

ORIGINAL
Volume I of III
Transcript

Personal Data
Privacy Act of 1974
(5 U.S.C. 552a)

RECORD OF BOARD PROCEEDINGS

MAJ MARGARET H. WITT
FV [REDACTED]
28 & 29 SEPTEMBER 2006



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND







TRANSCRIPT

AUTHENTICATION FOR RECORD OF BOARD PROCEEDINGS

IN THE CASE OF

MAJ Margaret H. Witt, [REDACTED]

I certify that this record accurately depicts the administrative discharge proceedings of the above-named Respondent. I further certify that a majority of voting members of the Board concurred in the findings and recommendations.



ALAN R. JACKSON, LTC, USAFR

Legal Advisor

14 Nov 06

(Date)

RECORD OF BOARD PROCEEDINGS

RE:

MAJ MARGARET H. WITT

BY

**BOARD OF OFFICERS CONVENEED UNDER
AIR FORCE INSTRUCTION 36-3209**

Appointed by Commander, Headquarters Air Force Reserve Command

Held at

Robins Air Force Base, Georgia

28 & 29 September 2006

TESTIMONY

Name of Witness	Pages Direct	Pages Cross	Pages Board
FOR THE GOVERNMENT:			
NONE			
FOR THE RESPONDENT:			
MAJ Witt, Margaret, Respondent (Unsworn)	90		

EXHIBITS ADMITTED INTO EVIDENCE

FOR THE GOVERNMENT	DESCRIPTION	OFF	ADM
GE-1	Special Order AA-076, dated 15 Sep 06	1	1
GE 1A	Special Order AA-077, dated 22 Sep 06	1	1
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GE-4	Command-Directed Investigation Report	4	18
GE-5	Printout of Title 10, Section 654	18	19
GE-6	News Articles - Major Witt	19	19
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GE-8	Disk containing video clip of interview of Major Witt	27	28

FOR THE RESPONDENT	DESCRIPTION	OFF	ADM
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RE-2	Awards and Decoration Information (A-I)	30	31
RE-3	Officer Performance Reports (A-T)	30	31
RE-4	Performance Report Information	30	31
RE-5	Aircrew Information	30	31
RE-6	Current Duty Information	30	31
RE-7	Promotion Information	30	31
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NONE			

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Abbreviations Used:

LA	Legal Advisor
MEM	Board Member
PRES	President
RC	Respondent's Counsel
REC	Recorder
REP	Reporter
RES	Respondent
WIT	Witness

1 [The pre-board was called to order at 0807, 28 September 2006.]
2

3 LA: This pre-board hearing will come to order.
4

5 The following persons are present at this pre-board hearing:
6

7 Myself, Lieutenant Colonel Alan R. Jackson, **Legal Advisor; Recorder**, Major Gordon Davis.
8 Are you on the----
9

10 AREC: Assistant Recorder, sir.
11

12 LA: You are on the record as **Assistant Recorder**?
13

14 AREC: Yes, sir.
15

16 LA: --Major Dawn Hankins; **Respondent's Counsel-Military Counsel**, Captain Kevin Catron;
17 **Respondent's Civilian Counsel**--I'm sorry. It's Jim----
18

19 RC: Lobsenz, sir.
20

21 LA: L-O----
22

23 RC: B, as in boy, S-E-N, as in Nancy, Z, as in zebra.
24

25 LA: And the **Respondent**, Major Witt; and the **Reporter**, Ms. Caretha Perry.
26

27 REC: This board is convened at Robins Air Force Base, Georgia, on 28 September 2006,
28 pursuant to Special Order AA-076, Headquarters, Air Force Reserve, dated 15 September 2006,
29 amended by Special Order AA-077, dated 27 September 2006, same headquarters.
30

31 This order has been marked as Government Exhibit 1 with its amendment marked as
32 Government Exhibit 1A and is offered into evidence as Government Exhibits 1 and 1A.
33

34 ARC: No objections.
35

36 LA: 1 and 1A will be admitted.
37

38 REC: Would Respondent's counsel please state their name, grade, organization and legal
39 qualifications.
40

41 ARC: I am Captain Kevin D. Catron, United States Air Force, duly designated judge
42 advocate and certified pursuant to Article 27(b), UCMJ, by the Judge Advocate General of the
43 U.S. Air Force as competent to perform the military--the duties of trial and defense counsel in
44 general courts-martial. I'm assigned to Headquarters, AFRC, as Chief of Defense Service. I'm
45 a member of the state bar of Colorado.
46

47 With me is civilian counsel, Mr. Jim Lobsenz, a member of the state bar of Washington.
48

49 REC: This board is convened to determine whether the Respondent, Major Margaret Witt
50 should be discharged from the United States Air Force Reserve under the provisions of AFI 36-

1 3209, specifically paragraph 2.30.1, for engaging in homosexual conduct and stating that she is
2 homosexual.

3
4 The court reporter for this board proceeding is Ms. Caretha Perry, who has received the
5 one-time oath.

6
7 [The Legal Advisor and recorders were sworn.]
8

9 REC: Board Exhibit I consists of the proposed initial instructions in this case. At
10 this time, the Government would move for Board Exhibit I to be admitted?
11

12 RC: No objections.
13

14 IA: And it's my understanding that the board members have not yet been provided with
15 either orders or the initial instructions. Is that correct?
16

17 REC: Correct, sir.
18

19 IA: My thought, Respondent, is that we would go ahead and I would present those to
20 them, so that they can be reviewing those while we completed the out-of-board hearing. Is
21 that----
22

23 ARC: Do that now, sir?
24

25 IA: Yes.
26

27 RC: Oh, that's fine.
28

29 IA: Okay.
30

31 Do we have their copies?
32

33 REC: Yes, sir. There should be copies at your table at your side there.
34

35 IA: You tell me that after I sat here and messed things up. Okay.
36

37 [The Legal Advisor took Government Exhibits 1 and 1A and Board Exhibit I to the members in the
38 deliberation room.]
39

40 IA: The record can reflect that I presented Board Exhibit I and Government Exhibits 1
41 and 1A to the board members.
42

43 REC: Yes, sir. And then moving along to the other Government Exhibits, Government
44 Exhibit 2 consists of the case file and it includes the notification letter from Headquarters,
45 Air Force Reserve Command/DP with the Statement of Reason, the commander's recommendation
46 letter, and the Respondent's board request. Copy of Government Exhibit 2 has been provided to
47 Respondent's counsel. The Government would move for Government Exhibit 2 to be admitted into
48 evidence.
49

50 ARC: No objections.

1 LA: Government Exhibit 2 will be admitted.
2

3 REC: Government Exhibit 3 consists of information from the Respondent's personal
4 information file and UPRG file. A copy has been provided to Respondent's counsel. The
5 Government moves for Government Exhibit 3 to be admitted into evidence.
6

7 RC: Sir, we do have some objections to some of the documents that are early in that
8 packet. The objections I had are to the--after the cover page there is a Record of Emergency
9 Data Sheet, and beneath that there are a number of--I think two Member's Group Life Insurance
10 election and certificate documents. I understand, I suppose, the Government's rationale for
11 why they picked those and think those are relevant and want them to be admitted, in that, they
12 identify the beneficiaries to receive unpaid pay allowances and life insurance benefits in the
13 event of the death of the member. But the documents, I'd say, starting with the Record of
14 Emergency Data, they are protected by the Privacy Act of the United States. It says, for
15 example, on the Record of Emergency Data, at the bottom, "I certified that the information I
16 have provided is true and correct to the best of my knowledge. I also understand providing
17 false information may be used for administrative, or criminal, or other adverse actions," and
18 then in small print that this document contains information that must be protected by a couple
19 of regulations and the Privacy Act of 1974.
20

21 It's not my--I don't believe the Government is contending that anything provided on there
22 is false and this is not a prosecution for providing false information to the United States,
23 and so it is protected by the Privacy Act. The only purpose for which this document can be
24 used is to determine who should receive such pay. Similarly, the insurance documents are also
25 protected by the Privacy Act, and I believe that members are assured when they do this that
26 this information is private and will not be released to anyone for any other purpose other than
27 distribution of the benefits, so I don't believe that it is permissible. I believe it is a
28 violation of federal law to use these for any other purpose, and I would object to their
29 admission today.
30

31 REC: The Government would respond, sir, that one exemption to the Privacy Act is
32 records that are kept by the government that are used for official uses. Here this proceeding
33 is to determine Major Watt's continued presence in the United States Air Force Reserve. And
34 one thing that the Government will be putting on today is evidence and argument that Major Witt
35 engaged in homosexual conduct with a Miss Laurie McChesney, who is listed on this Record of
36 Emergency data notification. And the Government would say that being that this is an Air Force
37 proceeding, being that this is a closed Air Force proceeding, that the exemption for official
38 use applies here.
39

40 RC: I take it the Government is not contending that anything on these documents is
41 false information?
42

43 REC: The Government is responding to Respondent's Counsel's objection, not going on to
44 make other statements of what the Government is conceding at this point.
45

46 LA: Well, let's address that. Is there any suggestion that any information is false?
47

48 REC: No, sir.

1 RC: Then it will be my position, sir, that that's the condition stated here. I
2 understand that providing false information may be used for administrative action.
3 Understanding the exemption to the Privacy Act, it's only to be used for official purpose, but
4 they are limited to personnel purposes of distributing.
5

6 LA: I'm going to be honest, I have no idea whether the Privacy Act covers that or not.
7 I assume you don't happen to have a copy with you?
8

9 REC: No, sir.
10

11 LA: Okay. Let's hold that, and I will--I'll take a look at the Privacy Act and see
12 whether I'll admit that. My immediate reaction is that Major Davis is correct, but before I
13 say that I want to make sure. And we'll look at that before I admit it and before it goes to
14 the board.
15

16 RC: I don't have any other objections to any other portions of that exhibit.
17

18 LA: Okay. We'll address that one. We'll take a break before we bring--or, before we
19 present it to the board.
20

21 REC: Then, sir, Government Exhibit 4 consists of a report--a commander-directed
22 investigation report. A copy has been provided to Respondent's counsel. The Government would
23 move for Government Exhibit 4 to be admitted into evidence.
24

25 RC: Can I have just one moment, sir.
26

27 LA: Sure.
28

29 [The Respondent's counsel conferred.]
30

31 RC: I do have a number of objections to many of these. I'm not sure where the best
32 place to start is, but I think it would be most logical for me to start with my objection based
33 on that some of the documents contained within this exhibit were illegally obtained.
34

35 Maybe, Major Davis, you can help me find it, but--maybe, it's not in here. But in the
36 documents the Government provided me--there it is--Colonel Torem, the investigator in this
37 case, attached an appendix to his interim report, which is a part of this, in which he
38 identifies the fact that the documents obtained from the McChesney divorce file were obtained
39 illegally, because the file is sealed.
40

41 LA: And we're talking about the appendix that's dated--pages 9--or, page 9, I guess,
42 of 11 through the front?
43

44 RC: Yes, sir.
45

46 LA: Okay.
47

48 RC: Nine, and the documents are actually listed, pages 10 and 11. Spokane County
49 Cause Number 04-3-000-10-4 is--that is the case of--[inaudible]--McChesney versus McChesney. I
50 assume it is the same in virtually all states, but in Washington State the parties are entitled

1 to make a motion to have a file sealed. In this case, the husband, Mr. McChesney, filed for
2 divorce, and then as reflected in Colonel Torem's chronology filed on January 5th of 2004. And
3 then, immediately thereafter, the next document that Colonel Torem found was the stipulated
4 order governing confidentiality and the sealing of the file.
5

6 Now he states in his memorandum that the court ordered the file sealed and that nothing
7 could be--when a file is sealed in Washington that means that nobody except the attorneys to
8 the case--normally, nobody except the attorneys to the case have access to that file. I
9 brought with me this morning. At the moment I can't quite find it. I'll look for it in a
10 second, but I kept it to confirm that the file is sealed. And I asked my secretary to
11 electronically attempt to access the Spokane County Superior Court file today; she did that
12 yesterday, and confirmed that it is sealed. What that produced is--we can check electronically
13 our dockets in different counties in the state. It produced a screen on her screen that says
14 "Access Denied. This file is sealed." Now I can't get access to that file.
15

16 Colonel Torem reflects in his memorandum that he sent someone he identifies as a
17 "friend," and I think he identifies him as a legal professional. I don't know if he would be a
18 lawyer or a paralegal. But after he traveled from the court to Spokane to interview witnesses,
19 came back to McChord, which is on the Westside of the state, he then asked his friend to obtain
20 access to documents in the McChesney divorce file. He says, "The friend who obtained the court
21 filing indicated absolutely no difficulty in obtaining it and made a complete copy. Therefore,
22 it may be that the Spokane County Superior Court's Clerks Office made an error in allowing him
23 to review and copy the file." Since it is hard to ignore these things, because there are
24 relevant things in it--but he writes, "Given the existence of the stipulated order, it may be
25 problematic or, perhaps, simply objectionable for the Air Force Reserve to make use of its
26 contents in any future administrative discharge proceeding without properly reobtaining
27 relevant documents from Mr. McChesney or his current attorney in the dissolution action, both
28 of whom would best be able to determine whether or not they can lawfully provide any needed
29 documents."
30

31 To my knowledge, the Government has not reobtained these documents legally. In order to
32 do that, they would have to make a motion in Spokane County Superior Court asking the superior
33 court judge to grant an exception to the sealing of the file and allow access to other persons.
34 It seems particularly objectionable here to use these documents, because our hands are tied.
35 The Government gets to use these documents. We don't get to go over that file and find any
36 other documents that might be relevant in rebuttal, because I can't get them. They are sealed.
37 It's particularly exasperating because you can see that in Colonel Torem's description of the
38 documents that he obtained there is a declaration of a "Heather McGuiness," which is submitted
39 on January 16th, which is one of the documents the Government is seeking to admit. And yet on
40 January 20th of 2004 you see, listing in his documents, it says "retraction of declaration of
41 Heather McGuiness." And we have spoken to Heather McGuiness and----
42

43 IA: Hold on a minute. Where are you?
44

45 RC: On page 10, in his listing of the documents, under the entry--third entry for
46 January 16th, one of the documents identified there is additional declarations in support of Pat
47 McChesney, and one of them is from Heather McGuiness. If you turned to the next page, under
48 the entry for January 20th, it says retraction of declaration of Heather McGuiness.

1 We spoke to Heather McGuiness yesterday to confirm that she retracted her declaration.
2 She had considerable problems with the first one. It was drafted for her by Mr. McChesney's
3 lawyer. There were things in it that were incorrect that she wanted stricken. Apparently, she
4 signed it in the belief that it was accurate and not reading it, and then discovered that the
5 attorney had not stricken at least all of--not all of the things she wanted stricken and she
6 moved to have it retracted. And, apparently, I don't know exactly what that entry means,
7 "retraction of." I don't know if that means that she has filed something that says "I retract
8 the declaration." I don't know if it's an order of the court saying that the declaration is
9 retracted. I don't know what it is, but it confirms what she told us, which is that the first
10 declaration is not accurate.
11

12 The fact that an agent of the government--I realize that it's not military personnel, but
13 someone acting at the request and direction of Colonel Torem violated the confidentiality order
14 that the superior court judge had entered. Now I was going to ask if the Government--the
15 Government, apparently, has all of these documents, so the Government should have a copy of
16 that order. At least Colonel Torem had a copy of that order. And if you have a copy of that
17 order, I would ask that it be produced now so the Legal Advisor could examine exactly what it
18 states.
19

20 But to copy something out of a file which has been sealed would be contempt of court. It
21 would be in Washington, and I assume it would be in any other court, and if you do it
22 knowingly, it's a crime. It would be a criminal contempt. I don't believe the Government
23 should be allowed to use anything from there. If they were, for some reason, allowed to be
24 used--allowed to use any documents from that file, I would think we would have to be granted
25 equal access to that file. If you wanted me to, I could identify all the documents which the
26 Government is proposing from the file, but I don't think that's necessary. There are three or
27 four declarations.
28

29 LA: Well, it may be. But let me get a general response, first.
30

31 REC: Yes. General response: first of all, at this time, the Government doesn't know
32 whether Respondent's Counsel is objecting to everything from the McChesney divorce file, or, in
33 particular, what we started off with, pages 9, 10, and 11 of the IO's report. Concerning pages
34 9, 10, and 11----
35

36 LA: Well--all right, let's hold on. My impression is, so we might as well address it,
37 that they are objecting to all of the documents obtained by the legal professional friend from
38 what they're claiming is a sealed file. So let's-----
39

40 REC: Right.
41

42 LA: And I'm interested in your response to that anyway----
43

44 REC: Right, sir.
45

46 LA: --even if that's not quite an accurate description.
47

48 REC: Yes. And in response to that--in response to that, the Government would have no
49 objection, or no problem, in removing those documents. The Government believed that those

1 documents consists of page 9, 10, and 11 of the IO report, because--just to give a bit of
2 background.
3

4 What happened in this case was the husband in the case, Pat McChesney, scanned and sent
5 in as part of his email, they are listed as "attachments" to his email various declarations
6 from the divorce proceedings, and those were sent into the Air Force by means of Pat McChesney.
7 Afterwards, the investigating officer did obtain a copy of the sealed file. When the
8 investigating officer received a copy of the sealed file, one, the investigating officer did
9 not put in his report any documents from the sealed file. Secondly, the investigating officer
10 did the memorandum for record, which consists of pages 9, 10, and 11 in his report where he
11 lists out what happened and what he saw in the sealed file. However, those documents that he
12 talks about in pages 9, 10, and 11, such as a declaration from Laurie McChesney, are not
13 included in his report. So the Government would say the documents that Pat McChesney himself
14 sent into the Air Force would be permissible.
15

16 LA: Well--okay, maybe, we are going to need to identify documents. And let me come
17 back and make sure that I understand. Now with respect to the interim report itself is there
18 an objection? We're talking about pages 1 through--the first 8 pages.
19

20 RC: I do have an objection that it is duplicative of the final report, but I don't
21 understand the reason for having an interim report and a final report both admitted.
22

23 LA: I'm speculating, but my guess is because the interim, apparently, has an appendix
24 and it looks like the final does not.
25

26 Is that----
27

28 REC: There's that. Also, the final--they are different in that the interim report was
29 prepared before Major Witt had decided whether to give a statement or not on the allegations,
30 and the final report contains what happened after that.
31

32 LA: Other than the appendix to the interim is there any particular reason why the
33 Government wants the interim in?
34

35 REC: No, sir.
36

37 LA: Okay. All right. So essentially then, we've got pages 9, 10, and 11 that the
38 Respondent is unhappy with.
39

40 RC: That's true. Although, sir, if you were to rule that the pages after that, that
41 the declarations were coming in, then I would want pages 10 or 11, or whichever one it is,
42 because it indicates that the declaration of Heather McGuinness was retracted, and I would want
43 that in the record if they're--if that's the best I can get. They're going to admit Heather
44 McGuinness's declaration, which she has later repudiated, and I would want the record going to
45 the board to include the notation on the docket that she retracted that.
46

47 REC: And if the Government could just respond to that, sir. Respondent's Counsel does
48 not represent any of the McChesneys. If Respondent's Counsel is objecting to certain documents
49 based on the fact that they were, as the Respondent's Counsel would allege wrongfully obtained

1 from a sealed file, then that should seem to be a consistent, if you're going to rule certain
2 ways.

3
4 LA: You lost me. Say that again slowly.

5
6 REC: Sure. Basically, sir, either these documents from a sealed file come in or they
7 don't. The Government would recommend that you don't allow piecemeal admission of them.
8

9 LA: Well--okay. The--I'm looking at the end of what is apparently the email to
10 General Jumper from Pat McChesney, and it lists four attachments. Are those the only
11 attachments that are in here?
12

13 REC: Yes, sir, along with the 1168----

14
15 LA: I'm--well----

16
17 REC: But from the sealed file. From this file.
18

19 LA: From the divorce file?
20

21 REC: Yes, sir.
22

23 LA: Okay. My immediate reaction is to the attachments two things. Number one, it
24 appears that they may have come from some source other than the sealed file; i.e., from Mr.
25 McChesney. But more than that, it appears to me--and Respondent I'll give you a shot at this
26 if you want--but it appears to me under AFI 51-602, the manner in which evidence is obtained
27 with perhaps one exception having to do with confessions is irrelevant for purposes of a board
28 hearing. I don't disagree with you, Mr. Lobsenz, that there may be some remedies within
29 Washington State for anyone who illegally accessed the file, but I'm not sure that addresses
30 whether it is admissible in this hearing. My impression is, under 51-602, it is. I'm prepared
31 to let you argue that.
32

33 RC: I guess I would say, sir, is that even assuming that that's correct it doesn't
34 really address the fact that we are powerless to respond to these documents, because our access
35 to the file is blocked. And I did find the--just the printouts that my secretary sent me.
36 I'll show them to Major Davis, if you'd like?
37

38 REC: Sure. Please.
39

40 RC: I would like to make these a part of the record, not to go to the board, but part
41 of the record to show our access is denied--the tiny little writing there. We can't get into
42 the docket. We can't copy the docket. So what we have is a disgruntled husband who is angry
43 at his wife because she's told him she's a lesbian and leaving him. And he files for divorce,
44 and then he gets to handpick and select which pieces of a file he thinks will best support his
45 allegations and complaints, sends them off to the Chief of the Air Force, and we can't respond.
46 We can't pick out anything that is favorable. We can't show he's--it's another objection I
47 have coming on in a minute--but he doesn't even send complete copies of most of these
48 declarations. They are missing pages. So he gets to pick out a page 1 and page 3 that says
49 things that he likes----

1 [The Assistant Respondent's Counsel exited the hearing room.]
2

3 LA: Hold on. The record will reflect Captain Catron left to make copies. I assume
4 with your consent?
5

6 RC: Yes, sir.
7

8 LA: Okay. Go ahead.
9

10 RC: We're powerless to respond, sir. Regardless of what that AFI 51-602 says, I think
11 it will be a due process violation to allow the Government to use evidence from a source that
12 is inaccessible to us. It's the same thing as allowing them to use hearsay testimony from
13 witnesses not accessible to us. We can't respond. That can't be fair. That can't be
14 consistent with due process to let somebody pick and choose parts of this file and not let us
15 have access to the other parts of the file.
16

17 LA: Well, I--my inclination--my biggest concern in that regard is with respect to
18 McGuiness and the possibility that there was a retraction of her attachment. Do you have any
19 evidence or any position with respect to that?
20

21 REC: No, sir. And in response to Respondent's Counsel's position that they are
22 powerless to respond, a few minutes ago they said that they contacted and interviewed Heather
23 McGuiness. And---
24

25 LA: Well, I think his argument is he's unable to respond in terms of reviewing the
26 file.
27

28 REC: There is---
29

30 LA: Which is, apparently, true.
31

32 REC: Right. And the Government doesn't know the ins-and-out of this file. That is one
33 of the reasons why the Government didn't exhibit--put in for the members that they can
34 evaluate. There is, indeed, a reference in the government exhibit, as prepared, that Heather
35 McGuiness may have retracted some or all of her statements. But even if she did afterwards
36 retract, at one point she did make those statements.
37

38 RC: Well, I'm powerless to respond to that. And my understanding is that some
39 attorney drafted some things and got her to sign it without looking at it, and that she never
40 really did make those statements.
41

42 LA: Here's my inclination. My inclination is--and I'll give each of you one final
43 shot at me after I tell you what I think my position is. My position is, I think that I am
44 inclined--well, let me ask one other question.
45

46 Major Davis, do you take issue with the Respondent's representation that Ms. McGuiness--
47 that, in fact, the first statement is not representative of her position?
48

49 REC: Besides the document that's in the file, I don't have evidence of that, sir.

1 LA: You haven't talked to her?
2
3 REC: No.
4
5 LA: Okay. My inclination is to permit the attachments, other than Ms. McGuiness's.
6 And since it appears--and I'll give you an opportunity to talk to her before I finally rule, if
7 you need, but accepting for the moment Respondent's representation that the statement we have
8 from Ms. McGuiness is not an accurate representation of what she meant to say, my inclination
9 is to exclude it and to allow the other three.
10
11 [The Respondent's counsel conferred.]
12
13 Now--I'm sorry. I didn't mean to interrupt.
14
15 RC: Sir, we were just--we have another objection based on the Rule of Completeness. I
16 think that Captain Catron was going to address that.
17
18 LA: Okay. Before we get to that, the rest of my position is that I think--obviously,
19 you are free to argue, and if you want the exhibit--an exhibit to go to the board as evidence
20 that you were unable to access the file, I'm inclined to accept that as admissible. And I'm
21 not telling you to do that. Obviously, that's your decision.
22
23 RC: I think I would like that.
24
25 LA: But then, certainly, you're free to argue that from the--from that and from the
26 other evidence. As I understand it, given my ruling, you're going to want the interim report
27 and appendix to come in. You're free to argue that you didn't have a shot at it, and that's
28 not fair, and who knows what else might be there.
29
30 RC: Okay.
31
32 LA: But that's my inclination. Now if you have no additional objection with respect
33 to that, let's go.
34
35 RC: Sir, would you like a copy of that docket printout, or----
36
37 LA: Yes. I've got one.
38
39 RC: And how do I, in this proceeding, formally----
40
41 LA: Well, you----
42
43 RC: In a state board I would say I'd have it marked and move its admission.
44
45 LA: Are you going to have other exhibits?
46
47 ARC: We are, sir.
48
49 RC: We are.

1 ARC: We can probably mark-----
2
3 LA: We'll just address it at that point then, I guess.
4
5 ARC: Would you prefer we mark this as a board exhibit that goes back to the members, or
6 do you want to mark it as a Respondent exhibit?
7
8 LA: My inclination, unless you--would be a Respondent exhibit.
9
10 ARC: Okay.
11
12 LA: Unless you--and we'll just address-----
13
14 ARC: We'll address it at-----
15
16 LA: Yes.
17
18 ARC: Continuing the objections-----
19
20 LA: And if you don't like the idea of it coming in, we'll address that too when we get
21 to it.
22
23 ARC: Continuing the objections. I stepped out for a bit to make a copy, so maybe this
24 was addressed. As far as the interim report, it seems to me that pages 1 through 9 are
25 duplicative of the final report. And I know we addressed the appendix and some of the
26 attachments, but that seems to be---
27
28 LA: 1 through 8?
29
30 ARC: Yes, sir, 1 through 8.
31
32 LA: Okay.
33
34 ARC: So I don't know if that was finalized, but I don't know why we're having--I know
35 it's an interim and Major Davis offered it. There were some changes or amendments to it, but I
36 believe 1 through 8 is the same, if I'm not mistaken. So I don't know why that would come in,
37 in addition to a final report.
38
39 LA: Well, my understanding from Mr. Lobsenz was that if I'm allowing some of the
40 attachments that you want the appendix to be entered. And it seems to me, putting in the
41 appendix, it makes sense to put in the report to show where the appendix came from.
42
43 ARC: That's fair enough, sir. All right. And I think our final objection to some of
44 the statements contained in the CDI, which is the basis of the Government's evidence, does
45 include some of the documents that we've already addressed. But aside from the legality of
46 being able to offer these, it would be a court order issue; some of the documents are
47 incomplete. And I think that's the biggest concern we have here. And I know Mr. Lobsenz has
48 addressed this, but it seems that all but one document--and I think you've already kept out the
49 declaration of Heather McGuiness, which is the only complete document that was even offered,
50 there is a declaration of Bridgette Halverson which is not completed.

1 LA: Well, all right. Let's back up and take them in what I think is the order, which
2 will be Margaret Witt. I show four pages.

3
4 ARC: And I would address that----

5
6 LA: Moot?

7
8 ARC: Yes, sir, based on relevance. I mean, obviously, this statement is by Major Witt,
9 and she's obviously the Respondent, but I don't think it has any facts or bearings to this
10 issue at all. It doesn't address any of the allegations levied against her. I mean it goes
11 specifically--unless I'm mistake. I assume Major Davis--I don't know if it addressing any of
12 the allegations that are brought against her, so I don't know why statements by Major Witt
13 would be relevant.

14
15 REC: As stated before, sir, part of the Government's case is to provide evidence and
16 argument that some of the homosexual conduct that Major Witt engaged in was with Laurie
17 McChesney, and her statement shows that there was a close relationship with Laurie McChesney;
18 McChesney was living with her, and so forth. So that's the relevance.

19
20 LA: And I tend to agree on that. I'm going to allow it. Other than that, we think
21 it's a complete statement?

22
23 RC: No, it's not a complete statement, sir.

24
25 LA: Oh, we're missing pages of it?

26
27 RC: If you look at it, at the first page, the title page, paragraphs 1 and 2, when you
28 turned the page, it's the end of paragraph 11 and the start of paragraph 12. So it appears to
29 me--and again I don't have access to the sealed file--that just prior, what's been admitted,
30 has something to do with either a fight or a confrontation in which Mr. McChesney was
31 displaying, apparently, violent behavior. Because it is says, "Pat's demeanor was such that I
32 was absolutely afraid of what he intended to do, and I actually left my home for a period of
33 time."

34
35 LA: It does appear as if there is some missing.

36
37 RC: So, you know, what he's done, he's taken out the part where it reflects bad
38 behavior on behalf of Mr. McChesney and left in other stuff.

39
40 REC: Sir, the--to respond to that, the Government does not have access to the sealed
41 file. This is one of the attachments that Mr. Pat McChesney sent in to the Air Force via
42 email. And Mr. McChesney sent in what he sent in.

43
44 LA: Well, but I--and I appreciate that. I do have some problem though with statements
45 that--well, we don't have the whole statement, and I'd like argument with regard to that.

46
47 REC: The argument is that the Government is suffering from the same restrictions. The
48 Government--who knows what else is in that statement. It could be helpful to Respondent's
49 counsel. It could be helpful to the Government. We don't know. The file is sealed. The way
50 that the Government got access to some of these statements is via Mr. McChesney. So the

1 Government is under the same--and the Government would argue that the incompleteness would go
2 to the weight of the evidence and not its admissibility. It can be, of course, highlighted to
3 the members through various means, "The statement is incomplete," "That it was piecemealed by
4 Mr. Pat McChesney to the Air Force," "Who knows what he kept out," and so forth. But the
5 Government would argue that goes to its weight rather than admissibility.
6

7 RC: Sir, to address that. The Rule of Completeness goes to admissibility not to the
8 weight.
9

10 LA: I have a real problem with having pieces of the statement. And I recognize the
11 Rules of Evidence are relaxed, but at some point--I mean my--I'll give you one more shot at it,
12 but my inclination is that if we don't have a whole statement it's not coming in.
13

14 REC: The Government is under the same restrictions as Respondent's counsel. The file
15 itself is sealed. Even when a witness testifies they're going to testify in part to what
16 happened and the event rather than the whole-----
17

18 LA: Well----

19 REC: --occurrence.
20

21 LA: Let me--all right. Let me back up. Who do you expect as witnesses?
22

23 REC: The Government intends on not calling any witnesses in its case-in-chief.
24

25 LA: Do we have the same problem with the other statements?
26

27 RC: Uh-huh.
28

29 ARC: Yes, we do, sir.
30

31 RC: It doesn't seem to me entirely accurate for the Government to say they have the
32 same problem as we do, because the Government knew that they were going to do this, and they
33 were going to try to use these declarations. The Government could have gone to Spokane and
34 asked the judge to allow them access to the file to get complete copies. They didn't do that.
35 It's not up to us to go get the permission that they should have got to make their own document
36 complete.
37

38 LA: And, Major Davis, I'll give you another argument.
39

40 REC: Uh-huh.
41

42 LA: But I'm really bothered by putting in pieces of statements.
43

44 REC: Okay, sir. Another piece of relevance in this is it was these statements coming
45 in via email that prompted leadership to start an inquiry and ultimately proceed with a
46 discharge action. So another reason why these statements are relevant is--was the
47 investigation launched in good faith, was it launched based on credible evidence. I mean even
48 if these statements, because they're incomplete, don't meet the standard, let's say, of
49 persuading the members to support a basis of discharge, these statements that were sent into
50

1 the Air Force do show that the inquiry was founded on credible evidence and that the inquiry
2 was not improper and the discharge action was not improper.

3
4 LA: Well, I don't think I buy that. I--My position right now is that if we don't have
5 whole statements, they won't come in. I just--I think--well, if nothing else, I think it is
6 difficult for me to make a determination as to the reliability of the statements without the
7 complete statements. Now---

8
9 REC: And the Government would ask for clarification of that, sir. We'd--an assessment
10 of the reliability that these are authenticate, that these were sent by Mr. McChesney, or----

11
12 LA: No----

13
14 REC: --the substance?

15
16 LA: The--with respect to the substance, there is--there is no way to know what else
17 might have been in the statement that would have affected what is--those portions that we have.
18 I just--and particularly, if the Government's essential argument is, "Well, okay, we don't have
19 to rely on them with respect to proving the allegations, but it shows some justification of why
20 the investigation." I don't think it matters why the investigation got started, there was an
21 investigation.

22
23 REC: Well, sir, under the AFI it can only be commenced based on credible information.

24
25 LA: Well, all right. I understand that, but I don't think that's a determination this
26 board is called on to make. The--unless I'm wrong, I don't think this board determines whether
27 there was--whether the investigation started in good faith. This board just looks at whether--
28 based on the fact of the investigation there is evidence to support it. And I think I
29 understand you to be saying the Government is not necessarily relying on these statements as
30 evidence with respect to any of the issues the board is called on to decide. Is that correct?

31
32 REC: Well, the Government--it would be, for some of the issues, for the board to
33 decide, such as the other alleged homosexual relationship with Laurie McChesney.

34
35 LA: Well, this--do any of these say that that sort of relationship went on?

36
37 REC: Yes, sir.

38
39 LA: I'm trying to remember. I read through this-----

40
41 REC: The statement of Heather McGuiness, the cousin to the two parties.

42
43 LA: Well, you know I've already got a problem with McGuiness?

44
45 REC: Right, sir. Also--I mean the statement by, we're not there yet--the daughter in
46 the case, M [REDACTED] and other things such as Margaret Witt's own statement provides
47 circumstantial evidence of the relationship.

48
49 LA: I've just got a problem with them. I'm not going to permit, number one, Major
50 Witt's declaration. I have the same problem with Ms. Halverson's--we talked about McGuiness,

1 which I'm not going to permit. Now Mrs. McChesney's I believe is interesting, in that, there
2 appears to be two signature pages, one unsigned and one signed. And the second signature page
3 actually appears to have added something that's not on the last page of the unsigned one. Any
4 idea what's going on there?
5

6 ARC: Sir, if you'd let us address that? If you want, we can address that, since it's
7 our objection on this document in and of itself. It appears there are two documents. If you
8 look at this proposed declaration from M [REDACTED] M [REDACTED] to the Superior Court of Spokane
9 County, it's pages 1 through 11, but the only documents offered or given is page 9 of 11.
10 There is no 10 or 11, so it's incomplete. On top of that, it's not even dated or signed. So--
11 I mean who wrote this? Obviously, she didn't, since she has no access as a layperson to these
12 sorts of documents, and I think it flies in the face of commonsense, if this is her statement,
13 if it's not even signed. The second document which you address is page 9 of 9. So where's
14 pages 1 through 8. It does appear to be signed by her, but it is completely incomplete.
15 Again, it's piecemeal, the exact same issue as the other documents.
16

17 REC: And the answer to that is--I mean, if anything, we have an extra complete document
18 here rather than the other statements that were incomplete. We have here which on the face of
19 it, a document that goes from page 1 through 9, with a page 9 being signed by the--apparently
20 the declarant. So the Government doesn't see where things are missing from this document.
21

22 LA: Well, two things: number one, everything else appears to be part of an 11-paged
23 document. Number two, if you look at the first paragraph on the page 9 of 9 page it appears to
24 be--I haven't read through the whole thing--but it appears like it's the same paragraph as the
25 last paragraph on page 9 of 11, but then the page 9 of 9 also has an additional paragraph. I'm
26 not happy with that one either. Now I will say, and I don't know how crucial these are to the
27 Government's case, if the Government believes it needs time to try to obtain the complete
28 statements, then I'm prepared to address that. But on the record, I have--I don't think those
29 statements ought to be coming in.
30

31 Now is the Government still prepared to proceed today, or do you need time to try to
32 obtain these statements?
33

34 REC: The Government can proceed today, sir. And the Government understands your ruling
35 and will modify the document according. The Government would just ask, we're not there yet,
36 but if, you know, if Respondent's counsel starts arguing, "Well, where are these documents that
37 the investigation was launched," based on credible evidence, would that, in your opinion, would
38 that open the door for some of these documents, then, to come in?
39

40 LA: Well, number one, I going to admit--and we may need now to go back and address
41 again the admissibility of the interim report, but my understanding is there is no objection to
42 the actual investigating officer's report.
43

44 ARC: Based on your ruling, sir, we would have an issue with the description of the
45 narrative portion of the CDI addressing the documents that you've kept out.
46

47 LA: Well, I think--I think I'm going to allow it to the extent that he references, "I
48 looked at stuff and this is what I looked at." Now if we need somehow to deal with an
49 instruction--I mean you're right. We don't know what he looked at. And if we need to address
50 that somehow in an instruction or argument, then we can.

1 ARC: Sir, I guess we have a concern with keeping out the documents themselves, but
2 allowing a narrative portion as to what these piecemeal documents say. It serves the same
3 effect. If we don't have the complete document, we can't address it, but by allowing a
4 narrative portion by an IO to CDI to speak on those documents, it's--I know this isn't your
5 intent--but it's really a backdoor way to get this evidence, if you will, before the members.
6

7 IA: Well----

8
9 ARC: We still have no way to address it. It still goes to Rule of Completeness.
10

11 IA Well, I understand you don't have a way to access those documents. And as I
12 indicated, I'm prepared to allow you to offer your exhibit. If we need to somehow address that
13 in instructions we can. But that's a different argument than whether these particular
14 attachments are appropriate. And my apparent--well, I don't know this. I don't know whether
15 he was relying on those attachments. It sounds like he was actually relying on, perhaps, more
16 complete attachments than were sent with the email--apparently, sent with the email. But I
17 think that's--and we may, since I'm keeping the attachments out, we may need to figure out a
18 way to instruct the board that some of what he relied on may have been incomplete. But I don't
19 think that's a basis to keep the report out.
20

21 ARC: No. I'm sorry, sir. Not the entire--I'm not asking--let me clarify, I'm not
22 asking to keep the entire report out, but there are narrative descriptions. Now we have no
23 problem with people he interviewed talking about witness's interviews. You know, rightfully,
24 that might come in. But with references to the documents you've left out, it's basically--it's
25 our understanding those aren't the only documents----
26

27 IA: Where does he do that?
28

29 ARC: I think when you talk about some of the witness interviews, I'm pretty sure he
30 refers to some of these documents.
31

32 IA: Okay. And I'm pretty sure----
33

34 RC: It says on page of 5 of the report, sir, a complete copy of the court file in the
35 McChesney case was obtained on 14 July through a personal friend.
36

37 IA: All right, where are we looking at?
38

39 RC: Page 5 of the interim report, paragraph 7, investigation----
40

41 IA: The interim report? All right, well, I assume it's probably in the other one
42 also. Page 5, paragraph 7, okay.
43

44 RC: Yes, sir. It talks about there: "Although the other documents contained in the
45 file at that time do not directly relate to Major Witt, several support the assertion that
46 Laurie McChesney was engaged in a homosexual affair with Major Witt. Many of the documents of
47 the file contain only indirect information, but some of them are actually quite direct. See
48 the appendix to report and the index of documents." So I think he's--they're saying that these
49 documents that you're now keeping out support the allegation the Government is here to prove.

1 LA: Is that in the final, does anybody know? It's not paragraph 7. And if so, do we
2 resolve that by excluding the interim report?
3

4 Major Davis, do you have a position on whether we just exclude the interim report and go
5 with the final?
6

7 REC: Well, I think everything is predicated here on your ruling, sir, of the appendix.
8 Pages 9 through 11 of the interim initial report at the appendix where it talks about the case
9 file being closed that the IO received a copy of it, that Heather McGuiness retracted her
10 statement. It's--it seems Respondent's counsel has gone kind of back and forth whether they
11 want this appendix excluded or not. If you are going to exclude this appendix, then the
12 Government would have no problem taking out of this exhibit the interim report, the initial
13 report. Because it seems the interim report is only being provided because it has this
14 appendix.
15

16 LA: That's correct--I think that's correct. My understanding is you're not relying on
17 anything in the interim report other than, essentially, anything that's---
18

19 REC: Right, sir.
20

21 LA: --not in the final?
22

23 REC: Right. So, bottom line, the Government has--the Government is amenable to taking
24 out the interim report, which would then take out the appendix and these other partial
25 statements.
26

27 LA: Does that solve the objection?
28

29 RC: I appreciate that.
30

31 LA: Is that a "yes?"
32

33 RC: Yes, sir.
34

35 ARC: Yes, sir.
36

37 LA: Okay. All right, then that's what we'll do. With respect to Government Exhibit
38 4, the first 11 pages will be removed, and the--I think it's four attachments referenced in the
39 email will be removed.
40

41 REC: The attachments on the email itself, sir?
42

43 LA: No. No--well, maybe I said---
44

45 REC: Okay.
46

47 LA: --that wrong. The four declarations.
48

49 REC: Right, sir. Understood.

1 LA: It references "attachments." Aren't those the only attachments referenced in the
2 email? But anyway, those four declarations.

3
4 REC: Right. All right, now does that resolve Respondent's objections, or are there any
5 I still need to address?

6
7 ARC: Sir, can we have a minute, please?

8
9 LA: Yes.

10
11 [The Respondent's counsel conferred.]

12
13 RC: That's the extent of the exclusions.

14
15 IA: All right.

16
17 When we break, if you would fix that and show it to Respondent, so that we can make sure
18 that everybody is on the same page before it goes to the board.

19
20 REC: Yes, sir.

21
22 RC: In light of that, those rulings, sir, then--I guess I don't know at this time.
23 Because I can't tell until we get to the end, maybe, whether--it doesn't seem like it's going
24 to be necessary for me to have to have the docket printout indicating that the file is sealed
25 as an exhibit. Because I'm not going to have to respond to that, I don't know----

26
27 IA: We'll get to that when you want to offer yours.

28
29 RC: Okay.

30
31 IA: And obviously, if you decide not to offer now and it later becomes relevant, we
32 can address that then.

33
34 Major Davis?

35
36 REC: Yes. The next report or the next offered exhibit----

37
38 IA: I'm sorry. Just to make sure on the record, Government Exhibit 3 is admitted
39 subject to the changes that we talked about.

40
41 AREC: You mean Government Exhibit 4, sir.

42
43 REC: Exhibit 4.

44
45 IA: Maybe--yes, Government Exhibit 4. Okay.

46
47 REC: Government Exhibit 5 consists of a printout of Title 10, Section 654, from the
48 United States Code, concerning a policy concerning homosexuality in the armed forces. A copy
49 has been provided to Respondent's counsel. The Government would move for Government Exhibit 5
50 to be admitted into evidence.

1 LA: Defense [sic][Respondent's counsel]?
2

3 RC: I'm objecting because I don't see the relevance of it. They have--they're going
4 to be given, I understand, the complete AFI. Essentially, what this--this statute contains a
5 number of legislative findings about why it's so awful to have homosexuals serve in the United
6 States military, but we're not here to make any arguments that there's anything wrong with the
7 statute constitutionality or otherwise. Those are arguments we have made in litigation in West
8 District Court in western Washington, but we're not making any of those arguments here today.
9 And it seems to me that all it does is inflame--it has an inflammatory effect talking about how
10 you can't have homosexuals in the military, and we're not here to argue against this statute,
11 so why do they need this.
12

13 REC: In response to that, sir, the AFI is an instruction enacted by the Air Force.
14 This is, one, to show the members that the Air Force isn't just picking and choosing its own
15 rules as to who can serve. That this comes down to the Air Force through, you know, statutory
16 language. Also, Respondent's Counsel is correct, there is more reference to findings and the
17 policy behind the policy in the Government Exhibit 5.
18

19 LA: I think it's admissible. I'm going to admit Government Exhibit 5.
20

21 REC: Government Exhibit 6 consists of various news articles that contain statements
22 from the Respondent and the Respondent's various attorneys, and the Government would ask for
23 Government Exhibit 6 to be admitted into evidence.
24

25 RC: If I could respond to this in two ways, sir; we do object to it, and we also have
26 our own motion, which I think is--covers the same ground here, and that is to exclude any
27 reference by the Government to the American Civil Liberties Union and the fact that I'm a
28 volunteer attorney for the American Civil Liberties Union. I say that because these articles
29 contain statements by attorneys for the ACLU, some by me, some by another ACLU attorney that
30 talks about challenges to the policy. That the ACLU takes the position both in Washington
31 State and nationally that the policy is unconstitutional, that homosexuals can provide good
32 service to their country, and there is no reason to exclude them. A lot of things like that.
33 But none of that is relevant to this hearing, because we're not here to make a constitutional
34 challenge to the policy. There are, at best, statements in here that indicate the--her lawyers
35 are standing up and saying, "She is a homosexual." I could understand the Government saying,
36 well, those stray places in all these articles are relevant to their--that they're allowed to
37 put on evidence that she makes a statement that she is a homosexual. But as a practical
38 matter, the Government has given me, within a last few days, notice apparently that they intend
39 to submit the declaration that Major Witt filed--signed and filed in U.S. District Court, which
40 says, "Yes, I am." So these are completely unnecessary. If that is also coming in--and I have
41 some objections to that--but, at best, the Government could point to a line or two in these
42 things which is relevant. But it's highly inflammatory and prejudicial to bring in before
43 these members the fact that she's making a litigation challenge to the entire policy in U.S.
44 District court, which is now in the 9th Circuit. That has no relevance, and the only purpose it
45 can serve is to, potentially, make the members of the board angry at her for bringing a test
46 case on the constitutionally.
47

48 And it contains all these references to the ACLU, and I did want to address that,
49 because, if you're going to allow these articles to come in with those statements, if you're
50 going to allow them to bring up the fact that she's represented in part by voluntary ACLU

1 counsel, then I'm going to have to voir dire the board members on their attitudes toward the
2 ACLU, as well. I wonder if the Government could point to two or three sentences in these
3 articles that they think are really relevant.
4

5 REC: Sir, the Government believes the entire exhibit is relevant, not just a few
6 sentences. It is expected--based on the Respondent's various declarations with the court, it
7 is expected today that their line, potentially--Respondent's Counsel's argument and issue is
8 that the members--even if argument isn't made by Respondent's counsel--is, if Major Witt was
9 homosexual, did she conduct herself in a discreet way? Did she mention it to anybody within
10 the Air Force? And these articles clearly show that after this investigation, Major Witt went
11 very public with the fact that she is homosexual and it was a continuing--continually going
12 against the policy of making a statement that one is homosexual, either statements that she
13 herself made, or her attorneys made on her behalf.
14

15 RC: Well, if I could address that. That brings up my other point, really. If you
16 take a look, for example, at one of these articles it begins--an article in the Seattle Times:
17 "A decorated McChord Air Force Base major, who was once featured in a national recruiting
18 pamphlet, sued the military Wednesday after she was suspended for being a lesbian." Well, she
19 has a constitutional right to bring a lawsuit. She has a right under the First Amendment to
20 petition the government for redress of grievances. And the United States Superior Court has
21 identified litigation by the act of filing a lawsuit as an act of exercising your first
22 amendment right to petition the government. It's the only place she can go. Where else is she
23 supposed to go to raise an argument that the policy and the regulations are unconstitutional?
24 We're not trying to do that here. We are doing that in the United States court system. If you
25 say that the Government should be allowed to represent to this board that, "Well, now here's a
26 person that should be discharged because she made statements to a court, she triggered a
27 lawsuit," what you're saying is she's being punished for exercising a First Amendment right to
28 petition the government. What you're saying is that the Air Force has the right to initiate a
29 discharge proceeding against someone, and then tie their hands and make it impossible for them
30 to go and seek judicial relief from it. That can't possibly be fair or accurate. And again,
31 it seems to be an attempt to argue that here's somebody who had the audacity to bring a
32 lawsuit.
33

34 IA: Well, let me ask you this to sort of move ahead with respect to Government Exhibit
35 7, which includes Major Witt's declaration. Do you anticipate objecting to that declaration?
36

37 RC: Is 7 the declaration filed in U.S. District Court?
38

39 IA: Yes.
40

41 RC: Yes, I do, sir, on essentially the same grounds that I just said, which is that
42 she has a constitutional right to seek relief in district court, and what they're saying here
43 is, "Well, if you do that we're going to penalize you for it."
44

45 Now one of the cases that is cited in the brief, which they also want admitted, is Roamer
46 versus Evans; it's 517 U.S. 620. In that case, the U.S. Supreme Court struck down a Colorado
47 law which basically said you can never put on the ballot for an initiative in Colorado a law
48 which would in any way extend employment discrimination protection for homosexuals. You just
49 can't do that. For all time, they are forbidden to go to the legislature. And they said you
50 can't cut off a section of the population from the right to go to one branch of government.

1 And here, what we have is, essentially, a similar kind of attempt by the Government saying if
2 you go to another branch of the government, the judicial branch, which is the branch you are
3 guaranteed the right to go to for redress of grievances, we're going to punish you for that.
4 We're going to say, "Ah-hah, you made a statement to a court that violates the policy.
5

6 And it's our position that it's one thing to say that a member of the United States
7 military, while in service, while in the military shall not make statements that's a part of
8 Don't-ask-don't-tell. We understand that. She never did. It's another thing to say that if
9 you keep your part of the bargain, you never make a statement, but somebody else outs you, we
10 come to you for comment in a military context and you have no comment, but then we notify you
11 that you will be suspended, you're just going to have to take no action. You're not going to
12 be allowed to go to federal court, because if you go to federal court and exercise your
13 constitutional right and make a statement there, we're going to make that part of the discharge
14 board and say, "Even if we can't get you for anything else, we can get you for telling a court
15 what the true facts are and that you wanted additional relief."
16

17 LA: Well, all right. Let me, number one, respond to the--with respect to the
18 declaration. Because my inclination is that the declaration is admissible. But give me your
19 argument with respect to it. And I'm asking that now, because then I want to know whether that
20 affects objections to issues like--if that's going to coming in will that affect your
21 objections with respect to things like the news articles. But we'll get to that in a minute.
22 Talk about the declaration.
23

24 REC: The declaration is relevant for several parts. First of all, in her own--in the
25 declaration, paragraph 12, the Respondent does admit that she is homosexual, that she engaged
26 in homosexual acts with a civilian woman. Going on in about the next paragraph, the Respondent
27 states in the declaration that she told a military member, a Senior Master Sergeant James
28 Schaffer that she was homosexual, that she has a same-sex partner, so that also shows
29 homosexual statements by the Respondent.
30

31 LA: Okay. My----

32
33 RC: Could I----

34
35 REC: And just to respond too. It's not the Government's intention to say that Major
36 Witt should never have filed a lawsuit. The members can be voir dired as to any bias that that
37 brings to them, and the Government will even agree to an instruction down the road that they
38 should draw no negative inference from the fact that she filed, but she did make statements
39 that are complete, signed off by herself, submitted to the court that go directly to the
40 allegations in this board.
41

42 LA: Okay, with respect--did you have something you wanted to say on the declaration?
43

44 RC: Something minor, sir. But I don't think the declaration says exactly what Major
45 Davis says. He indicated that she says in the declaration that she admitted to a Sergeant
46 Schaffer--I don't remember exactly what you said, but it's paragraph 16--and she does say,
47 "With the exception of Senior Master Sergeant James Schaffer, I never told anyone in the
48 military about my relationship with my partner. He was and still is my neighbor, and he
49 trained as a firefighter while I was volunteering as a county firefighter. He was a member of
50 my unit, the 446th AES, and he was also a civilian friend and neighbor. While on our way to

1 firefighting training, he asked me how long my partner and I had been together, and I told him
2 how many years it had been, 3 or 4." I think answering a question, "How long have you been
3 with someone," and saying "3 or 4," is not quite the same as saying I admit to whatever.
4

5 LA: Well----

6
7 RC: But I understand Major Davis's main point to be it's relevant, and I don't dispute
8 the fact that it's relevant.
9

10 LA: With respect--and I hate to address this piecemeal--to the other parts of 7, with
11 respect to the declaration, my inclination is that it is admissible, and I intend to admit it.
12 Now having said that, does that affect the approach--your objection with respect to Exhibit 6.
13 If it doesn't, that's fine. But I can see that it might, and I just----
14

15 RC: It makes, in effect, my objection to 6, I think, stronger. Because I don't
16 believe anywhere in her declaration, for example, does she saying anything indicating that this
17 is an ACLU case. If you've got her declaration in evidence where she says, "It's true," "I had
18 a relationship with Tiffany Jenson," "The allegation is that I had sexual relations with her,
19 and that's true," what in the world is the need for any of these newspaper articles any more?
20

21 LA: And I'm----

22
23 RC: All they do is talk about "litigation," "lawsuit," "press conference," and the
24 "ACLU," none of which are relevant to this board.
25

26 REC: Sir, a servicemember--like I said, it can be addressed through voir dire, through
27 instruction, has a right to go to federal court to seek relief. However, it's another matter
28 now if we're saying that a servicemember has a total right to hold a press conference and talk
29 about any subject that they wish to talk to in the media--I mean in several places Major Witt
30 mentions that she is a private person, you know, surprised as to why this has come about.
31 While this case was still ongoing she made further statements to the media, and her attorneys
32 made statements to the media at press conferences that were held by themselves.
33

34 LA: All right, address specifically his objections with respect to references to the
35 ACLU?
36

37 REC: The Government would have no problem in redacting any mention of the ACLU through
38 the exhibit, but it--then we get into, you know, completeness of the document. Are the
39 documents complete? Also, these documents, these articles, Exhibit 6, seem pretty fairly
40 balanced. I mean they also allow--they really allow Respondent and Respondent's counsel to
41 address the issue, because throughout the articles it's also mentioned that the Air Force and
42 the Air Force Reserve Command declined to comment on the case. So really, if anything, they're
43 sounding boards for the Respondent and the Respondent's counsel, and these are further
44 statements that were made by them.
45

46 RC: I don't understand the relevance of assumptions by ACLU staff counsel, for
47 example, like Mr. Caplan--but to go back for a moment.
48

49 I guess the suggestion is she can file a lawsuit, and that will be the end of it, and
50 there is an assumption that there won't be any media coverage. It just blinks at reality.

1 It's a public document when we file the complaint. It's a public document when she filed the
2 declaration in support of her motion for a preliminary injunction. There's no way that we can
3 keep that secret from the press. Once those documents are filed, and I speak from some
4 experience, there are hundreds of phone calls that start coming in from reporters. I supposed
5 it would be sort of nonsensical from the organization's point of view to say we have no comment
6 to anyone on anything and our documents speak for themselves, just go read the court file. So
7 instead we have a place where they all come for 20 to 30 minutes and they can ask their
8 questions and go away. So it just doesn't make any sense to suggest that there is something
9 improper about that, and if there is--I mean if there is anybody to be criticized for it, what
10 you really are doing is criticizing the ACLU as a national organization, not her. So I----

11
12 REC: The Government is not saying that there's nothing--that there's anything improper.
13 What the Government is saying is that there is some thing very relevant. Once again, when the
14 Air Force was contacted for comment, the Air Force declined to comment. To say that a person
15 who is contacted by the press must talk to the press in uniform at a staged press conference,
16 as can be seen from the pictures--this wasn't on the steps of the courthouse. It is relevant.
17

18 LA: I think it is because it addresses--they go to the publicness, if you will, of any
19 profession of homosexuality, and I think that's relevant because the board is called to decide
20 whether--the publicness of it. Now I can--so I think, in general, these articles are
21 admissible.
22

23 Now two questions with respect to that. Number one, I'm not sure of the admissibility.
24 I'm more inclined to exclude the final article that discusses the disposition of the case,
25 because I'm not sure it has any particular relevance with respect to the arguments that you're
26 making. And I would just assume--it seems to me we open up a new issue. And if you want to
27 fight for it, I'll give you an opportunity to fight for it, but my inclination is to exclude
28 the final one, because I just assume that the board not draw any inappropriate conclusions from
29 a constitutional or legal standpoint on the policy of homosexuality. And I don't know,
30 defense, you may say if I--[inaudible]--the evidence come in, but my inclination is to exclude
31 it.
32

33 RC: No, I would want them all out. If I can't have them all out, I would like the
34 last one out, sir.
35

36 LA: Okay.
37

38 RC: But I did want to, if I could----
39

40 LA: All right, hold on. Before we get to that, do you want to argue with respect to
41 the last one?
42

43 REC: No, sir. We'd----
44

45 LA: Okay.
46

47 REC: The Government would agree with your ruling.
48

49 LA: All right. Now the second issue that I--and I have some concerns with it, is the
50 objection with respect to references to the ACLU. My inclination is that if we start trying to

1 redact those portions, we'd wind up with a bigger mess, and my inclination is, Mr. Lobsenz, is
2 to tell you to address that as you will in voir dire and, if the Respondent wants an
3 instruction both with respect to her right to file a lawsuit and with her right to be
4 represented by the ACLU, I think that would be appropriate, because I certainly don't want them
5 drawing any adverse inferences from that. So that--and if you want to make one last shot at
6 redacting those portions, I'll listen. But it seems to me we'd make a bigger mess if we start
7 trying to do that.
8

9 RC: I understand, sir. I won't argue further on that point, but I have a different
10 request. Major Davis referred to the fact that she was in uniform at this press conference.
11 At least one of these articles shows a photograph of her in uniform, and it's my understanding--
12 -I mean I've never been in the military, but there is some regulation that suggests that you're
13 not supposed to be in uniform if it's not an official military function. I think, again, that--
14 -I do not believe the Government should be permitted to either put in evidence that she was in
15 uniform, because even if they don't argue it, apparently, that will register with members of
16 the board that that was a bad act and she shouldn't have been doing that. And maybe you can
17 blame me or other ACLU attorneys for not realizing that that was a violation of some military
18 regulation, but we're here to decide one issue, whether or not she engaged in homosexual
19 conduct. It is--if she did, that's the only issue. It should not be permissible for the
20 Government to inflame this board against her on the grounds that she may have violated some
21 other regulation.
22

23 LA: Are there references in the article too, or are you just talking about the photos?
24

25 RC: Well, I'm talking primarily about the photos, because I don't think there are any
26 references in the articles----
27

28 REC: There are references in one article. One moment, while I find it.
29

30 LA: Do you know?
31

32 REC: Yes. The article from the Seattle Times; "Lesbian Challenges Military Policy."
33

34 LA: How far back are we?
35

36 REC: About the first-third--the second-third of the document.
37

38 LA: Okay.
39

40 REC: There is, paragraph--the fourth paragraph down, it states, "Dressed in her flight
41 suit and holding her medals and commendation letters," and there are other references in other
42 articles.
43

44 LA: Well, all right.
45

46 Respondent, if you can--well, let me ask first: do you have a problem with redacting the
47 photographs?
48

49 REC: Yes, I do.

1 LA: Why?
2

3 REC: Because unlike what Respondent's Counsel says, the members here today are not to
4 decide one issue, "Is she a homosexual?" Another issue that they need to decide is should she
5 be discharged. And Respondent's Counsel, himself, represented a prior military member from the
6 Army who was found to be homosexual, but the Army retained that individual out of fairness. So
7 one issue for the members to decide today is, "Should she be discharged," and a person holding
8 a private press conference in uniform, coming, displaying commendations and so forth, should be
9 evaluated by the members. Now the Government is not going to add the fact that she was in her
10 flight suit as a basis for discharge, and she received no disciplinary proceedings because of
11 it, but it does go to the issue should she be discharged.
12

13 LA: Let me ask--well, let me ask you this, is the Government taking the position that
14 she was in error in appearing in uniform? And I ask----
15

16 REC: No. It just goes to the publicness of her statements. It's one thing--somebody
17 who is flipping channels or looking at a printed document, you know, a person says they're a
18 homosexual. It's another thing when the person surrounds themselves with their awards in their
19 flight suit at a press conference that they themselves held.
20

21 LA: Well, all right. So you don't expect to make some sort of argument that because
22 she was appearing at least in uniform--well----
23

24 ARC: Sir, briefly, can I address Major Davis's comment about the standard of proof here
25 today. In a typical hearing, as we all know, for example, an unsat case, you have two
26 questions: "is there a basis" and "Should you discharge?" In this particular case, Major Davis
27 is mistaken as to the question of should you discharge. In a homosexual conduct case, if they
28 find homosexual conduct, it's mandatory. There is no discretion, but for a few factors, so
29 going to the argument that, well, it also goes to the decision of should you discharge. That's
30 not an issue here today. The issue is, did she engage in conduct? Did she make a statement?
31 Bam, issue resolved. So----
32

33 RC: Is that--I'm sorry to interrupt my own co-counsel, but you gave me the findings
34 and recommendations worksheet, and I wonder if I could--because if this is the worksheet to be
35 used it has a section after the finding about whether there's a finding of conduct or if she
36 should or should not be separated.
37

38 ARC: That's the basis----
39

40 LA: I understand what you're arguing.
41

42 ARC: --to try to backdoor. If--"Hey, it also goes to the decision of look how bad she
43 is. You should discharge her." That's not an issue in a homosexual conduct or statement case.
44 So I don't think that applies here.
45

46 LA: Well, it seems to me that the publicness of Major Witt's appearances, and without
47 regard to the fact that she's exercising constitutional rights, which she is and which I think
48 is--as I said, I think the board is entitled to be reminded of. At the same time it seems to
49 me that how public the profession was is relevant in decisions they're called to make. I'm

1 going to let, with the exception of the last article which I'm going to remove, I'm going to
2 admit Government Exhibit 6.

3
4 REC: Understood, sir.

5
6 AREC: Sir, you're also admitting Government Exhibit 7? Because you said you were----

7
8 LA: No, we haven't gotten to 7 yet.

9
10 AREC: Okay.

11
12 LA: I guess we're about to. Are you now offering Government Exhibit 7?

13
14 REC: At this time, the Government is offering Government Exhibit 7. It consists of
15 court documents filed by the Respondent, and a copy has been provided to Respondent's counsel.
16 The Government would move for Government Exhibit 7 to be admitted into evidence.

17
18 RC: Sir, my understanding is that you already, basically, ruled that part of 7 and
19 its--Major Witt's declaration is coming in.

20
21 LA: That's my inclination, yes, to allow at least the declaration.

22
23 RC: So my objections will--additional objections will be directed to the other parts.
24 To begin with, on the top of Exhibit 7 is an email from Major--[inaudible]--who I believe was
25 with her in court, and--U.S. District Court in Tacoma, Washington. I don't see the relevance
26 of this email advising--one government counsel advising another government counsel of the way
27 in which the court ruled, and you've already kept out the last newspaper article which talks
28 about how the district court ruled. And so I think consistent with that you would keep out
29 this email which doesn't have any relevance.

30
31 LA: I don't like the email. You're welcome to pitch an argument, but I don't. You're
32 probably going to lose, but I'll give you the opportunity, if you want it, okay.

33
34 REC: The Government can take out the email, sir.

35
36 LA: Email I want off. The declaration, unless you have some additional objections,
37 the declaration is coming in.

38
39 RC: Understood. But I would object to--my brief----

40
41 LA: Well, before we get to that, is this Exhibit A part of the declaration? The nurse
42 brochure a part----

43
44 REC: Is what, sir?

45
46 LA: Is the nurse brochure----

47
48 REC: Yes, that was part of the Respondent's declaration with the court.

1 LA: Okay. All right, address the brief--oh, you're talking about the brief for this
2 Motion for Preliminary Injunction----

3
4 RC: The Motion for Preliminary Injunction.

5
6 LA: How many things are here, is it just that motion?

7
8 RC: Just that, and it's 37 pages of that motion.

9
10 LA: Actually, to maybe short circuit this, before you tell me why it shouldn't come
11 in, why don't you tell me why it should?

12
13 REC: Again, sir, it was a statement filed on Major Witt's behalf by her attorneys.
14 Under the theory of principal/agent relationship there were also--you know, to be considered as
15 statements from Major Witt herself. Also, in this case, it can also show how Major Witt and
16 her attorneys were downplaying the situation with the court. They just make reference to a
17 homosexual relationship with a civilian woman. They never mention anything on McChesney or the
18 situation with that second woman, Laurie McChesney.

19
20 LA: I don't like the motion. I'm going to exclude the motion. I'll allow the
21 declaration as Government Exhibit 7. If you need me to be more specific on why, I can put a
22 reason on the record, if I need to. Essentially, I think those are arguments made by the
23 attorney on her behalf, one would assume to most likely obtain the best result, and I'm
24 uncomfortable with allowing that in. Anything else with respect to Government Exhibit 7?

25
26 RC: [Negative response.]

27
28 LA: So we're down, essentially, to the declaration and the attachment. And with those
29 changes, Government Exhibit 7 is admitted.

30
31 And again, Major Davis, if you would with 6 and 7, once we fix them, show them to
32 Respondent so we're all on the same page.

33
34 REC: Yes, sir. And finally, Government Exhibit 8 consists of a digital video and audio
35 clip of a press conference held by the Respondent in which the Respondent makes statements. A
36 copy has been provided and shown to Respondent. If you would wish, at this time, we can show
37 the legal advisor the audio-video clip.

38
39 LA: Well, let's wait and see what your position is on that.

40
41 RC: Well, I do have an objection to it. It's similar to the objections I've made
42 before. It would seem that you would show it, and then have to give the discussionary
43 instruction that she has a right to file a lawsuit. And there's nothing in it that I can think
44 of that's beyond what's in the newspaper articles, and certainly nothing in it that's beyond
45 the declaration. So I would say that under a Rule 403 kind of analysis it's got absolutely
46 minimal probative value at this point, given what else is already coming in--I mean you--what
47 is already coming in is her statement that "I had a relationship with a woman named 'Tiffany
48 Jenson,' and it was a sexual relationship," so what possible need is there, again, now to show
49 her in her uniform answering questions of the press? And--I don't believe that any of the
50 questions of the press are targeted in any way that are factual inquiries like, "Where did you

1 have sexual relations with the woman, Tiffany Jenson," or something like that. There are no
2 questions like that. There are questions that--at best, the statements are: "Within the
3 military, I never told anybody that I was a lesbian." So what's--minimal, minimal value, and,
4 again, fairly seriously prejudicial. I do not know how you would edit the tape to get out--I
5 guess, you indicated you will permit it. You will not redact references to the ACLU, but
6 they'll all be in there, so we'll just have an inflammatory appeal to the fact that she's
7 allying herself with the ACLU which is having a press conference in her behalf, and nothing
8 really relevant beyond--certainly beyond what you've got.
9

10 REC: Once again, sir, it goes to the publicness of the statements. The audio-video
11 clip does provide additional information that's not in the articles. You know, for instances,
12 the photos in the articles, her in her flight suit near, you know, the ACLU and so forth, it
13 could be a photographer just catching a person unaware, just taking a snapshot. The video clip
14 shows that this was a staged press conference. She is surrounded by her commendation letters,
15 awards, achievements, and it shows the length of the press conference.
16

17 LA: How long is it?

18
19 REC: It's about 20 seconds, sir.
20

21 RC: Maybe----

22
23 LA: Then, yes, I want to see it.
24

25 RC: Yes.
26

27 LA: Is that all?
28

29 REC: Yes, at this time.
30

31 LA: I'd probably go ahead and decide that anyway, but, certainly, let's show it.
32

33 REC: Yes.
34

35 LA: Can we do that without blinding our reporter?
36

37 REC: I think we can.
38

39 AREC: We'll find out.
40

41 LA: Can we do it without Major Kirkpatrick here to tell us how?
42

43 REC: We will try, sir.
44

45 [The Recorder set up and played the video clip, Government Exhibit 8.]
46

47 REC: And that is the extent of Government Exhibit 8.

1 LA: Okay, I'm going to admit Exhibit 8. I will work--while the board is reviewing the
2 exhibits, I'll work on a proposed instruction and will solicit any suggestions from either side
3 with respect to the lawsuit and the references to the ACLU.
4

5 Okay. Anything else from the Government?
6

7 REC: No, sir, and the Government would just propose that Government Exhibit 8--a
8 digital copy of Government Exhibit 8 will be made a part of the board record.
9

10 LA: Okay.
11

12 REC: And the Government just intends, in its case, to play the audio-video clip for the
13 members, not really to allow them to have the exhibit to go back into deliberations.
14

15 LA: After they've reviewed the other exhibits?
16

17 REC: Yes, sir.
18

19 LA: Okay. All right.
20

21 Does Respondent have any exhibits that you want me to address at this point--I'm sorry,
22 before we get to that, I do need to confirm.
23

24 Government, you have no witness you intend to call in your case-in-chief?
25

26 REC: Yes, sir. And the Government has no further exhibits.
27

28 LA: Okay.
29

30 RC: Sir, can we have a few minutes, please?
31

32 LA: What do you mean by a "few?"
33

34 RC: Two in place?
35

36 LA: Sure. Okay.
37

38 [The Respondent counsel conferred.]
39

40 RC: Is now the time for us to offer our exhibits even though the Government hasn't put
41 on its evidence and rested?
42

43 LA: Typically, what would happen, and this is subject to you doing it a different way
44 if you want, but rather than them put on all theirs, you put on all of yours in terms of
45 documentary evidence, what we would typically do is provide all of that to the board at one
46 time, and then let them recess and review the exhibits without any deliberation at that time.
47 Although I can't recall, right off hand, do we do opening before or after we give them the
48 exhibits?
49

50 RC: Before.

1 REC: Before, sir.
2
3 LA: Okay. So we'd have is voir dire, argument--well, opening, then give them
4 everybody's exhibits, let them review them, and then come back and, normally, take witnesses,
5 if there were any in this case, come back play the video, and then you'd be--you have whatever
6 you want to do.
7
8 RC: That would be fine. We do have two notebooks full of exhibits, and I believe
9 they've been provided to Major Davis.
10
11 ARC: Unfortunately, they're marked a little differently. They're marked numerically
12 versus alphabetically, but hopefully we can deal with that. We have twenty exhibits, some of
13 which have sub-exhibits, so I'll go through each of them.
14
15 LA: Well----
16
17 ARC: It would be easier to just go ahead and admit everything and I could put on the
18 record what we have and what we've given to Government counsel and see if they have any
19 objections to any of them.
20
21 LA: Okay. Well, all right--I mean it seems to me you're offering Respondent's Exhibit
22 1 through 20?
23
24 ARC: We are, sir. And just to clarify, Respondent's Exhibit 2 has Alpha through India,
25 A through I.
26
27 LA: Okay.
28
29 ARC: Number 3 has Alpha through Tango, A through T, and that is about it. There are
30 twenty exhibits. Exhibit 2 and 3 that we offered do have sub-exhibits. At this time, we do
31 offer Exhibits 1 through 20 as Respondents Exhibits 1 through 20.
32
33 LA: Do you have objections?
34
35 REC: No, sir. Respondent's Counsel has provided the Government with copies of those
36 exhibits.
37
38 LA: Do you have notebooks for all----
39
40 RC: We do.
41
42 ARC: We do, sir.
43
44 LA: Okay.
45
46 ARC: We also have declarations that we will submit as separate documents, if you will.
47 Copies have been previously provided to Government counsel. They are numbered numerically.
48 Again, there is, specifically, twenty-two declarations or "statements," if you will, but they
49 are numbered 1 through 20. Copies have been provided, previously provided, and we offer those
50 at this time.

1 RC: Just to explain that, that's probably my fault, but the first set of 1 through 20
2 are mainly sort of personnel items, and I separately had 22 character reference declarations.
3

4 LA: Is there--can we simply mark that on the outside as Respondent Exhibit 21?
5

6 ARC: We can do that, sir, if you want.
7

8 LA: Let's do that so that we can kind of keep up with it. Those are things like
9 witness----

10
11 ARC: Yes, sir. Just character statements.
12

13 LA: Character statements. Okay.
14

15 Have you seen those, Major Davis?
16

17 REC: Yes, sir. And----
18

19 LA: And you didn't----
20

21 REC: --the Government doesn't have objections to them.
22

23 LA: All right. If I didn't say, Government Exhibits 1 through 21 are admitted.
24

25 AREC: Respondent Exhibits.
26

27 REC: Respondent's.
28

29 LA: Thank you. Respondent Exhibits.
30

31 Anything further from Respondent?
32

33 RC: Maybe one additional thing and that's just to clarify; we did make a discover
34 request for the forwarding email that General Jumper sent to when he forwarded the complaint of
35 Mr. McChesney to McChord Air Force base and the wing. It's just my understanding that you have
36 not been able to find that forwarding email.
37

38 REC: That is correct. Based on the emails that I have sent to Captain Catron, I had
39 General--now General Crabtree, the 446th Wing Commander, look through his email, and his
40 secretary; they were not able to find that email. The investigating officer, Lieutenant
41 Colonel Torem, believes that the email that was sent down to the wing from General Jumper's
42 staff is the emailed contained in the investigating officer's report, the email from Mr.
43 McChesney. And yesterday afternoon, I believe Respondent's counsel, via email indicated that
44 they were satisfied with the Government's diligence in trying to find that email.
45

46 RC: I appreciate your efforts to try to find it.
47

48 LA: Is there any suggestion that the Government has intentionally lost, misplaced, or
49 failed to provide it that you are concerned with?

1 RC: [Negative response.]
2
3 LA: Okay.
4
5 RC: I don't have any other motions with respect to either our exhibits or the
6 Government's exhibits. Now is not really the time to bring up matters about witnesses that we
7 might call. That's for later.
8
9 LA: Well, my--I notice the script asks for me to ask for your witnesses. I'm not sure
10 that you're required to tell me at this point. It might--if you're willing to disclose it, it
11 might speed things up later on. How many witnesses do you intend to call?
12
13 RC: For scheduling purposes, we do intend--we don't have anybody we can cross-examine,
14 with a paper case from the Government, and the main case comes through their investigator,
15 Colonel Torem. I have spoken to Colonel Torem and he will be available today and tomorrow by
16 telephone, and I do intend to ask him questions--some questions, but not a very lengthy---
17
18 LA: Okay.
19
20 RC: --examination. We also had requested that Colonel Janette Moore-Harbert be made
21 available as a witness.
22
23 Has the offer of proof that I drafted been provided to the Government?
24
25 ARC: [Negative response.]
26
27 RC: No.
28 I do have--prepared an offer of proof that I had contact with Colonel Moore-Harbert in--
29 on March 14th of this year. And I have this in a written form, but she was willing to talk to
30 me on that day, and she said she would get back to me. I had sent her an email and she
31 responded to my email and said she'd get back to me, and she did not get back to me. I called
32 her again in about a month, and although she had been willing to talk to me before, she said,
33 "I'm sorry. I can't"--"I cannot help you," is what she said and was not willing to talk to me
34 any more. I have attempted to reach her in this month, in September. It would be my desire to
35 place a phone call to her. I have her phone numbers, and at the appropriate time--and I hope
36 that she answers and hopes that she is willing to respond to my questions. But I don't know,
37 because since March she won't respond.
38
39 LA: Captain Catron, have you tried to reach her--I mean is there a reason to believe
40 we can't just tell her to be available at "X" time? Is she a reservist or active duty?
41
42 RC: Air reservist, sir.
43
44 LA: Okay.
45
46 RC: I'm going to be leaving this issue with Mr. Lobsenz. As the AFRC Respondent's
47 Counsel, I feel I'm not the best person to speak with----
48
49 LA: Okay.

1 RC: I don't know how it works, but I believe that there are some internal career-
2 related reasons for a person who is in, like, Colonel Moore-Harbert's position to be unwilling
3 to get involved. She's received her promotion, but she hasn't been pinned on. She's a
4 colonel-select. I have every reason to believe that she has very favorable testimony to give
5 on behalf of Major Witt, and also every reason not. In the last few months, I have come to
6 believe that she doesn't want to get involved.
7

8 IA: All right. Is she on notice that the hearing is going on and she may be called?
9

10 RC: She did not respond to any messages. She doesn't know, unless somebody has told
11 her at the base.
12

13 IA: Do we know if she's an ART, or is she just a traditional reservist?
14

15 RC: She's an ART, whatever that is.
16

17 IA: Okay. Well, that affects how easy it might be for us to be able to get a hold of
18 her.
19

20 Were y'all able to get a hold of her?
21

22 REC: No, sir. And this information that Lieutenant Colonel Harbert refused to talk
23 with Respondent's counsel is news, at this point, to the Recorder.
24

25 IA: Let me suggest this, Mr. Lobsenz, if you want to--if you wouldn't mind seeing if
26 you can reach her, advise her that the hearing is going on, advise her that she may be called
27 as a witness, and that as an ART we ought to be able to find her when we need her, and if she
28 has any concerns with that she can talk to me about it.
29

30 RC: Okay, I'll do that.
31

32 IA: And if you run into problems, let me know and we'll see what we can do.
33

34 RC: I don't have any other preliminary matters, sir.
35

36 IA: Okay.
37

38 All right, Major Witt, there are some things that I need to advise you. As you have
39 obviously gathered by now, this board is convened to hear evidence pertaining to your case and
40 to recommend to the discharge authority whether you should be discharged from the United States
41 Air Force Reserve prior to the normal expiration of your term of service.
42

43 You have the following rights:
44

45 You have the right to appear at all open sessions of this board in person with or without
46 legal counsel or, in your absence, to be represented by legal counsel at all open sessions of
47 this board. You may, of course, be represented by your designated legal counsel, Captain Kevin
48 Catron, or in lieu of his representation you may be represented by military legal counsel of
49 your own choosing, if that counsel is serving on extended active duty and is determined to be
50 reasonably available. In lieu of or in addition to military legal counsel you may, obviously,

1 also, be represented by civilian legal counsel at no expense to the Government. You have the
2 right to conduct an inquiry of the voting members of the board and challenge them for cause
3 only. You have the right to request the appearance before this board of any witness whose
4 testimony you believe is material to this case. If I determine that that witness is reasonably
5 available and that the witness's testimony can contribute materially to the case, those
6 witnesses will be invited to appear at no expense to you, and the Government will assist in
7 those invitations. You or your counsel may question any witness who appears before the board.
8 All rights granted under Article 31 of the Uniform Code of Military Justice are extended to
9 you. In addition, you may submit to examination by the board, and if you choose to do so,
10 you'll be subject to cross-examination just as any other witness. If you do not desire to make
11 a sworn statement, you may make an unsworn statement to the board either personally or through
12 counsel, verbally or in writing, or any combination of those. Regardless of the manner in
13 which you make an unsworn statement you will not be subject to cross-examination. If you do
14 not choose to testify or make an unsworn statement, your silence will not and cannot be
15 considered as an admission of the truth of the evidence against you. You also have the right
16 during this hearing to submit any evidence to the board for its consideration. You may submit,
17 as you're obviously aware, depositions, sworn or unsworn statements, affidavits, or any other
18 evidence that you and your counsel think is appropriate for consideration by the board.
19

20 Do you understand your rights in this board proceeding?

21
22 RES: [Affirmative response.]
23

24 LA: The other thing I would advise you of is if at any time you have any questions
25 about your rights or about the proceedings you should either feel free to ask me or tell me you
26 need time to talk to your counsel and I'll give you that opportunity.
27

28 Okay, if I've got the order down correctly, once we get the board in, voir dire and then
29 opening.
30

31 Mr. Lobsenz, you can make your opening then or you can reserve it until the opening of
32 your case, and then we'll present the documents to the board for their consideration.
33

34 RC: I had a question about voir dire, sir.
35

36 LA: Uh-huh.
37

38 RC: And that is, I guess, essentially, to request individual voir dire. Many of the
39 questions we're going to deal with are on the subject of homosexuality, and it would be my
40 guess that it would be something that people would prefer that they not have to disclose in the
41 presence of other officers.
42

43 ARC: Sir, I think Major Davis and I talked about this yesterday. And correct me if I'm
44 wrong, sir. I think we're in agreement that on the issue of homosexual pre-deposition concerns
45 about the policy, I think we both agreed to do our general voir dire of "Hey, welcome to AFRC,"
46 and then bring them each in individually and address the more complex issues. I think that was
47 the understanding between counsel.
48

49 REC: The Government has no problem in conducting individual voir dire of homosexual
50 issues.

1 LA: With respect to that, I understand that the two alternates are true alternates who
2 will only come on if one of the others is dismissed, and I assumed they will come on in the
3 order they're listed in the order?

4
5 REC: Yes, sir.

6
7 ARC: We have no problem with that.

8
9 LA: Right. So with respect to voir dire, do we voir dire, generally, all five at one
10 time or just the three--in fact, I guess, we only have the three in there. The other two are
11 on standby somewhere?

12
13 AREC: Yes, sir, they're on standby.

14
15 LA: Okay. So you're--your thought is to go through all of these, and then essentially
16 start over, if we have to remove one of these?

17
18 REC: Yes, sir. And it's expected, as the issue has been raised, it's been expected
19 that the majority of voir dire is going to be conducted on an individual basis anyway. So
20 having all five present at the beginning would seem----

21
22 LA: It seems to me like we're taking a gamble. But, okay, I'm prepared to let y'all
23 run with that, if that's what you want to do. I have been told that the Board President just
24 had general questions about his duties and responsibilities. With the parties' consent, I'm
25 prepared to just, generally, advise him informally, or I'll bring him in here and do it. But
26 my guess is, if it's like the ones we've had before, he basically just wants to know, you know,
27 "How do I run the show," and that sort of thing. And I'm comfortable advising him of that off
28 the record, unless either party thinks that needs to be on the record?

29
30 REC: The Government doesn't think it needs to be on the record, sir.

31
32 LA: Okay. How long do you think you need to get the exhibits in order?

33
34 REC: Probably about 15 to 20 minutes, sir.

35
36 LA: I mean really.

37
38 REC: No. Really, sir.

39
40 LA: You really think so--okay.

41
42 REC: Yeah, I think so. It's mainly just taking out the objected to documents.

43
44 LA: Okay. Let's--I've got about 10 'til--y'all moved my clock--10 'til 10. Let's
45 shoot for being back no later than 1015. I will advise the board that we expect to recommence
46 at 1015, and I'll talk to the President about any question he may--if any of them start getting
47 into anything substantive, I'll stop and inform the parties and we'll do it on the record.

1 REC: Another option, before the Government takes a break to take care of its documents,
2 is to launch into voir dire at this point. And then, once we seat the panel, if--you know,
3 when we seat the panel, the Government can take a break and get its documents in order.
4

5 RC: My recommendation is to take a break now and get it done just so----
6

7 LA: I'd rather do that and know that we've got that ready to go.
8

9 REC: All right, sir.
10

11 LA: Anything else we need to address?
12

13 REC: Yes. Government Exhibit 2 consists of the case file for discharge including the
14 notification letter that was sent to the Respondent and the Respondent's response to it. When
15 Major Witt was informed of her discharge, she, in part of her response, requested that
16 Lieutenant Colonel Moore-Harbert be made personally available at the board proceeding. The
17 Government has had a dialogue with defense on whether they really wanted Lieutenant Colonel
18 Herbert here physically and the mechanics of going about doing that. And the Government was
19 informed, yes, they--that Respondent's counsel did not want Lieutenant Colonel Moore-Harbert
20 here physically, and there was maybe an issue whether she'd be called in, in any place. So for
21 Government Exhibit 2 that has been redacted by the Government out because we didn't want to put
22 the Respondent's counsel in the situation of saying that they wanted a witness present, and
23 then there's no witness, and the members would be scratching their heads, "Well, what happened?
24 Why this change of events?" So that demand for Lieutenant Colonel Moore-Harbert to be here
25 physically was taken out of Government Exhibit 2. Government, for the sake of the record--the
26 Government would ask the legal advisor to inquiry of Respondent if she does want Lieutenant
27 Colonel Moore-Harbert here, physically.
28

29 LA: Do y'all?
30

31 ARC: We have no objections with Major Davis redacting that portion. It's our position,
32 at this point, that we're not going forward on a physical request or a travel invitation order,
33 without waiving the issue of trying to get a hold of her telephonically.
34

35 LA: Okay. All right, then that's fine. But now that I look back at it, too, I do
36 remember one other thing I need to address.
37

38 Major Witt, you indicated, apparently, in your response when you asked for this
39 administrative discharge board that you wanted Captain Catron, and then with respect to your
40 request for legal--civilian counsel, you asked for both Mr. Lobsenz and a Nicki McGraw. Are
41 you prepared to go forward today with representation apparently without Mrs. McGraw present?
42

43 RC: Yes, sir.
44

45 LA: Okay. Anything else we need to address?
46

47 AREC: The only other thing, sir, is we're still pending a final decision on Government
48 Exhibit 3, with the Privacy Act.

1 LA: Yes. I've got to go find that. Anybody have any idea what the citation for the
2 Privacy Act is?
3

4 RC: I think it gives it on that exhibit.
5

6 AREC: If not, we can get it for you quickly.
7

8 LA: Okay.
9

10 AREC: There is also a 33-series. They identify and implement it for the Air Force.
11

12 LA: Okay. Yeah, I will work on that.
13

14 Anything further from the Respondent?
15

16 RC: No, sir.
17

18 LA: Then we'll be in recess.
19

20 [The proceedings recessed at 0957, 28 September 2006.]
21

22 [The out-of-board hearing was called to order at 1025, 28 September 2006.]
23

24 LA: The board will come to order. Do I need to bring them in first?
25

26 ARC: Sir----
27

28 LA: There are some things we need to address, actually.
29

30 AREC: The members are still absent; the parties are present.
31

32 REC: The members are absent.
33

34 LA: Okay, number one, with respect to Government Exhibit 3 and the objection to it, as
35 I understand it, pages 2, 3, 4, and 5 of that exhibit, I find that under the Privacy Act, I
36 don't believe that it applies to an intra-agency use of records for an official purpose;
37 Therefore, I think that they can properly be considered by the board. I will tell you, I made
38 myself a note to remind the board that with respect to--while once this is over they are free
39 to talk generally about their experience, they are not to talk about the specific nature of
40 exhibits containing personal information, and I'll remind them of that.

41 With respect to the exhibits, Major Davis, I understand that the changes have been made?
42

43 REC: Yes, sir.
44

45 LA: Mr. Lobsenz, are you satisfied that the exhibits reflect my rulings?
46

47 RC: I am, sir.
48

49 LA: Okay. Is there anything else we need to address?

1 RC: No, sir.

2
3 REC: Just, is--did Respondent counsel admit or are they holding off on Respondent
4 counsel's exhibit showing that the court's file was sealed?
5

6 LA: Well, right now, I don't think that that is one of the exhibits.
7

8 RC: Right. I have not offered that, because there is no reason to offer it.
9

10 REC: Okay. That's fine.
11

12 RC: Because there's none of them in there.
13

14 REC: Thanks, sir.
15

16 LA: Anything else from the Government?
17

18 REC: No.
19

20 LA: Okay. Will you get the board members?
21

22 [The out-of-hearing board terminated at 1027, 28 September 2006.]
23

24 LA: The board will come to order.
25

26 REC: This board is convened at Robins Air Force Base, Georgia, on the 28th of September
27 2006, pursuant to Special Order AA-076, Headquarters, Air Force Reserve, dated 15th September
28 2006, as amended by Special Order AA-077, same headquarters, dated 22 September 2006. This
29 order has been marked as Government Exhibit 1 and Government Exhibit 1A for the amendment, and
30 a copy of the orders have been provided to the voting members of the board.
31

32 The Respondent, in this case, is present and is represented by counsel, Mr. Jim Lobsenz.
33

34 RC: Good morning. My name is Jim Lobsenz.
35

36 REC: And Captain Kevin Catron.
37

38 This board is convened to determine whether the Respondent in this case, Major Margaret
39 Witt, should be discharged from the United States Air Force Reserve under the provisions of AFI
40 36-3209, specifically paragraphs 2.30.1.1, for homosexual conduct, and paragraph 2.30.1.2., for
41 stating that she is homosexual.
42

43 The following board members are present; and if I mispronounce any names, please speak up
44 and let me know:
45

46 Colonel Clayton Childs, as **Board President**, with Colonel Franklin Myers and Colonel
47 Melvin Giddings as **Board Members**; Colonel Alan R. Jackson, as **Legal Advisor**; and both myself,
48 Major Gordon Davis and Major Dawn Hankins as **Recorders** in the case.

1 The President and members are with vote, the Recorders and Legal Advisor are without
2 vote.

3
4 None of the members are absent.

5
6 LA: Members of the board, number one, you should have had an opportunity to review
7 Government Exhibit 1, which is the special order appointing you to this board. Did any of you
8 note any corrections with respect to your information on that order?
9

10 [Negative responses from the members.]
11

12 LA: Negative response from the members. On the record, I don't know whether we
13 specifically indicated this, but the board members present are the ones named in the original
14 order. The two alternates named in the amended order are not present.
15

16 AFI 36-3209 requires that each voting member have at least 3 years commissioned service.
17 I'm taking a wild guess, but my guess is all of you satisfy that?
18

19 [Affirmative responses from the members.]
20

21 LA: That's an affirmative response from all members. At least one of you must be a
22 reserve officer. Is one of you a reserve officer?
23

24 [Affirmative responses from the members.]
25

26 LA: That was an affirmative response from all three members. Are any of you ARTs?
27

28 [Affirmative response from Colonel Giddings.]
29

30 LA: Colonel Giddings is an ART. Colonel Childs, Colonel Myers, you are not?
31

32 MBR[COL Myers:] AGR.
33

34 LA: Okay.
35

36 MBR[COL Childs:] Traditional reservist.
37

38 LA: All right. Thank you.
39

40 Colonel Giddings, are you on orders.
41

42 MBR[COL Giddings:] Yes, sir, I am.
43

44 LA: All right.
45

46 Major Davis, you're going to be covering the names of any commanders and so forth that
47 they may--in your voir dire that they might need to know whether they know them?
48

49 REC: Yes, sir, I had planned on doing so.

1 LA: Okay. Good.
2

3 AFI-36-3209 also requires that each voting member be senior in both permanent and
4 temporary grade to Major Witt. Again, I'm guessing that that's correct, but do all of you meet
5 that requirement?
6

7 [Affirmative responses from the members.]
8

9 LA: That's an affirmative response from all members. Are any of you aware of any
10 reason why you cannot conscientiously participate as a member of this board?
11

12 [Negative responses from the members.]
13

14 LA: Negative response from the members. Are any of you aware of any reason why you
15 could not render a fair and impartial decision in this case?
16

17 [Negative responses from the members.]
18

19 LA: Negative response from all members. This board is governed by the procedures
20 outlined in AFI 51-602 on boards of officers and AFI 36-3209. Have each of you had an
21 opportunity to familiarize yourself with these instructions?
22

23 [Affirmative responses from the members.]
24

25 LA: It's an affirmative response from the members. Do all of you believe that you are
26 qualified to serve as a voting member in this board?
27

28 [Affirmative responses from the members.]
29

30 LA: It's an affirmative response from all members. All right, members of the board,
31 what we're about to do is generally referred to as "voir dire," and you're probably familiar
32 with it, at least generically, as to what it is. The--we will tell you the purpose is not to
33 pry, which of course is cockamamie. The purpose is to pry, but the reason for prying is to--
34 each side, of course, is entitled to a member who, in this particular case, can be fair and
35 impartial, given the fact that we all approach everything we do with our own perspectives and
36 biases, and the purpose of voir dire is to give them an opportunity to talk with you a little
37 about your perspectives and biases to ensure themselves that each of you is a good fit for this
38 particular board. So I'd ask that you recognize that purpose and not hold it against counsel
39 for any question that you might get asked.
40

41 In that regard, what I think we're going to be doing is probably have Major Davis--well,
42 we will start with Major Davis who will have some questions for the board, generally, followed
43 by questions by either Mr. Lobsenz or Captain Catron on behalf of the Respondent--generally.
44 And then I anticipate that we will then excuse the board and invite each of you back in
45 separately for some additional questions. The purpose, obviously, is to--on those matters
46 where an answer from one board member might have some prejudicial effect on the other board
47 members, we can avoid that by talking to each of you individually.
48

49 With that, Major Davis, you may proceed.

1 REC: Yes, sir. Thank you.
2

3 Members, as I mentioned a few moments ago, I'm Major Gordon Davis. Along with Major Dawn
4 Hankins, I'll be presenting the Government's case to you today. As Colonel Jackson mentioned,
5 I have a few questions for you. You may not know this, but we don't receive any biographical
6 data sheets on you or anything else, and we want to make sure, you know, different people with
7 interests here today receive a fair hearing. Because, of course, the outcome of today's
8 hearing is very important to the Respondent, Major Witt. However, it's also very important to
9 my client, the Air Force, as represented by the Air Force flag that's also in the room. So I
10 just want to ask some, you know, general background questions.
11

12 First, has any member of the board served on an administrative discharge board hearing
13 before?
14

15 MBR[COL Giddings:] Yes, I have.
16

17 REC: That was a negative response from both Colonel Childs and Colonel Myers.
18

19 You'll see me repeating a lot of your responses, that way--it's for the purpose of the
20 board reporter back there who is taking notes for the record--but a positive response from
21 Colonel Giddings.
22

23 Colonel Giddings, how many discharge boards would you say that you've sat on as a member?
24

25 MBR[COL Giddings:] One prior.
26

27 REC: Okay, sir. And do you recall what that case was about?
28

29 MBR[COL Giddings:] It was on non-participation.
30

31 REC: Okay, sir.
32

33 Has any member of the board previously sat on a criminal court-martial hearing?
34

35 [Negative responses from the members.]
36

37 REC: Negative response from all members. Has any member of the board previously sat on
38 a civilian criminal court hearing?
39

40 [Negative responses from the members.]
41

42 REC: Negative response from all members. Now obviously, today's case involves a few
43 people. First, you know, it involves the Respondent, Major Margaret Witt, from the 446th
44 Aeromedical Evacuation Squadron at McChord Air Force Base, Washington. Does any member of the
45 board know the Respondent in this case, Major Witt?
46

47 [Negative responses from the members.]

1 REC: Negative response from all members. In a few minutes, as expected, you'll receive
2 the different documents in the case to review, and you'll also see other people mentioned in
3 those documents. First, does any member of the board know a Lieutenant Colonel Adam Torem?
4 [Negative responses from the members.]
5

6 REC: Negative response from all members. Does any member of the board know a
7 Lieutenant Colonel Moore-Harbert?
8

9 [Negative responses from the members.]
10

11 REC: Negative response from all members. You'll see that different--this case has been
12 processed by different commanders at different stages. Does any member of the board know a
13 Colonel Mary Walker from the 446th Aeromedical Evacuation Squadron?
14

15 [Negative responses from the members.]
16

17 REC: Negative response from all members. Now at the time he was involved with the
18 case, he as a colonel, now he's a general. Does any member of the board know General Eric
19 Crabtree, the 446th Airlift Wing Commander?
20

21 [Negative responses from the members.]
22

23 REC: Negative response from all members. Would all members agree that today the
24 Government has the burden of proving to you the Government's case by a preponderance of the
25 evidence?
26

27 [Affirmative responses from the members.]
28

29 REC: Positive response from all members. And would all members of the board agree that
30 you will hold the Government to its burden to prove its case to you by a preponderance of the
31 evidence today?
32

33 [Affirmative responses from the members.]
34

35 REC: Positive response from all members. However, would all members of the board agree
36 not to hold the Government to some other standard, such as the "beyond a reasonable doubt
37 standard" that applies in criminal matters.
38

39 [Affirmative responses from the members.]
40

41 REC: Positive response from all members. Thank you.
42

43 IA: Mr. Lobsenz or Captain Catron?
44

45 RC: Morning.
46

47 Major Davis asked most of the questions that I would have asked. There are a few more
48 names that I wanted to ask you about. Does any member of the board know personally Major
49 General Robert? I'm not sure how to pronounce it, *Dy-gan--D-U-I-G-N-A-N*, NAF commander of the
50 4th Air Force?

1 [Affirmative responses from Colonel Childs and Colonel Giddings.]
2

3 RC: Would it be appropriate to follow up now or later?
4

5 LA: Well, you can certainly do so now, at least until we--if we get some indication
6 that we need to do it individually, we can otherwise. But I do need you to, if you would,
7 indicate answers of who says what.
8

9 RC: My understanding is, Colonel Giddings, you do know the NAF commander?
10

11 MBR[COL Giddings:] Yes, I do.
12

13 RC: And Colonel Childs, you also know the NAF commander?
14

15 MBR[COL Childs:] Correct. And the only clarification I would like to make is you asked
16 "personally" versus--there is a difference between "personally" versus "professionally."
17

18 RC: Would you clarify that for me? But for the moment, Colonel Myers, you do not know
19 the NAF commander?
20

21 MBR[COL Myers:] Just in being in a few meetings, is all.
22

23 RC: Okay.
24

25 If you could clarify for me Colonel Childs, how do you know him?
26

27 MBR[COL Childs:] I'm in his chain of command, so, therefore, he does know me by name and
28 I know him by name as far as, you know, professional interaction and social interaction that is
29 strictly related to the job.
30

31 RC: Colonel Childs, the NAF commander in this case--how do I pronounce his name?
32

33 MBR[COL Childs:] I pronounce it *Dy-gan*. General *Dy-gan*.
34

35 RC: General Duignan authorized the fact-finding inquiry in this case. Would it be
36 hard for you, if you're in his chain of command, to reach a result favorable to the Respondent
37 in this case, if he's the one that authorized the fact-finding inquiry?
38

39 MBR[COL Childs:] No, it would not be difficult.
40

41 RC: Okay. And other than being in his chain of command, you don't have any particular
42 personal relationship with him?
43

44 MBR[COL Childs:] No.
45

46 RC: Colonel Giddings, how do you know him?
47

48 MBR[COL Giddings:] I worked at 4th Air Force whenever he came on board as the NAF
49 commander.

1 RC: Okay. And you have no personal relationship with him?
2

3 MBR[COL Giddings:] I know him when I see him, and I could speak with him. I know him to
4 be a very open and honest person, so I know he--I'm comfortable around him. I'm not--I just
5 know him professionally and know him around the NAF building.
6

7 RC: And a similar question with respect to General John Jumper, who, as I understand
8 it, was Chief of Staff of the Air Force, and so I think--November of 2005. I expect you all
9 know of him professionally, so my only question is do any of you have a personal relationship
10 with him or any more greater acquaintance with him than in a purely professional manner?
11 [Negative responses from the members.]
12

13 RC: That is a negative response from all members. Have any of the board members been
14 stationed at McChord Air Force Base?
15

16 [Negative response from the members.]
17

18 RC: Have any of you ever been to McChord Air Force Base?
19

20 MBR[COL Giddings:] I have.
21

22 RC: Affirmative from Colonel Giddings. And did you have any unpleasant or negative
23 experience during that time?
24

25 MBR[COL Giddings:] No, I went as part of an inspection team with 4th at one time.
26

27 RC: You wouldn't have been inspecting the 446th Aeromedical Medical Evacuation
28 Squadron, would you?
29

30 MBR[COL Giddings:] No. No.
31

32 RC: Okay. Thank you. Those are the only general questions I have.
33

34 IA: Members of the board, what I would propose is that, if we could ask you to, that
35 you excuse yourselves, other than Colonel Childs. I guess we'll start with you as President.
36 If you wouldn't mind remaining and we'll take it one at a time.
37

38 [Colonel Myers and Colonel Giddings exited the hearing room.]
39

40 IA: Major Davis, you may proceed.
41

42 **INDIVIDUAL VOIR DIRE OF COLONEL CHILDS**
43

44 [Questions by the Respondent's Counsel:]
45

46 Q. Colonel Childs, as I also mentioned a few moments ago, today the Government is
47 alleging that Major Witt both engaged in homosexual conduct and also made statements that she
48 is homosexual, so today's case deals with homosexuality. Sir, do you hold any strong moral or
49 religious view on homosexuality?
50

A. No. As far as--no.

1 Q. Okay, sir. Have you ever heard of either the Air Force or the Department of
2 Defense policy concerning homosexuality?

3 A. I have. I've received briefs as a commander, and I have received briefs on the
4 policy, frequently. And in fact, in the last 2 weeks, I have had a briefing from the active
5 duty regarding the Air Force's policy and a briefing from my own JAG regarding the Air Force's
6 policy. Not related to this case, 'cause we did not know what this case was about, but
7 happened that the annual requirements were coming due, so I have received annual training on
8 the Air Force's policy.
9

10 Q. Okay, sir. You might have an advantage over other wings out there. As a result
11 of your training, what's your understanding of what the policy is?

12 A. My understanding is the main concern that the regulation deals with is conduct.
13 That the--it is the conduct that is the thing that drives this sort of thing. It is not a--how
14 do I want to put it. I want to be careful about--again, I just got my briefing, so I got to
15 make sure that I understand--I mean it is not an orientation issue or anything like that. It
16 is the professional conduct that is the subject of the Air Force's policy.
17

18 Q. Okay, sir. It's expected today that you'll be receiving, maybe, instructions from
19 Colonel Jackson, and there's also the various AFI provisions?

20 A. Uh-huh. Yes.
21

22 Q. Would--if you did receive such instruction from Colonel Jackson or other sources,
23 provisions in the AFI, would you follow those instructions?

24 A. Absolutely.
25

26 Q. Is anybody close to you, sir, a homosexual or a bi-sexual?

27 A. No one close to me. I have extended-family members that have related themselves
28 as homosexual--cousins. However, again, cousins on my wife's side that are not close
29 acquaintances or distance relatives, and not people I interact with frequently. But, yes.
30

31 Q. Okay, sir. You mentioned that some of the people that you know to be homosexual
32 you don't interact with frequently. Why is that?

33 A. Due to geographic--they live in Florida, and we live in Kansas, so--that would be
34 the only reason that I don't.
35

36 Q. Okay, sir. Have you ever had to deal with a situation where you suspected, or
37 have you had cause to believe that a subordinate of yours was homosexual, or were you ever
38 involved in any kind of Air Force homosexual inquiry action?

39 A. I have not been.
40

41 Q. Okay, sir. It's expected that you'll be receiving documents showing that this
42 case has received some attention in the press. Now that you're here and you know what the case
43 is about, you can see Major Witt, you know that the case deals with her, do you have any memory
44 of having read any article or anything on the news about this case?

45 A. I have not.

1 Q. Okay, sir. And finally, it's also expected in this case you'll be receiving a lot
2 of documents showing that, except for this issue, Major Witt's service record has otherwise
3 been exemplary and she has many accomplishments that I think both sides will share with you
4 today. Now as part of my job as Recorder there are probably statements and maybe even
5 arguments that I will have to make doing my professional role. If I do that will you hold--and
6 maybe if I misspeak or I don't come across personally favorably to you, will you hold that
7 against my client, the Air Force?

8 A. No.

9
10 REC: Okay, sir. Thank you.

11
12 LA: Mr. Lobsenz?

13
14 RC: Thank you, sir.

15
16 [Questions by the Respondent's Counsel:]

17
18 Q. Good morning, sir.

19 A. Good morning.

20
21 Q. Maybe, I can start this way, sir: do you have children of your own?

22 A. Yes.

23
24 Q. How--boy, girl, both?

25 A. Two daughters.

26
27 Q. Two daughters. Okay. I have two daughters. Suppose--sir, I take it that neither
28 of your daughters has ever had occasion to advise you that they are of a homosexual
29 orientation. Would that be correct?

30 A. They have not.

31
32 Q. Suppose one did? How old are they now?

33 A. I have a--17 and 21.

34
35 Q. That's exactly the ages of my children. Can you imagine and tell me how you would
36 react if one of your daughters came to you and said, "Dad, I am gay"?

37 A. My reaction would be--no one, I don't think, honestly, can tell you until they're
38 put in the specific situation, because it would depend largely on other circumstances, and that
39 sort of thing. So I'm not predisposed to have a judgment one way or the other, other than
40 it's--I've gotten to this point in my life to where the way I look at things is individuals
41 make their own decisions. They know--what I'm trying to say is, if they came to me and made
42 that decision, first of all, as far as my daughters are concerned, I would continue to--there
43 is no way to get this out without getting into personal feelings on these sort of things, but
44 again, I would unconditionally still love my children, okay. That is the first thing. The
45 life that they--the life that they choose and the way they choose to live their life will have
46 different consequences and different paths with the way they take that. And when they make
47 decisions on the way they conduct themselves it will have an impact on their lives, and I
48 expect that they will be held accountable for those decisions as they go down through life. I
49 will not--I would not expect to blindly endorse decisions that my children would make, however,

1 I would love them unconditionally regarding their--regarding our family status. I don't know
2 if that makes any sense or not, but---

3
4 Q. Well, that helps. Do you think that you would have any inclination to try to
5 challenge their assertions, say, "Are you sure," try it--something like, "You don't have to be
6 this way," "You can choose not to be this way," would there be any part of you that would react
7 that way?

8 A. Quite frankly, I would say no, at that point. I would presume that if my
9 daughters came to me with that statement that there would be nothing that I would try to do to
10 influence their thinking at that point. Again, I would be supportive to them in a nurturing
11 way. However, the consequences and the way they dealt with their life would be their own to
12 deal with, especially on the daughter who's over 21. The daughter over 21, you begin making
13 decisions as an adult and you're held accountable for your decisions that you make as an adult.
14 That does not, therefore, mean that I have to take care of her any more or anything like that.
15 She is--it's her responsibility, her decision.

16
17 Q. Let me change my hypothetical now and ask you, suppose--I'd like you to envision
18 someone that you trust very much, an officer in the Air Force that you absolutely trust
19 implicitly, so you'd have absolutely no reason at all to doubt information coming from that
20 officer.

21 A. Yes.

22
23 Q. And assume that officer came to you and said, "We have a fellow officer, a male
24 officer under your command, and I know for a fact that that officer is a homosexual. What do
25 you think your first reaction would be in that type of situation? Assuming that you had no
26 idea beforehand.

27 A. Right. The--if someone came to me with the--the first thing that I would have to
28 do, in my opinion as a commander, at that point, is to ask the question on what basis do you
29 come to me with this information; in other words, is it based on fact, has the individual made
30 a statement, is it based on conduct. And that's, basically--again, I go back to my previous
31 knowledge of the regulation. My knowledge of the regulation says that the only thing that
32 someone would have reason to bring this to me is if it was demonstrated conduct or a statement
33 that the individual made. Either of those two things would be grounds to open an
34 investigation. If it is just based on appearance or opinion or subjecture, it is not enough
35 grounds for me as a commander to open an investigation.

36
37 Q. I'm trying to get at not so much what you would do.

38 A. Yes.

39
40 Q. But what you would feel?

41 A. What I would feel is that----

42
43 Q. And what I'm wondering is--if he mentions an officer that you had no reason before
44 to think was homosexual, and as far as you knew was doing a fine job, to change your opinion,
45 your personal opinion of that officer, or change your----

46 A. First off----

47
48 Q. --opinion of the way you might want to----

49 A. Of the one that brought it to me?

1 Q. No.
2 A. Or the one that is the subject thereof?
3
4 Q. Yeah.
5 A. It--okay, if somebody brought that to my attention would it change my opinion of
6 the subject? In dealing with numerous disciplinary cases in my career and numerous issues, I
7 tend to believe that there are two sides to every story, okay. I do not take anything at face
8 value. If anyone, even one of my most trusted officers comes to me with a complaint about
9 another officer or another individual in my organization, I take it with a, should I say, grain
10 of salt, just in the aspect that one person's opinion does not make it so, even if it is one of
11 my most trusted colleagues.
12
13 [The Respondent's Counsel's cell phone rang.]
14 RC: Excuse me, sir. I'm sorry I did not turn this off. I may have been--I left my
15 number for the witness that we're going to call later, so I didn't--I'm sorry, sir.
16
17 MBR[COL Childs:] But as--to continue, even my most trusted colleagues, in a situation
18 that is volatile, such as a homosexual accusation would be--or, another accusation, maybe,
19 under different circumstances--again, I--one person, even a trusted person coming to you with
20 an opinion is not enough to alter my opinion of someone else's behavior based on their
21 professional conduct. That's why, again, I'm thinking I'd have to do an investigation, if it
22 was warranted to make that actual determination.
23
24 Q. Okay. I guess, I'll push the--I'm going to go another step now.
25 A. Sure.
26
27 Q. When you do your investigation, let's say the parents of the servicemember say,
28 yes, it's absolutely true for a fact that the person is a homosexual. So that, in my
29 hypothetical, anyway----
30 A. Yes.
31
32 Q. --you no longer have a shred of doubt.
33 A. Okay.
34
35 Q. What I'm trying to get at is, do you feel you don't want this person in your unit
36 anymore, do you feel that you respect this person less because you found out he's a homosexual
37 airman?
38 A. I do not respect the person less. I do, however, have an obligation according,
39 it's in the regulations, to pursue and--to pursue the situation and to remedy the situation in
40 accordance with Air Force regulations. My personal opinion of the individual, if they have
41 performed professionally, would not be----
42
43 Q. Would not be changed?
44 A. --changed or tainted.
45
46 Q. And it wouldn't matter that--whether the person you were told was homosexual was a
47 man or a woman, then?
48 A. It wouldn't.

1 Q. Okay. Do you think there's any kind of particular qualities or personal
2 characteristics that you associate with people who are homosexual?

3 A. In the--there are stereotypical things, but they are not, in my opinion, correct.
4 In other words, there is no set behavior, no set appearance, no set trait, if that answers your
5 question--there is no way to look at the outside and say, yes, that is true.

6
7 Q. Okay. So when Major Davis informed you that the evidence here shows you that--
8 will show that Major Witt has an outstanding career, that doesn't come as a surprise to you
9 that a person could both have an outstanding career and perhaps be a homosexual member of the
10 Air Force?

11 A. That does not surprise me.

12
13 Q. It seemed to me from Major Davis's question it was quite clear that you understood
14 that Air Force regulations do not require the discharge of a servicemember just because they
15 have a homosexual orientation. And my question to you is, personally, do you have any problems
16 with that being the Air Force's official policy? In other words, would you prefer if the Air
17 Force policy was to require discharge of people who purely had that orientation, but no proof
18 of act?

19 A. Personally--again, it's not my position to put personal judgment on Air Force
20 regulations. It's simply to follow them. So, therefore, as far as placing a personal or a
21 moral, you know, response to that, I don't know if I can give an appropriate one to that. I
22 support the Air Force policy as it stands right now.

23
24 Q. Okay.

25 A. And will do so fully.

26
27 Q. At least since "Don't Ask Don't Tell" was adopted in the early 90's, it should be
28 theoretically true that there is some large number of homosexual servicemembers serving. I'm
29 not going to ask you for any names, but are you personally aware of how many people who have
30 served in the Air Force, that you are aware of, who were of a homosexual orientation? I'm not
31 talking about if you sat on a board to----

32 A. Right. Understand. I have not--I'm not familiar with any homosexual people that
33 have been--that I have served with by conduct. In other words, I have no--by conduct or by
34 expression indicated they've been. So therefore, I have no reason to believe that they were.

35
36 Q. I guess you said you had cousins on your wife's side who have identified
37 themselves as gay?

38 A. That's correct.

39
40 Q. Are you on good terms with them? I know they live far away from you, but are----

41 A. The only way it came to my attention was when we were getting ready to move--and
42 this is an interesting family story--but, anyway, we were getting ready to move my mother-in-
43 law's sister down to be near her kids in Florida, and so we were up there to move her household
44 goods, and her son, who is gay, and his partner were there helping us move stuff. Previous to
45 that, I had only met the other--the individual one other time, probably around Christmas or
46 Thanksgiving time frame, and at that point it was not common knowledge that he was gay at the
47 time. So that's--I'm trying to think that--to close family and friends that's the only--that I
48 am familiar with at this time.

1 Q. Okay. If Major Witt testifies at this hearing, can you be confident that you
2 would evaluate her credibility the same way you would evaluate the credibility of anyone else,
3 including someone who was straight?

4 A. Yes, very confident in that.
5

6 Q. Now I'd like to ask you some questions about your reaction to being selected to
7 serve on this board. Did you have a reaction?

8 A. I, when they requested--first of all, again, we don't know the subject of the
9 board until we walk into this room. So other than being sent the appropriate sections to be
10 studied under the Air Force regulation--which I looked at in the 2 days prior to coming down
11 here--regarding the proceedings of the board and officer misconduct, it all calls--falls under
12 the same general section, so I still did not know the specific situation we were going to be
13 dealing with. As far as the selection for the board, I don't think this is one of those things
14 that everybody aspires to. Nobody wants to serve on a discharge board, and nobody, especially
15 myself, likes to sit in judgment of other people. So that's a difficulty situation.
16

17 Q. I appreciate that. Then, as I understand it, it would be when Major Davis spoke
18 to you just a few moments ago is the first time you learned this discharge board was going to
19 be about homosexual conduct?

20 A. This is correct.
21

22 Q. So at that moment, on top of sort of everyone's general feeling of why me, why did
23 I have to be on one of these boards, do you have any particular reaction to--"If I had to be on
24 a board, why do I have to be on a board that's about homosexual conduct? I'd rather be on
25 something else"?

26 A. I--well, yes. This is a difficult subject to have to deal with, so--and I mean
27 "difficult" in regards to being politically sensitive. You know, politically sensitive to--all
28 the way up and down. And again, it's a difficult board. You know, the previous one where the--
29 we had talked about his--it was on his previous board where it was failure to participate, and
30 when the individual didn't show up for the board that's a pretty clear cut board. So as far
31 as--this makes it a little more challenging, and it certainly makes it more challenging from
32 the--because of the personal implications involved in everyone's life, as well as the political
33 sensitiveness of the subject matter.
34

35 Q. Can I tease those out for just a minute?

36 A. You may.
37

38 Q. The personal ones you're talking about are the consequences, potentially, to Major
39 Witt?

40 A. That's correct.
41

42 Q. You don't mean to yourself?

43 A. Not to myself.
44

45 Q. And the "political consequences"--or, what did you mean by that?

46 A. Well, the--and I guess this is gleaned from, again, the statement, although I have
47 not read, or seen, or heard anything but the opening statement regarding having it--that it was
48 in the press. So that was the statement that I gleaned was that--was that there's potential
49 for this situation to continue and get visibility from politicians and get visibility from news
50 media. So therefore, anytime--just as I--if you were on a civilian court downtown, and you

1 walked in and found out it was a murder trial, or it was, you know, something that would gain a
2 lot of attention, you would go--you would immediately have a little bit of what-have-I-gotten-
3 myself into feeling.

4
5 Q. Well, I think I can speak for everybody in this room, anyway, I want you to be
6 reassured that nobody is going to go and bandy your name about as having anything to do with
7 this board. I can't give you any guarantees that--and with a transcript being prepared, and in
8 these kinds of things there are appeals--I can't give you any guarantees, but nobody here is
9 going to try to subject you to the limelight.

10 A. I understand. It's just the nature of my job.

11
12 Q. Sure.

13 A. That's as--I'm here because it is part of my obligation as an officer.

14
15 Q. I want to ask you some questions, and I hope you will understand that, you know,
16 it's my responsibility to ask these questions, and they are focused on potential political
17 pressures upon yourself, personally. Just--all I know, which is not very much, but I know
18 you're a colonel. How long have you been a colonel?

19 A. It will be 3 years--3 years in May of '07.

20
21 Q. Okay. And you have aspiration to be promoted to general?

22 A. I didn't even aspire to be promoted to colonel. My career has been--has been not
23 so much of my own doing as needs where people have asked me to pursue--to take the next step
24 and that sort of thing, when the time is right. I have no personal aspirations.

25
26 Q. All right. Well, that means--with 3 years have you yet been up for--eligible for
27 promotion to general yet, or not yet?

28 A. The way the process works is, right now, I'm considered for--in the reserves, you
29 get considered by a brigadier-general selection board, which--select position selection board,
30 which means they put you in a general officer's position, then once you are in the general
31 officer's position you compete for selection to general. So right now, I'm not eligible to be
32 selected for general at the present time.

33
34 Q. Okay.

35 A. 'Cause I'm not in a general-officer position.

36
37 Q. Okay. I want to go back. I know you said that you were familiar with--Major
38 General Duignan?

39 A. Duignan.

40
41 Q. Duignan, he authorized this. Really, can you say that if you served here, and
42 you've heard all the evidence, and you decided in your heart that the right return of verdict
43 here was not to discharge, that there is not a basis for a discharge and I'm not going to
44 discharge, that wouldn't cause any problems with you? You wouldn't be thinking General Duignan
45 is not going to like this. I can't really stick my neck out because the general that I work
46 under he started this and it would be sort of a slap in his face to say no''?

47 A. I have no--I understand your question. I have no--the outcome of this board is
48 irrelevant to my career, to be honest with you. Other than my job, again, I would expect that
49 General Duignan's expectation of me is to come down here and be fair and impartial and address
50 the situation as presented before me. My judgment would not be questioned if the board came

1 back with a--a--with whatever finding we come back with, my judgment will not be questioned,
2 and I do not feel like it will be questioned.
3

4 Q. Okay. Now this is going to be a hypothetical question.

5 A. Sure.
6

7 Q. But let's just say, hypothetically, you're wrong, and try to imagine this
8 situation, because I have to think that when a person contemplates sitting on a jury, sitting
9 on a board like this, they have to run through these things in their mind that might happen.
10 You might be wrong. Major General Duignan might come to you afterwards and say, "How could you
11 have voted to retain that lesbian major? How could you have done that? I am disappointed in
12 you." That's the hypothetical. Hard as it is for you to imagine, what do you imagine your
13 response would be?

14 A. My response would be--I would only find--whatever the circumstance would be, would
15 be based on the evidence that was presented in front of me that either supports or does not
16 support discharge under the appropriate Air Force instruction. So it--"I was bound," and
17 that's, basically, the way I would answer the general. And that's the way I've had to answer
18 other colonels and other generals on other issues is: no matter what your personal opinions
19 are, the Air Force regulation says this. And if that affects my career, that affects my
20 career. If making the appropriate decision under the appropriate AFI is not supported, then it
21 is not an organization that I want to work for. So I would have absolutely no problem walking
22 away from the whole situation, if I don't get the support that I need as, say, a member of this
23 board.
24

25 Q. Thank you. Somewhat along those same lines you'll hear evidence that this
26 inquiry, although it was authorized by General Duignan, the first military officer in the Air
27 Force to hear anything of these allegations was General John Jumper, Chief of Staff. So it's
28 somewhat the same question: in any way, would your decision about what's the right decision to
29 render in this case, in any way, be influenced by the fact that the Chief of Staff of the Air
30 Force was the one who initially referred this at the Air Force base, McChord?

31 A. Again, in reference to your--to General Jumper who is now retired, I have no
32 personal or professional dealings with him. So a retired general causes me no issues. "No
33 concern for my career," would be the answer to that one. It all does go back to the high-
34 visibility politics. You know, association with the gay issue that would be the concern there.
35 However, again, I will do what I'm paid to come here and do, and I'll, basically, make a
36 decision based on the facts and the regulations.
37

38 Q. If you were sitting where Major Witt is sitting today, would you want a person
39 like yourself on the board?

40 A. Yes.
41

42 Q. Now I have a series of questions for you about just your views about legal rights
43 and lawyers. Lawyers are everybody's favorite, correct?

44 A. [Laughed.]
45

46 Q. Do you feel that members of the armed forces have legal rights when it comes to
47 how they are treated by the armed forces as their employer?

48 A. They--they have--this--yeah, there is a loaded question. They have legal rights
49 afforded them under the Uniform Code of Military Justice, which is certainly what we're here
50 for and kind--you know, actually, this is not--well, this is not even a UCMJ thing other than

1 the--well, I guess--okay, let me confuse myself a little bit more. But anyway, basically, they
2 do have rights. However, they have--they are held accountable under both the code of--Uniform
3 Code of Military Justice and under civil statutes as well as a civilian. So they're kind of in
4 a double jeopardy situation where, you know, they're held not only to civilian standards, but
5 they also have the additional Uniform Code of Military Justice standards to which they're held
6 accountable, and they have rights under that code.

7
8 Q. Well--for example, you understand that an officer with--in the Air Force Reserve
9 has the right to have counsel and have a lawyer?

10 A. Sure.

11
12 Q. They have a right to have both military counsel and civilian counsel, correct?

13 A. Yes, they do.

14
15 Q. And I guess what I'm getting at is that is the way it is. Do you think that's a
16 good thing, or do you think they should have the right to both military and civilian counsel in
17 a proceeding like this?

18 A. I think they could, they should--they could and should, and if I was sitting there
19 I would want it. So that's...

20
21 Q. Do you think an officer in the United States Air Force should have the right to
22 bring a lawsuit against the United States Air Force if they don't think their legal rights are
23 being respected?

24 A. I think that--let me think. Could you repeat that question again?

25
26 Q. All right. I mean it's not something you would ordinarily think about day-to-day
27 in your career. You don't go around thinking about I wonder if I should sue the Air Force.
28 But is there some reason why you think military servicemembers, unlike everybody else in the
29 United States, should not be able to sue their government employer if they feel that their
30 rights have been violated?

31 A. That's, again, a legal question that I'm probably not qualified to answer on a
32 personal----

33
34 Q. What I'm getting at----

35 A. On a personal level I feel like I----

36
37 Q. On a personal level it's, like, are you offended by the notation that somebody
38 might think, "Wait, you can't do that to me. I'm going to bring a lawsuit"?

39 A. No. That is not----

40
41 Q. Maybe, I can ask it just this way: if the legal advisor gives you a legal
42 instruction about the rights of Air Force members along those lines, are you confident that you
43 can follow that instruction?

44 A. And that legal advisor would be?

45
46 Q. Colonel Jackson.

47
48 IA: He's talking about me.

49
50 WIT: Okay.

1 Q. If he gives you an explanation of what the legal rights are of a member of the Air
2 Force to bring a lawsuit, you can follow that instruction?

3 A. Absolutely.
4

5 Q. Okay. I don't know how common it is myself for a member to have a civilian
6 counsel as well as a military counsel. It is my impression that that is kind of, somewhat,
7 unusual. Is that your impression?

8 A. I would think not unusual at all in a case such as this. I would think not at
9 all. Also, if this is one case--and I would also not think it unusual if there was a civil-
10 tied double jeopardy kind of thing where there was also a civil application that they would
11 want to have a lawyer who could represent them in both and be knowledgeable in the case.
12

13 Q. Okay. Do you have any kind of reaction that's negative when you see that she has
14 two lawyers and one is civilian and not military? Is there any kind of feeling that, you know,
15 that's disrespectful to Captain Catron, "Why isn't she satisfied with just one lawyer? Why
16 does she need two?"

17 A. No, it doesn't bother me at all.
18

19 Q. Do you make any assumptions that she must be really wealthy to be able to afford
20 some lawyer to come from somewhere, who obviously isn't from Georgia?

21 A. I make no presumptions about someone's wealth. I know that, financially, people
22 can make all sorts of arrangements, and lawyers make financial arrangements regarding the
23 proceedings of their case, as well. So...
24

25 Q. Let me just tell you, I'm from Seattle, Washington. Does that do anything for
26 you?

27 A. It's kind of rainy----
28

29 Q. You know, Starbucks-drinking weenies from Seattle coming down here and---
30

31 A. It's kind of rainy there. I'm from Wichita, Kansas, so the location and--part of
32 the country is not relevant to me.

33 Q. Does it surprise you to learn that I'm not being paid a thing to be here? She's
34 not paying me. Nobody is paying me.

35 A. It wouldn't surprise--it would or would not surprise me, to me it's irrelevant.
36

37 Q. Okay. So let me ask you, and I don't want to--let me think--kind of openly
38 suggest it. But if you were in a situation where you were facing administrative discharge,
39 let's say for just something completely different. I don't know, passing bad checks or
40 something. And you were thinking, you know, "This is wrong. I want to preserve my military
41 career. I want to fight this thing, and I want a lawyer, and I want a civilian lawyer as well
42 as a military lawyer, and I can't afford one, because I haven't the money to buy a lawyer with
43 what lawyers cost these days," in that situation, do you think you could consider yourself
44 going to some non-profit civil rights organization and asking them for help?

45 A. Sure.
46

47 Q. Have you heard of the American's Civil Liberties Union, sir?

48 A. Yes.