhibit No. 87
 8 marked for identification.)
 9 BY MR. WOODS:
 10 Q Colonel, this is a document that was
 11 produced to us during the process in this case.
 12 And this dates back to the time at or before the
 13 time of the enactment of Don't Ask, Don't Tell.
 14 And it says in the second paragraph that
 15 The Army Research Institute assembled a task
 16 force, quote, In preparation for planned focus
 17 groups, surveys, literature surveys, et cetera, as
 18 required by the CSA -- which I understand refers
 19 to the Chief of Staff Army.
 20 Are you with me so far?
 21 A Yes, I am.
 22 Q Okay. In the third paragraph it says

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1 this.
 2 Quote, Due to decisions at senior
 3 levels, ARI -- which I take it is Army Research
 4 Institute -- was never given the green light to
 5 pursue the tasking to the full extent. In
 6 particular, there were restringent restrictions on
 7 seeking attitudes and opinions through surveys or
 8 discussion groups, from service members, end
 9 quote.
 10 Do you have any information about that
 11 subject?
 12 A No.
 13 MR. GARDNER: Objection, vague.
 14 BY MR. WOODS:
 15 Q Pardon?
 16 A No, sir, I do not.
 17 Q Okay. Do you know who made the decision
 18 at the senior level to give ARI the red light?
 19 MR. GARDNER: Objection,
 20 mischaracterizes the document. Also objection,
 21 beyond the scope.
 22 THE WITNESS: I don't know who it refers

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1 to as senior level.
 2 BY MR. WOODS:
 3 Q Okay. And do you know why senior level
 4 people apparently made a decision to not give ARI
 5 the green light to do surveys or discussion groups
 6 from service members on the subject of homosexuals
 7 in the military?
 8 MR. GARDNER: Objection, beyond the
 9 scope.
 10 THE WITNESS: I'm not aware.
 11 BY MR. WOODS:
 12 Q Now, recently an individual, Army
 13 Secretary John McHugh, made some statements about
 14 the current study of Don't Ask, Don't Tell.
 15 Are you aware of his statements?
 16 A I'm aware he made some comments, yes,
 17 sir.
 18 Q Okay. And so what he said was that this
 19 working group that's now reviewing the policy was
 20 working to determine the most effective and most
 21 comprehensive way to solicit the views of men and
 22 women in uniform across the military. Okay?

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1 A Okay.
 2 Q And he said that the working group is,
 3 quote, Likely to utilize a third party from
 4 outside of the department to solicit these views
 5 so soldiers can speak candidly and without fear of
 6 separation.
 7 And that was a statement that he made on
 8 April 1st of this year.
 9 Do you have any information about that?
 10 MR. GARDNER: Objection, vague.
 11 THE WITNESS: No, sir, I do not.
 12 BY MR. WOODS:
 13 Q So do you know whether the working group
 14 has engaged a third party from outside the Defense
 15 Department to conduct some sort of survey?
 16 MR. GARDNER: Objection, calls for
 17 information that is subject to deliberative
 18 process privilege. And I will instruct the
 19 witness not to answer.
 20 MR. WOODS: The question is whether he
 21 knows. That's all the question asks for. I can't
 22 imagine whether he knows the answer as part of the

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1 deliberative process, so please reconsider.
 2 MR. GARDNER: You're asking him whether
 3 he knows the answer, not what the answer is?
 4 MR. WOODS: That's what the question
 5 said.
 6 MR. GARDNER: All right.
 7 THE WITNESS: I don't know.
 8 BY MR. WOODS:
 9 Q I'll show you what I'll mark as Exhibit
 10 88, which is a report called, Gays and Lesbians at
 11 War: Military Service in Iraq and Afghanistan
 12 Under Don't Ask, Don't Tell. It's dated September
 13 15, 2004.
 14 (Deposition Exhibit No. 88
 15 marked for identification.)
 16 MR. GARDNER: Just for the record, I'll
 17 object to any questions about Exhibit 88 as being
 18 beyond the scope of the Rule 30(b)(6) notice of
 19 deposition.
 20 BY MR. WOODS:
 21 Q Do you know if anybody in the
 22 military -- I'm sorry, have you ever seen this

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1 poll before?
 2 MR. GARDNER: Same objection.
 3 THE WITNESS: No, sir, I can't say that
 4 I have.
 5 BY MR. WOODS:
 6 Q Okay. Have you ever been even made
 7 aware of it?
 8 MR. GARDNER: Objection, vague.
 9 Objection, beyond the scope of the Rule 30(b)(6)
 10 deposition.
 11 THE WITNESS: Again, I reviewed a lot of
 12 documents, but this one just doesn't come to mind.
 13 I can't say that I have not been made aware of it,
 14 but it doesn't come to mind.
 15 BY MR. WOODS:
 16 Q Do you know anybody else in the Defense
 17 Department has reviewed this report or poll?
 18 MR. GARDNER: Objection,
 19 mischaracterizes the document as a poll.
 20 Objection, beyond the scope of the Rule 30(b)(6)
 21 deposition. Objection, lack of foundation, calls
 22 for speculation.

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1 THE WITNESS: I don't know.
 2 BY MR. WOODS:
 3 Q Okay. Let me show you what I'll mark as
 4 89.
 5 (Deposition Exhibit No. 89
 6 marked for identification.)
 7 BY MR. WOODS:
 8 Q Exhibit 89, Colonel, is a memorandum.
 9 We can't tell who it was prepared for because that
 10 information has been deleted by the Defendants.
 11 And we can't tell who it's from because that
 12 information has also been deleted by the
 13 Defendants. And it appears that some information
 14 has been deleted from the bottom of the second
 15 page as well.
 16 But this is a document that was produced
 17 to us by the Defendants in this case. And you can
 18 see that because at the bottom right-hand side it
 19 says OSD P&R plans.
 20 Do you see that?
 21 A Yes, sir, I do.
 22 Q What does that stand for, by the way?

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1 A Office of Secretary of Defense personnel
 2 and readiness. And there's a plans office within
 3 personnel and the readiness that's -- that would
 4 have been in their -- that's their office.
 5 Q Okay. So it appears that somebody in
 6 the Office of the Secretary of Defense read the
 7 study or report we just looked at, Exhibit 88, and
 8 commented on it.
 9 Is that what it appears to be?
 10 MR. GARDNER: Objection, lack of
 11 foundation, calls for speculation, beyond the
 12 scope of the Rule 30(b)(6) deposition notice.
 13 THE WITNESS: I don't know whether they
 14 read it or made comment on it.
 15 BY MR. WOODS:
 16 Q Well, that's what it appears to be.
 17 A Yeah.
 18 Q Do you know if anybody else in the
 19 Defense Department reviewed Exhibit 88?
 20 MR. GARDNER: Objection, asked and
 21 answered. Objection, beyond the scope of the Rule
 22 30(b)(6) deposition notice. Objection, calls for

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1 speculation. Objection, lack of foundation.
 2 THE WITNESS: 88 or 89?
 3 BY MR. WOODS:
 4 Q That's 89. 89 is a description of 88.
 5 A Okay. So you're asking if they reviewed
 6 this [indicating]?
 7 Q If anybody else reviewed 88.
 8 MR. GARDNER: Same objections.
 9 THE WITNESS: Sir, I don't know.
 10 BY MR. WOODS:
 11 Q Okay. And do you have any information
 12 as to who authored Exhibit 89?
 13 MR. GARDNER: Objection, beyond the
 14 scope of the Rule 30(b)(6) deposition notice.
 15 Objection, lack of foundation. Objection, calls
 16 for speculation.
 17 THE WITNESS: I don't know.
 18 BY MR. WOODS:
 19 Q Do you know who it was prepared for?
 20 MR. GARDNER: Same objections.
 21 THE WITNESS: I don't know.
 22 BY MR. WOODS:

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1 Q I'm going to show you next what I'm mark
 2 as Exhibit 90. It's an article called, Attitudes
 3 of Iraq and Afghanistan War Veterans Toward Gay
 4 and Lesbian Service Members. And this was
 5 published on October 29, 2009.
 6 (Deposition Exhibit No. 90
 7 marked for identification.)
 8 MR. GARDNER: And just for the record,
 9 same objection with respect to Exhibit 90. Topic
 10 15 asks for polls conducted by or on behalf of the
 11 Defendants. This document, Exhibit 90, is neither
 12 of those things. Accordingly, any questions about
 13 them is beyond the scope of the Rule 30(b)(6)
 14 deposition.
 15 BY MR. WOODS:
 16 Q Have you ever seen or heard of this
 17 report, Colonel?
 18 MR. GARDNER: Objection, beyond the
 19 scope.
 20 THE WITNESS: I can't recall that I
 21 have, no, sir.
 22 BY MR. WOODS:

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1 Q Are you aware of anybody in the Defense
 2 Department who might have read and made a report
 3 on it, just like someone made a report in Exhibit
 4 89 of the report we looked at earlier, Exhibit 88?
 5 MR. GARDNER: Objection, compound.
 6 Objection, beyond the scope of the Rule 30(b)(6).
 7 Objection, lack of foundation. Objection, calls
 8 for speculation.
 9 THE WITNESS: I don't know.
 10 BY MR. WOODS:
 11 Q I'll show you what I'll mark as Exhibit
 12 91, which is the report titled, Opinions of
 13 Military Personnel on Sexual Minorities in the
 14 Military. This one is dated December 2006.
 15 (Deposition Exhibit No. 91
 16 marked for identification.)
 17 MR. GARDNER: Same objection with
 18 respect to Exhibit 91. Exhibit 91 is not a poll
 19 conducted by or on behalf of the Defendants.
 20 Accordingly, questions about this document go
 21 beyond the scope of the Rule 30(b)(6) deposition
 22 with respect to topic 15.

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1 BY MR. WOODS:
 2 Q Have you ever seen Exhibit 91 before,
 3 Colonel?
 4 A No, sir, not that I'm aware.
 5 Q Have you ever heard anything about it?
 6 MR. GARDNER: Objection, vague.
 7 Objection, beyond the scope.
 8 THE WITNESS: The specifics of it, no, I
 9 have not.
 10 BY MR. WOODS:
 11 Q Have you ever heard about it generally?
 12 A Well, yeah, just in -- I read the -- the
 13 RFA's that answered a question about the Zogby
 14 poll. That's the only thing that I know about it.
 15 Q Okay. Do you know whether anybody at
 16 the Defense Department has ever reviewed and made
 17 any comment on the Zogby poll, here Exhibit 91?
 18 MR. GARDNER: Objection, beyond the
 19 scope of the Rule 30(b)(6) deposition notice.
 20 Objection, lack of foundation. Objection, calls
 21 for speculation.
 22 THE WITNESS: I don't know.

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1 BY MR. WOODS:
 2 Q Have you, yourself, ever seen any of the
 3 public opinion polls on the subject of homosexuals
 4 in the military?
 5 MR. GARDNER: Objection, beyond the
 6 scope of the Rule 30(b)(6) deposition notice.
 7 Objection, relevance.
 8 THE WITNESS: No.
 9 BY MR. WOODS:
 10 Q Have you ever seen a 2003 Fox News poll?
 11 MR. GARDNER: Objection, beyond the
 12 scope of the Rule 30(b)(6) deposition notice.
 13 Objection, relevance.
 14 THE WITNESS: I can't say that I have,
 15 no.
 16 BY MR. WOODS:
 17 Q Have you ever seen a 2005 Boston Globe
 18 poll?
 19 MR. GARDNER: Objection, beyond the
 20 scope of the Rule 30(b)(6) deposition notice.
 21 Objection, relevance.
 22 THE WITNESS: I can't say that I have,

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1 no, sir.
 2 BY MR. WOODS:
 3 Q Have you ever seen a 2008 ABC News
 4 Washington Post poll?
 5 MR. GARDNER: Objection, beyond the
 6 scope of the Rule 30(b)(6) deposition notice.
 7 Objection, relevance.
 8 THE WITNESS: I can't say that I have,
 9 no, sir.
 10 BY MR. WOODS:
 11 Q Do you have any familiarity with what
 12 polls of the general public reveal about current
 13 views towards homosexual service in the military?
 14 MR. GARDNER: Objection, beyond the
 15 scope of the Rule 30(b)(6) deposition notice.
 16 THE WITNESS: I don't know.
 17 BY MR. WOODS:
 18 Q Do you think public views towards
 19 homosexuals in the military have changed since
 20 Congress enacted Don't Ask, Don't Tell?
 21 MR. GARDNER: Objection, beyond the
 22 scope of the Rule 30(b)(6) deposition notion.

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1 Objection, lack of foundation. Objection, calls
 2 for speculation. Also objection, relevance.
 3 THE WITNESS: I don't know if they have.
 4 BY MR. WOODS:
 5 Q And you haven't done anything to try to
 6 find out, have you?
 7 MR. GARDNER: Objection, beyond the
 8 scope of the Rule 30(b)(6) deposition notice.
 9 THE WITNESS: No.
 10 BY MR. WOODS:
 11 Q Do you think opinions in -- I'm sorry.
 12 Strike that.
 13 Do you think opinions among members of
 14 the United States Armed Forces about service by
 15 homosexuals in the military have changed since
 16 Congress enacted Don't Ask, Don't Tell?
 17 MR. GARDNER: Objection, beyond the
 18 scope of the Rule 30(b)(6) deposition. Objection,
 19 lack of foundation. Objection, calls for
 20 speculation. Objection, relevance.
 21 THE WITNESS: I don't know.
 22 BY MR. WOODS:

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1 Q Have you done anything to try to find
 2 out whether military opinion has changed on Don't
 3 Ask, Don't Tell since 1993?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition.
 6 THE WITNESS: No.
 7 BY MR. WOODS:
 8 Q In your opinion, do the results of any
 9 of the polls matter in terms of the purposes of
 10 Don't Ask, Don't Tell or whether it furthers those
 11 purposes?
 12 MR. GARDNER: Objection, compound.
 13 Objection, beyond the scope of the Rule 30(b)(6)
 14 deposition notice. Objection, lack of foundation.
 15 Objection, relevance.
 16 You can answer if you have a personal
 17 view.
 18 THE WITNESS: No, I do not.
 19 BY MR. WOODS:
 20 Q Okay. You answered his question, not
 21 mine.
 22 My question was in your opinion, do the

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1 results of any of the polls matter in terms of the
 2 purposes of Don't Ask, Don't Tell?
 3 MR. GARDNER: Same objections.
 4 THE WITNESS: In my opinion, no, they do
 5 not matter.
 6 BY MR. WOODS:
 7 Q In your opinion, do the results of any
 8 polls matter as to whether Don't Ask, Don't Tell
 9 furthers its stated objectives?
 10 MR. GARDNER: Objection, beyond the
 11 scope of the Rule 30(b)(6) deposition. And
 12 objection, lack of foundation. Objection, calls
 13 for speculation. Objection, relevance.
 14 THE WITNESS: Are you asking my personal
 15 opinion? The previous question asked for my
 16 personal opinion.
 17 BY MR. WOODS:
 18 Q Well, I'll go with you on this question
 19 about whether it's your personal opinion. Go
 20 ahead.
 21 MR. GARDNER: Same objections.
 22 THE WITNESS: Can you restate the

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1 question, please? I want to make sure I have it
 2 clear in my head.
 3 BY MR. WOODS:
 4 Q Does the results of any of the polls
 5 matter as to whether Don't Ask, Don't Tell
 6 furthers its stated objectives?
 7 MR. GARDNER: Same objections.
 8 If you have a personal view, feel free
 9 to share.
 10 THE WITNESS: Personal views, no.
 11 BY MR. WOODS:
 12 Q All right. We're going to switch topics
 13 now.
 14 A Sure.
 15 Q And there are two topics that are so
 16 close or so similar that I want to cover them
 17 together. And those are topics three and ten.
 18 A Three and ten.
 19 Q So category three is the application of
 20 the policy to service members deployed overseas to
 21 combat theaters from 2001 to the present, such as
 22 Operation Enduring Freedom in Afghanistan and

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1 Operation Iraqi Freedom, including the total
 2 number of service members discharged or
 3 investigated pursuant to the policy, any
 4 consideration, discussion, or deliberation
 5 regarding whether to suspend either the policy and
 6 the investigation pursuant to the policy or any
 7 discharge proceeding initiated under the policy.
 8 Okay. That's number three.
 9 A Yes, sir.
 10 Q Number ten has to do with, quote,
 11 Deployment of gay or lesbian service members who
 12 were contemporaneously, either in the process of
 13 discharge proceedings for homosexual conduct or
 14 under investigation for allegedly engaging in
 15 homosexual conduct or any other alleged breach of
 16 the policy from year 2001 to the present.
 17 Okay. Are you with me?
 18 A I'm with you.
 19 Q Okay. What, if anything, did you to
 20 prepare to testify today on those topics?
 21 A Again, I talked to counsel, as well as I
 22 had a discussion with Mr. Retherford, due to his

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1 background in military personnel policy. And I
 2 also spoke with Mr. John Plotkin of the staff
 3 judge advocates office at United States Army
 4 Forces Command.
 5 Q I'm sorry, where is Mr. Plotkin?
 6 A U.S. Army Forces Command. Its acronym
 7 is FORSCOM, F-O-R-S-C-O-M.
 8 Q Anything else you do to prepare for
 9 these topics?
 10 A Yes, sir. I -- yes. I also spoke
 11 with -- or e-mail correspondence with the Manpower
 12 and Reserve Affairs Office for the Air Force; the
 13 Navy, Department of the Navy; and also spoke with
 14 the Army personnel office as well.
 15 Q And did you review any documents in
 16 preparation for your testimony on these two
 17 particular topics?
 18 A Again, like the previous topics, I
 19 reviewed the statute as well as the DOD policy.
 20 And I reviewed a document from Forces Command as
 21 well, U.S. Army Forces Command.
 22 Q Okay. The statute, by the way, in Don't

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1 Ask, Don't Tell itself has a provision that allows
 2 someone to avoid separation if it's in the best of
 3 the military; isn't that right?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition.
 6 THE WITNESS: From my under -- can I see
 7 a copy of the statute?
 8 BY MR. WOODS:
 9 Q Sure.
 10 A Just so I'm -- I don't misspeak.
 11 Q Here you go.
 12 [Handing document].
 13 A Yes, sir. Thank you.
 14 MR. GARDNER: Are you marking that?
 15 MR. WOODS: No. I'm just showing him
 16 the statute.
 17 THE WITNESS: [Witness examined
 18 document].
 19 MR. GARDNER: Do you want to point to a
 20 particular part?
 21 MR. WOODS: It should be in 651 B-1-D.
 22 MR. GARDNER: 654?

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1 MR. WOODS: 654, yeah.
 2 THE WITNESS: D-I-D?
 3 MR. WOODS: B-I-D.
 4 THE WITNESS: [Witness examined
 5 document]. Okay. I've read it, yes, sir.
 6 BY MR. WOODS:
 7 Q Okay. So let me go back to the
 8 question.
 9 There is a provision in the statute that
 10 allows someone who would otherwise be subject to
 11 discharge to be retained in service if under the
 12 particular circumstances of the case the member's
 13 continued presence in the armed forces is
 14 consistent with the interest of the armed forces
 15 in proper discipline, good order, and morale?
 16 MR. GARDNER: Objection, calls for a
 17 legal conclusion. The statute speaks for itself.
 18 Are you asking for his legal interpretation of the
 19 statute?
 20 BY MR. WOODS:
 21 Q Please answer the question.
 22 A As I read the statute, B-1 -- excuse me,

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1 654 B-1, it allows a member to be separated if
 2 they engaged in, attempted to engage in, or
 3 solicited another to engage in a homosexual act.
 4 If a number of things are present, such conduct is
 5 a departure from member's usual customary behavior
 6 is, one, the conduct under all the circumstances
 7 unlikely to occur, such conduct was not
 8 accomplished by the use of force or intimidation.
 9 Also what you mentioned, under the
 10 particular circumstances of the case, the member's
 11 continued presence in the armed forces is
 12 consistent with the interest of the armed forces
 13 in proper discipline, good order, morale, and the
 14 member does not have a propensity or intent to
 15 engage in homosexual acts.
 16 All five of those would have to be
 17 determined before someone would be maintained.
 18 That's the way I read this statute.
 19 Q All right. Turning to the two topics
 20 we're talking about.
 21 What did you and Mr. Retherford discuss
 22 on these two topics?

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1 A I can't point to any one certain thing
 2 that we discussed about this topic. We just
 3 discussed the topic of the DADT in general, and
 4 the numbers of times. But I can't point to one
 5 certain thing that we discussed on this one.
 6 Q All right. But you did have e-mail on
 7 this topic or these topics with Manpower and
 8 Reserve Affairs Office for the Air Force?
 9 A Yes.
 10 Q And what was the purpose of e-mailing
 11 that office?
 12 A I wanted to make sure that they didn't
 13 have any policies in place that we didn't know
 14 about that would be contrary to DOD policy.
 15 Q Okay. And what did you find out from
 16 the e-mails with Manpower and Reserve Affairs
 17 Office of the Air Force?
 18 A That they do not.
 19 Q Well, what did you ask to be e-mailed?
 20 A I asked whether they had a policy
 21 where -- where they deployed openly gay members,
 22 had they ever knowingly done so, had they -- did

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1 their policy apply differently to women than it
 2 did men, did they knowingly deploy someone who was
 3 an open homosexual. I believe that's the three
 4 things that I asked.
 5 Q When did you send this e-mail?
 6 A I believe it was a Wednesday.
 7 Q About two weeks ago?
 8 A No. This Wednesday.
 9 Q This Wednesday this week?
 10 A Yes.
 11 Q Okay. And did you get a response?
 12 A Yes, sir, I did.
 13 Q When?
 14 A I got a response both Wednesday as well
 15 as Thursday I received responses.
 16 Q And do you have these e-mails with you?
 17 A No, sir, I do not.
 18 Q Do you have any documents in the folder
 19 that you have with you on these two subjects?
 20 A [Witness examined document]. No, sir, I
 21 do not.
 22 Q All right. Well, let's just get to

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1 this.
 2 What else do you have in the folder?
 3 A I have organizational charts for the
 4 Department of Defense as well as Defense agencies.
 5 Q Can I see this?
 6 A [Handing document].
 7 Q Okay.
 8 A And I also have a spreadsheet of some
 9 data, days between deployment end date and
 10 separation date.
 11 [Handing document].
 12 Q Okay. The two organizational chart
 13 documents that you just handed me, are these
 14 things that you were just able to pull off your
 15 computer?
 16 A I received those from Captain Grant.
 17 Q Okay. And the other document is a
 18 multipage document titled, Days between deployment
 19 end date and separation date, active duty DADT
 20 separations as of April 1, 2010.
 21 Where did you receive this document?
 22 A I also received this from Captain Grant.

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1 Q And when did you receive this document
 2 from Captain Grant?
 3 A I believe it to be earlier this week.
 4 Q Okay. So we'll get copies of these made
 5 at our next break.
 6 This document is days between deployment
 7 end date.
 8 The document also includes information
 9 about the numbers of discharges of enlisted men
 10 and -- or enlisted personnel and officers, doesn't
 11 it?
 12 A I'd have to look at it.
 13 Q It does.
 14 [Handing document].
 15 A [Witness examined document]. Yes.
 16 Q Okay.
 17 A Yes, sir, it does.
 18 Q Okay. We'll get copies of these made at
 19 a break.
 20 All right. And what were the answers
 21 you got from the Manpower and Reserve Affairs
 22 Office from the Air Force in response to your

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1 e-mails?
 2 A That their policy was in concert with
 3 the DOD policy.
 4 Q Well, regardless of what their policy
 5 was, what did they say about whether the Air Force
 6 had ever deployed any known homosexuals?
 7 A I was told no.
 8 Q And did you have a similar e-mail with
 9 the similar office for the Navy?
 10 A Yes, sir, I did.
 11 Q And is that -- did you send the e-mail
 12 at or about the same time as the e-mail you sent
 13 to the Air Force?
 14 A I sent it the same time.
 15 Q Okay. And did you get a response from
 16 the Navy?
 17 A Yes, sir, I did.
 18 Q And what was the response?
 19 A The answer was no.
 20 Q And did you do a similar e-mail with the
 21 Army?
 22 A Yes. And the answer was the same: No.

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1 Q Do you have the e-mails with the Navy or
 2 the Army with you?
 3 A No, I do not.
 4 Q Okay. Will you agree to send us the
 5 e-mails that you had with the Air Force, Navy, and
 6 Army on this subject?
 7 MR. GARDNER: Objection, to the extent
 8 you're requesting documents, you do that through
 9 counsel for the Department of Justice. The
 10 discovery deadline is over.
 11 MR. WOODS: Does that mean no?
 12 MR. GARDNER: That means exactly what I
 13 said it means.
 14 MR. WOODS: Will you peruse the
 15 documents or not, Counsel. Just tell me, yes or
 16 no?
 17 MR. GARDNER: No.
 18 MR. WOODS: Okay. Fine.
 19 MR. GARDNER: No obligation to.
 20 MR. WOODS: Okay. Fine. I just keep
 21 adding to the Rule 56-F argument.
 22 You can laugh all your want.

1 MR. GARDNER: You're being ridiculous,
 2 Counsel.
 3 MR. WOODS: You may think so.
 4 MR. GARDNER: I know so.
 5 BY MR. WOODS:
 6 Q And tell me, please, why you spoke to
 7 John Plotkin in preparation for your testimony on
 8 these subjects?
 9 A Mr. Plotkin could -- well, there is a
 10 FORSCOM regulation, or commanders handbook I
 11 believe is what it was called, that discussed --
 12 or that had a rule in it for deployment of someone
 13 in the reserves that was maybe undergoing
 14 separation for homosexual conduct. And I didn't
 15 know -- I wasn't an expert on the reserve matter
 16 or that FORSCOM regulation, so I spoke with
 17 Mr. Plotkin.
 18 Q Prior to the process of preparing to
 19 testify today, were you aware of this FORSCOM
 20 regulation?
 21 A No, sir, I was not.
 22 Q When did you first become aware of this

1 A Yes, sir.
 2 Q -- when you spoke with Mr. Plotkin?
 3 A Yes, sir, it appears to be.
 4 Q I take it there was a particular part of
 5 the regulation that you discussed with
 6 Mr. Plotkin?
 7 A Yes. Yes, sir.
 8 Q And was that the section that's on page
 9 33?
 10 A Correct.
 11 Q And under criterion, the box number 21
 12 that says homosexual conduct?
 13 A Correct.
 14 Q Okay. And until you got this document
 15 from counsel about two weeks ago you had never
 16 seen this regulation before, correct?
 17 MR. GARDNER: Objection, asked and
 18 answered.
 19 THE WITNESS: Correct.
 20 BY MR. WOODS:
 21 Q All right. And so you discussed it with
 22 Mr. Plotkin; and I take it you asked him questions

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1 FORSCOM regulation?
 2 A When it was told to me by counsel.
 3 Q When was that?
 4 A It was approximately two weeks ago.
 5 Q And so after being made aware of this
 6 regulation by counsel, you spoke to Mr. Plotkin.
 7 When did you speak with him?
 8 A I believe we spoke to Mr. Plotkin about
 9 approximately a week-and-a-half ago.
 10 Q And how long did you speak to him?
 11 A Fifteen to 20 minutes, I would estimate.
 12 Q And did you have the FORSCOM regulation
 13 with you when you spoke with him?
 14 A Yes, sir, I did.
 15 Q I'll show you what I'll mark as Exhibit
 16 92, which I believe is the FORSCOM regulation
 17 we're talking about, but I want to be sure.
 18 (Deposition Exhibit No. 92
 19 marked for identification.)
 20 BY MR. WOODS:
 21 Q So is this the FORSCOM regulation that
 22 you had --

1 about it?
 2 A Yes, sir.
 3 Q What did he ask him?
 4 A I specifically -- or we specifically
 5 asked him about 21 Charlie, because this document
 6 applies to the reserves component forces. And I
 7 didn't know exactly how it applied.
 8 So we asked him -- or I asked him about
 9 21 Charlie, that says, If discharge is not
 10 requested prior to the unit's receipt of alert
 11 notification, discharge is not authorized. Member
 12 will enter active duty with the unit.
 13 I asked him what that meant.
 14 Q By the way, was somebody else on this
 15 phone call with you and Mr. Plotkin?
 16 A It was a conference call.
 17 Q And who else was on the call?
 18 A Mr. Gardner was present, and Captain
 19 Grant was present. And I believe that's it. And
 20 we were the only ones present.
 21 Q Was anybody else present in your
 22 pre-deposition preparation telephone call with

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1 Mr. Retherford?

2 A Well, Mr. Retherford's in my office. It

3 wasn't a telephone call. It was just discussion

4 between he and I.

5 Q All right. So what did Mr. Plotkin tell

6 you when you asked him how this worked?

7 A Well, for 21 Charlie, he said that if --

8 once the unit receives an alert notification,

9 i.e., that they've been alerted that they're going

10 to deploy, and if the discharge has not been

11 requested by the time they receive that alert

12 notification, they will not discharge the member

13 at that moment; however, they will allow the

14 member to enter active duty with the unit, and

15 then continue the separations proceedings at that

16 point.

17 Q At what point?

18 A After they enter active duty.

19 Q How much time passes between the moment

20 when they're alerted and the moment when they

21 deploy?

22 A I don't know. I don't know if there's a

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1 standard time in the reserves. I just don't know.

2 Q All right. Did you discuss with

3 Mr. Plotkin item 21-A of the FORSCOM regulation on

4 page 33?

5 A Yeah, I think we quickly went over 21-A

6 and 21-B, because my main question surrounded 21

7 Charlie.

8 Q All right. And what do you understand

9 to be the way in which 21-A works?

10 A My understanding of 21-A is that if the

11 discharge has been requested and approved before

12 the unit gets their alert notification, the member

13 is discharged prior to that unit going active

14 duty.

15 Q And approved at what level?

16 A It would be approved at the separational

17 authority, whoever the separational authority is

18 for that discharge.

19 Q And what do you understand 21-B to mean?

20 A That if the discharge has been requested

21 but has not yet by approved by the discharge

22 authority, that the entry into active duty will be

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1 delayed and there'll be a -- until a determination

2 is made.

3 Q And what do you understand 21-C to mean?

4 MR. GARDNER: Objection, asked and

5 answered.

6 THE WITNESS: That -- I understand 21

7 Charlie to mean if the -- if a discharge is not

8 requested prior to the unit -- them receiving an

9 alert notification, discharge does not occur at

10 that moment. The member enters active duty with

11 the unit, and separation proceedings will continue

12 to discharge.

13 BY MR. WOODS:

14 Q Right. And so in this context, who

15 requests a discharge of a homosexual member of the

16 reserves?

17 A The request will come from the

18 commander.

19 Q Okay. So the commander can receive a

20 report that a member under his command is subject

21 to discharge under Don't Ask, Don't Tell because

22 the person is a homosexual, but can simply not

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1 request the discharge; and under 21-C, the

2 discharge is not authorized and the member will

3 enter active duty with his unit?

4 MR. GARDNER: Objection, compound. Also

5 objection, mischaracterizes Don't Ask, Don't Tell

6 orders.

7 THE WITNESS: I don't understand the

8 question.

9 BY MR. WOODS:

10 Q Okay. Well, let's start with the phrase

11 in 21-C, if discharge is not requested prior to

12 the unit's receipt of alert notification, right?

13 A Correct.

14 Q Okay. So what does it mean when it says

15 discharge is not requested; in other words, does

16 somebody have to request a service member's

17 discharge under Don't Ask, Don't Tell?

18 A Yes.

19 Q Okay.

20 A The commander will -- under Don't Ask,

21 Don't Tell, the commander can receive what he or

22 she believes is creditable information, and at

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1 that point have to make a decision of what that
 2 credible information is, and is it in fact
 3 credible.
 4 If they determine that it is credible,
 5 then they have to appoint an inquiry officer.
 6 That inquiry officer looks at the case, and
 7 frankly conducts an inquiry to see if the
 8 allegations, whether it's a homosexual act,
 9 conduct, or statement or marriage, whether that's
 10 in fact true. And after that point, the inquiry
 11 will go to the unit commander.
 12 The recent revision of policy, that was
 13 revised last month actually, says the person
 14 that -- the only person that can institute the
 15 inquiry is an O7 or above, which is a brigadier
 16 general in all the services except for the Navy,
 17 and it's a rear admiral lower half. They're the
 18 only ones that can initiate the inquiry. They can
 19 delegate the inquiry I believe to a O5, which is a
 20 lieutenant colonel or a commander. And they
 21 conduct the inquiry.
 22 Once the results of that inquiry are

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1 given back to the O7, then that person decides if
 2 there enough for it to be -- to go to a discharge
 3 board or a separations board.
 4 Q All right. Well, let's focus on the
 5 period of time before the revisions that were made
 6 recently this year.
 7 A Okay.
 8 Q Okay?
 9 A Yes, sir.
 10 Q So the process would be the commander
 11 receives information; that's the first thing that
 12 happens, right?
 13 A Correct.
 14 Q The commander then evaluates whether the
 15 information is credible; that's the second step,
 16 right?
 17 A Correct.
 18 Q If the commander decides the information
 19 is credible, he or she appoints an inquiry officer
 20 to make inquires about the report?
 21 A Correct.
 22 Q And then the inquiry officer comes back

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1 to the commander with the results of the findings?
 2 A Yes.
 3 Q And then the commander decides whether
 4 or not to initiate a discharge?
 5 A Based on the results of the inquiry,
 6 yes, sir.
 7 Q Okay.
 8 A Yes, sir.
 9 Q All right. So with that in mind, let's
 10 look at 21-C.
 11 A Okay.
 12 Q So if a person -- I'm sorry, if there
 13 has been information received about a member, and
 14 that member -- and that's the only stage that it
 15 has reached so far, the commander has received
 16 information. Okay?
 17 A Okay.
 18 Q And that person's unit receives alert
 19 notification, that person will enter active duty
 20 with the unit under this regulation, right?
 21 A That's my understanding yes, sir.
 22 Q Let's continue on with this.

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1 So if a commander receives information
 2 about a member and determines that the information
 3 is credible, and that's the only point at which
 4 the matter stands at that moment when the unit
 5 receives alert notification, that person will
 6 enter active duty with the unit, right?
 7 A That's my understanding, yes, sir.
 8 Q And let's say that the commander has
 9 received information and determined that the
 10 information was credible and has appointed an
 11 inquiry officer, and that's the stage at which it
 12 stands when the unit receives alert notification,
 13 in that situation the member will enter active
 14 duty with the unit, under this regulation; is that
 15 right?
 16 A That's my understanding, yes, sir.
 17 Q Okay. And let's say that information
 18 has been received, the commander has deemed it
 19 credible, appointed an inquiry officer. And the
 20 inquiry officer reports back to the commander.
 21 And the commander has not yet made a decision
 22 whether to initiate discharge.

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1 At that stage, if the unit receives
 2 alert notification, the member will enter active
 3 duty with the unit, correct?
 4 A That's my understanding, yes, sir.
 5 Q And if in this scenario the commander
 6 receives information, deems it credible, appoints
 7 an inquiry officer, then the inquiry officer
 8 reports back and the commander believes that there
 9 is grounds for separation under Don't Ask, Don't
 10 Tell, the commander can elect not to request a
 11 discharge at that particular point in time, and
 12 the member could enter active duty with his unit,
 13 right?
 14 MR. GARDNER: Objection, the sentence
 15 mischaracterizes the policy.
 16 THE WITNESS: [Witness examined
 17 document]. Can you restate the question?
 18 BY MR. WOODS:
 19 Q Sure. I know it was long.
 20 A Yeah, it was long.
 21 Q All right. Okay. Assume that a
 22 commander receives information, deems it credible,

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1 appoints an inquiry officer. The inquiry officer
 2 comes back to the commander and says yes, the
 3 information is credible and the member is subject
 4 to discharge under Don't Ask, Don't Tell. But the
 5 commander has, for whatever reason, not yet
 6 initiated a discharge.
 7 If that unit is deployed, the member
 8 would enter active duty with his unit, right?
 9 MR. GARDNER: Objection,
 10 mischaracterizes the policy. Also objection,
 11 hypothetical.
 12 You can answer if you understand it.
 13 THE WITNESS: If that unit is alerted
 14 for deployment, not if they're deployed --
 15 BY MR. WOODS:
 16 Q Right.
 17 A -- if they're alerted for deployment,
 18 they would enter active duty. That's my
 19 understanding, yes, sir.
 20 Q Okay. Thank you for correcting my
 21 misuse of military terminology. Okay. Thank you.
 22 Now, this regulation that we are looking

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1 at, this FORSCOM regulation, was -- is part of a
 2 unit commander's handbook; is that right?
 3 A That's what it says on the front cover,
 4 so I could only assume that, yes, sir.
 5 Q And it appears it was effective as of
 6 July 15, 1999?
 7 A Yeah, based on -- that's what the cover
 8 says, yes, sir.
 9 Q Right. And do you know whether a prior
 10 version of this handbook included the same
 11 language that we've been looking at about
 12 homosexual conduct?
 13 MR. GARDNER: Objection, beyond the
 14 scope of the Rule 30(b)(6) deposition, which is
 15 limited from 2001 to the present.
 16 THE WITNESS: I don't know.
 17 BY MR. WOODS:
 18 Q Okay. And do you know if it is still in
 19 effect today?
 20 A My understanding is it is still in
 21 effect today.
 22 Q Okay. And did it change in any way

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1 after 9/11, as far as you know?
 2 MR. GARDNER: Objection, vague.
 3 THE WITNESS: I don't know
 4 BY MR. WOODS:
 5 Q Okay. Are there any other regulations
 6 in any other branch of the armed forces similar to
 7 what we've looked at here?
 8 MR. GARDNER: Objection, vague.
 9 THE WITNESS: I asked that question of
 10 the MRAs as well. And they reported back that
 11 they have no similar regulation.
 12 BY MR. WOODS:
 13 Q All right. And I'm sorry, you used
 14 another acronym there.
 15 A I'm sorry. Manpower and Reserve
 16 Affairs. When you've been in 21 years, you kind
 17 of talk that way, so --
 18 Q No, I understand. But I'm just trying
 19 to decipher it. That's all.
 20 A Yeah.
 21 Q So this is one of the questions you --
 22 A Yes, sir.

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1 Q -- in your e-mail -- let me finish the
 2 question.
 3 A I'm sorry.
 4 Q All right. This is one of the questions
 5 you asked in your e-mail to the Manpower Reserve
 6 Affairs Office of the Air Force, the Navy, and the
 7 Army's comparable?
 8 A Correct. It is.
 9 Q Have you ever heard about the notion
 10 that people might falsely claim to be homosexual
 11 in order to avoid deployment?
 12 MR. GARDNER: Objection, beyond the
 13 scope of the Rule 30(b)(6) deposition. Objection,
 14 lack of foundation.
 15 You can answer if you have personal
 16 knowledge.
 17 THE WITNESS: I've heard of that. I've
 18 heard of that being possibly done.
 19 BY MR. WOODS:
 20 Q Okay. Are you aware of any reports or
 21 statistics about the frequency or infrequency of
 22 that happening?

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1 MR. GARDNER: Objection, beyond the
 2 scope of the Rule 30(b)(6) deposition. Objection,
 3 lack of foundation.
 4 THE WITNESS: No, sir, I'm not.
 5 BY MR. WOODS:
 6 Q Okay. Do you have any information as to
 7 how many times this FORSCOM regulation that we've
 8 been looking at has been employed; in other words,
 9 how many people were sent into active duty under
 10 this section 21 of the FORSCOM regulation?
 11 A No, sir, I do not.
 12 Q Did you ask that question?
 13 A No, I did not.
 14 Q Did you, in preparation for this
 15 deposition, ask anyone whether Don't Ask, Don't
 16 Tell is applied more or less often in times of
 17 war?
 18 MR. GARDNER: Objection, beyond the
 19 scope of the Rule 30(b)(6) deposition notice.
 20 THE WITNESS: No, I did not.
 21 BY MR. WOODS:
 22 Q And are you aware that some people

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1 believe that the policy is applied less frequently
 2 in times of war?
 3 MR. GARDNER: Objection, beyond the
 4 scope of the Rule 30(b)(6) deposition. Objection,
 5 vague as to "some persons." Objection, lack of
 6 foundation. Objection, calls for speculation.
 7 THE WITNESS: I don't know.
 8 BY MR. WOODS:
 9 Q You said you looked at some of the
 10 regulations in preparation for your deposition.
 11 Did you look at the Department of
 12 Defense instruction number 1332.14?
 13 A Can I see that just to make sure?
 14 Q Sure. I have a version of it here.
 15 [Handing document].
 16 A [Witness examined document]. Yes, sir,
 17 this is -- this is the newest version of this
 18 instruction.
 19 Q Okay. And is this what you reviewed in
 20 preparation for your deposition?
 21 A Yes, it is.
 22 Q Okay. Good.

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1 MR. WOODS: Let me mark that as an
 2 exhibit. It will be the next exhibit, 93.
 3 (Deposition Exhibit No. 93
 4 marked for identification.)
 5 BY MR. WOODS:
 6 Q All right. And this regulation applies
 7 to all the branches of the service, doesn't it?
 8 A That's correct.
 9 Q And when you say this is the newest
 10 version, do you happen to know when this version
 11 was put into place?
 12 A [Handing document to counsel].
 13 There were two attached, yes.
 14 Q Okay. Good.
 15 A I believe the date to be March 25th of
 16 this year.
 17 Q And the changes that were made on that
 18 date are the ones that are indicated by the
 19 redlining?
 20 A Yes, sir, the line-in/line-out changes,
 21 yes, sir.
 22 Q Now, I want you to look at page 5. And

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1 this regulation goes on for several pages in
 2 everything it says. There is a provision here
 3 that says -- it starts with number seven --
 4 Nothing in these procedures.
 5 Do you see that?
 6 A Yes, I do.
 7 Q And then it goes on in subsection C,
 8 Precludes retention of a service member for a
 9 limited period of time in the interest of national
 10 security as authorized by the secretary concerned.
 11 Do you see that?
 12 A Yes, I do.
 13 Q And does this portion of the regulation
 14 allow the retention of a homosexual service member
 15 for a limited period of time in the interest of
 16 national security as authorized by the secretary
 17 of the branch in which that member serves?
 18 MR. GARDNER: Objection, calls for a
 19 legal conclusion.
 20 THE WITNESS: Just bear with me while I
 21 parse this.
 22 [Witness examined document]. Okay. Can

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1 you re-ask the question, sir? I read it.
 2 BY MR. WOODS:
 3 Q Does this portion of the regulation
 4 allow the retention of a homosexual service member
 5 for a limited period of time in the interest of
 6 national security if authorized by the secretary
 7 of the branch in which that member serves?
 8 MR. GARDNER: Objection, calls for a
 9 legal conclusion.
 10 THE WITNESS: [Witness examined
 11 document]. I don't know.
 12 BY MR. WOODS:
 13 Q Isn't that what it says?
 14 MR. GARDNER: Objection. Exactly.
 15 Calls for a legal conclusion. The document speaks
 16 for itself.
 17 THE WITNESS: [Witness examined
 18 document]. I can't -- I don't know. I can't
 19 testify to the intent that --
 20 BY MR. WOODS:
 21 Q I didn't ask about the intent. Okay.
 22 So do you have any reason to believe it

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1 does not mean exactly what it says, which is that
 2 nothing in the regulations precludes the retention
 3 of a homosexual service member for a limited
 4 period of time in the interest of national
 5 security if authorized by the secretary of that
 6 branch?
 7 MR. GARDNER: Objection, calls for a
 8 legal conclusion. The regulation speaks for
 9 itself.
 10 THE WITNESS: [Witness examined
 11 document]. I don't know, sir. I don't.
 12 BY MR. WOODS:
 13 Q Okay. This regulation that we're
 14 looking at, number 1332.14, applies to enlisted
 15 personnel only; is that right?
 16 A That's correct.
 17 Q Okay. Is there a different instruction
 18 or regulation for separation of officers?
 19 A Yes, sir, there is.
 20 Q All right. And is that number 1332.30?
 21 A I believe that to be true, yes, sir.
 22 Q All right. Let me show you then what

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1 I'll mark as Exhibit 94.
 2 (Deposition Exhibit No. 94
 3 marked for identification.)
 4 THE WITNESS: [Witness examined
 5 document].
 6 BY MR. WOODS:
 7 Q And on page 3 of this -- first of all,
 8 Exhibit 94 is the regulation about separation of
 9 officers for homosexual conduct, right?
 10 A Correct. Yes, sir.
 11 Q And this version I've handed you is the
 12 most recent version recently modified?
 13 A Correct.
 14 Q As indicated by the lining on it?
 15 A Yes, sir.
 16 Q All right. Directing your attention to
 17 page 3, subsection C-2.
 18 Nothing in this instruction or the
 19 service implementing regulations requires that an
 20 officer be processed for separation when a
 21 determination is made as follows, in accordance
 22 with the regulations prescribed by the secretary

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1 of the military departments concerned, that: The
 2 officer -- one, the officer engaged in acts, made
 3 statements or married or attempted to marry a
 4 person known to be of the same biological sex for
 5 the purpose of avoiding military service; and
 6 separation of the office would not be in the best
 7 interest of the armed forces.
 8 Do you see that?
 9 A Yes, sir, I do.
 10 Q Do you know how many times that ever
 11 happened?
 12 MR. GARDNER: Objection, beyond the
 13 scope of the Rule 30(b)(6) notice deposition.
 14 Also objection, vague what "that" refers to.
 15 THE WITNESS: No, sir, I do not.
 16 BY MR. WOODS:
 17 Q Okay. I'm going to back to the prior
 18 regulation, 1332.14.
 19 Do you know how many times the secretary
 20 of any of the branches authorized the retention of
 21 a homosexual service member for a limited period
 22 of time in the interest of national security?

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1 A No, sir.
 2 MR. GARDNER: Objection, beyond the
 3 scope of the Rule 30(b)(6).
 4 BY MR. WOODS:
 5 Q You can answer.
 6 A No, sir, I do not.
 7 Q And do you know if there are any records
 8 kept of such occasions?
 9 MR. GARDNER: Objection, beyond the
 10 scope of the Rule 30(b)(6) deposition.
 11 THE WITNESS: I do not, no.
 12 BY MR. WOODS:
 13 Q Are you aware of any individual members
 14 of the armed forces who were retained although
 15 they were known to be homosexuals?
 16 A No, sir, I do not.
 17 Q Have you read any articles about such
 18 instances?
 19 MR. GARDNER: Objection, relevance.
 20 THE WITNESS: Read any articles that
 21 they were retained and to be known homosexuals?
 22 BY MR. WOODS:

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1 Q Yes.
 2 A No.
 3 Q You seem surprised to even think of the
 4 concept.
 5 MR. GARDNER: Objection.
 6 BY MR. WOODS:
 7 Q Have you not seen articles, for example,
 8 about Lieutenant Dan Choi?
 9 MR. GARDNER: Objection,
 10 mischaracterizes Lieutenant Choi's status.
 11 THE WITNESS: I've seen them, but I
 12 can't recall -- I can't recall the background of
 13 it, to be honest with you.
 14 BY MR. WOODS:
 15 Q Okay. Are you aware of an article in
 16 the Boston Globe in 2006 reporting that 36 members
 17 of the armed forces were openly gay and allowed to
 18 stay in uniform that year?
 19 MR. GARDNER: Objection, hearsay.
 20 Objection, relevance.
 21 THE WITNESS: No, I'm not aware of that.
 22 BY MR. WOODS:

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1 Q Have you read any articles on this
 2 subject in the Stars and Stripes?
 3 A No, I haven't read the Stars and
 4 Stripes, so no.
 5 Q What is Stars and Stripes?
 6 A It's an overseas newspaper. It's
 7 basically -- yeah, basically an overseas newspaper
 8 for military personnel.
 9 Q And is it produced by the military?
 10 A Sir, I have no idea. I don't know.
 11 Q So you're not familiar with an article
 12 in the Stars and Stripes, April 14, 2010, called,
 13 Discharged Gay Sailor Called Back to Active Duty?
 14 MR. GARDNER: Objection, asked and
 15 answered. Objection, hearsay.
 16 THE WITNESS: No.
 17 BY MR. WOODS:
 18 Q I'm sorry. I have the date wrong on
 19 that. It's actually May 6, 2007.
 20 MR. GARDNER: Same objections.
 21 THE WITNESS: Same answer. No.
 22 BY MR. WOODS:

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1 Q Are you aware of any occasion when
 2 homosexuals were called to active duty despite
 3 acknowledging that they were homosexual or gay?
 4 A I can't say that I, personally, am aware
 5 of that, no, sir.
 6 Q Have you ever served with homosexuals?
 7 MR. GARDNER: Objection, relevance.
 8 Objection, beyond the scope of the Rule 30(b)(6)
 9 deposition.
 10 THE WITNESS: I don't know.
 11 BY MR. WOODS:
 12 Q Okay. At least no one has informed you
 13 that he or she is a homosexual among the people
 14 that you've worked with in the Air Force?
 15 MR. GARDNER: Objection, beyond the
 16 scope of the Rule 30(b)(6) deposition. Objection,
 17 relevance.
 18 THE WITNESS: No, no one's informed me
 19 so that I'm aware that they're homosexual and I
 20 served with them, no.
 21 BY MR. WOODS:
 22 Q Well, let me ask you this, Colonel.

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1 If you went back to your unit tomorrow
 2 and announced that you were homosexual or
 3 bisexual, do you think that would have any impact
 4 on cohesion or morale in your unit?
 5 MR. GARDNER: Objection, beyond the
 6 scope of the Rule 30(b)(6) deposition. Objection,
 7 calls for speculation. Objection, relevance.
 8 Objection, hypothetical.
 9 THE WITNESS: Are you asking my personal
 10 opinion?
 11 BY MR. WOODS:
 12 Q Yeah.
 13 A My personal opinion is yeah, it likely
 14 would. If I went back as -- in my position as a
 15 commander, there could be a probability that it
 16 would impact my ability to lead, impact whether,
 17 you know, someone had a moral dislike toward me
 18 because of that. It could then impact good order
 19 of discipline of the unit, which I'm responsible
 20 for as the commander.
 21 So if you're asking my personal opinion,
 22 the answer is yeah, I think it could have an

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1 impact. Now, how much? I don't know.
 2 Q You think people would not consider the
 3 quality of your service and your capabilities?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition. Objection,
 6 hypothetical. Objection, calls for speculation.
 7 Objection, relevance.
 8 If you want to give your personal views,
 9 go for it.
 10 THE WITNESS: Personal opinion, yeah, I
 11 do. Because in the military, we have -- we have
 12 professionals from all walks of life that come in
 13 with different ideas, different moral value,
 14 different sets, different values. And I can't say
 15 that there would not be some people in there
 16 that -- that could be against me because of -- if
 17 I came out and said I was an open homosexual.
 18 It has potential to have impact. How
 19 much impact, I don't know. But I would be
 20 concerned about it, as a commander.
 21 BY MR. WOODS:
 22 Q And you mentioned that some people might

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1 have an immoral dislike of you if you were to come
 2 out, for lack of a better word?
 3 A Right.
 4 Q Do you think someone's moral dislike of
 5 you for that reason is important?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition. Objection,
 8 relevance. Objection, speculation.
 9 If you have personal views, go ahead.
 10 THE WITNESS: Personal view is to me
 11 personally it would not matter that they had a
 12 moral I guess detest for what I am. But as a
 13 commander, it would certainly matter because I
 14 don't know how much sway that person has in the
 15 unit, whether they can then, you know, create some
 16 good order and discipline problems within the
 17 unit, that's then going to affect my ability to
 18 lead.
 19 MR. WOODS: Why don't we go off the
 20 record and take a five-minute break at this point.
 21 (Recess)
 22 BY MR. WOODS:

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1 Q We talked a little while ago about a
 2 1992 Air Force poll.
 3 Do you recall that?
 4 A Yes, sir, I do.
 5 Q Do you know whether the poll that was
 6 done at that time also polled or surveyed
 7 attitudes of non-military people?
 8 A Not that I'm aware.
 9 Q Now, as we all know in this case,
 10 various documents have been produced to us by the
 11 Defendants.
 12 Were you involved in the process of
 13 producing documents to us?
 14 A I was in one of the offices that was
 15 asked if we had documents, yes.
 16 Q And what, if anything, did you do after
 17 being asked about documents?
 18 A My office searched our files, if we had
 19 anything dealing with the matter.
 20 Q When you say my office, does that --
 21 what do you mean? Your personal office, or the
 22 section in which you work?

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1 A The section within I work.
 2 Q Is that the right term, "section"?
 3 A Yeah, it'll do.
 4 Q Would you describe the search that was
 5 done in your section, please?
 6 MR. GARDNER: Which topic are you on
 7 now?
 8 MR. WOODS: This is part of seven.
 9 MR. GARDNER: Okay.
 10 THE WITNESS: I wasn't the primary
 11 person doing the search in our office, but I know
 12 we did an electronic search on our files in the
 13 office, as well as a search of hard copy files in
 14 our office.
 15 BY MR. WOODS:
 16 Q Who was the primary person involved in
 17 that?
 18 A In my office, it was Lieutenant Greg
 19 Brown.
 20 Q What is Colonel Brown's position?
 21 A Greg is -- Colonel Brown is the -- I
 22 believe his duty title is chief officer programs.

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1 But he also performed duties somewhat like an
 2 executive officer for Mr. Retherford.
 3 Q And do you have any information about
 4 the extent of the electronic search that was done?
 5 A Within my office?
 6 Q Yes.
 7 A Other than we searched all of our hard
 8 drives as well as any share drives, network share
 9 drives.
 10 Q When you say our hard drives, what do
 11 you mean by that?
 12 A I meant within my office.
 13 Q Okay. And when you referred to network
 14 share drives, what are you referring to there?
 15 A They are drives -- they are -- they are
 16 common drives on a network where people can store
 17 information. And our office has a drive that's
 18 dedicated not only to us but others within
 19 military personnel policy. And that's where we
 20 conducted the search. So it's a common drive
 21 that's accessible within the office.
 22 Q All right. So when you say it's a

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1 common drive or a share drive, I want to find out
 2 how broad it goes.
 3 Is it just within the particular part of
 4 the Air Force in which you are working today?
 5 A No. Actually, I'm within -- not part of
 6 the Air Force.
 7 Q Okay.
 8 A I'm within -- if I could show you that
 9 document.
 10 Q The organization chart?
 11 A Yes, sir.
 12 Q All right. I did have those documents
 13 copied over the break. So I'm going to give you
 14 back your originals. And let me mark as
 15 exhibits -- as Exhibit 95 the org chart for the
 16 Department of Defense, and 96 the org chart
 17 headed, Defense Agencies.
 18 A Yes, sir.
 19 (Deposition Exhibits No. 95
 20 and 96 marked for
 21 identification.)
 22 THE WITNESS: [Witness examined

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1 document].

2 BY MR. WOODS:

3 Q Okay. So you were saying?

4 A Okay. So to put this in context, if you

5 look at Exhibit 95, here where it says Office of

6 the Secretary of Defense?

7 Q Yes.

8 A And then you have undersecretaries?

9 Q Yes.

10 A I'm under the undersecretary for

11 personnel and readiness. So if you flip to the

12 next page, it shows you where the undersecretary

13 for Defense for personnel and readiness is. And

14 within that construct, I am just within the P&R

15 area. The P&R -- PDUSD P&R is further broken

16 down --

17 Q Slow down. You have to slow down for

18 her, please.

19 A Oh, I'm sorry.

20 Q Especially when you use the acronyms.

21 So go ahead.

22 You're within the P&R area?

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1 A Which stands for personnel and

2 readiness.

3 Q Right.

4 A That is further broken down into other

5 directorates, one of which is military personnel

6 policy, which is not depicted on here, but it's

7 further broken down. And then within military

8 personnel policy is officer and enlisted personnel

9 management. That's where my office is at. So

10 that's where the search was done.

11 The common drive that I referred to, I

12 believe it to be true that the people that can see

13 that common drive are everyone in military

14 personnel policy and down.

15 Q All right. So if you look at the org

16 chart, this network share drive or common drive is

17 shared by which columns on this chart, Exhibit 96?

18 A Oh, that specific network drive that I'm

19 talking about is shared only within this PDUSD

20 P&R.

21 Q Okay. All right. And when you searched

22 or Colonel Brown searched electronically on the

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1 office hard drive and the network shared drive, do

2 you know what was searched?

3 MR. GARDNER: Objection, vague.

4 BY MR. WOODS:

5 Q In other words, what search terms were

6 used?

7 A No, sir, I do not. I don't know what

8 values he put in it as a search mode.

9 Q Okay. Do you have any information about

10 whether the documents that were produced to us by

11 the Defendants in this case is a complete

12 production of all of the documents that we

13 requested and were allowed to obtain?

14 A I'm told they are.

15 Q Okay. And who told you that?

16 A Actually, it was Captain Grant who

17 showed me the memo that was the memo that went out

18 to all of Department of Defense, to include

19 Defense agencies, requesting that information.

20 Q So you only know what's in a memo that

21 Captain Grant showed you?

22 A Well --

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1 MR. GARDNER: Objection,

2 mischaracterizes the --

3 BY MR. WOODS:

4 Q And what you know from what happened in

5 your office?

6 MR. GARDNER: Objection,

7 mischaracterizes the witness's testimony.

8 THE WITNESS: I know that the memo was

9 sent. And the result of that memo within my

10 office -- not within the entire Department of

11 Defense -- I can tell you what was done there. I

12 could not tell you what was done in those other

13 agencies. However, they were instructed to do a

14 thorough search.

15 BY MR. WOODS:

16 Q And can you tell me who the memo was

17 sent to?

18 A Can I see a copy of the memo?

19 Q I don't have a --

20 MR. GARDNER: He didn't have it.

21 THE WITNESS: Oh, he didn't have it?

22 It was sent to -- when I received the

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1 memo in comparison to this -- these charts --
 2 [indicating] -- it was addressed to everyone
 3 accept for the combatant commands.
 4 BY MR. WOODS:
 5 Q All right. So if you want to use these
 6 charts, Exhibits 95 and 96, to help.
 7 A Yes, sir.
 8 Q Who was sent this memo by Captain Grant
 9 in order to gather documents to be produced to us
 10 in this case?
 11 A Oh, the DOD field activities, the
 12 Defense agencies.
 13 Q And when you say -- I'm sorry to
 14 interrupt, but when you say DOD field activities,
 15 do you mean to include all of the centers or
 16 activities listed underneath the heading DOD --
 17 A Yes, sir, I --
 18 Q -- activities?
 19 A Yes, sir, I do.
 20 Q Similarly, when you say Defense
 21 agencies, do you mean to include --
 22 A Likewise.

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1 Q -- all the items in that box labeled,
 2 Defense Agencies, on Exhibit 95?
 3 A I do.
 4 Q Okay.
 5 A It was also sent to the departments of
 6 the Army, the Navy, and the Air Force, and as well
 7 as the inspector general and the Chairman of the
 8 Joint Chiefs of Staff, and everyone under him.
 9 Q I take it you have no personal
 10 information about what response was received to
 11 the memo from any location other than your own
 12 office?
 13 A That would be correct.
 14 Q Did anyone tell you what was received by
 15 anybody else, or rather received from anybody
 16 else?
 17 A Not that I recall, no.
 18 Q Did the memo that Captain Grant sent out
 19 include terms that were to be searched on
 20 computers?
 21 A Not that I'm aware. And I also don't
 22 believe it's correct that Captain Grant sent that

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1 out. It was Captain Grant that showed it to me.
 2 Q Okay.
 3 A But it was signed out by someone else.
 4 Who, frankly, the name escapes me. But I'm not
 5 aware -- I don't remember. I don't know.
 6 Q Well, you said your office used some
 7 search terms, but you weren't sure what they were.
 8 Do you --
 9 A Yeah, I --
 10 Q -- know who decided what search terms to
 11 use in your office?
 12 A No, sir, I do not.
 13 Q And did you, personally, see any of the
 14 documents that were provided to us?
 15 MR. GARDNER: Objection, vague.
 16 THE WITNESS: I would have only seen
 17 those that -- that when I was searching on the
 18 Inter -- or on the share drive that would have
 19 been provided. So I wouldn't have seen all of
 20 them. But there may have been some that were
 21 provided, but I don't recall.
 22 BY MR. WOODS:

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1 Q All right. But aside from the ones that
 2 came from your office, you didn't see any of the
 3 documents that were gathered in response to the
 4 memo that was sent?
 5 A At the time they were received?
 6 Q Yes.
 7 A No, sir.
 8 Q Do you remember when this memo was sent
 9 out?
 10 A The exact date, no, sir, I do not.
 11 Q Can you give me your best estimate,
 12 please?
 13 A I believe it was in the August/September
 14 time frame of last year.
 15 Q Okay. And do you recall only one such
 16 memo?
 17 A That's all I have seen.
 18 Q And had you seen this memo before you
 19 were beginning the process of preparing for the
 20 deposition today?
 21 A Yes, I have.
 22 Q Do you have any information, as you are

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1 here today, on whether the all responsive
 2 documents have been produced to us, other than
 3 what you've already said?
 4 MR. GARDNER: Objection, asked and
 5 answered.
 6 THE WITNESS: It's my understanding they
 7 have.
 8 BY MR. WOODS:
 9 Q And what is the basis of your
 10 understanding?
 11 A The -- everyone that I mentioned
 12 previously was asked for the documents. And they
 13 were provided. But I can't -- I can't testify to
 14 exactly who provided them, though.
 15 Q Well --
 16 A That's just my understanding.
 17 Q Okay. And so the question is what is
 18 the basis of your understanding that the documents
 19 were provided?
 20 A My conversation with counsel.
 21 Q Apart from conversation with counsel,
 22 you don't have any independent knowledge of

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1 whether we were provided with the documents that
 2 we had requested; is that right?
 3 MR. GARDNER: Objection, vague as to
 4 "independent knowledge."
 5 THE WITNESS: I, personally, have no
 6 knowledge, no.
 7 MR. WOODS: All right. Let's mark as
 8 the next exhibit, which is 97, this other document
 9 that we had copied at the break, which is this
 10 four-page charted called, Days between deployment
 11 end date and separation date.
 12 (Deposition Exhibit No. 97
 13 marked for identification.)
 14 BY MR. WOODS:
 15 Q All right. And I gather this is a
 16 document that you reviewed in preparation for your
 17 deposition today since it was in that folder you
 18 brought with you?
 19 A That's correct.
 20 Q And where did you get this document?
 21 A This document was provided by Captain --
 22 Q Captain Grant again?

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1 A Yes, Captain Grant. Sorry.
 2 Q And did you have some discussion with
 3 him about it?
 4 A Yes, sir.
 5 Q And when was the discussion with Captain
 6 Grant about Exhibit 97?
 7 A I believe it to have been earlier this
 8 week.
 9 Q Okay. Had you asked him to prepare or
 10 provide you with this document?
 11 A I honestly don't recall whether I asked
 12 or someone else asked.
 13 Q Okay. And what do you recall about the
 14 discussion you had with Captain Grant about this
 15 document, Exhibit 97, earlier this week?
 16 A It was -- there was a concern that -- I
 17 believe in one of the questions that was
 18 answered -- about people being discharged while
 19 overseas or investigations happening overseas.
 20 And we don't keep track of any type of
 21 investigations or inquiries. But we wanted to
 22 look to see just to show in relation to deployment

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1 how many days after that return from deployment
 2 people were separated.
 3 Because the way it works is no one is
 4 separated from overseas. They -- or from a
 5 deployment zone. They return to their home
 6 station, to their normal duty station, prior to
 7 deployment. And they are deployed -- excuse me,
 8 they are separated after return from there. And
 9 the reason for this document was just to see if --
 10 how close to -- from return from deployment
 11 somebody was separated.
 12 Q Okay.
 13 A Was the simple purpose of this.
 14 Q All right. Thank you.
 15 And do you know who prepared this
 16 document?
 17 A I believe it was Defense Manpower Data
 18 Center, but I can't attest to that.
 19 Q Okay. And you said a couple things in
 20 your answer a moment ago that I wanted to follow
 21 up on.
 22 A Okay.

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1 Q You said, if I understood and heard you
 2 right, that you don't keep track of investigations
 3 or inquiries; is that correct?
 4 A That's true.
 5 Q All right. So --
 6 A We don't keep track of that.
 7 Q So in the process we described before,
 8 if the commander receives information, deems it
 9 credibility, he then sends it to an inquiry
 10 officer for an inquiry, right?
 11 A Yes.
 12 Q Okay. Are there any statistics or
 13 records kept about the number of such inquiries?
 14 A No, there are not, no.
 15 Q Okay. Are there records keep in any of
 16 the branches of the services about that?
 17 A Not that I'm aware, no, sir.
 18 Q And when you were talking about
 19 inquiries, do you mean the same by the term you
 20 also used, "investigations," or do you mean that
 21 to mean something different?
 22 MR. GARDNER: Objection, that's within

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1 your 30(b)(6) notice, to be clear.
 2 THE WITNESS: I'm not following your
 3 question.
 4 BY MR. WOODS:
 5 Q Well, you used the terms you don't keep
 6 track of investigations or inquiries.
 7 As you used those terms in your answer,
 8 do you mean to use them in the same way, or do
 9 they mean something different to you?
 10 A I use them -- for me, they're the same.
 11 Q So as far as you know, none of the
 12 branches of the services keep any records of the
 13 number of inquiries under Don't Ask, Don't Tell?
 14 A That's correct, no. You're correct. I
 15 don't know --
 16 Q Okay.
 17 A -- if they do.
 18 Q Do you know if any records are kept
 19 about the number of separation proceedings that
 20 are commenced?
 21 A That are commenced, no, sir. That are
 22 commenced in the deployment zone?

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1 Q No, no, no. Just commenced. Period.
 2 A No, they're not. Not commenced.
 3 Q Okay. Do you know whether there are any
 4 records kept about the number of service members
 5 who successfully rebut the presumption of
 6 homosexual conduct?
 7 MR. GARDNER: Objection, beyond the
 8 scope of the Rule 30(b)(6) deposition notice.
 9 Also objection to the extent this implicates topic
 10 number 12, which is off-limits.
 11 THE WITNESS: Not that I'm aware.
 12 BY MR. WOODS:
 13 Q Now, you also said in one of your
 14 answers a moment ago that no one is separated from
 15 a deployment zone; is that correct?
 16 A That's true.
 17 Q Is that by policy?
 18 A It is not within -- I'm not aware that
 19 it's within DOD policy. But the services have
 20 that policy. I know the Army has that policy
 21 and -- I'm not aware that its OSD policy. But,
 22 yeah, I know that that's what the services do.

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1 Q Now, again you used another acronym.
 2 A I'm sorry.
 3 Q OSD, that means Office of the Secretary
 4 of Defense?
 5 A Office of the Secretary of Defense.
 6 Q I'm learning your terminology.
 7 So your understanding is that each of
 8 the branches of the armed forces have individual
 9 policies that specify that people will not be
 10 separated from duty or homosexual conduct while-in
 11 a deployment zone?
 12 MR. GARDNER: Objection,
 13 mischaracterizes the testimony.
 14 THE WITNESS: I would go further than
 15 that, that they won't be separated for any reason
 16 in the deployment zone.
 17 BY MR. WOODS:
 18 Q Okay.
 19 A The reason for that is that's not quite
 20 the right place to separate somebody, and telling
 21 them to find a way back home. So we bring them
 22 back home. And then we'll separate them from

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1 their duty station.
 2 Q All right. And in the Don't Ask, Don't
 3 Tell process that you have described, are
 4 inquiries of the sort you described done in
 5 deployment zones?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition.
 8 THE WITNESS: My understanding is they
 9 are.
 10 BY MR. WOODS:
 11 Q And what does a commander do if he
 12 receives back the results of an inquiry and
 13 believes that reason exists for separation under
 14 the policy?
 15 MR. GARDNER: Same objection.
 16 THE WITNESS: They would follow the
 17 policy from there. If they believe that there is
 18 a violation of the policy, then a separation board
 19 would convene.
 20 BY MR. WOODS:
 21 Q And would a separation board convene in
 22 a deployment zone?

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1 A My understanding is it would. I don't
 2 know that that's ever happened, personally. But
 3 my understanding is it would.
 4 Q Well, there is a Department of Defense
 5 policy about that one way or the other?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6).
 8 THE WITNESS: Not that I'm aware of.
 9 BY MR. WOODS:
 10 Q Are there policies by individual
 11 branches about that?
 12 MR. GARDNER: Same objection.
 13 THE WITNESS: Not that I'm aware.
 14 BY MR. WOODS:
 15 Q All right. And when you received this
 16 document from Captain Grant that we're looking at,
 17 Exhibit 97, what information did you derive from
 18 it?
 19 A First, I noticed that a large number had
 20 never by deployed. And then further I noted
 21 that -- that it seemed a trend that most of the
 22 folks -- most of the people were separated beyond

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1 361 days after their return. It seemed to trend
 2 that way.
 3 Q And did you find that to be the case in
 4 each of the fiscal years covered by this document?
 5 A [Witness examined document]. I would
 6 say generally that's true, based on this document.
 7 Q Okay. And so the largest category of
 8 people separated from service because of Don't
 9 Ask, Don't Tell are people who were never deployed
 10 to a combat zone at all?
 11 A Yeah, based on this data, yes, sir --
 12 Q Okay.
 13 A -- I would admit that.
 14 Q Okay. And that's right because the
 15 majority of people never are deployed to combat,
 16 right?
 17 MR. GARDNER: Objection, vague.
 18 THE WITNESS: I don't -- I don't know
 19 the numbers or the data as to who's been deployed
 20 or who has not been deployed. So, yeah, I can't
 21 say that the majority have or have not.
 22 BY MR. WOODS:

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1 Q Okay. And then the second largest
 2 category I gather are people who were deployed and
 3 are discharged 361 days or more after the
 4 deployment ended.
 5 Am I right about that?
 6 A That's the way the data reads to me,
 7 yes, sir.
 8 Q Okay. So the second largest group,
 9 according to this chart, are people who served a
 10 deployment in combat, came back, and remained in
 11 the service for another year, approximately, or
 12 more, right?
 13 A Well, they may have been deployed.
 14 Whether they served in combat, I don't know.
 15 Q All right.
 16 A But, yeah, that's the next largest
 17 group.
 18 Q All right. So what do you understand
 19 this chart to mean when it talks about deployed?
 20 A That someone has been deployed to a
 21 combat zone.
 22 Q To a combat zone. Okay. Thank you.

CS
LF
VA

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1 A Yeah.

2 Q All right. So the second largest

3 category of people, according to this chart, year

4 by year are people who were deployed to a combat

5 zone, came back to their duty station, and served

6 in their respective branch for approximately a

7 year or more after they were returned from the

8 combat zone?

9 A That would be my reading, yes, sir.

10 Q Would that suggest to you, Colonel, that

11 these people had successfully performed their

12 duties as members of the United States Armed

13 Forces in a combat zone?

14 MR. GARDNER: Objection, lack of

15 foundation, calls for speculation.

16 BY MR. WOODS:

17 Q Let me rephrase the question.

18 Would that suggest to you that these

19 people's homosexuality did not affect their

20 performance in a combat zone?

21 MR. GARDNER: Objection, lack of

22 foundation, calls for speculation.

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1 THE WITNESS: I don't know.

2 BY MR. WOODS:

3 Q I mean, if you didn't perform adequately

4 in a combat zone, you're not likely to stay in the

5 service for another year or more, are you?

6 MR. GARDNER: Objection, argumentative.

7 Objection, calls for speculation. Objection,

8 hypothetical.

9 THE WITNESS: That determination would

10 be up to the commander who owns the person about

11 whether he or she, being the commander, determined

12 that they did not perform adequately. And then

13 they will then make a decision.

14 So for me to say that we would

15 automatically separate someone who did not perform

16 well in a combat zone, I don't think I can say

17 that.

18 BY MR. WOODS:

19 Q Well, let's say the person didn't

20 necessarily perform great. But the question is

21 whether the person's homosexuality interfered with

22 the performance.

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1 I mean, if you as a commander had

2 somebody who you didn't separate while deployed in

3 a combat zone for homosexuality and you kept the

4 person on for another year or so, wouldn't it be

5 safe to assume that the person's homosexuality had

6 no impact on their performance in the combat zone?

7 MR. GARDNER: Objection, hypothetical,

8 calls for speculation, lack of foundation.

9 (Whereupon at which time

10 Mr. Easton left the

11 deposition.)

12 THE WITNESS: Yeah, I would say to that

13 that the person may not have violated the policy

14 while they were deployed against homosexual

15 conduct where there's a statement or actually

16 performing some type of homosexual act. So they

17 didn't act upon their homosexuality.

18 The fact that the person's homosexual

19 had no bearing in this. The fact that the person

20 committed -- had homosexual conduct is what's

21 important here. So that's what I would say.

22 BY MR. WOODS:

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1 Q Now, you see on the chart that there are

2 occasional instances where people are separated

3 within two weeks of their return.

4 Do you see that --

5 A Yes, sir.

6 Q -- occasionally happening?

7 A Yes, sir, I did.

8 Q All right. And what does that signify,

9 if anything, to you?

10 MR. GARDNER: Objection, vague.

11 THE WITNESS: It would signify to me

12 that all of the steps that we previously mentioned

13 about the inquiry, their review, the separation

14 board, would have taken place prior to that, to

15 allow that person to separate upon return.

16 BY MR. WOODS:

17 Q Because the process takes longer than

18 two weeks, doesn't it?

19 A I don't know the specific days that it

20 takes.

21 Q But in the normal course, you would

22 expect it to take longer than two weeks, wouldn't

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1 you?
 2 MR. GARDNER: Objection, asked and
 3 answered, lack of foundation.
 4 THE WITNESS: I really don't know. I
 5 haven't participated in one of these boards, so I
 6 don't know how long it takes.
 7 BY MR. WOODS:
 8 Q All right. And the last page of this
 9 document says it's prepared by DMDC.
 10 And what does DMDC stand for?
 11 A That's the Defense Manpower Data Center.
 12 Q Okay. And then it says underneath that,
 13 DRS number 33118.
 14 What does that mean?
 15 A I believe that to be their coding as to
 16 how they performed the search so that if at a
 17 future date we wanted to go back and retrieve
 18 data, say in a year from now, that number could be
 19 used and to retrieve a new report using those same
 20 search parameters as was used on this.
 21 Q Okay. And does the number 33118 mean
 22 anything?

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1 A To me, no. But I think it's just a file
 2 name of search parameters so that this same search
 3 could be performed at a future date --
 4 Q Okay.
 5 A -- using the same parameters.
 6 Q And this document has columns under the
 7 Army section for a category called warrant
 8 officer.
 9 Can you explain what that is, please?
 10 A It's a classification of a soldier in
 11 this case who is neither an enlisted person nor an
 12 officer. They're somewhat in between the two.
 13 They'll outrank the enlisted personnel, but won't
 14 outrank any of the officers between them.
 15 Q What rank does the person have?
 16 Is the rank called warrant officer?
 17 A Yes, sir, it is. And it goes up I
 18 believe to five levels, up to CWO5, which is chief
 19 warrant officer five.
 20 Q All right. And we see in this chart
 21 that on occasion officers from each of the
 22 branches of the service are discharged under Don't

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1 Ask, Don't Tell.
 2 Do you have any understanding as to
 3 whether the process for separating officers is in
 4 any way different from the process for separating
 5 enlisted men?
 6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition.
 8 THE WITNESS: Are you talking about the
 9 process as far as the inquiry?
 10 BY MR. WOODS:
 11 Q Yes.
 12 A No, it's -- from my understanding, it's
 13 not any different.
 14 Q Is the approval required for separation
 15 any different for officers as compared to enlisted
 16 men?
 17 MR. GARDNER: Objection, beyond the
 18 scope of the Rule 30(b)(6) deposition.
 19 THE WITNESS: I believe it to be.
 20 BY MR. WOODS:
 21 Q And how is it different?
 22 A I believe the separation authority is

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1 the Secretary of the Air Force -- or excuse me,
 2 the secretary of that military department.
 3 Q We looked earlier at some documents that
 4 were marked as Exhibit 86, which were the
 5 documents related to women who were separated?
 6 A Yes, sir.
 7 Q And do you remember that it was broken
 8 down by branch and by reason: Act, marriage, or
 9 statement?
 10 A Correct.
 11 Q Are you aware of any documents that
 12 break down the separations of officers by reason?
 13 MR. GARDNER: Objection, beyond the
 14 scope of the Rule 30(b)(6) deposition.
 15 THE WITNESS: I am not aware, no.
 16 BY MR. WOODS:
 17 Q All right. Let's go to category number
 18 seven next.
 19 MR. GARDNER: I thought we were in
 20 category number seven.
 21 BY MR. WOODS:
 22 Q Category seven is for your testimony

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1 about, quote, Reports, research, or analysis
 2 concerning United States Armed Forces personnel
 3 and homosexual conduct or homosexual orientation
 4 commissioned, requested, or received by Defendants
 5 from any personal organization, including but not
 6 limped to the RAND Corporation, Family Research
 7 Council, the Defense Readiness Council, the Center
 8 for Military Readiness, the Retired Officers
 9 Association now called the Military Officers
 10 Association of America, TROA, the American
 11 Security Council Foundation, the Conservative
 12 Resource Center, Exodus International,
 13 Regeneration, The Jackson Institute, Walter Reed
 14 Army Institute of Research, PERSEREC, Military
 15 Working Group Study, U.S. Government
 16 Accountability Office, and the Homosexual Study
 17 Group.
 18 Are you with me?
 19 A Yeah, I'm with you.
 20 Q All right. So what did you do to
 21 prepare to testify today on that topic?
 22 A I spoke with counsel.

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1 Q Okay. Anything else?
 2 A Not that I can remember, no.
 3 Q Okay. Did you review any documents in
 4 preparation for testimony on this subject?
 5 MR. GARDNER: Objection, asked and
 6 answered.
 7 THE WITNESS: For this subject, no.
 8 BY MR. WOODS:
 9 Q Okay. Are you aware of any reports,
 10 research, or analysis that was commissioned,
 11 requested, or received by the Defendants from the
 12 RAND Corporation?
 13 A Yes.
 14 Q And what are you aware of?
 15 A I believe it's a 1992 report from RAND.
 16 Q Okay. And have you ever read that
 17 report?
 18 A I have reviewed the report, yes.
 19 Q And when did you review the report?
 20 A In the last two weeks.
 21 Q Do you know who requested the RAND
 22 report?

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1 A The report I'm referring to, I think it
 2 says on the inside front cover it was requested by
 3 the Secretary of Defense.
 4 Q At the time that was Secretary Aspin?
 5 A Yes, sir, it was.
 6 Q And do you know whether that report by
 7 the RAND Corporation was considered by Congress at
 8 the time it enacted Don't Ask, Don't Tell?
 9 MR. GARDNER: Objection, beyond the
 10 scope of the Rule 30(b)(6) deposition.
 11 You can answer if you know.
 12 THE WITNESS: I don't know whether it
 13 was considered, no.
 14 BY MR. WOODS:
 15 Q Do you know whether it was provided to
 16 Congress?
 17 MR. GARDNER: Same objection.
 18 THE WITNESS: I know that the Secretary
 19 of Defense at that, Secretary Aspin, submitted a
 20 memo to a congressman -- I think it's Senator
 21 Shelby -- that had that report, referenced that
 22 report, that it was attached. So that's all that

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1 I know.
 2 BY MR. WOODS:
 3 Q Okay. So you saw some memo from
 4 Secretary Aspin to Senator Shelby?
 5 A I believe it was Senator Shelby.
 6 Q And do you recall, from your review of
 7 this report, what conclusions it had about service
 8 in the military by homosexuals?
 9 MR. GARDNER: Objection, vague.
 10 Objection, overbroad.
 11 THE WITNESS: No, sir, I don't remember
 12 specifically to that point.
 13 BY MR. WOODS:
 14 Q Do you remember it saying that so long
 15 as homosexual service members perform their
 16 assigned functions effectively and observe
 17 military standards of conducted, integration of
 18 openly gay and lesbian service members would
 19 resemble the uneventful integration of blacks and
 20 women?
 21 MR. GARDNER: Objection, to the extent
 22 it mischaracterizes the document.

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1 THE WITNESS: Can you show me that in
 2 the document? It may jog my memory.
 3 BY MR. WOODS:
 4 Q This is Exhibit 98 that I'll show you,
 5 the RAND report.
 6 (Deposition Exhibit No. 98
 7 marked for identification.)
 8 BY MR. WOODS:
 9 Q First of all, is this the report that
 10 you were referring to earlier?
 11 A Yes, sir, I believe it to be.
 12 Q Okay. You identified it as a 1992
 13 report.
 14 Actually, it's a 1993 report; isn't that
 15 right?
 16 A That's my mistake, yes, sir.
 17 Q Now, I suppose it was a little unfair to
 18 ask you about one particular passage from this
 19 lengthy report, so --
 20 A Thank you.
 21 Q Let me try it this way then. It's hard
 22 to navigate through this, but if you could find,

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1 please, page 307 of the report.
 2 A [Witness examined document].
 3 Q Are you with me?
 4 A Yes, sir, I'm with you.
 5 Q Up at the heading, How would allowing
 6 acknowledged homosexuals to serve affect cohesion
 7 and performance?, there is a sentence that reads,
 8 It should be reiterated that no systemic empirical
 9 research has been conducted on the effect of
 10 acknowledged homosexuals on unit cohesion or unit
 11 performance.
 12 And everything in that sentence, from
 13 "no systemic empirical research" on is italicized?
 14 A Yes.
 15 Q Okay. Now, since the 1993 RAND report,
 16 are you aware of any systematic empirical research
 17 that has been conducted by the Defendants on the
 18 effect of acknowledged homosexuals on unit
 19 cohesion or unit performance?
 20 MR. GARDNER: Objection, beyond the
 21 scope of the Rule 30(b)(6) deposition.
 22 THE WITNESS: No.

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1 BY MR. WOODS:
 2 Q Are you aware of any systematic or
 3 empirical research that has ever been conducted
 4 for the Defendants or by the Defendants that shows
 5 that the presence of acknowledged homosexuals in
 6 the military negatively impacts unit cohesion or
 7 unit performance?
 8 MR. GARDNER: Objection, beyond the
 9 scope of the Rule 30(b)(6) deposition.
 10 THE WITNESS: I'm not aware.
 11 BY MR. WOODS:
 12 Q On page 330 next. Well, actually, I'll
 13 start -- at the bottom of 329 is the conclusions
 14 of this section of the report.
 15 It says, The analysis in this chapter
 16 suggests that concerns about the potential effect
 17 of permitting homosexuals to serve in the military
 18 are not groundless, but the problems do not appear
 19 to be insurmountable, and there is ample reason to
 20 believe that heterosexual and homosexual military
 21 personnel can work together effectively.
 22 Are you with me?

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1 A I'm with you.
 2 Q All right. And then the review of the
 3 literature suggests the following conclusions.
 4 And the first bullet point says, there
 5 is no direct scientific evidence regarding the
 6 effects of the presence of acknowledged
 7 homosexuals on unit cohesion or unit performance.
 8 I need to ask you this question.
 9 Are you aware of any reports, research,
 10 or analysis that has been requested, commissioned,
 11 or received by the Defendants, since the RAND
 12 study, on the affects of the presence of
 13 acknowledged homosexuals on unit cohesion and unit
 14 performance?
 15 MR. GARDNER: Objection, multiple
 16 compound question. Objection, beyond the scope of
 17 the Rule 30(b)(6) deposition.
 18 THE WITNESS: Not that I'm aware.
 19 BY MR. WOODS:
 20 Q Have you ever been made aware of any
 21 scientific evidence regarding the effects of the
 22 presence of acknowledged homosexuals on unit

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1 cohesion or unit performance in any report,
 2 research, or analysis commissioned, requested, or
 3 received by the Defendants?
 4 MR. GARDNER: Objection, compound.
 5 Objection, beyond the scope of the Rule 30(b)(6).
 6 Objection, vague as to "scientific."
 7 THE WITNESS: I'm not aware.
 8 BY MR. WOODS:
 9 Q Are you aware of any other studies that
 10 RAND has done, since this one, on the subject of
 11 sexual orientation and the military?
 12 A Again, I reviewed a lot of reports, and
 13 whether they're GAO or RAND. So I can't
 14 positively state whether it was -- which one was
 15 which.
 16 Q Okay.
 17 A I am confused in my mind.
 18 Q Do you have any information about
 19 whether there is any current study underway by the
 20 RAND Corporation on this subject?
 21 MR. GARDNER: Objection, beyond the
 22 scope of the Rule 30(b)(6) deposition.

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1 THE WITNESS: I'm not aware of any
 2 currently underway, no.
 3 BY MR. WOODS:
 4 Q Okay. Are you aware of any reports,
 5 research, or analysis concerning U.S. Armed Forces
 6 personnel and homosexual conduct or homosexual
 7 orientation commissioned, requested, or received
 8 by from the Defendants from the Family Research
 9 Council?
 10 MR. GARDNER: Objection, multiple
 11 compound question.
 12 THE WITNESS: I don't know.
 13 BY MR. WOODS:
 14 Q You don't know --
 15 A What --
 16 Q -- if you're aware --
 17 A -- what --
 18 Q -- of it or not?
 19 A -- I'm not aware that I've received it.
 20 It may be one of the documents I received. But it
 21 certainly doesn't ring a bell with me.
 22 Q Okay. Same question for the Defense

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1 Readiness Council.
 2 MR. GARDNER: Same objection.
 3 THE WITNESS: I'm not aware. If I'm
 4 shown the document, I may recall.
 5 BY MR. WOODS:
 6 Q Same question for the Center for
 7 Military Readiness.
 8 MR. GARDNER: Same objection.
 9 THE WITNESS: Yeah, if shown, I may
 10 recall. But I don't.
 11 BY MR. WOODS:
 12 Q Are you familiar with something called
 13 the Center for Military Readiness?
 14 A Only that there is such an entity.
 15 Beyond that, no.
 16 Q Okay. And is that entity part of the
 17 Defense Department or not?
 18 A I don't know.
 19 Q And what about the Defense Readiness
 20 Council? Are you familiar with that?
 21 A Only that I've heard of it.
 22 Q Okay. Do you know if it's part of the

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1 Defense Department or not?
 2 A I assume so, only by the name "Defense."
 3 But I don't know.
 4 Q I'm going back to my question from --
 5 A Yes, sir.
 6 Q -- category seven.
 7 Are you aware of any reports, search, or
 8 analysis concerning the United States Armed Forces
 9 personnel on homosexual conduct or homosexual
 10 orientation commissioned, requested, or received
 11 by Defendants from the Retired Officers
 12 Association?
 13 MR. GARDNER: Objection, multiple
 14 compound question.
 15 THE WITNESS: I'd have to give the same
 16 answer. I'm not -- it's not -- I don't recall.
 17 But if shown it, I may -- may see it and may
 18 remember.
 19 BY MR. WOODS:
 20 Q Okay. Same question for the next name
 21 on the list, TROA.
 22 MR. GARDNER: Same objection.

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1 THE WITNESS: Same answer.
 2 BY MR. WOODS:
 3 Q Same question for the next name on the
 4 list, American Security Council Foundation.
 5 MR. GARDNER: Same objection.
 6 THE WITNESS: Same answer.
 7 BY MR. WOODS:
 8 Q Same question for the next name,
 9 Conservative Resource Center.
 10 MR. GARDNER: Same objection.
 11 THE WITNESS: Same answer.
 12 BY MR. WOODS:
 13 Q Same question for Exodus International.
 14 MR. GARDNER: Same objection.
 15 THE WITNESS: Same answer.
 16 BY MR. WOODS:
 17 Q Same question for Regeneration.
 18 MR. GARDNER: Same objection.
 19 THE WITNESS: Same answer.
 20 BY MR. WOODS:
 21 Q Same question for The Jackson Institute.
 22 MR. GARDNER: Same objection.

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1 THE WITNESS: And same answer.
 2 BY MR. WOODS:
 3 Q Same question for Walter Reed Army
 4 Institute of Research.
 5 MR. GARDNER: Same objection.
 6 THE WITNESS: Same answer.
 7 BY MR. WOODS:
 8 Q Okay. Are you familiar with the Walter
 9 Reed Army Institute of Research?
 10 A Only that I've heard of them.
 11 Specifically what they do, if shown a document, it
 12 may jog my memory. But I can't recall at the
 13 moment.
 14 Q All right. Same question for PERSEREC.
 15 That's all capitals, P-E-R-S-E-R-E-C.
 16 MR. GARDNER: Same objection.
 17 THE WITNESS: Yeah, I have reviewed the
 18 PERSEREC report.
 19 BY MR. WOODS:
 20 Q How many?
 21 A Two.
 22 Q Do you recall which years?

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1 A I believe 1988. And I may be fuzzy on
 2 the last year. '92 or '93. I believe '92, but I
 3 can't positively state that.
 4 Q Okay. And when did you review the two
 5 PERSEREC reports that you did review?
 6 A It's been in the last two weeks.
 7 Q Okay. Prior to the last two weeks when
 8 you were informed that you would be testifying on
 9 this category, had you ever reviewed them before?
 10 A No, sir, I have not.
 11 Q Did you even know that existed before
 12 two weeks ago?
 13 MR. GARDNER: Objection, relevance.
 14 THE WITNESS: No, did not.
 15 BY MR. WOODS:
 16 Q And when you reviewed them, did you read
 17 the entire reports?
 18 A I'd have to kind of see them just to jog
 19 my memory, to make sure I read them all. I know I
 20 received them, but whether I read the entire
 21 report --
 22 Q Where did you get them?

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1 A Where did I get them?
 2 Q Yeah.
 3 A I got them from counsel.
 4 Q And did you get the RAND report from
 5 counsel, too?
 6 A The RAND report actually we had in my
 7 office. I don't think counsel provided that.
 8 Q Okay. And while the RAND report was in
 9 your office previously, you hadn't read it before;
 10 is that right?
 11 A That's correct.
 12 Q And when you received the PERSEREC
 13 reports from counsel, were you directed to review
 14 any particular parts of the reports?
 15 A Yes.
 16 Q Which parts?
 17 A I'd have to look at it to tell you.
 18 Q Were some parts of it flagged for you?
 19 Is that the idea?
 20 A I believe that to be the case.
 21 MR. WOODS: Let me mark as Exhibit 99
 22 then a PERSEREC report dated December 1988.

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1 (Deposition Exhibit No. 99
2 marked for identification.)
3 MR. GARDNER: Off the record.
4 (Recess)
5 BY MR. WOODS:
6 Q So we're back from our break. And we
7 have marked as Exhibit 99 this 1988 PERSEREC
8 report.
9 First of all, can you tell us what
10 PERSEREC stands for?
11 Does it stand for Defense Personnel
12 Security Research and Education Center?
13 A That's my understanding. That's on the
14 cover, yes, sir.
15 Q And that's a part of the Department of
16 Defense?
17 A That was my understanding, yes.
18 Q And on the organization chart that you
19 provided to us today that we've copied and marked
20 Exhibit 95 and 96, where does it fall?
21 A [Witness examined document]. I don't
22 know.

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1 Q Okay. And the people who work for
2 PERSEREC are part of the Department of Defense; is
3 that right?
4 MR. GARDNER: Objection,
5 mischaracterizes PERSEREC.
6 THE WITNESS: I don't know. I really
7 don't.
8 BY MR. WOODS:
9 Q Does PERSEREC --
10 Now, is this report that we've now
11 marked as Exhibit 99 one of the reports that you
12 reviewed in preparation for your deposition?
13 A That's correct, yes.
14 Q And I see as we go through it that
15 unfortunately I've copied the same exhibit that
16 somebody else marked at another deposition of this
17 report. So it's missing the even-numbered pages
18 that Mr. Freeborne was supposed to fix, but
19 hasn't.
20 MR. FREEBORNE: Actually, we have fixed
21 it.
22 MR. GARDNER: Actually, in Dr. Korb's

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1 deposition we introduced a complete copy of it and
2 substituted it into the record.
3 MR. WOODS: Oh, good. Thank you.
4 Anyway.
5 MR. GARDNER: Anyway.
6 BY MR. WOODS:
7 Q Do you have any information about what
8 was done with this 1988 PERSEREC report after it
9 was completed?
10 MR. GARDNER: Objection, vague.
11 Objection, beyond the scope of the Rule 30(b)(6)
12 deposition.
13 THE WITNESS: My understanding is this
14 draft report of the final version was again
15 completed either in '92 or '93. But beyond that,
16 I don't know what was done with it.
17 BY MR. WOODS:
18 Q This one doesn't say anywhere on it that
19 it's a draft.
20 MR. GARDNER: Objection, the document
21 speaks for itself.
22 BY MR. WOODS:

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1 Q So what information do you have that
2 suggests that this is a draft?
3 A I was -- I believe that all -- any of
4 the PERSEREC reports up to the '92 one were draft
5 reports.
6 Q Okay. And what is the source of that
7 belief that you have?
8 A In speaking with counsel. And I also
9 read it somewhere, but I don't know exactly where
10 that was at.
11 MR. GARDNER: Maybe it's on one of the
12 even pages.
13 MR. WOODS: Let me mark as Exhibit 100 a
14 1989 PERSEREC report.
15 (Deposition Exhibit No. 100
16 marked for identification.)
17 BY MR. WOODS:
18 Q All right. Exhibit 100 is another
19 PERSEREC report.
20 Is this the report that you reviewed in
21 preparation for your deposition?
22 A [Witness examined document]. I do not

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1 remember reviewing this one.
 2 Q Okay. And this one is stamped on front
 3 "draft," as you can see?
 4 A Yes, sir.
 5 Q Does that refresh your recollection
 6 about whether Exhibit 99 that we just looked at
 7 was or was not a draft?
 8 A No, sir, it does not.
 9 MR. WOODS: I'm going to show you
 10 Exhibit 101, a 1991 PERSEREC report.
 11 (Deposition Exhibit No. 101
 12 marked for identification.)
 13 THE WITNESS: [Witness examined
 14 document].
 15 BY MR. WOODS:
 16 Q Have you reviewed Exhibit 101, a 1991
 17 PERSEREC report, in preparation for your
 18 deposition?
 19 A Yes, sir, I have seen this one, yes,
 20 sir.
 21 Q And does seeing it refresh your
 22 recollection about whether Exhibit 99 is or isn't

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1 a draft report?
 2 A [Witness examined document]. It
 3 provides no more clarity, no, sir. Maybe if the
 4 even pages were there it would, but --
 5 Q Well, the subjects are different.
 6 A Yeah, but --
 7 Q In other words, 99 is about
 8 nonconforming sexual orientations in the military
 9 suitability. And 101 is about homosexuality and
 10 personnel security. They seem to be different
 11 subjects.
 12 A Yes, they are different subjects. But I
 13 know that there was a draft report that was --
 14 that was provided to the sponsors of that report
 15 that was -- that was beyond the scope of what was
 16 asked for. And the scope was actually dealing
 17 with personnel security.
 18 So my understanding was that that draft
 19 report somewhat morphed into this homosexual and
 20 personnel security report, and is why the
 21 statement is up front in the preface that it does
 22 not deal with Department of Defense policy that it

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1 excludes homosexuals from military service, so --
 2 Q And what is the source of the
 3 information that you just gave us?
 4 A That I just told you?
 5 Q Yes.
 6 A It is here in the preface of this
 7 PERSEREC report.
 8 Q Well, no, you said something about the
 9 sponsors of the report, and the report was beyond
 10 the scope of what was asked.
 11 A The -- I reviewed a memo that was from
 12 the sponsor within the Department of Defense for
 13 the report that received the initial draft report,
 14 and stated -- had made a reply to the report that
 15 it was beyond the scope, that the research went
 16 beyond talking about -- or beyond a researching
 17 personnel security. It delved into other matters
 18 that were not germane to the issue at hand.
 19 And one of the responses in the letter
 20 was that they didn't even -- the producers of the
 21 draft report did not talk with the policy experts
 22 to discuss the homosexual conduct policy, if you

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1 will, especially as it related to I believe unit
 2 cohesion, morale, and the like.
 3 Q All right. So this information comes
 4 from some other memorandum that you read in
 5 preparation for your deposition within the last
 6 two weeks?
 7 A That's correct.
 8 Q And it was authored -- this memo that
 9 you're talking about goes back to the years when
 10 these PERSEREC reports were being prepared?
 11 A Yes, sir, it does.
 12 Q And who is the author of the memo that
 13 you're referring to?
 14 A I believe the name was Craig Algerman
 15 [phonetic] on that memo.
 16 Q And what was his position with the
 17 Department of Defense?
 18 A Sir, I do not know.
 19 Q And did you review any memos from anyone
 20 at PERSEREC in response to any memo from
 21 Mr. Algerman about the scope of the report and
 22 whether the reports were or were not within the

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1 scope of what had been requested of PERSEREC?
 2 A I can't recall that I did. But I
 3 reviewed so many different documents.
 4 Q And this memo that you're talking about
 5 that you did saw was provided to you by counsel
 6 within the last two weeks?
 7 A I don't -- I don't really know whether I
 8 saw it from what they gave me, or I reviewed
 9 something in the office. So I can't attest to
 10 they gave it to me.
 11 MR. GARDNER: And for the record, that
 12 document has also been produced to you during the
 13 course of discovery.
 14 MR. WOODS: Thank you for your
 15 unnecessary interruption.
 16 BY MR. WOODS:
 17 Q Do you know whether any of these
 18 PERSEREC reports were provided to Congress as it
 19 was considering the enactment of Don't Ask, Don't
 20 Tell?
 21 MR. GARDNER: Objection, beyond the
 22 scope of the Rule 30(b)(6) deposition.

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1 You can answer if you know.
 2 THE WITNESS: I only know that the Les
 3 Aspin -- Secretary Les Aspin memo that I mentioned
 4 earlier -- no, I take that back. It did not say
 5 that this is PERSEREC. It was the RAND report.
 6 Not that I recall.
 7 BY MR. WOODS:
 8 Q Do you know if it was intentionally
 9 withheld from Congress, any of these PERSEREC
 10 reports?
 11 MR. GARDNER: Objection, beyond the
 12 scope of the Rule 30(b)(6) deposition.
 13 THE WITNESS: I have no knowledge of
 14 that.
 15 BY MR. WOODS:
 16 Q Are you aware of any later PERSEREC
 17 reports than the 1991 report on the subject of
 18 homosexuality in the military?
 19 A Not that I recall.
 20 Q Do you think it's helpful in assessing
 21 whether Don't Ask, Don't Tell accomplishes its
 22 stated goals to know what these reports from

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1 PERSEREC say?
 2 MR. GARDNER: Objection, beyond the
 3 scope of the Rule 30(b)(6) deposition. Objection,
 4 calls for speculation, lack of foundation,
 5 relevance.
 6 THE WITNESS: Yeah, I don't know.
 7 BY MR. WOODS:
 8 Q And going back to category seven.
 9 Are you aware of any reports, research,
 10 or analysis concerning United States Armed Forces
 11 personnel and homosexual conduct or homosexual
 12 orientation commissioned, requested, or received
 13 by Defendants from U.S. Government Accountability
 14 Office?
 15 A I don't recall, no. Not that I'm aware.
 16 Q And are you aware of any such reports
 17 from the Homosexual Study Group?
 18 A No, I'm not aware.
 19 Q Have you ever heard of the group called
 20 Homosexual Study Group?
 21 A To be honest with you, no, I have not.
 22 Q Okay. And did you review any of the GAO

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1 reports beside the one that we've already marked
 2 as an exhibit today, the 2005 GAO report?
 3 A Yeah, I believe there was at least one
 4 other GAO report. But the year and the subject
 5 escapes me.
 6 Q Let me show you what I'll marked as
 7 Exhibit 102 then. It's a June 1992 GAO report.
 8 (Deposition Exhibit No. 102
 9 marked for identification.)
 10 BY MR. WOODS:
 11 Q Is this something that you've seen
 12 before, Colonel?
 13 A Yes, it is.
 14 Q And did you see it in preparation for
 15 your deposition?
 16 A That's correct.
 17 Q Have you seen it prior to the
 18 preparation for your deposition?
 19 A I can't say that I have.
 20 Q And where did you get it when you
 21 reviewed it in preparation for your deposition?
 22 A I received it from counsel.

IR-PT

IR-PT, CS, LF

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1 Q Did you ever see a report done by
 2 something called the Military Working Group in
 3 about 1993?
 4 A Yes, sir, I did.
 5 Q And when did you first see that report?
 6 A It's been in the last two weeks.
 7 Q And were you again provided that report
 8 by counsel?
 9 A That's correct.
 10 Q Prior to that time, about two weeks ago
 11 when you were designated to testify on this
 12 category at this deposition, you had never read it
 13 before?
 14 A That's correct.
 15 Q Have you ever heard of it before?
 16 A Honestly, no, I had not.
 17 Q Do you have any information about how
 18 the military working group performed its work?
 19 MR. GARDNER: Objection, vague.
 20 Objection, beyond the scope of the Rule 30(b)(6)
 21 deposition.
 22 THE WITNESS: No, I do not.

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1 BY MR. WOODS:
 2 Q And have you ever seen a report called
 3 the Crinindon report?
 4 A Yes, I have.
 5 Q And do you know who produced that
 6 report?
 7 A Who provided it to me, or who wrote the
 8 report?
 9 Q Both questions.
 10 A I'm not trying to be a smart --
 11 Q Both questions. Very good. Very good.
 12 A It was written by a Navy captain by the
 13 name of Crinindon. I believe published in 1957.
 14 It was provided to me by my counsel -- or counsel,
 15 I should say.
 16 Q And prior to receiving it from
 17 counsel -- I presume within the last two weeks; is
 18 that right?
 19 A That would be correct.
 20 Q Had you ever seen it before?
 21 A No, I had not.
 22 Q Had you heard of it before?

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1 A No, I had not.
 2 Q And do you know who requested the
 3 document that became known as the Crinindon
 4 report?
 5 MR. GARDNER: Objection, vague.
 6 THE WITNESS: No, I do not.
 7 BY MR. WOODS:
 8 Q Do you know what use was made of the
 9 Crinindon report?
 10 MR. GARDNER: Objection, vague. Use by
 11 whom?
 12 BY MR. WOODS:
 13 Q By the military.
 14 MR. GARDNER: Same objection. Also
 15 beyond the scope of the Rule 30(b)(6) deposition.
 16 THE WITNESS: I know it was -- one of
 17 the purposes of it was for security classification
 18 I believe of civilians. But beyond that, what
 19 use, I don't know.
 20 BY MR. WOODS:
 21 Q In your review of reports in preparation
 22 for your deposition, did you review any reports

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1 other than the ones that we have covered so far
 2 today at this deposition?
 3 MR. GARDNER: Objection, overbroad.
 4 You can answer if you recall.
 5 THE WITNESS: I don't recall that I did.
 6 BY MR. WOODS:
 7 Q Okay. And in any of the reports that
 8 you reviewed in preparation for your deposition,
 9 did you see any report that concluded that
 10 homosexual service was not compatible with unit
 11 cohesion or troop morale?
 12 MR. GARDNER: Objection, overbroad.
 13 THE WITNESS: No, I did not.
 14 BY MR. WOODS:
 15 Q And are you aware of any report that was
 16 never requested, commissioned, or received by the
 17 Department of Defense to demonstrate that Don't
 18 Ask, Don't Tell furthers its stated purposes of
 19 unit cohesion, troop morale, and good order and
 20 discipline?
 21 MR. GARDNER: Objection, beyond the
 22 scope of the Rule 30(b)(6) deposition.

IR-PT
VA

VA,
IR-
PT

IR-
PT, PE

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1 THE WITNESS: I know of no study of that
 2 nature.
 3 BY MR. WOODS:
 4 Q Are you aware that Admiral Mullen,
 5 Chairman of the Joint Chiefs of Staff, recently
 6 said, quote -- said that there, quote, Just isn't
 7 any objective data out there regarding the effects
 8 of Don't Ask, Don't Tell and the potential impact
 9 of repealing Don't Ask, Don't Tell?
 10 MR. GARDNER: Objection, beyond the
 11 scope of the Rule 30(b)(6) deposition. Objection,
 12 hearsay.
 13 THE WITNESS: I don't know what the
 14 admiral actually -- when he says objective data,
 15 what he means by that. But I -- I know of no --
 16 no studies, as we've already talked about, that
 17 are out there.
 18 BY MR. WOODS:
 19 Q And are you aware of any efforts today
 20 to try to obtain objective data?
 21 A I'm not personally aware of those
 22 efforts. But I do know that the Secretary, in his

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1 testimony, alluded to the fact that they were
 2 going to do something of that nature. But beyond
 3 that, I don't know.
 4 Q And do you know what, if anything, is
 5 being done, as Secretary Gates said would be done?
 6 MR. GARDNER: Objection. I will
 7 instruct the witness not to answer to the extent
 8 that implicates deliberative process privilege.
 9 BY MR. WOODS:
 10 Q I take it you're following your
 11 counsel's instruction not to answer that question?
 12 A Yes, sir, I am.
 13 Q And can we stipulate that any time you
 14 have done that throughout the day -- that is,
 15 instructed not to answer -- you followed your
 16 counsel's instruction?
 17 A Yes, sir.
 18 Q Let's turn to category four of the
 19 deposition notice again.
 20 Category four is the compatibility or
 21 incompatibility of gay and lesbian Americans with
 22 service in the United States Armed Forces,

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1 including the effect of the presence of such
 2 individuals, if any, on unit cohesion, combat
 3 effectiveness, unit morale, good order,
 4 discipline, and readiness to fight.
 5 Are you with me?
 6 A I'm with you, sir.
 7 Q Okay. And what, if anything, did you do
 8 to prepare to testify on that subject at today's
 9 deposition?
 10 A I reviewed -- I consulted with counsel.
 11 I also reviewed the statute, as I did with all the
 12 other topics; reviewed the Senate Arms Services
 13 Committee testimony from that period. I
 14 believe -- I believe it was mid 1993. I reviewed
 15 the President's State of the Union Address.
 16 And I reviewed the Secretary of Defense
 17 and the Chairman of the Joint Chiefs of Staff,
 18 their statements -- I believe it's to the Senate
 19 Arms Service Committee here in the last month or
 20 so.
 21 Q Okay. Did you speak to anyone other
 22 than counsel in preparation for your testimony on

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1 this particular topic?
 2 A Not that I can recall.
 3 Q Okay. So one of the items you reviewed
 4 was the President's State of the Union Address in
 5 which he promised to repeal Don't Ask, Don't Tell,
 6 correct?
 7 A Yes.
 8 Q And did you review any other statements
 9 by the President, such as his statements that
 10 Don't Ask, Don't Tell, quote, weakness our
 11 national security, close quotes?
 12 A Can you show me that document so I can
 13 refresh my memory?
 14 Q It was from a speech he made --
 15 A Okay.
 16 Q -- over the summer.
 17 MR. GARDNER: And he's asking to see the
 18 statement. Can you provide it to him?
 19 THE WITNESS: Without seeing the
 20 document, I won't be able to say that that's what
 21 he said. I know the President said a number of
 22 things. And I would be less than truthful if I

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1 testified that that's what he said when I don't
 2 know that's exactly what he said.
 3 BY MR. WOODS:
 4 Q Well, take me at my word, that he said
 5 that Don't Ask, Don't Tell, quote, weakness our
 6 national security. Okay? Are you with me?
 7 A I'm with you.
 8 Q Okay. So do you agree with him?
 9 A Objection.
 10 MR. GARDNER: Objection, vague as to
 11 "you." You're referring to the United States?
 12 BY MR. WOODS:
 13 Q Yes, I'm referring to you as the
 14 designated person most qualified to testify on
 15 category four.
 16 MR. GARDNER: I will once again object.
 17 There's no obligation to provide the most
 18 qualified or most knowledgeable person on topic.
 19 But having said that, if you want to
 20 provide the United States' answer, please do.
 21 THE WITNESS: Okay.
 22 The -- in 1993 this statute was enacted

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1 by Congress, after much testimony by a number of
 2 expert witnesses both for and against the issue,
 3 two of which were General Powell and General --
 4 BY MR. WOODS:
 5 Q Schwarzkopf?
 6 A Schwarzkopf. Sorry.
 7 -- General Schwarzkopf. During that
 8 time, Congress considered again a number of
 9 different testimonies. However, the testimony by
 10 these two individuals, with an inordinate amount
 11 of experience -- I think General Schwarzkopf
 12 testified of 40-plus years and three-plus war
 13 experience -- their extensive testimony, Congress
 14 enacted the statute.
 15 Now I fast forward to today, 17 years
 16 later. The President has announced his desire to
 17 repeal the statute. And the Secretary of Defense
 18 has supported -- has publicly supported, by his
 19 statements, that he supports the President, and in
 20 the meantime is -- is reviewing, by this working
 21 group, of how best to implement the President's
 22 desire, if -- if the statute is repealed, how best

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1 to implement that within the department.
 2 And this working group is going to
 3 review any issues that may arise from that. And I
 4 believe the Secretary's words in his statement
 5 were how to best mitigate those risk as much as
 6 possible.
 7 Q Okay. And that's all really
 8 interesting, Colonel.
 9 A Okay.
 10 Q But I don't think it answered my
 11 question. So let me repeat the question.
 12 A Okay.
 13 Q Does Don't Ask, Don't Tell weaken our
 14 national security?
 15 MR. GARDNER: Objection, asked and
 16 answered.
 17 You can say it again.
 18 THE WITNESS: I would repeat my previous
 19 answer.
 20 BY MR. WOODS:
 21 Q Okay. I'm not asking about what
 22 happened in 1993 or who said what in 1993.

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1 I'm asking you, as the person designated
 2 to testify on category number four today, does
 3 Don't Ask, Don't Tell weaken our national
 4 security?
 5 MR. GARDNER: Objection, asked and
 6 answered.
 7 You can answer it again.
 8 THE WITNESS: Okay.
 9 Again, this statute in 1993 was enacted.
 10 It -- through a lot of advice from both the
 11 military community and outside the military
 12 community.
 13 Congress made a decision at that point
 14 that it was not helpful to national security to
 15 have open homosexuals participate in the military.
 16 That's the law of the land. It has been since
 17 1993 and continues to be to this day.
 18 However, the President has said that he
 19 would like to see the statute repealed. And the
 20 Secretary of Defense has supported -- publicly
 21 supported the President that -- in that effort.
 22 And in preparation, in case it is

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1 repealed, the department is currently reviewing
 2 any factors that maybe would weigh on the
 3 decision, and that I also believe that the
 4 Secretary said could properly inform Congress as
 5 maybe to the way ahead as well, and to mitigate
 6 any issues so that they're not unnecessary risk.
 7 BY MR. WOODS:
 8 Q Okay. Again, you're still not answering
 9 my question. So once again I'm going to move to
 10 strike the answer.
 11 I'm not asking about what Congress did
 12 in 1993 or what was said to Congress in 1993. I'm
 13 not asking about what's being studied today or
 14 what might be studied tomorrow.
 15 I'm just asking you to testify, right
 16 now today, whether Don't Ask, Don't Tell weakness
 17 our national security?
 18 MR. GARDNER: Objection, asked and
 19 answered. Object to the insinuation that it is
 20 not responsive.
 21 If you want to try again, feel free to
 22 try it again for a third time.

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1 THE WITNESS: I would repeat my same
 2 response.
 3 BY MR. WOODS:
 4 Q Is there any evidence of which you are
 5 aware that Don't Ask, Don't Tell does not weaken
 6 our national security?
 7 MR. GARDNER: Objection. Form.
 8 THE WITNESS: I'm not sure I understand
 9 that question.
 10 BY MR. WOODS:
 11 Q All right. I'll be happy to rephrase
 12 it.
 13 Is there any evidence of which you are
 14 aware that Don't Ask, Don't Tell promotes national
 15 security?
 16 A Other than the military judgment of
 17 those testifying before the committee, no.
 18 Q Okay. Again, the 1993 --
 19 A Yes.
 20 Q -- material?
 21 A Yes, sir.
 22 Q Okay. And you understand that Colin

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1 Powell has changed his mind since 1993?
 2 MR. GARDNER: Objection,
 3 mischaracterizes what Colin Powell has done. If
 4 you have a statement you want to show him, please
 5 show him the statement.
 6 MR. WOODS: Counsel, I don't need your
 7 interruptions about what I'm supposed to do or not
 8 do.
 9 BY MR. WOODS:
 10 Q Do you understand that Colin Powell,
 11 sir, has changed his mind?
 12 MR. GARDNER: Objection,
 13 mischaracterizes what --
 14 MR. WOODS: Let him --
 15 MR. GARDNER: -- Colin Powell --
 16 MR. WOODS: -- answer the question,
 17 please. Stop interrupting.
 18 MR. GARDNER: I am entitled to launch
 19 the objections I believe are appropriate,
 20 Mr. Woods. You may not like them. I'm entitled
 21 to make them.
 22 THE WITNESS: I don't believe that to be

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1 an accurate representation of General Powell's
 2 stance on this.
 3 BY MR. WOODS:
 4 Q What do you understand his current
 5 stance to be?
 6 MR. GARDNER: Objection, lack of
 7 relevance.
 8 You can answer.
 9 THE WITNESS: Okay.
 10 My understanding is that he has not
 11 called for the repeal, but rather he has called
 12 for a review of the policy.
 13 BY MR. WOODS:
 14 Q Okay. Are you aware of any study,
 15 report, or analysis that shows whether Don't Ask,
 16 Don't Tell has worked to achieve its stated
 17 purposes?
 18 MR. GARDNER: Objection, vague.
 19 THE WITNESS: I'm aware of no such
 20 report.
 21 BY MR. WOODS:
 22 Q Are you aware of reports that indicate

IR-
PE

IR-
PE

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1 that it does not work or has not worked?
 2 A No, sir.
 3 Q Are you aware of statements by military
 4 leaders indicating that it does not work and has
 5 not worked?
 6 MR. GARDNER: Objection, vague. Also
 7 objection, lack of foundation.
 8 THE WITNESS: Not that I'm aware of.
 9 BY MR. WOODS:
 10 Q Other than the statements that you
 11 referred to by General Powell and General
 12 Schwarzkopf, are you aware of any evidence that
 13 was presented to Congress that service by
 14 homosexuals in our armed forces was detrimental to
 15 unit cohesion and troop morale?
 16 MR. GARDNER: Objection,
 17 mischaracterizes the witness's testimony that
 18 that's the only testimony he's relying upon.
 19 THE WITNESS: I know of General Powell's
 20 and General Schwarzkopf's testimony. I know there
 21 was other evidence. What all they considered, I'm
 22 not aware.

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1 BY MR. WOODS:
 2 Q And have you done anything to prepare
 3 for this deposition by trying to become more
 4 familiar with what was presented to Congress in
 5 1993?
 6 MR. GARDNER: Objection, vague.
 7 You can answer.
 8 THE WITNESS: Yes, I have.
 9 BY MR. WOODS:
 10 Q And what else have you done?
 11 A I reviewed the Senate Arms Services
 12 Committee report.
 13 Q Anything else?
 14 A Not that I can recall.
 15 Q Were you ever deployed to Iraq?
 16 A Yes, sir, I was.
 17 Q I don't think you mentioned that when
 18 you were going through your various positions.
 19 A Well, I don't consider that part of my
 20 duty history. It wasn't a permanent assignment
 21 for me. I was deployed actually when I was on the
 22 air staff, from January -- mid January of 2006 to

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1 early June of 2006.
 2 Q And did you just perform the same duties
 3 and responsibilities that you had previously been
 4 performing at --
 5 A No, sir.
 6 Q No?
 7 Okay. How did they change?
 8 A This duty was -- I was responsible for
 9 what's called strength reporting, and in that
 10 capacity was responsible for reporting the total
 11 numbers of personnel that were on the ground in
 12 Iraq daily.
 13 Q And besides that deployment, were you
 14 deployed to any other combat zones during your
 15 service?
 16 A No, sir, I was not. It was my first
 17 one.
 18 MR. WOODS: Let's go off the record.
 19 Give me five minutes just to check my notes.
 20 (Recess)
 21 BY MR. WOODS:
 22 Q All right. Colonel, when you were in

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1 Iraq, did you have an opportunity to serve with
 2 any members of the armed forces of any other
 3 countries working with us there?
 4 MR. GARDNER: Objection, beyond the
 5 scope of the Rule 30(b)(6) deposition topics that
 6 Colonel Brady was designated for.
 7 You can answer.
 8 THE WITNESS: Yes, there were other
 9 countries that were there.
 10 BY MR. WOODS:
 11 Q Right. And did you, personally, have
 12 the opportunity to work with members of the armed
 13 forces of those other countries?
 14 MR. GARDNER: Same objection.
 15 THE WITNESS: Yes, sir, I did.
 16 BY MR. WOODS:
 17 Q And did you have any information about
 18 whether any of them were or were not homosexuals?
 19 MR. GARDNER: Objection, beyond the
 20 scope.
 21 THE WITNESS: No, I did not.
 22 BY MR. WOODS:

IR-
PT,
PE

1 Q Would it have mattered to you?
 2 MR. GARDNER: Objection, beyond the
 3 scope. Objection, relevance? Objection,
 4 speculation. Objection, vague.
 5 THE WITNESS: You're asking personal
 6 opinion?
 7 BY MR. WOODS: VA
 8 Q Yes.

9 A Yes, it probably would have mattered,
 10 only because it would have been something I'd have
 11 been thinking about. How much it would have
 12 affected our working relationship, I don't know
 13 that. But it would have been something in the
 14 back of my mind.

15 Q All right. Can you give me an example
 16 of a person that you worked with from a foreign
 17 military service while you were in Iraq?

18 MR. GARDNER: Objection, beyond the
 19 scope. Objection, vague by "example."

20 THE WITNESS: I know there was an
 21 officer from Italy who was also assigned to our
 22 office that performed somewhat liaison duties.

1 Q Okay. And if they had, either of them,
 2 midway through the time that you worked with them,
 3 disclosed to you that they happened to be
 4 homosexual or bisexual, would that have interfered
 5 with your working relationship with them?

6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition. Objection,
 8 speculation. Objection, hypothetical.

9 You can answer if you can.

10 THE WITNESS: I don't know to what
 11 degree it would have affected it, but yes, it
 12 would have probably affected our relationship.

13 BY MR. WOODS:

14 Q In what way?

15 MR. GARDNER: Same objections.

16 THE WITNESS: I would have been
 17 concerned with -- well, concerned -- I would have
 18 been just aware of issues, such as if we were
 19 going to the showers together or something like
 20 that. I'm sure that would have been in my mind.

21 You know, just from a privacy aspect.

22 But, again, that's hypothetical.

1 BY MR. WOODS:

2 Q Okay. And how long did you work with
 3 that Italian officer?

4 MR. GARDNER: Same objection.

5 THE WITNESS: He was there for about
 6 half my tour. So he was there for about
 7 two-and-a-half months.

8 BY MR. WOODS:

9 Q Okay.

10 A But, also, I need to add this. There
 11 was a Bulgarian officer. I think he's from
 12 Bulgaria. I get it mixed up. But there was
 13 another foreign country officer that was there as
 14 well, for about the same amount of time that, took
 15 his place.

16 Q Okay. So you were in Iraq for about
 17 two-and-a-half months with an Italian officer and
 18 for another two-and-a-half months with a Bulgarian
 19 officer?

20 A I believe it was a Bulgarian. I'm
 21 positive on the Italian, but -- and somewhat
 22 confident on the Bulgarian.

1 Neither one of those did that, but --

2 BY MR. WOODS:

3 Q Right. But as a colonel, you don't have
 4 to shower in a group shower, do you? Even in
 5 Iraq?

6 MR. GARDNER: Objection, beyond the
 7 scope of the Rule 30(b)(6) deposition topics.

8 You can answer.

9 THE WITNESS: At my location we did not.

10 BY MR. WOODS:

11 Q Okay.

12 A We had -- but I can't testify to the --
 13 of all locations in Iraq.

14 Q No, no, no. I'm not asking --

15 A Okay.

16 Q -- about everybody.

17 A Yeah.

18 Q I only asked about you.

19 You, while you were there, had a private
 20 shower, didn't you?

21 A I had a shower -- not a private shower
 22 in my room, no. It was a communal shower that had

1 private stalls in it.
2 Q Okay. So I don't understand then what
3 you were talking about, about these other officers
4 from Italy or Bulgaria.

5 What privacy concerns would you have had
6 if they happened to have mentioned to you that
7 they were a homosexual?

8 MR. GARDNER: Objection, beyond the
9 scope of the Rule 30(b)(6) deposition. Objection,
10 hypothetical. Objection, calls for speculation.
11 Objection, relevance.

12 You can answer.

13 THE WITNESS: In this -- where we were
14 taking showers at, you aren't naked just in the
15 shower. You know, a lot of people would disrobe
16 out in the main area. There was a main area with
17 sinks surrounding the wall. Some people would
18 disrobe there. Actually, the majority of the
19 people disrobed outside the shower, then got in.
20 So it just wasn't in the shower when they were
21 naked.

22 BY MR. WOODS:

1 Objection, beyond the scope of the Rule 30(b)(6).
2 You can answer.

3 THE WITNESS: Yes.

4 BY MR. WOODS:

5 Q And for all you know, some of the other
6 people in these environments happen to be
7 homosexual, right? **CS, AR**

8 MR. GARDNER: Objection, argumentative,
9 beyond the scope of the Rule 30(b)(6) deposition,
10 calls for speculation, lack of foundation,
11 relevance.

12 You can answer if you can.

13 THE WITNESS: They may have, but I
14 didn't know that --

15 BY MR. WOODS:

16 Q Right.

17 A -- that they were.

18 Q But did you ever feel uncomfortable
19 because there were perhaps homosexuals who were
20 able to see you naked or who were naked before
21 you?

22 MR. GARDNER: Objection, beyond the

1 Q So in my lifetime, it would be like me
2 going to the gym, where there are private shower
3 stalls; but there's a common area where there are
4 the sinks and things like that.

5 Does that describe what you're
6 describing?

7 MR. GARDNER: Objection, form.
8 Objection, relevance. Objection, beyond the
9 scope.

10 You can answer.

11 THE WITNESS: Yes, and people walking
12 around naked in that area. Yeah, I think that was
13 a good --

14 BY MR. WOODS:

15 Q And so you've been in that environment
16 too, right? Not just at this location in Iraq for
17 six months?

18 MR. GARDNER: Object -- **VA**

19 BY MR. WOODS:

20 Q You've been in similar environments
21 before yourself, haven't you?

22 MR. GARDNER: Objection, vague.

1 scope of the Rule 30(b)(6) deposition. Objection,
2 relevance, speculation, hypothetical.

3 THE WITNESS: No, I can't say that
4 I've -- I have.

5 BY MR. WOODS:

6 Q And when you're in an area that isn't
7 private, you know that there perhaps might be
8 homosexuals around, right?

9 MR. GARDNER: Objection, beyond the
10 scope. Objection, vague. Objection, relevance.
11 Objection, calls for speculation.

12 THE WITNESS: Yeah, there could be and
13 there couldn't be. There's that possibility --

14 BY MR. WOODS:

15 Q Right.

16 A -- that they are.

17 Q Right. And so you ever worry that there
18 might be, and worried about your privacy in that
19 environment when you're not sure one way or
20 another whether there are homosexuals around or
21 not?

22 MR. GARDNER: Objection, beyond the

1 scope. Objection, vague. Objection, calls for
2 speculation. Objection, relevance.

3 THE WITNESS: Since I wouldn't know that
4 they are, it wouldn't enter -- I wouldn't -- it
5 wouldn't be an issue for me at that moment,
6 because I didn't know that they were.

7 BY MR. WOODS:

8 Q All right. Are you aware of any
9 reports, studies, or analysis done by the
10 Defendants about service by members of our armed
11 forces members with gay members of foreign
12 militaries?

13 A Can you restate that?

14 Q Sure. Sure. I'm talking about in a
15 situation where, you know, our soldiers fighting
16 in whatever location or serving rather in whatever
17 location they might be serving might be serving
18 alongside with gay or homosexual members of other
19 countries' armed forces?

20 A But you asked if there were any -- I
21 thought you asked --

22 Q Yeah. Right.

1 A -- if there were any reports.

2 Q That's what I'm talking about. And
3 that's the subject I'm talking about.

4 A Okay. Yeah, I'm not aware of any
5 reports of that nature.

6 Q Okay. So, for instance, I assume we
7 have troops in countries where homosexuals are
8 openly allowed to serve, right?

9 MR. GARDNER: Objection, lack of
10 foundation, calls for speculation, beyond the
11 scope of the Rule 30(b)(6). **LF, CS**

12 You can answer if you know.

13 THE WITNESS: I think that's fair to
14 say.

15 BY MR. WOODS:

16 Q Sure. We have troops stationed in
17 Canada, Great British, Australia, places of that
18 sort, don't we? **LF**

19 A Yes, we do.

20 Q Okay. And are you aware of any reports
21 indicating that there has ever been a problem with
22 our troops serving alongside or working alongside

VA

1 with openly gay troops from any other country?

2 MR. GARDNER: Objection, beyond the
3 scope of the Rule 30(b)(6) topic. Objection,
4 vague. Objection, lack of foundation.

5 You can answer if you know.

6 THE WITNESS: I don't know.

7 BY MR. WOODS:

8 Q Okay. And are you aware of situations
9 where openly gay officers from foreign countries
10 have been in positions of leadership over our
11 members?

12 A I'm not aware of that.

13 Q Are you aware of any studies of that
14 phenomenon?

15 MR. GARDNER: Objection, beyond the
16 scope of the Rule 30(b)(6) deposition.

17 You can answer if you know.

18 THE WITNESS: No, sir, I'm not aware.

19 MR. WOODS: Okay. All right. Well, I
20 am finished with questions for you today, Colonel.

21 THE WITNESS: Okay.

22 MR. WOODS: Thank you for your patience

1 today.

2 I am not, however, finished with this
3 30(b)(6) deposition. Because it is our position
4 that you, Colonel, with all due respect, were not
5 the appropriate person to testify on all of the
6 subjects on which you were designated. And I'm
7 going to seek some further court relief about
8 that, and also in that regard would probably seek
9 some court relief about the questions you were
10 instructed not to answer today.

11 Thank you.

12 THE WITNESS: Yes, sir.

13 MR. GARDNER: And just for the record,
14 which topics are you contending Colonel Brady was
15 not properly prepared for, Counsel?

16 MR. WOODS: I'm not going to argue with
17 you now.

18 MR. GARDNER: I'm not asking you to
19 argue now. I'm asking you to state your position
20 on the record.

21 MR. WOODS: I'll do that in due course.

22 MR. GARDNER: Because you're not

**IR-
PT,
PE**

**IR-
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PE**

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1 prepared to?

2 MR. WOODS: No, I'm quite prepared to.

3 MR. GARDNER: But you're unwilling to

4 tell me now, while the witness is here, which

5 topics you believe he's not prepared for?

6 MR. WOODS: Okay. I'll tell you.

7 One two three, four, seven, 10, 15.

8 MR. GARDNER: Your position, just so I'm

9 clear, is that Colonel Brady was not prepared to

10 answer your questions with respect to topics one,

11 two, three, four, seven, 10, and 15? That's your

12 position, Counsel?

13 MR. WOODS: I'm sorry, do I have to

14 repeat myself?

15 MR. GARDNER: Yeah. I want to make sure

16 I'm fair with you --

17 MR. WOODS: Yes.

18 MR. GARDNER: -- that your -- all right.

19 That's fine.

20 EXAMINATION BY COUNSEL FOR DEFENDANTS

21 BY MR. GARDNER:

22 Q Colonel Brady, I've got some questions

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1 for you.

2 Mr. Woods asked you a question about

3 reservists getting activated in the context of an

4 alert.

5 Do you recall that?

6 A Yes, I do.

7 Q And what happens -- because Mr. Woods

8 did not ask you this question -- what happens once

9 that reserve homosexual service member is on

10 active after the alert? What happens to that

11 member?

12 A He --

13 MR. WOODS: Excuse me. Object to the

14 question on the grounds that it calls for

15 speculation, and as an incomplete hypothetical

16 question.

17 BY MR. GARDNER:

18 Q I'm asking you a process question.

19 A Okay.

20 Q I'm not asking you about any particular

21 member.

22 As a process question, what happens

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1 pursuant to the FORSCOM once a reserve service

2 member is on active duty after the alert? What

3 happens to that member?

4 A Once a member comes on active duty, the

5 separations process continues.

6 Q Okay. So once that individual --

7 presumed is a FORSCOM --

8 A Yeah.

9 Q -- is deployed, does he serve his entire

10 term of duty?

11 A No.

12 Q What happens?

13 A If he were found to be -- if he were

14 found to be actually a homosexual after

15 investigation, he's returned.

16 Q Now, with respect to topic seven,

17 Colonel Brady -- it's the one about all the

18 different reports.

19 A Yes, sir.

20 Q A question about that.

21 In respect to preparation for topic

22 seven, did you look at those two organizational

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1 charts which were Exhibits 95 and 96 in

2 preparation for that topic?

3 A Yes, I did.

4 Q And you said you spoke to Captain Grant;

5 is that correct?

6 A Correct.

7 Q And based upon your review of the org

8 charts -- oh, and you also reviewed, I think you

9 said, a letter that indicated where requests for

10 information were directed to, correct?

11 A That's correct.

12 Q And based upon review of those documents

13 in your discussion with Captain Grant, were you

14 able to inform yourself as to whether or not the

15 department was able to comply with the discovery

16 requests by the Plaintiff?

17 MR. WOODS: Objection, leading.

18 THE WITNESS: I believe so.

19 BY MR. GARDNER:

20 Q And what were you able to --

21 A I felt that the department did as it was

22 instructed.

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1 Q By the way, these documents identified
 2 in topic seven, or these categories, the RAND, the
 3 GAO, those types of documents, would those be
 4 documents that would generally be retained in your
 5 division of the department?
 6 A Not necessarily. No, they would not.
 7 Q Okay. Would some of them?
 8 A Some of them may.
 9 Q Okay.
 10 A But certainly not all.
 11 Q And can you give me a flavor of the
 12 types that might be?
 13 MR. WOODS: Objection as to "flavor,"
 14 vague and ambiguous.
 15 BY MR. GARDNER:
 16 Q You can answer.
 17 A For example, the RAND Corporation
 18 report, we had that; mainly because we do a lot of
 19 work with RAND. But the others, no.
 20 Q Okay. You were asked a question about
 21 the PERSEREC report and whether the PERSEREC
 22 report was provided to Congress.

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1 Do you recall that?
 2 A Yes, I do.
 3 Q And do you recall whether or not Larry
 4 Korb provided the PERSEREC report to Congress in
 5 connection with his testimony?
 6 A Yes.
 7 Q What's your recollection?
 8 A I was informed that Mr. Korb provided
 9 that as an attachment to his testimony to
 10 Congress.
 11 Q Okay. I think I used some bad
 12 terminology there. I asked you about those that
 13 go on activity duty.
 14 When you go on activity duty after an
 15 alert is issued, are you deployed pursuant to a
 16 FORSCOM?
 17 A At the moment you come on active duty?
 18 Q Correct.
 19 A No, you're not.
 20 Q Okay.
 21 A You're deployed at this later date.
 22 Q I see.

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1 A Usually, you will -- the person will
 2 undergo some type of training to prepare -- to
 3 further prepare for that deployment. And then
 4 they will be deployed. And at that point they're
 5 considered deployed.
 6 Q I see.
 7 So when you --
 8 MR. GARDNER: Okay. No, I think that's
 9 it. I have no further questions.
 10 MR. WOODS: I'm so glad you did that.
 11 EXAMINATION BY COUNSEL FOR PLAINTIFF
 12 BY MR. WOODS:
 13 Q All right. First of all, Colonel, who
 14 informed you that Mr. Korb provided a PERSEREC
 15 report to Congress?
 16 A Actually, it was counsel. And I
 17 forgot --
 18 Q Which counsel?
 19 A I believe it was Mr. Gardner.
 20 Q When did Mr. Gardner tell you that?
 21 A I believe it was Wednesday of this week,
 22 earlier this week.

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1 Q Okay. What else did he tell you on
 2 Wednesday of this week?
 3 MR. GARDNER: Objection. I will
 4 instruct the witness not to answer.
 5 To the extent you are asking him about
 6 non-substantive information, to the extent you're
 7 asking him about information used to educate the
 8 witness to testify, you can answer the question.
 9 BY MR. WOODS:
 10 Q How many meetings did you have with
 11 Mr. Gardner to prepare yourself to testify today?
 12 A How many meetings total?
 13 Q Yes.
 14 A I believe it was three.
 15 Q And addition to the three meetings, did
 16 you have telephone conversations and e-mails with
 17 him about deposition preparation?
 18 A I had one conversation that I'm aware
 19 of. And it was mainly to ask I think about a
 20 report. I can't remember exactly what it was.
 21 Q Okay. How long did the three meetings
 22 with Mr. Gardner last?

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1 A The one this past Wednesday was -- I'd
 2 estimate about six hours. The -- one of the
 3 others was about five hours, five or six hours.
 4 And I think the third was about the same, the --
 5 it's the middle meeting that I'm -- I'm vague on
 6 how long it took.
 7 Q So your meetings with Mr. Gardner lasted
 8 the total of about 15 to 18 hours?
 9 MR. GARDNER: Objection,
 10 mischaracterizes the witness's testimony.
 11 THE WITNESS: I don't know exactly,
 12 because I don't know the middle time. But that's
 13 probably a close approximation.
 14 BY MR. WOODS:
 15 Q Is that the best estimate you can give
 16 me today, 15 to 18 hours?
 17 A Yes, sir, it is.
 18 Q Thank you.
 19 In addition to meeting with Mr. Gardner,
 20 did you meet with any other lawyers in preparation
 21 for your deposition today?
 22 A Outside of my meeting with

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1 Mr. Gardner --
 2 Q Yes.
 3 A -- no.
 4 Q Okay.
 5 A No.
 6 Q I take it there were other lawyers
 7 present during at least some of your meetings with
 8 Mr. Gardner?
 9 A Yes, sir, there were.
 10 Q Who else was present during any of these
 11 meetings?
 12 A Mr. Gym Schwenk, Mr. Michael Fucci,
 13 Captain Grant. And there were others, but God
 14 help me I don't remember all their names.
 15 Q Okay. And who is Mr. Schwenk?
 16 A Mr. Schwenk, he is an attorney in the
 17 DOD Office of General Counsel.
 18 Q And who is Mr. Fucci?
 19 A He works for DOD office of general --
 20 Department of Defense Office of General Counsel as
 21 well.
 22 Q And Captain Grant?

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1 A Captain Grant is -- I believe is an Army
 2 Judge Advocate General also I think assigned to
 3 their litigation shop.
 4 Q Okay. By the way, did Mr. Gardner tell
 5 you which of the three PERSEREC reports Mr. Korb
 6 provided to Congress?
 7 A I believe he stated it was the draft
 8 report that was -- that was provided.
 9 Q Okay. The 1988 report, or the 1989
 10 report?
 11 A I don't know. I don't recall.
 12 Q All right. And Mr. Gardner asked you a
 13 question about the FORSCOM regulation. And he
 14 described it as a process question.
 15 Do you recall that testimony that you
 16 just gave a few minutes ago?
 17 A Yes, sir, I do.
 18 Q Okay. And what was the source of the
 19 information that you used to answer that question?
 20 Is it information you have some personal
 21 knowledge of, or was it information provided to
 22 you by your lawyers?

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1 MR. GARDNER: Objection, compound.
 2 THE WITNESS: Actually, it was
 3 information provided to me by Mr. John Plotkin of
 4 United States Forces Command.
 5 BY MR. WOODS:
 6 Q And was there anything else that you and
 7 Mr. Plotkin discussed that you haven't told us
 8 yet, or didn't tell us in response to my questions
 9 about your conversation with him?
 10 MR. GARDNER: Objection,
 11 mischaracterizes the Colonel's previous testimony.
 12 THE WITNESS: Not that I'm aware.
 13 MR. WOODS: Thank you, very much.
 14 THE WITNESS: Thank you.
 15 MR. GARDNER: I will reserve the right
 16 to have the witness review and sign his errata
 17 sheet.
 18 Thank you.
 19 (Whereupon at 6:15 p.m., the
 20 deposition of COLONEL JAMIE
 21 SCOTT BRADY, 30(b)(6), was
 22 adjourned.)

1 CERTIFICATE OF DEPONENT
 2 I hereby certify that I have read and examined the
 3 foregoing transcript, and the same is a true and
 4 accurate record of the testimony given by me.
 5 Any additions or corrections that I feel are
 6 necessary, I will attach on a separate sheet of
 7 paper to the original transcript.

8
9

Signature of Deponent

10 I hereby certify that the individual representing
 11 himself/herself to be the above-named individual,
 12 appeared before me this _____ day of _____
 13 2010, and executed the above certificate in my
 14 presence.

15
16

NOTARY PUBLIC IN AND FOR

17
18

County Name

19
20
21 MY COMMISSION EXPIRES:
22

1 CERTIFICATE OF NOTARY PUBLIC
 2 I, BARBARA A. HUBER, CSR, the officer
 3 before whom the foregoing deposition was taken, do
 4 hereby certify that the witness whose testimony
 5 appears in the foregoing deposition was duly sworn
 6 by me; that the testimony of said witness was
 7 taken by me in stenotypy and thereafter reduced to
 8 print under my direction; that said deposition is
 9 a true record of the testimony given by said
 10 witness; that I am neither counsel for, related
 11 to, nor employed by any of the parties to the
 12 action in which this deposition was taken; and,
 13 furthermore, that I am not a relative or employee
 14 of any attorney or counsel employed by the parties
 15 hereto, nor financially or otherwise interested in
 16 the outcome of this action.

17
18

18 BARBARA A. HUBER, CSR
 19 Notary Public, in and for the
 20 District of Columbia
 21 My Commission Expires: March 14, 2012
 22