

# Attachment 8

## Deposition of Dennis Drogo

### Key to Objections

AA	Asked and answered
AR	Argumentative
CS	Calls for speculation
IR-EW	Irrelevant, enlistment waivers for convicted felons
IR-PT	Irrelevant, personal testimony of the witness
IR-PE	Irrelevant, post-enactment developments
VA	Vague

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

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

IR-EW-entire deposition

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

IR-PE-entire depositions,  
except 41:12-42:20

Washington, D.C.

Friday, April 16, 2010

30(b)(6) Deposition of  
DENNIS DROGO, 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 8:00 a.m., before  
Barbara A. Huber, Notary Public in and for the  
District of Columbia, when were present on behalf  
of the respective parties:

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 On behalf of Plaintiff:</p> <p>3 DANIEL J. WOODS, ESQUIRE</p> <p>4 White &amp; Case, LLP</p> <p>5 633 West Fifth Street</p> <p>6 Suite 1900</p> <p>7 Los Angeles, California 90071-2007</p> <p>8 213.620.7772</p> <p>9 dwoods@whitecase.com</p> <p>10</p> <p>11 On behalf of Defendants:</p> <p>12 JOSHUA E. GARDNER, ESQUIRE</p> <p>13 RYAN BRADLEY PARKER, ESQUIRE</p> <p>14 JESSE GRAUMAN, ESQUIRE</p> <p>15 U.S. Department of Justice</p> <p>16 Civil Division</p> <p>17 Federal Programs Branch</p> <p>18 20 Massachusetts Avenue, NW</p> <p>19 Washington, D.C. 20001</p> <p>20 202.616.8470</p> <p>21 joshua.e.gardner@usdoj.gov</p> <p>22</p>	<p>1 CONTENTS</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Counsel for Plaintiff 6</p> <p>4 Counsel for Defendants 64</p> <p>5 Counsel for Plaintiff 67</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 3	Page 5
<p>1 CAPTAIN PATRICK GRANT</p> <p>2 U.S. ARMY LEGAL SERVICES AGENCY</p> <p>3 901 N. Stuart Street</p> <p>4 Arlington, Virginia 22203</p> <p>5 703.696.1626</p> <p>6</p> <p>7 Also Present:</p> <p>8 Vin Kamath, Paralegal</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 DEPOSITION EXHIBITS: PAGE</p> <p>2 No. 65 - Notice of 30(b)(6) Deposition 6</p> <p>3 (Retained)</p> <p>4</p> <p>5 No. 66 - Memorandum, June 27, 2008 30</p> <p>6</p> <p>7 No. 67 - Article by Michael Boucai 39</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

Page 6

1 PROCEEDINGS  
 2 (Deposition Exhibit No. 65  
 3 marked for identification.)  
 4 Whereupon,  
 5 DENNIS DROGO, 30(b)(6),  
 6 was called as a witness by counsel for Plaintiff,  
 7 and having been duly sworn by the Notary Public,  
 8 was examined and testified as follows:  
 9 EXAMINATION BY COUNSEL FOR PLAINTIFF  
 10 BY MR. WOODS:  
 11 Q Would you state your full name, please?  
 12 A Dennis Drogo.  
 13 Q And can you tell us your current  
 14 employment or occupation?  
 15 A I work for the Office of the  
 16 Undersecretary of Defense for personnel and  
 17 readiness, military personnel policy, the  
 18 directorate of accession policy. And I'm an  
 19 assistant director there.  
 20 Q And how long have you held that  
 21 position?  
 22 A A little over five years.

Page 7

1 Q And to whom do you report in that  
 2 position?  
 3 A I'm sorry?  
 4 Q To whom do you report in that position?  
 5 A Dr. Gilroy, the director of accession  
 6 policy.  
 7 Q And Dr. Gilroy's first name is?  
 8 A Curtis Gilroy.  
 9 Q And in your position today, are you a  
 10 member of the armed forces?  
 11 A No, I am not.  
 12 Q Have you ever been a member of the armed  
 13 forces?  
 14 A Yes, I have.  
 15 Q And can you describe how long you were a  
 16 member of the armed forces and in which branch,  
 17 please?  
 18 A I served with the United States Air  
 19 Force for 26 years as an enlisted member.  
 20 Q And what time period did that cover?  
 21 A 1979 to 2004, or actually 2005 is the  
 22 official date.

Page 8

1 Q And when you left the Air Force, you  
 2 took on the job that you told today?  
 3 A Yes, sir.  
 4 Q Okay. Thank you.  
 5 And do you understand that we're here  
 6 today for a deposition of the Department of  
 7 Defense. And that you have been designated by the  
 8 Department of Defense to testify on one subject?  
 9 A Yes, sir.  
 10 Q Okay. And have you done anything to  
 11 prepare yourself to testify on that subject today?  
 12 A I reviewed the documents similar to  
 13 this -- [indicating] -- that were provided.  
 14 Q Okay. So I've shown you what we've  
 15 marked as Exhibit 65.  
 16 And if I understand this correctly,  
 17 you're here to testify today on category or  
 18 subject 14, which is, quote, The history,  
 19 consideration, development, creation,  
 20 authorization, reasons for authorization,  
 21 adoption, and implementation of each branch of the  
 22 United States Armed Forces respective policy

Page 9

1 regarding moral waivers of prior felony  
 2 convictions, including any amendments to such  
 3 policies or changes in the implementation of or  
 4 criteria for such policies since 2001; is that  
 5 right?  
 6 A That is correct.  
 7 Q Okay. And in order to prepare yourself  
 8 to testify as the person most qualified from the  
 9 Defense Department on that subject, did you do  
 10 anything besides reading this deposition notice,  
 11 Exhibit 65?  
 12 MR. GARDNER: Objection,  
 13 mischaracterizes the Government's obligation under  
 14 Rule 30(b)(6).  
 15 You can answer.  
 16 BY MR. WOODS:  
 17 Q Please answer.  
 18 A No, sir. Did I do anything in  
 19 additional to prepare? No.  
 20 Q Well, what did you do to prepare to  
 21 testify today on this subject?  
 22 A Reviewed current policies.

Page 10

1 Q Okay. And when you say you read current  
 2 policies, are you referring to some particular  
 3 documents?  
 4 A Yes.  
 5 Q What documents did you review?  
 6 A Title 10, first of all, Section 504.  
 7 Q Okay.  
 8 A And then I also reviewed DOD  
 9 instruction -- and I can't remember the numbers,  
 10 like 1349.26. It's the qualifications standards  
 11 for the department.  
 12 Q Okay. Anything else?  
 13 A And I also reviewed DTM 0818, which is  
 14 enlistment waivers.  
 15 Q Okay. In your current position, what  
 16 are your duties and responsibilities?  
 17 A I handle issues regarding a lot to do  
 18 with recruiting. We handle a waiver process. We  
 19 handle recruiter irregularities, marketing,  
 20 enlistment incentives, and other  
 21 recruiting-related issues.  
 22 Q And do you do that on behalf of all of

Page 11

1 the branches of our armed forces?  
 2 A I do it as a Department of Defense  
 3 representative, yes.  
 4 Q Are military recruiters sometimes  
 5 members of the military and sometimes not members  
 6 of the military?  
 7 MR. GARDNER: Objection, compound.  
 8 You can answer.  
 9 THE WITNESS: The majority of recruiters  
 10 are military members. The Army ran a pilot  
 11 program where they had contract recruiters for a  
 12 period of time.  
 13 BY MR. WOODS:  
 14 Q And were contract recruiters allowed to  
 15 be openly homosexual?  
 16 MR. GARDNER: Objection, beyond the  
 17 scope of the Rule 30(b)(6) topic.  
 18 You can answer if you have personal  
 19 knowledge.  
 20 THE WITNESS: I don't know the answer to  
 21 that question.  
 22 BY MR. WOODS:

Page 12

1 Q Was there any prohibition against openly  
 2 gay people or homosexual individuals serving as  
 3 contract recruiters, that you're aware of?  
 4 MR. GARDNER: Objection, beyond the  
 5 scope of the Rule 30(b)(6) deposition.  
 6 You can answer if you have personal  
 7 knowledge.  
 8 THE WITNESS: Once again, that was an  
 9 Army contract. And I'm not familiar with the  
 10 details of the contract.  
 11 BY MR. WOODS:  
 12 Q Now, one of the things that you reviewed  
 13 in preparation for testifying on this subject  
 14 today was 10 United States Code Section 504.  
 15 And does that law basically provide that  
 16 people who have been convicted of felonies may not  
 17 enlist in our armed forces but may be authorized  
 18 to do so in meritorious cases?  
 19 A Yes, sir, by the service secretaries,  
 20 that's correct.  
 21 Q And does that mean the secretary of each  
 22 breach of our armed forces?

Page 13

1 A Yes, sir.  
 2 Q And are decisions about such exceptions  
 3 made by each branch individually?  
 4 A To a limited degree. We provide a -- a  
 5 basic outline of what's expected. And then they  
 6 promulgate their own policies based on that  
 7 guidance.  
 8 Q And the outline that you're referring  
 9 to, is that in writing somewhere?  
 10 A That would be the DTM 0818, and the  
 11 13 -- I'll have to get you to exact number -- the  
 12 1349.26, I believe.  
 13 Q Okay. And when did the Department of  
 14 Defense provide this outline that you refer to?  
 15 A The DTM itself was published in June of  
 16 '08. And the directive itself, I don't know when  
 17 that -- that covers a whole host of topics for  
 18 qualifications, so I assume that's pretty much a  
 19 long-standing document.  
 20 Q And prior to the DTM being published in  
 21 June 2008, was there some prior version of it?  
 22 A No.

Page 14

1 Q Prior to June 2008 when the DTM was  
 2 published, was the process for allowing exceptions  
 3 or waivers for felons handled on a branch basis as  
 4 opposed to a Department of Defense basis?  
 5 A The DTM provided guidance on the  
 6 categorization of offenses and the reporting  
 7 process more than the actual waiver review process  
 8 itself. The services do have -- do still retain  
 9 that authority.  
 10 Q And when you talk about the  
 11 categorization of offenses, can you explain what  
 12 you mean by that, please?  
 13 A Basically, the department categorizes  
 14 offenses into different categories: Major  
 15 misconduct, misconduct, and other offenses.  
 16 Q All right. And this is something that  
 17 the department did for the first time in  
 18 approximately June of 2008?  
 19 A It was done prior to that, in 1998, in  
 20 an informal -- well, it was done in a formal  
 21 meeting, but it was never promulgated in policy.  
 22 So between 1998 and when we rewrote the DTM or

Page 15

1 when we -- I actually published the DTM, the  
 2 services had began to use it for their own  
 3 personal tracking procedures, and not something  
 4 standardized at the department level as it was  
 5 intended.  
 6 Q And when you categorize offenses under  
 7 this DTM, is it correct that they are categorized  
 8 as either major misconduct, misconduct,  
 9 non-traffic offenses, or traffic offenses?  
 10 A Correct.  
 11 Q And why was it set up that way as  
 12 opposed to setting it up in terms of felonies and  
 13 misdemeanors?  
 14 A Because the differing municipalities and  
 15 jurisdictions across the country viewed things  
 16 differently. If something is processed as a  
 17 felony, regardless of the jurisdiction, it has to  
 18 go under major misconduct.  
 19 Q All right. So what you were trying to  
 20 accomplish by categorizing offenses in the way  
 21 that you described -- major misconduct,  
 22 misconduct, non-traffic offense, and traffic

Page 16

1 offence -- was to take into account state-by-state  
 2 variations, where a felony in one state might not  
 3 be a felony in another state?  
 4 A Correct.  
 5 Q You were looking at the nature of the  
 6 offense itself, instead of how it was categorized  
 7 by any individual state?  
 8 A As well as the possible punishment,  
 9 correct.  
 10 Q Okay. And is the current policy one  
 11 that allows individuals who have been convicted of  
 12 what is categorized as major misconduct to be  
 13 admitted to our armed forces?  
 14 A Yes.  
 15 Q Okay. But a waiver is required for  
 16 that?  
 17 A Yes.  
 18 Q And who must authorize the waiver?  
 19 A Each service has a formal process that  
 20 they go through. And the approval authority for a  
 21 major misconduct is one of the recruiting service  
 22 commanders or original commanders, usually in the

Page 17

1 grade of a general officer or at a minimum the  
 2 colonel.  
 3 Q Is it possible for someone to enlist in  
 4 our armed forces who has two major misconducts?  
 5 A Theoretically, yes, it is possible.  
 6 Q Is it possible in all four branches?  
 7 A By policy, it is possible.  
 8 Q And if you are an individual with a  
 9 misconduct offense, what waiver, if any, is  
 10 required?  
 11 A The misconduct offenses -- I would have  
 12 to look -- I believe it's two misconducts.  
 13 Q Two misconducts require a waiver?  
 14 A Yes.  
 15 Q And is it correct that if you have  
 16 three -- I'm sorry, four non-traffic offenses and  
 17 one misconduct offense, you also require a waiver?  
 18 A Yes, that is correct.  
 19 Q Okay. And is that also true for all of  
 20 the branches of the service?  
 21 A That is true for all branches.  
 22 Q And what records are kept of people who

Page 18

1 are allowed to join our armed forces with waivers?  
 2 MR. GARDNER: Objection, beyond the  
 3 scope of the Rule 30(b)(6) topic.  
 4 You can answer if you know.  
 5 THE WITNESS: As a matter of when -- an  
 6 individual process, there is a coding process.  
 7 And that is entered on one of the enlistment  
 8 forms. And that is kept as part of the person's  
 9 record.  
 10 BY MR. WOODS:  
 11 Q And what records are kept by the  
 12 Department of Defense to track how many people are  
 13 enlisted under this waiver program?  
 14 MR. GARDNER: Objection, beyond the  
 15 scope of the Rule 30(b)(6).  
 16 You can answer.  
 17 THE WITNESS: The DTM was intended to  
 18 help resolve some of the problems that the  
 19 department did have in tracking the -- the outcome  
 20 of those decisions. The coding was inconsistent  
 21 over time amongst the services, so the DTM  
 22 established something more consistent so we could

Page 19

1 track it. Although the services all had a code  
 2 prior, and they could probably provide details if  
 3 required.  
 4 BY MR. WOODS:  
 5 Q All right. So prior to the DTM in June  
 6 2008, the services were not tracking these in a  
 7 consistent way?  
 8 A They were generally -- depends on what  
 9 span of time you refer to. I mean, in '98 is when  
 10 there was an informal meeting and they established  
 11 coding that was to be implemented across all  
 12 services. For a period of time that was used.  
 13 And then over time it evolved into something other  
 14 than what was designed at that 1998 meeting.  
 15 So where along that process it  
 16 changed -- it remained fairly constant, but there  
 17 were changes. And to be able to identify those  
 18 changes, I don't think we would be able to do  
 19 that.  
 20 Q All right. Could you estimate for me  
 21 the number of convicted felons who were admitted  
 22 to the armed forces from 1994 to 2008?

Page 20

1 MR. GARDNER: Objection, calls for  
 2 speculation. Objection, beyond the scope of topic  
 3 14 of the Rule 30(b)(6) deposition.  
 4 THE WITNESS: We would really have no  
 5 way of knowing that.  
 6 BY MR. WOODS:  
 7 Q Okay. As the person designated by the  
 8 Department of Defense as its most qualified  
 9 individual to testify on the subject we're here to  
 10 talk about today, you cannot that number for me?  
 11 MR. GARDNER: Objection, calls for  
 12 speculation. Objection, beyond the scope of the  
 13 Rule 30(b)(6) topic. Objection, mischaracterizes  
 14 the Government's obligation under Rule 30(b)(6).  
 15 If you have personal knowledge, you can  
 16 answer.  
 17 THE WITNESS: The stipulation where you  
 18 put convicted felons makes it's difficult to  
 19 track.  
 20 BY MR. WOODS:  
 21 Q Okay.  
 22 A The services were granting waivers for

Page 21

1 felony offenses, regardless of the disposition.  
 2 And they did not distinguish between those that  
 3 were convicted and those that were otherwise  
 4 adversely adjudicated.  
 5 Q Okay. Taking that into account, can you  
 6 estimate the number of individuals with felony  
 7 offenses who were admitted into our armed forces  
 8 from 1994 until the DTM in June of 2008?  
 9 MR. GARDNER: Objection, beyond the  
 10 scope of the Rule 30(b)(6) deposition. Objection,  
 11 calls for speculation.  
 12 THE WITNESS: I do not have that  
 13 information readily available. And the integrity  
 14 of that data would be suspect.  
 15 BY MR. WOODS:  
 16 Q Okay.  
 17 A We would be able to provide a figure,  
 18 but the data would be suspect.  
 19 Q Okay. And are you able to provide a  
 20 figure since the DTM was provided in June of 2008?  
 21 MR. GARDNER: Objection, beyond the  
 22 scope of the Rule 30(b)(6) deposition.

IR-PT  
CS

AR  
CS

IR-PT  
CS

IR-PT

IR-PT  
CS

IR-PT

Page 22

1 You can answer if you can.  
 2 THE WITNESS: We would be able to for  
 3 fiscal year 2009. We would be able to provide  
 4 felony convictions that were waived.  
 5 BY MR. WOODS:  
 6 Q And what is the fiscal year that you're  
 7 using?  
 8 A Ours starts October 1st through  
 9 September 30th.  
 10 Q And do you have that number?  
 11 A I do not have it with me.  
 12 Q Is it correct or incorrect that the  
 13 number of waivers of this type has increased since  
 14 2001?  
 15 MR. GARDNER: Objection, vague.  
 16 THE WITNESS: Between 2001 and the  
 17 current date?  
 18 BY MR. WOODS:  
 19 Q Yes.  
 20 A It has not had a consistent trend.  
 21 Q Okay. How would you describe the trend  
 22 since 2001?

Page 23

1 A There was a period of increase and a  
 2 period of decrease.  
 3 Q And when was the period of increase?  
 4 A Two thousand -- well, once again it  
 5 becomes difficult because we changed the  
 6 classification process. So you're not counting  
 7 the same things that you were counting previously.  
 8 So to be able to say definitively that there were  
 9 more or less is not really possible.  
 10 You can say there was -- the tracking  
 11 numbers that show more were probably from 2002  
 12 through 2005. But once again it's difficult to  
 13 actually put a firm number on it just because of  
 14 the change in accounting procedures.  
 15 Q And what accounts for the increase,  
 16 given the numbers are suspect, from 2002 to 2005?  
 17 A That would be speculation.  
 18 Q And then was there a decrease after  
 19 2005?  
 20 A Yes.  
 21 Q Okay. And --  
 22 A Some --

Page 24

1 Q Go ahead.  
 2 A Some of that may be due to the  
 3 reporting. And some of it may be other variables.  
 4 Q And has there been an increase following  
 5 that decrease?  
 6 A No.  
 7 Q And when we talk about the category of  
 8 major misconduct offenses, can you tell me what  
 9 some of the types of offenses that fall into that  
 10 category would be, please?  
 11 A Burglary, arson, armed robbery. There's  
 12 a host of them. I mean, I --  
 13 Q Rape?  
 14 A Rape is identified on that list also,  
 15 yes.  
 16 Q Murder?  
 17 A Yes.  
 18 Q Do different branches of the service  
 19 have a larger number of waivers for felony  
 20 offenses than other branches?  
 21 A Yes.  
 22 Q Okay. And could you sort of rank them

Page 25

1 by numbers, please?  
 2 A Generally, it would be just based on  
 3 size. Army would be first. The number of people  
 4 they bring in is -- far exceeds the other  
 5 services. Then Marine Corps and Navy are fairly  
 6 close. And Air Force is generally last.  
 7 Q Can a person who joins the armed forces  
 8 under a waiver of the type we're discussing today  
 9 become an officer?  
 10 MR. GARDNER: Objection, beyond the  
 11 scope of the Rule 30(b)(6).  
 12 You can answer.  
 13 THE WITNESS: Yes, they could ultimately  
 14 become an officer.  
 15 BY MR. WOODS:  
 16 Q Do you have any records that would track  
 17 the frequency with which that might happen?  
 18 MR. GARDNER: Objection, beyond the  
 19 scope of the Rule 30(b)(6) topic.  
 20 You can answer if you know.  
 21 THE WITNESS: No, I don't have records  
 22 of that.

IR-PT

IR-PT



Page 26

1 BY MR. WOODS:  
 2 Q Is there any restriction on the type of  
 3 position that a person admitted to the armed  
 4 forces under a waiver for felony offences can  
 5 serve in?  
 6 A The waiver process qualifies a person  
 7 for service. Beyond that, the only other thing  
 8 that would restrict them is their ability to gain  
 9 a security clearance. And those are adjudicated  
 10 individually by the services.  
 11 Q So, for example, a person admitted to  
 12 the service under a waiver for felony offence who  
 13 had a gun charge on his record might be handed a  
 14 rifle and sent out to combat, right?  
 15 MR. GARDNER: Objection, hypothetical.  
 16 You can answer if you can.  
 17 THE WITNESS: That's kind of a broad  
 18 question. I'm not really sure what -- if someone  
 19 convicted of a weapon offense can carry a weapon  
 20 serving? Yes.  
 21 BY MR. WOODS:  
 22 Q Now, was there any study done, to your

Page 27

1 knowledge, about the effect on unit cohesion or  
 2 troop morale by allowing convicted felons to serve  
 3 in our armed forces?  
 4 MR. GARDNER: Objection, beyond the  
 5 scope of the Rule 30(b)(6) deposition.  
 6 You can answer if you have personal  
 7 knowledge.  
 8 THE WITNESS: There are research studies  
 9 done, but not that address that specific issue.  
 10 BY MR. WOODS:  
 11 Q What research studies are done?  
 12 MR. GARDNER: Objection.  
 13 BY MR. WOODS:  
 14 Q Or have been done?  
 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: The studies that exist  
 19 mainly focus on the attrition rates of waivers.  
 20 BY MR. WOODS:  
 21 Q And is the attrition rate higher for  
 22 people admitted under waivers?

Page 28

1 MR. GARDNER: Objection, beyond the  
 2 scope of the 30(b)(6) deposition.  
 3 You can answer if you know.  
 4 THE WITNESS: The majority of the  
 5 research shows that those convicted of the most  
 6 serious offenses tend to do as well if not better  
 7 than non-waivered members.  
 8 BY MR. WOODS:  
 9 Q And what -- I'm sorry, how many studies  
 10 are there that focus on attrition rates with  
 11 people with these waivers?  
 12 MR. GARDNER: Objection, beyond the  
 13 scope of the Rule 30(b)(6) deposition.  
 14 You can answer if you know.  
 15 THE WITNESS: I'm aware of at least  
 16 three.  
 17 BY MR. WOODS:  
 18 Q And can you identify them for me,  
 19 please?  
 20 MR. GARDNER: Objection, beyond the  
 21 scope of the 30(b)(6) deposition.  
 22 THE WITNESS: I can tell you who

Page 29

1 published them. One would be HumRRO.  
 2 BY MR. WOODS:  
 3 Q How do you spell that?  
 4 A H-U-M-M-R-O. And the other would be  
 5 CNA, Center for Naval Analysis. And then the  
 6 services have individual studies done internally,  
 7 but those are not --  
 8 Q And do you know the dates of those  
 9 studies?  
 10 MR. GARDNER: Objection, beyond the  
 11 scope of the Rule 30(b)(6) deposition.  
 12 THE WITNESS: No, I don't.  
 13 BY MR. WOODS:  
 14 Q Are you aware of any studies, reports,  
 15 or analyses that may have been done that address  
 16 whether convicted felons present a greater risk to  
 17 unit cohesion and troop morale than homosexuals?  
 18 MR. GARDNER: Objection, beyond the  
 19 scope of the Rule 30(b)(6) deposition.  
 20 If you have personal knowledge, you can  
 21 answer.  
 22 THE WITNESS: I'm not aware of anything

IR-PT

IR-PT

IR-PT

Page 30

1 that addresses that specifically.  
 2 BY MR. WOODS:  
 3 Q I'll show you what I'll mark as Exhibit  
 4 66.  
 5 (Deposition Exhibit No. 66  
 6 marked for identification.)  
 7 BY MR. WOODS:  
 8 Q I've put before you, sir, a document  
 9 dated June 27, 2008, that I believe is the DTM  
 10 document you mentioned before.  
 11 Am I right about that?  
 12 A [Witness examined document]. Correct.  
 13 Q So Exhibit 66 is the directive-type  
 14 memorandum, or DTM, number 08-018; is that  
 15 correct?  
 16 A That is correct.  
 17 Q And were you involved in the preparation  
 18 of this document?  
 19 A Yes, I was.  
 20 Q Can you explain your involvement in the  
 21 preparation of this document, please?  
 22 A I chaired the working group that wrote

Page 31

1 the policy.  
 2 Q And how many members were there in the  
 3 working group that produced this policy?  
 4 A Somewhere between 18 and 30.  
 5 Q Okay. And is this the current policy  
 6 today?  
 7 A It is the current policy.  
 8 Q And on page 3 of this document, under --  
 9 this is the heading responsibilities. And under  
 10 item number four it says secretaries of the  
 11 military departments. And they are to, under  
 12 subsection E, report waiver data quarterly to the  
 13 office of the USD P&R.  
 14 Do you see that?  
 15 A That is correct.  
 16 Q Okay. And have the secretaries of each  
 17 branch provided such waiver data quarterly?  
 18 A They have.  
 19 Q And what happens to that data when it is  
 20 received? Is it combined into one larger report?  
 21 A It is.  
 22 Q And how often are those larger reports

Page 32

1 generated?  
 2 A It's an annual report.  
 3 Q And that's the report that you mentioned  
 4 before that was done for fiscal year 2009, or is  
 5 that a different report?  
 6 A Yes.  
 7 Q I'm sorry. My question was compound.  
 8 What is the report that was the combined  
 9 report of the quarterly data from each branch?  
 10 A We have published an annual report that  
 11 shows the waiver data for fiscal year 2009.  
 12 Q And if you wanted to get the similar  
 13 waiver data for prior fiscal years, how would you  
 14 do that?  
 15 A We have the data.  
 16 Q And in what form do you have the data?  
 17 A Similar to the current format from 2005  
 18 on. Prior to 2005, it's less consistent.  
 19 Q And what is the name or title of the  
 20 reports that you have for the years 2005 to 2008?  
 21 A They all have the same name. They're  
 22 the waiver report. They're just called waiver

Page 33

1 report.  
 2 Q And who authors the waiver reports that  
 3 are produced each year?  
 4 A Who authors them?  
 5 Q Yeah. Who produces the report?  
 6 A I actually draft the report.  
 7 Q And who do you send it to?  
 8 A Senior leadership within the department.  
 9 Q And so you produced this report each  
 10 year since 2005?  
 11 A I have.  
 12 Q And do you recall, from your work in  
 13 preparing these reports, fluctuations or changes  
 14 in the number of waivers in these years?  
 15 MR. GARDNER: Objection, asked and  
 16 answered.  
 17 You can answer it again.  
 18 THE WITNESS: It has fluctuated, yes.  
 19 BY MR. WOODS:  
 20 Q Can you describe the fluctuations for  
 21 me, please?  
 22 MR. GARDNER: Objection, asked and

AA

AA

Page 34

1 answered.

2 THE WITNESS: I thought we already went

3 through that earlier. From -- I could not give

4 you the definitive answer from 2007 to 2009 how

5 it's fluctuated up or down. I'd have to review

6 the reports.

7 BY MR. WOODS:

8 Q Now, when someone is reviewing an

9 application for enlistment by someone who has one

10 of these offenses that we're talking about, major

11 misconduct or misconduct, things of that sort,

12 what standard is the person reviewing the

13 application supposed to employ?

14 A They assess the "whole person" concept.

15 They look at letters of recommendations from

16 individuals in the community. They look at

17 employment history. They look at school history,

18 other conduct and such.

19 Q Okay. Can you explain what you mean by

20 the "whole person" concept?

21 A Basically, those topics that I just

22 addressed are what -- that constitutes the whole

Page 35

1 person.

2 Q And is it the idea that if the whole

3 person, when you look at the whole person --

4 strike that.

5 Is the concept that when you look at the

6 whole person, you might be able to conclude that

7 despite whatever offense may have been committed,

8 the person could contribute to the armed forces?

9 A Yes.

10 Q And on page 2 of the exhibit that we're

11 looking at, Exhibit 66, DTM 08-018, on page 2, is

12 there a statement of this "whole person" concept?

13 A No.

14 Q Okay. I'm looking at page 2 under the

15 heading policy.

16 It says, It is DOD policy that --

17 And in the second bullet point it says,

18 quote, Judgment as to an applicant's

19 qualifications is reached by virtue of a "whole

20 person" review in which all aspects of an

21 applicant's qualifications are examined. It is

22 possible, in some cases, that waiver consideration

Page 36

1 may be warranted.

2 Is that what you're referring to as you

3 talk about the "whole person" concept?

4 A Yes.

5 Q And this document we're looking at is

6 signed by somebody named David S.C. Chu.

7 Who was he?

8 A He was the Undersecretary for Defense

9 for personnel and readiness. He's no longer in

10 that position.

11 Q Was he your supervisor at the time this

12 report was prepared?

13 A No. He is the department representative

14 on all personnel issues.

15 Q And is there any -- was this "whole

16 person" review a new idea at the time that this

17 DTM 8-18 was issued?

18 A No.

19 MR. GARDNER: Objection, vague.

20 THE WITNESS: I'm sorry.

21 BY MR. WOODS:

22 Q And had it been a policy prior to the

Page 37

1 date of this document?

2 A It is a term that's understood

3 universally throughout the recruiting commands.

4 Q Okay. And what is it understood to mean

5 without -- within the recruiting commands?

6 A I'm sorry?

7 Q What does it mean?

8 A You look at all aspects that the

9 individual, every bit of information you have in

10 front of you regarding that individual. And you

11 make an assessment based on that information

12 that's available.

13 Q And why is this "whole person" review

14 not appropriate for reviewing applications for

15 enlistment by homosexuals?

16 MR. GARDNER: Objection, beyond the

17 scope of the Rule 30(b)(6) deposition topic.

18 You can answer if you've got personal

19 knowledge.

20 THE WITNESS: And that's -- that's

21 beyond my scope.

22 BY MR. WOODS:

VA

IR-PT

IR-PT  
AR

Page 38

1 Q Well, is there any reason why  
2 homosexuality might not just be one factor to  
3 consider in considering a whole person, just as  
4 you would consider a person's conviction for a gun  
5 offense?  
6 MR. GARDNER: Objection, beyond the  
7 scope of the Rule 30(b)(6) topic.  
8 You can answer if you have personal  
9 knowledge.  
10 THE WITNESS: We just enforce the laws  
11 as provided by Congress.  
12 BY MR. WOODS:  
13 Q Well, was there ever any study done to  
14 determine whether a "whole person" review might  
15 include homosexuality as one part of the review of  
16 a person --  
17 MR. GARDNER: Objection.  
18 BY MR. WOODS:  
19 Q -- before deciding on a person's  
20 qualifications to serve?  
21 MR. GARDNER: Objection, beyond the  
22 beyond the scope of the Rule 30(b)(6) topic, which

Page 39

1 is topic 14, enlistment waivers.  
2 You can answer if you have personal  
3 knowledge.  
4 THE WITNESS: I have no knowledge about  
5 it.  
6 BY MR. WOODS:  
7 Q Were you asked to participate in the  
8 process of producing documents to us in this case?  
9 MR. GARDNER: Objection, beyond the  
10 scope of the Rule 30(b)(6) topic.  
11 You can answer if you've got personal  
12 knowledge.  
13 THE WITNESS: I provided answers to some  
14 questions to Captain Grant. I'm not sure  
15 specifically if they were for you or --  
16 BY MR. WOODS:  
17 Q Okay. I'm going to show you next  
18 Exhibit 67, which is an article called, Balancing  
19 Your Strengths Against Your Felonies,  
20 Considerations for Military Recruitment of  
21 Ex-Offenders.  
22 (Deposition Exhibit No. 67

Page 40

1 marked for identification.)  
2 BY MR. WOODS:  
3 Q All right. You have before you this  
4 article.  
5 Have you ever seen this article before?  
6 A I believe I have.  
7 Q Okay. And when did you see it before?  
8 A I don't recall exactly. I do remember  
9 something similar. I'm not sure if it's the exact  
10 same document.  
11 Q Okay. So you don't remember when you  
12 saw this earlier.  
13 Can you look at the back of it, please,  
14 where there are tables that -- well, it's the  
15 various things. But table one is headed, Criteria  
16 for requiring moral waivers by offense and  
17 service.  
18 Do you have that page of the exhibit in  
19 front of you there?  
20 A I do.  
21 Q Is this an accurate statement of the  
22 criteria today?

Page 41

1 MR. GARDNER: Objection, compound.  
2 Take all the time you need to review  
3 that document.  
4 THE WITNESS: I would say no.  
5 BY MR. WOODS:  
6 Q Okay. Was it at one point an accurate  
7 statement of the criteria?  
8 MR. GARDNER: Same objections.  
9 THE WITNESS: I would not be able to  
10 answer that definitively.  
11 BY MR. WOODS:  
12 Q Okay. And if you look at table two,  
13 table two attempts to chart the number of waivers  
14 for the years 1990 to 1997.  
15 Do you see that?  
16 A I do.  
17 Q And can you tell me whether this chart  
18 accurately lists the number of waivers that were  
19 granted during those years?  
20 MR. GARDNER: Objection, compound.  
21 Objection, beyond the scope of the Rule 30(b)(6)  
22 deposition.

IR-PT

IR-PT

Page 42

1 Take the time you need to review this  
 2 document.  
 3 THE WITNESS: My assumption would be  
 4 that the data is suspect.  
 5 BY MR. WOODS:  
 6 Q And why would you assume that?  
 7 A Generally, this data is collected  
 8 through the DMDC, the Defense Manpower and Data  
 9 Center, in California, which is simply a code  
 10 search. They would have sought -- normally  
 11 through a FOIA or something similar document  
 12 process -- to get that data from that agency.  
 13 And those -- and that coding is what we  
 14 identified in 2005 as a problem, and thus led us  
 15 down the trail to the new DTM.  
 16 Q Are you aware of any more reliable  
 17 figures for these years, 1990 to 1997, besides  
 18 what's listed in this exhibit?  
 19 MR. GARDNER: Objection, compound.  
 20 THE WITNESS: No.  
 21 BY MR. WOODS:  
 22 Q If you look at the next page of the

Page 44

1 THE WITNESS: Yeah, I'm assuming that's  
 2 just a culmination of all the others.  
 3 BY MR. WOODS:  
 4 Q All right. And then if you look at  
 5 table four of this exhibit, at that chart of 2003  
 6 to 2006 waiver grant figures by offense  
 7 categories.  
 8 Do you see that?  
 9 A I do.  
 10 Q And do you have any information about  
 11 whether that information is accurate?  
 12 A I would not be able to say definitively.  
 13 I would comfortable -- very comfortable in saying  
 14 2003 and 2004, probably not accurate. 2005 and  
 15 2006, I'd have to compare that to our current  
 16 records.  
 17 Q And why are you comfortable in saying  
 18 2003 and 2004 are probably not accurate?  
 19 A Because we went -- in 2005 when we  
 20 identified the coding problem and as we worked  
 21 through the process, we asked the services to go  
 22 back and recount some years. And they did that

IR-PT

IR-PT

Page 43

1 exhibit, it's table number three. And this is the  
 2 waiver to grant figures for the years 2003 to  
 3 2006.  
 4 Do you have any view about whether these  
 5 figures are accurate?  
 6 MR. GARDNER: Objection, compound.  
 7 Please take the time you need to review  
 8 the document, sir.  
 9 THE WITNESS: The story would be the  
 10 same. The data is suspect, the accounting  
 11 processes and the -- just the entire tracking  
 12 system was inconsistent.  
 13 BY MR. WOODS:  
 14 Q Okay. And focusing in particular on the  
 15 item DOD total moral waivers.  
 16 Do you see that line --  
 17 A I do.  
 18 Q -- on this chart?  
 19 Is your testimony the same for that  
 20 particular figure for each of the years listed  
 21 here?  
 22 MR. GARDNER: Objection, vague.

Page 45

1 for us.  
 2 Q And who made the request in 2005 to the  
 3 services to go back and recalculate those years?  
 4 A Actually wasn't made in 2005. It was  
 5 actually made later on.  
 6 Q I'm sorry. Excuse me.  
 7 A I actually made that request.  
 8 Q And I take it that was in some memo to  
 9 each branch?  
 10 A It could have been.  
 11 Q And you received responses from each  
 12 branch in response to your request?  
 13 A I did.  
 14 Q And what did you do with the responses  
 15 once you had received them?  
 16 A We consolidated the data that they  
 17 provided, did a basic integrity check on it, and  
 18 published a report based on those data.  
 19 Q Okay. And what's the name of the report  
 20 that was published?  
 21 A It's the same report as the other. It's  
 22 the waiver report.

Page 46

1 Q But did you go back and recalculate the  
 2 figures for the prior years after you received the  
 3 data from the military?  
 4 MR. GARDNER: Objection, vague.  
 5 THE WITNESS: I'd have to look at the  
 6 timeline of when things actually occurred. At  
 7 some point, whether it was -- I believe in 2006  
 8 we -- at that point we asked them for the records  
 9 that they still had on file to classify them  
 10 appropriately according to a temporary chart that  
 11 we provided at that time, which is very similar to  
 12 the final DTM which came out later.  
 13 BY MR. WOODS:  
 14 Q I'm not sure I'm clear on this with you.  
 15 So you asked each branch to go back and  
 16 give you the numbers that they had for prior  
 17 years, correct?  
 18 A Just for those two years, '5 and '6.  
 19 Q 2005 and 2006. All right.  
 20 And then when you got the data for 2005  
 21 and 2006 for each branch -- and what year did you  
 22 make that request?

Page 47

1 A That's that I -- as I had previously  
 2 said, I'm not exactly sure. I believe that was  
 3 2006. I'd have to look at my documents.  
 4 Q Okay. But did you go back in the waiver  
 5 report you did for whatever year that -- strike  
 6 that.  
 7 Did you do then a waiver report for the  
 8 fiscal year 2005?  
 9 A I'm not sure if we did one specifically  
 10 for 2005 or we did a combined one that noted the  
 11 changes.  
 12 Q So there may be a report that combines  
 13 fiscal year 2005 and 2006 and notes; is that  
 14 right?  
 15 A Correct. Or it may be individual. I'd  
 16 have to go back and look. I'm not sure. I'm not  
 17 a hundred percent sure on what we did with that  
 18 document when we recalculate those data.  
 19 Q All right. And that would also in that  
 20 report show the changes from the prior reports of  
 21 the data?  
 22 MR. GARDNER: Objection, vague.

Page 48

1 THE WITNESS: I'm not sure I really  
 2 follow what you're asking.  
 3 BY MR. WOODS:  
 4 Q All right. Okay. Were there waiver  
 5 reports for fiscal years 2005 and 2006 prior to  
 6 this report that was prepared after the data was  
 7 collected again?  
 8 MR. GARDNER: Objection, compound.  
 9 THE WITNESS: There was a data call.  
 10 And the data was collected. I don't know if it  
 11 was ever put into a report because it was -- to  
 12 us, it was obvious that there was some  
 13 questionable data.  
 14 BY MR. WOODS:  
 15 Q All right. I just have a few more  
 16 questions about Exhibit 66, the DTM. This report  
 17 has a table one which is called, Categorization  
 18 and coding of conduct waivers.  
 19 Can you tell me what this is intended to  
 20 include, please?  
 21 MR. GARDNER: Objection, vague.  
 22 You can answer if you understand.

Page 49

1 THE WITNESS: Table one, traffic  
 2 offenses?  
 3 BY MR. WOODS:  
 4 Q The whole table.  
 5 A That's how we categorize the offenses.  
 6 Q Okay. So you talk about the four  
 7 categories of offenses; and this attempts to  
 8 classify them as either a traffic offense, a  
 9 non-traffic offense, a misconduct offense, or a  
 10 major misconduct offense?  
 11 A That is correct.  
 12 Q Okay. And then each particular type of  
 13 offense in each category is given an offense code?  
 14 A Correct.  
 15 Q So, for example, murder is code 427?  
 16 A That is also correct.  
 17 Q And then table two is, Enlistment waiver  
 18 codes.  
 19 Can you tell me what this table  
 20 reflects, please?  
 21 A These are on the enlistment forms, as  
 22 I'd previous mentioned. They have to enter a code

Page 50

1 for anyone who enlists with a waiver. And this is  
 2 the coding table that they already used.  
 3 Q And then there is another item attached  
 4 here. It's called attachment three, Service  
 5 waiver data.  
 6 Can you tell me what this is, please?  
 7 A That is the report form that they use to  
 8 provide me the tally for the report.  
 9 Q So this is the form that each branch is  
 10 supposed to use to provide you with this service  
 11 waiver data on a quarterly basis?  
 12 A That's correct.  
 13 Q And are there any plans or consideration  
 14 at the present time to modify or revise this DTM  
 15 that we're looking at?  
 16 A Yes.  
 17 Q And what is underway at the present  
 18 time?  
 19 A We have a work group meeting scheduled  
 20 for May 3rd and 4th, at which time we need to take  
 21 it out of the DTM, which is meant as a temporary  
 22 document, and put it into an official instruction.

Page 51

1 And at that time the work group will review the  
 2 document. I do not foresee any significant  
 3 changes in it.  
 4 Q All right. And do you think that this  
 5 DTM has approved the process of maintaining the  
 6 data on waivers?  
 7 MR. GARDNER: Objection, relevance.  
 8 You can answer.  
 9 THE WITNESS: It has clearly  
 10 standardized the collection process across the  
 11 services.  
 12 BY MR. WOODS:  
 13 Q So in your opinion it's worked?  
 14 MR. GARDNER: Objection, beyond the  
 15 scope of the Rule 30(b)(6). Objection, relevance.  
 16 THE WITNESS: In my opinion, it provides  
 17 us more reliable data.  
 18 BY MR. WOODS:  
 19 Q And so because of that, it's going to  
 20 move out of the DTM and into an official  
 21 instruction and become even more formalized?  
 22 MR. GARDNER: Objection, compound.

Page 52

1 Objection, to the extent it mischaracterized the  
 2 witness's testimony.  
 3 THE WITNESS: That's not necessarily the  
 4 rationale from moving it from a DTM to an  
 5 instruction. But our policy requires if you're  
 6 going to have some type of formal policy at the  
 7 department level, there needs to be an instruction  
 8 or a directive in a more permanent document, not a  
 9 temporary document such as a DTM.  
 10 BY MR. WOODS:  
 11 Q In your 25 or so years of service in the  
 12 Air Force, did you serve with any homosexuals?  
 13 MR. GARDNER: Objection, Beyond the  
 14 scope of the Rule 30(b)(6) deposition topic.  
 15 If you have personal knowledge, you can  
 16 answer.  
 17 THE WITNESS: No, none that I knew of.  
 18 BY MR. WOODS:  
 19 Q Have you learned after the fact that  
 20 some of the people that you served with were  
 21 homosexuals?  
 22 MR. GARDNER: Objection, beyond the

Page 53

1 scope of the Rule 30(b)(6) deposition topic 14,  
 2 which is enlistment waivers.  
 3 You can answer if you've got personal  
 4 knowledge.  
 5 THE WITNESS: Not that I'm aware of, no.  
 6 BY MR. WOODS:  
 7 Q If during your 25 years of service in  
 8 the U.S. Air Force you at some point announced to  
 9 your colleagues that you were homosexual or  
 10 bisexual, do you think that would have any impact  
 11 on the cohesion of the unit you were working in or  
 12 of the morale of the people you were working with?  
 13 MR. GARDNER: Objection, Beyond the  
 14 scope of the Rule 30(b)(6) topic 14 related to  
 15 enlistment waivers. Objection, hypothetical.  
 16 Objection, calls for speculation. Objection,  
 17 relevance.  
 18 You can answer if you can.  
 19 THE WITNESS: I don't have an answer for  
 20 that question.  
 21 BY MR. WOODS:  
 22 Q Why not?

IR-  
PT  
CS

IR-PT  
CS

IRPT  
CS

VA

IR-PT

Page 54

1 MR. GARDNER: Same objections.  
 2 You can answer if you can.  
 3 BY MR. WOODS:  
 4 Q It's either a "yes," "no," or "I don't  
 5 know."  
 6 MR. GARDNER: Objection to that question  
 7 as also being improper.  
 8 You can answer whichever way you see  
 9 fit, sir.  
 10 THE WITNESS: I'd have to see the  
 11 question again.  
 12 BY MR. WOODS:  
 13 Q All right. I'll have the question read  
 14 back.  
 15 (The reporter read the record  
 16 as requested.)  
 17 MR. GARDNER: Objection, beyond the  
 18 scope of --  
 19 MR. WOODS: You already objected.  
 20 MR. GARDNER: -- the Rule 30(b)(6) --  
 21 MR. WOODS: You already objected.  
 22 MR. GARDNER: -- deposition topic 14.

Page 56

1 A I have no clue.  
 2 Q So you don't know one way or the other  
 3 whether it would have made a difference to your  
 4 colleagues, right?  
 5 A Right.  
 6 MR. GARDNER: Same objections.  
 7 BY MR. WOODS:  
 8 Q What role, if any, does William Carr  
 9 play in the process of the authorization,  
 10 adoption, and implementation of the waiver  
 11 policies?  
 12 A Mr. Carr's title is the Deputy  
 13 Undersecretary of Defense for military personnel  
 14 policy. In that position, he is the  
 15 representative of the department that can  
 16 promulgate the policy.  
 17 Q And is it true that because of a  
 18 shortage of military personnel, there is a greater  
 19 willingness on the part of the armed forces to  
 20 accept people with criminal backgrounds?  
 21 MR. GARDNER: Objection, vague as to  
 22 time frame.

Page 55

1 Objection, compound. Objection, hypothetical.  
 2 Objection, calls for speculation. Objection,  
 3 relevance.  
 4 MR. WOODS: Counsel, I hope you don't  
 5 want to stay here until tomorrow, because we're  
 6 not going to finish if you keep objecting and you  
 7 if you keep repeating the objections simply when  
 8 the question is repeated.  
 9 MR. GARDNER: Counsel, if we stay here  
 10 for a long period of time, it's because you're  
 11 asking questions outside the scope of the Rule  
 12 30(b)(6) deposition. Ask proper questions, we'll  
 13 get out of here quickly.  
 14 MR. WOODS: If you want to go back to  
 15 court and lose again, I'm quite happy to do that.  
 16 We're here pursuant to a court order. And I'll  
 17 get another court order if I need to. And I will.  
 18 MR. GARDNER: All right. If you --  
 19 BY MR. WOODS:  
 20 Q Now, just answer the question, sir.  
 21 A I have no clue.  
 22 Q Pardon?

Page 57

1 THE WITNESS: I don't -- I don't know if  
 2 there's any way to really quantify that question,  
 3 or a response to that question.  
 4 BY MR. WOODS:  
 5 Q Well, the standards have been relaxed  
 6 for things like age in the last few years, haven't  
 7 they?  
 8 A The age standard has changed, yes.  
 9 Q So you can be older than -- an enlistee  
 10 could be older than enlistee used to be, right?  
 11 A Yes.  
 12 Q What's the current age?  
 13 A Forty-two.  
 14 Q What did it use to be?  
 15 MR. GARDNER: Objection, beyond the  
 16 scope of the Rule 30(b)(6) deposition.  
 17 THE WITNESS: I don't know off the top  
 18 of my head. I'm sorry.  
 19 BY MR. WOODS:  
 20 Q And when did that change?  
 21 MR. GARDNER: Same objection.  
 22 THE WITNESS: Within the last three



Page 58

1 years. I don't know the exact date.  
 2 BY MR. WOODS:  
 3 Q And what was the reason for that change?  
 4 MR. GARDNER: Objection, beyond the  
 5 scope of the Rule 30(b)(6) deposition.  
 6 THE WITNESS: That's not my portfolio.  
 7 I'm not sure of the rationale.  
 8 BY MR. WOODS:  
 9 Q Okay. And what other standards have  
 10 been relaxed in last few years?  
 11 MR. GARDNER: Objection, Beyond the  
 12 scope of the Rule 30(b)(6) deposition topic 14.  
 13 You can answer if you know.  
 14 THE WITNESS: The standards for conduct  
 15 waivers have remained consistent.  
 16 BY MR. WOODS:  
 17 Q Well, that wasn't my question.  
 18 What other standards have changed in the  
 19 last few years?  
 20 MR. GARDNER: Objection, beyond the  
 21 scope of the Rule 30(b)(6) deposition. Objection,  
 22 lack of foundation.

Page 59

1 THE WITNESS: I'm not aware of any  
 2 others.  
 3 BY MR. WOODS:  
 4 Q What about the standard for  
 5 intelligence? Has that changed?  
 6 MR. GARDNER: Objection, beyond the  
 7 scope of the Rule 30(b)(6) deposition topic 14.  
 8 Objection, lack of foundation.  
 9 You can answer if you know.  
 10 THE WITNESS: I'm not sure what  
 11 you're -- when you say intelligence, I'm not sure  
 12 what you're referring to.  
 13 BY MR. WOODS:  
 14 Q Well, let's say math and verbal  
 15 aptitude.  
 16 MR. GARDNER: Objection, same objection.  
 17 THE WITNESS: The aptitude requirement  
 18 has not changed. The Title 10 allows certain  
 19 percentages. And once again I don't know the  
 20 exact numbers. And then beyond that, it's up to  
 21 the departments to set their own standards.  
 22 BY MR. WOODS:

Page 60

1 Q Are there any studies been done about  
 2 whether people with higher math and verbal  
 3 aptitude scores perform better in the armed  
 4 forces?  
 5 MR. GARDNER: Objection, beyond the  
 6 scope of topic 14, which relates solely to prior  
 7 felony conviction waivers.  
 8 You can answer if you know.  
 9 THE WITNESS: I'm not the department  
 10 expert in that area.  
 11 BY MR. WOODS:  
 12 Q Who is?  
 13 MR. GARDNER: Objection, same objection.  
 14 THE WITNESS: The person probably best  
 15 qualified would be a Dr. Jane Arabian.  
 16 BY MR. WOODS:  
 17 Q And what is that person's title?  
 18 A She is in the same office we are. Same  
 19 title, basically. She has a different portfolio  
 20 is all.  
 21 Q And what is her portfolio?  
 22 A Testing programs.

Page 61

1 Q Are you aware of any reports to Congress  
 2 by the Department of Defense about whether, for  
 3 lack of a better term, smart people perform better  
 4 than others?  
 5 MR. GARDNER: Objection, beyond the  
 6 scope of topic 14, which relates to felony waiver.  
 7 You can answer if you have personal  
 8 knowledge, sir.  
 9 THE WITNESS: That -- the one thing I do  
 10 know that the department does target is they want  
 11 high school graduates who test in category 1  
 12 through 3A's. That's their primary focus.  
 13 BY MR. WOODS:  
 14 Q And is that one of the considerations,  
 15 math and verbal aptitude, that's part of the  
 16 "whole person" review that's part of the  
 17 consideration of a waiver for someone who's  
 18 been --  
 19 A The --  
 20 Q -- of the offense categories we've  
 21 discussed?  
 22 A The aptitude score is one of the

IR-PT

IR-PT

Page 62

1 considerations.

2 Q Is there a view in the Department of

3 Defense that allowing convicted felons to serve is

4 preferable to allowing homosexuals to serve?

5 MR. GARDNER: Objection, beyond the

6 scope of the Rule 30(b)(6) topic 14.

7 THE WITNESS: I did not hear the first

8 part of the question. I heard the last two parts.

9 BY MR. WOODS:

10 Q Okay. I'll repeat it then.

11 Is there a view in the Department of

12 Defense that allowing convicted felons to serve in

13 the United States Armed Forces is preferable to

14 allowing homosexuals to serve?

15 MR. GARDNER: Objection, beyond the

16 scope of topic 14.

17 You can --

18 THE WITNESS: Not that I --

19 MR. GARDNER: -- answer if you know.

20 THE WITNESS: Not that I am aware of.

21 BY MR. WOODS:

22 Q And back to the DTM on page 3.

Page 63

1 Under section four about the secretaries

2 in the military departments, subsection D requires

3 the secretaries to, Establish procedures to grant

4 waivers accomplish, accomplish reviews, and ensure

5 individuals meet the appropriate standards or are

6 granted an exception pursuant to section 504(a).

7 Were those procedures produced by each

8 secretary in writing?

9 A By someone on his staff, within the

10 department. Each service has their own.

11 Q And so those were sent to you following

12 June of 2008?

13 A Most of those were in existence in some

14 modifications. I do have copies of those

15 documents.

16 Q Okay. Did you ever have any discussions

17 with an individual named Lawrence Korb?

18 A Korb, K-O-R-B, Korb?

19 Q Yes.

20 A Not that I recall personally, no.

21 Q Did you ever have any discussions with

22 any research assistant working for him?

Page 64

1 MR. GARDNER: Objection, vague.

2 THE WITNESS: I'd have to have a name.

3 MR. WOODS: Okay. Thank you.

4 MR. GARDNER: I have just a few

5 questions.

6 EXAMINATION BY COUNSEL FOR DEFENDANT

7 BY MR. GARDNER:

8 Q Mr. Drogo, you said that, early on, to

9 prepare yourself you reviewed documents.

10 Did you speak to any individuals in the

11 armed services to prepare yourself today?

12 A I did.

13 Q Who did you speak to?

14 A I spoke to a representative from each

15 service. Do you need the actual names of each?

16 Q No, that's okay.

17 Why did you speak to them?

18 A Just to make sure there was no changes

19 or anything of importance beyond what I was

20 already aware of.

21 Q And did they confirm your understanding?

22 A Yes.

Page 65

1 Q Now you mentioned, with respect to the

2 major misconduct offenses, that rape was one of

3 the major misconduct offenses, correct?

4 A That is correct.

5 Q In what circumstances would a conduct

6 waiver be given for a rape major misconduct

7 offense?

8 A A conviction of a felony sexual assault

9 is not authorized a waiver.

10 Q Okay. And putting aside a conviction of

11 a felony sexual assault, in what circumstances

12 would a conduct waiver be authorized for a rape

13 offense?

14 A If someone is -- I'm not sure I follow

15 the question. If someone is convicted of the

16 felony, they are not entitled to a waiver.

17 Q Okay. Same question with respect to

18 murder.

19 In what circumstances would a murderer

20 be given a conduct waiver?

21 A They're reviewed on a case-by-case. I

22 don't know if I would be able to provide a

Page 66

1 scenario where that ever would be approved.  
 2 Q Okay. Going back to Exhibit 66. That  
 3 is the memorandum, the DTM I believe. And I'd  
 4 like to draw your attention to the second page,  
 5 under policy.  
 6 And the very first bullet point says,  
 7 The services will enlist into the armed services  
 8 individuals who are fully qualified to serve.  
 9 Do you see that?  
 10 A I do.  
 11 Q Does DOD have a view as to whether or  
 12 not those that are provided enlistment waivers are  
 13 fully qualified to serve?  
 14 A They are fully qualified.  
 15 Q Now, going to Exhibit 67, this is a law  
 16 view article. And I want to draw your attention  
 17 to table one. You were asked a question -- and  
 18 this is on page 40, Bates labeled 2817. You were  
 19 asked a question as to whether or not you believed  
 20 that table was inaccurate or accurate. And your  
 21 testimony was that it was inaccurate.  
 22 Why do you believe table one is

Page 67

1 inaccurate?  
 2 A Because the department now has a  
 3 standard. And these do not mirror the department  
 4 standard. They may have been -- at the time of  
 5 this document, they may have been; but they are  
 6 not currently.  
 7 Q Fair enough.  
 8 MR. GARDNER: I have no further  
 9 questions. Thank you, sir.  
 10 MR. WOODS: All right. Thank you for  
 11 asking questions. Gives me some more ideas.  
 12 EXAMINATION BY COUNSEL FOR PLAINTIFF  
 13 BY MR. WOODS:  
 14 Q All right. So who were the people in  
 15 each service who you spoke to in preparation for  
 16 your deposition today?  
 17 A In the Army it would be Mr. Frank  
 18 Shaffrey. In the Air Force it would have been  
 19 Mr. Anglo Haygood. In the navy -- I'm trying to  
 20 remember the name. It would have been Commander  
 21 Rene Squires. I think that -- and maybe Mr. Bohn,  
 22 B-O-H-N. In the Marine Corps it would have been

Page 68

1 Lieutenant Colonel Senter and Colonel Sansong  
 2 [phonetic].  
 3 Q And what -- did you ask the same  
 4 question or questions to each of them?  
 5 A It was just kind of a broad conversation  
 6 that I -- I stated what I believed their policies  
 7 were. And I just asked for confirmation.  
 8 Q And that's the only subjects you  
 9 discussed with them, their current policies?  
 10 A Yes, sir.  
 11 Q And did you speak to anyone else in  
 12 preparation for your deposition?  
 13 A No.  
 14 Q Now, you asked about you were asked  
 15 about a person who was convicted of felony sexual  
 16 assault and said that that could never result in a  
 17 waiver.  
 18 Was that your testimony?  
 19 A That is cor -- a felony conviction.  
 20 Q Right. For sexual assault?  
 21 A Right.  
 22 Q Is that in the DTM anywhere?

Page 69

1 A That is in another instruction. That's  
 2 in the SAPAR instruction, the Sexual Assault  
 3 Prevention and Response instruction. We did send  
 4 out a letter to the services last year addressing  
 5 that issue, to make sure that they also were aware  
 6 of that.  
 7 Q And the SAPAR instruction, what is the  
 8 date of that?  
 9 A 2005. And it was updated in 2008.  
 10 Q And the letter that you referred to?  
 11 A That would have been June of 2009.  
 12 Q Okay. And other than convictions for  
 13 sexual assault, are there any other sort of  
 14 automatic disqualifications?  
 15 MR. GARDNER: Objection, vague.  
 16 THE WITNESS: Not by policy.  
 17 BY MR. WOODS:  
 18 Q Okay. So there is no policy that  
 19 prohibits the service from accepting a convicted  
 20 murderer, for example; and those people would be  
 21 considered on a case-by-case basis?  
 22 A There is nothing in policy that

IR-PT  
CS

Page 70

1 prohibits it, but it's not a likely occurrence.  
 2 Q Understood.  
 3 But has it ever happened?  
 4 A I would be speculating for murder. I  
 5 have no clue. I would venture to say no, but it's  
 6 speculation.  
 7 Q Okay. And lastly, on page 2 of Exhibit  
 8 66 again, the DOD policy that, quote, The services  
 9 will enlist into the armed forces individuals who  
 10 are fully qualified to serve.  
 11 What is meant there by fully qualified  
 12 to serve?  
 13 A They have been met the established  
 14 department standards.  
 15 Q And is there any reason why, accept for  
 16 the law, homosexuals might not be fully qualified  
 17 to serve, as that term is used in this document?  
 18 MR. GARDNER: Objection, beyond the  
 19 scope of topic 14.  
 20 THE WITNESS: I'd be speculating. I  
 21 have no -- we just enforce the laws.  
 22 MR. WOODS: All right. Thank you. I'm

Page 71

1 finished with this witness. Let's move on to the  
 2 next one.  
 3 MR. GARDNER: That'll be fine. Let's  
 4 take five.  
 5  
 6 (Whereupon at 9:03 a.m., the  
 7 deposition of DENNIS DROGO, 30(b)(6),  
 8 was adjourned.)  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22

Page 72

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  
 10 \_\_\_\_\_  
 11 Signature of Deponent  
 12 I hereby certify that the individual representing  
 13 himself/herself to be the above-named individual,  
 14 appeared before me this \_\_\_\_ day of \_\_\_\_\_,  
 15 2010, and executed the above certificate in my  
 16 presence.  
 17  
 18 \_\_\_\_\_  
 19 NOTARY PUBLIC IN AND FOR  
 20  
 21 \_\_\_\_\_  
 22 County Name  
 MY COMMISSION EXPIRES:

Page 73

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