

1 Q. Got any feelings about that organization?

2 A. Not personal feelings, no.

3

4 Q. Nobody, I don't think, agrees with every position that an organization takes or
5 disagrees with every position an organization takes. But if, on balance, would you say you--
6 more often than not, agree or disagree with what you understand to be conditions taken by that
7 organization?

8 A. I find that--how would I put this one. I had an answer set up previously under a
9 different angle before you asked the last portion of it, so I got to clear that part out of my
10 mind. If I could, the ACLU, if I were to address it is, while I may disagree with some of the
11 positions that it takes at times, I would defend the organization in regards to it is an
12 appropriate organization and a necessary organization to assert the rights of people that don't
13 have an avenue otherwise. Their stances on certain issues, I, like any number of people, will
14 not agree with any organization on all of their stances on positions. So that's about all I
15 can say with that.

16

17 Q. Sure.

18 A. Does that make any sense?

19

20 Q. Yes, it does. Does it surprise you in any way at all to hear that the ACLU would
21 agree to find a voluntary attorney to represent a member of the armed forces in a proceeding
22 like this?

23 A. No, it does not surprise me.

24

25 Q. Would you have been, generally, aware that the ACLU furnished legal counsel to
26 Colonel Oliver North back in the 80's when he was subpoenaed to testify in front of Congress
27 and facing criminal charges? Have you ever read anything about that?

28 A. I remember the situation, but I don't remember any tie to the ACLU. But it would
29 not surprise me.

30

31 Q. So if I told you that they went to court and Congress and said that you're
32 violating Colonel North's Fifth Amendment right, that doesn't surprise you?

33 A. That would not surprise me.

34

35 Q. And they won, too. Okay, I'm not an ACLU staff attorney, sir, but I--meaning I'm
36 not employed by them, but I am in private practice and I do occasionally agree to take a case
37 for free, so that's where I am. Do you have any reaction to that, like, "Doesn't this guy have
38 anything better to do?"

39 A. No. That doesn't bother me at all.

40

41 Q. Okay. Have you ever been to Washington State?

42 A. I have. In my career as an airline pilot, I have been to Portland----

43

44 Q. That's Oregon. That's as close as you got?

45 A. That's as close as I got, Portland. I think I probably have been to Washington
46 State--okay, Washington State, Spokane, and then also Fairchild--yeah, Fairchild Air Force
47 Base. I was up there for survival training, and have been there just, you know, for 1 or 2
48 days at a time, that sort of thing.

1 Q. But not McChord, apparently?

2 A. Not McChord. And I will say--let me qualify McChord to the best of my knowledge.
3 I, again, as a pilot, we transit bases and I can't honestly keep track of all the bases I've
4 been to, but nothing attracts my recollection.

5 Q. Just two more questions. And one of them being kind of hard, and one of them is:
6 is there anything about me that rubs you the wrong way right now? You're just sitting there
7 thinking, "I don't like this guy"?

8 A. [Negative response.]
9

10 Q. No. Okay. This is harder, because you don't really get a chance to interact with
11 Major Witt, but from what little you know, anything about Major Witt sitting here today looking
12 at her that rubs you the wrong way?

13 A. Nope.
14

15 Q. Any reason you can think of you can't give her a fair hearing?
16 A. Not that I can think of.
17

18 RC: Thank you, sir. I know that was a lot of questions, but thank you.
19

20 MBR[COL Childs:] I understand.
21

22 [There being no further question for Colonel Childs, he was excused and exited the hearing
23 room.]
24

25 [Colonel Myers entered the hearing room.]
26

27 IA: Major Davis?
28

29 REC: Yes, sir.
30

31 **INDIVIDUAL VOIR DIRE OF COLONEL MYERS**
32

33 [Questions by the Respondent's Counsel:]
34

35 Q. Sir, as I mentioned before we went into individual questioning sessions, this case
36 involves allegations that, both, Major Witt committed homosexual conduct and also that she made
37 statements that she was homosexual, so this case today deals with homosexuality. And I just
38 have a few questions for you concerning different views, different knowledge points you might
39 have on that subject. First, sir, do you have any moral or religious view on homosexuality?

40 A. Actually, I don't, and not really one way or the other.
41

42 Q. Okay, sir. Do you think that people choose to be homosexual, or that they are
43 born that way, or you don't know, what's your view on the subject?

44 A. I really don't know. I don't know one way or the other. And I've heard talk both
45 ways. But, again, I don't have an opinion on that, as well.
46

47 Q. Okay, sir. Have you ever conducted any investigation or taken any action on a
48 military member based on them, maybe, being homosexual or bi-sexual?

49 A. I have not.

1 Q. Do you have anybody close to you that is homosexual or bi-sexual?
2 A. No. Not at this time, no.
3
4 Q. Okay. Now a lot of times nothing in this world is certain. Have you ever served
5 with any Air Force member or know of any Air Force member that you suspected was homosexual?
6 A. Yes.
7
8 Q. And what did you--you know, we're not asking you to mention any names of anybody,
9 but what characteristics or what things caused you to think that a person might be homosexual?
10 A. It had more to do with hearsay from other people--'cause I wasn't going to the
11 parties and things like that--but hearsay had come back from parties that this certain type of
12 conduct was going on, but that's the only thing that made me suspect that.
13
14 Q. Okay, sir. Did you take any follow-up action on this hearsay or launch any
15 investigation based on it?
16 A. I did not, no.
17
18 Q. And why was that, sir.
19 A. Because it wasn't an outright proclamation or anything that was--if they were
20 caught in the act there would have been.
21
22 Q. Now let's say, sir, and as I mentioned before very few things in this world are
23 dead certain. Now say you're not certain that a person is homosexual, but you suspect, maybe
24 you tend to believe that they are, would you have any problems continuing to serve with that
25 member, with having that member in your Air Force?
26 A. No--I mean I think with the Don't-Ask-Don't-Tell policy, I bought into that
27 absolutely, so, you know, I would not have a problem with that.
28
29 Q. Now you just mentioned, you know, the Don't-Ask-Don't-Tell policy. I believe you
30 received some training on the Department of Defense policy on homosexuals in the military?
31 A. Yes.
32
33 Q. And, sir, if you could, what's your understanding of that policy?
34 A. I think it goes back from me being a commander. If I witness it, or I'm told, or
35 somebody else is a witness to this fact and relates it to me, then I'm obligated as a commander
36 to do something. Other than that, I'm not going to ask--go down and ask anybody, working with
37 a circumstantial type of thing, going on to cause an investigation and that's the way I
38 interpret it.
39
40 Q. And, you know, later on in the proceedings it's expected--you know, there's parts
41 of the AFI that your attention will be called to, you may receive legal instructions from
42 Colonel Jackson, the legal advisor, and you may find that, under certain circumstances, you can
43 find that a person is homosexual, but if they meet certain criteria, meet certain guidelines
44 that person can continue to serve in the military.
45
46 RC: Excuse me. I don't usually object, but I think it's misleading, implications
47 being conveyed to Colonel Myers that otherwise if you find an orientation you can be kicked out
48 of the military, and that's not entirely accurate. The only thing orientation can be
49 considered for is evidence that suggests that there may be conduct in and of itself. They can
50 stay if they're homosexual.

1 LA: I understood the question to be appropriate. I'm going to allow it.
2
3 REC: Okay, sir. And just to----
4
5 LA: Just to make sure, obviously--Colonel Myers, you'll be told this again--if at
6 anytime you find a difference between what counsel tells you the rules and law are and what I
7 tell you you should follow, you follow what I wind up telling you.
8
9 MBR[COL Myers:] Correct.
10
11 LA: Go ahead.
12
13 Q. Do you remember the question, sir? If not, I can repeat it.
14 A. I think I understand.
15
16 Q. Yeah. If you are given guidance by the AFI, by legal instruction that a person
17 can be found to be a homosexual, but yet they meet certain criteria they can still be allowed
18 to remain in the military, to serve in the military, would you follow that instruction and
19 guidance?
20 A. Yes. I understand that's what the AFI says.
21
22 Q. Okay, sir. And then, you know, in this case it's expected that you will be
23 receiving a lot of documents from both sides about Major Witt's career, and you'll be seeing
24 that it's been a very good career, it's been even an exemplary career with the exception of
25 what the board will have to consider today. And what I want to ask is, in presenting this case
26 to you, if I happen to misspeak, or if I happen to say something that rubs you the wrong way,
27 would you hold--necessarily hold that against my client, the Air Force?
28 A. No.
29
30 Q. Okay, sir. Thank you.
31
32 LA: Mr. Lobsenz?
33
34 [Questions by Respondent's Counsel:]
35
36 Q. Morning, sir. Sir, are you a parent?
37 A. I am.
38
39 Q. How many children do you have--boys or girls?
40 A. I have three daughters and a son.
41
42 Q. Okay. And I take it none of them have ever done this, but if you would assume for
43 a moment, hypothetically, that--how old are they?
44 A. They range from 24 to 14.
45
46 Q. Okay. If one of your daughters or your son came to you and said that I need to
47 tell you that I'm a homosexual, could you tell me, give me a guess as to your first immediate
48 reaction to news like that, what it would like?
49 A. I--it seems like an odd question. I'd be surprised.

1 Q. Okay. I guess what I'm wondering is would you be disappointed, would you be
2 angry?
3 A. I don't know. And regardless of what happens this person will be my child and I
4 would accept them. I'm not going to be one of those people that's going to not.
5
6 Q. Do you think there would be any inclination on your part to question whether they
7 were right? Would you ask your son or daughter, "Are you sure? Maybe you're not"?
8 A. I would think by the time they came and talked to me that they would know.
9
10 Q. Uh-huh. I wouldn't change your view of what type of person, what kind of moral
11 and integrity--what kind of person they were, would it?
12 A. I can't answer that question.
13
14 Q. Okay. Fair enough. Do you--if I can change it. Let's assume that some male
15 officer under your command has your complete trust, you think they're a wonderful officer, and
16 some other officer comes to you and presents you with an absolutely clear proof that they are
17 of homosexual orientation, anyway--I'm not talking about conduct right now. Just they give you
18 a clear shot that this person is homosexual. How do you think that would affect your desire to
19 have that person subject to continue to serve in the Air Force?
20 A. You're talking about proof or just somebody coming up--I mean they come up with---
21
22 Q. They got proof. They got proof that satisfies you totally. Is it going to change
23 the way you feel about serving with that person, that he is a homosexual?
24 A. "Feel" has nothing to do with it at that point. If I'm in charge, then I'm
25 obligated to do other things.
26
27 Q. Understood, and yet I'm going to continue on this line for a bit, because I've
28 definitely had the experience of talking to officers like yourself, who say, "My job, I have to
29 do this," "I have to decide whether to launch an investigation or not," "I have to follow
30 regulations," and I can't allow personal feelings inside to affect that, but nevertheless, I'm
31 asking you--I understand it wouldn't affect it, but what would they be? What would your
32 feelings toward that homosexual servicemember now be now that you're convinced that they were
33 homosexual?
34 A. I'd--I'm not sure that my feelings would change. I would probably be disappointed
35 in the fact that they understand the UCMJ as well as I do--or should know, anyway.
36
37 Q. And I'm not sure what you're driving at. The UCMJ would say you can't engage in
38 homosexual conduct, but it wouldn't say you can't be homosexual. So if all you're finding out
39 is that they are for a fact homosexual, their parents come to you and say it, "Yes, my son is
40 homosexual," you don't have any indication that he's even engaged in any conduct, but he is
41 homosexual, you're totally convinced now, does this affect the way your feelings are toward
42 this officer that previously you thought was a fine officer?
43 A. No, I still would think that they were a fine officer.
44
45 Q. Okay. Wouldn't have any reason yet to think that he violated the UCMJ, would
46 you?
47 A. I'm thinking here that if I have a violation it's different than what you're
48 talking about. You and I are thinking different lines. Is that right? Someone who is just
49 saying this without proof of something of action in that, then my thoughts about them will not
50 change.

1 Q. Okay. Well, under Don't-Ask-Don't-Tell, if a person is of a homosexual
2 orientation, but doesn't talk about it and doesn't engage in any act, the Air Force policy, the
3 military policy, the Armed Forces of the United States, is they can serve. Do you have any
4 problem with that?

5 A. No.
6

7 Q. You were asked if you had anyone close to you who you knew to be homosexual, and I
8 think your answer was something like "not at this time." Did--was it someone who was close to
9 you and died?

10 A. No, I'm just going back through my history and I've never really been close to
11 anybody that I knew was homosexual where--you know, you'd be in a place where--no.
12

13 Q. Okay. So, so far as you know, no one in your family, no one that you've ever
14 worked with, so far as you know?

15 A. Nobody in my family, no--but I mean people I've worked with. But I mean it's not
16 somebody I'm close to, so that--that's in different circles and things.
17

18 Q. Would that have been somebody you worked with in the military?

19 A. No.
20

21 Q. Okay. In some civilian employment?

22 A. Yes.
23

24 Q. Okay. Did you have any problems with that person?

25 A. No.
26

27 Q. Did you have, in general, positive or negative feelings, or none toward that
28 person?

29 A. We worked together--I mean it was people you worked with, and as far as I was
30 concerned they did their job well, so it was----
31

32 Q. Was that--I guess I'm guessing. Maybe you can tell me what kind of employment it
33 was, was it commercial piloting or----

34 A. No, it was construction.
35

36 Q. If Major Witt gives a statement in this case, are you inclined to think that you
37 would evaluate her credibility any differently than any person who wasn't accused of homosexual
38 conduct?

39 A. I have no idea why I would.
40

41 Q. Major Davis told you that you would hear evidence that she has an outstanding
42 career. Does that surprise you in light of the allegations of homosexual conduct--is it in any
43 way surprising you that somebody might have an exemplary career and yet be homosexual?

44 A. No. And I would say just by the way she's been decorated, there's been--somebody
45 thinks she's been doing a good job.

1 Q. Thank you. I asked Colonel Johnson [sic][Colonel Childs] about his reaction to
2 being selected to serve on the board, and I understood from him that you don't find out the
3 nature of the allegation until you got here. So it was sometime, an hour or two ago, that you
4 find out for the first time that not only were you going to serve on the board, but it has to
5 do with an allegation of homosexual conduct. And understand that, in general, servicemembers
6 are not happy about being called to serve on a board--would that be generally true, you think,
7 they wish they hadn't been called?

8 A. We're all busy.
9

10 Q. On top of the general feeling of "I wish I hadn't been called," what can you tell
11 me about your reaction to finding out now not only I'm called, but I've been called to sit on a
12 case that involves allegations of homosexual conduct? Does that make it in some way even less
13 pleasant, something even more that you wish to avoid?

14 A. It comes down to this, this is what my duty is today. And what the subject
15 matter--if anything else, because of how much publicity this gets, I find it to be, probably,
16 more interesting than maybe something else.
17

18 Q. Okay. So if I asked, do you wish that the subject of this board had been
19 something other than homosexuality, is the answer no? I'm actually kind of interested that
20 it's--it could be check forging----

21 A. Yeah. Whatever--I mean it really--at this point----
22

23 Q. Doesn't matter?

24 A. No. No, not specifically.
25

26 Q. I want to ask you some questions really directed to, quite frankly, whether or not
27 you have a concern that it could harm your career to serve on a board with these types of
28 allegations. I wonder if you would agree with this proposition: if a person--if an officer
29 serves on a board that involves allegations of homosexual conduct, and if that officer, at the
30 end of the case, decides to vote to retain the servicemember because there's not a basis for
31 discharge, while there is virtually no way that such a vote could ever be a positive thing for
32 a person's career, it could potentially, somehow, be considered a negative and come back to
33 hurt them. Do you agree with that?

34 A. I can't see it affecting my career one way or the other regardless what this comes
35 out to be.
36

37 Q. Okay. You're a colonel. How long have you been a colonel, sir?

38 A. Just short of 2 years.
39

40 Q. Okay. Do you have aspirations for a promotion to general, or if it happens it
41 happens?

42 A. Today, I think--just trying to do my job to keep things going would be a wonderful
43 thing.
44

45 Q. So can you tell us with confidence that how it might affect your future promotion
46 or your career it will have absolutely no impact whatsoever, and how you reached your decision
47 in this case?

48 A. It has absolutely nothing to do with me and my future.

1 Q. Okay.

2 A. Nothing.

3

4 Q. Let me ask you about, in general, about General John Jumper. You will learn in
5 the course of the evidence that the first person in the United States Air Force to get any word
6 of these allegations was General John Jumper and he forwarded the information he received to
7 the Air Base, McChord. Is there anything about hearing that these allegations were first
8 forwarded down through the chain of command from the Chief of Staff of the U.S. Air Force, does
9 that make you--in any way change that answer you just gave, that somehow, maybe, this could be
10 bad for me if I were to----

11 A. I, frankly, don't care where it comes from.

12

13 Q. Okay. And I think I used this example or something different, but if you were
14 sitting where Major Witt is sitting accused of some kind of misconduct and it was suggested
15 that you should be removed from the Air Force and your career ended, if you were sitting here,
16 would you want a person like yourself sitting over there on the board?

17 A. Somebody that is unbiased, absolutely.

18

19 Q. Okay. I want to ask you some questions about how you feel about lawyers and
20 people's legal rights. Maybe, I'll start with lawyers. How do you feel about lawyers, in
21 general, do you have a--any kind of generalization you can make about your feelings about
22 lawyers?

23 A. I've heard several lawyer jokes lately.

24

25 Q. Well, what do you think about those lawyer jokes?

26 A. A lot of them were pretty funny. I started thinking about different professions
27 and that, and I'm glad that I'm not a lawyer because of all the background stuff. I mean I
28 know that you guys have all spent hours and hours and hours getting ready for this, and it's
29 not a thing that I would want to do, so I have some respect for that. And there's the, you
30 know, the other side out there that--[inaudible]--I mean it's a different type thing.

31
32 Q. Well, in those polls that they conducted about professions that you respect or
33 disrespect, lawyers almost, inevitably, come out way down toward the bottom as people in a
34 profession that people don't trust.

35 A. Well--I mean a lot of politicians are lawyers, as well, so----

36

37 Q. Right.

38 A. So it kind of goes with that.

39

40 Q. Okay. So what do you think, do you think that's a fair generalization that
41 lawyers are not very trustworthy?

42 A. No, I think it has to do with a small percentage of them.

43

44 Q. Okay. Do you think if you were in trouble for some reason and going to get so
45 sort of administrative separation action that you'd want a lawyer?

46 A. Definitely.

47

48 Q. Okay.

49 A. Somebody that's smarter than all the regs and everything that they may have.

1 Q. In this case, you can see that she's got two lawyers; anything about that that
2 rubs you the wrong way and strikes you as unusual?

3 A. No, it makes good sense.
4

5 Q. Okay. It doesn't in any way make you feel that she's in some way disrespecting
6 either Captain Catron or the military in that she feels she has to have another civilian lawyer
7 as well as military counsel?

8 A. Absolutely not.
9

10 Q. Okay. She does have a right to both of us. I'm just wondering--I guess you've
11 already answer that, but do you feel that she should have that legal right to legal
12 representation, is that right?

13 A. Absolutely.
14

15 Q. Okay. Are you making any assumptions as you sit there that she must be affluent
16 to be able to afford a second lawyer or make any assumptions about her wealth?

17 A. It never even occurred to me.
18

19 Q. Okay. And so if I told you that I'm actually here as a volunteer and being paid
20 absolutely nothing, not by her, not by anybody else, does that surprise you?

21 A. Yeah.
22

23 Q. Why does that surprise you?

24 A. Because your professional time for not being paid. I'm an engineer and I wouldn't
25 do that very often.
26

27 Q. Okay. If you were in trouble and facing an administrative separation proceeding
28 and you didn't have the money to hire a lawyer, but you really wanted a civilian lawyer in
29 addition to your military counsel, would you consider going to some civil rights organization
30 and seeing if they would provide you one for free?

31 A. I would imagine that I would look at all my--all the alternates.
32

33 Q. Now here's a hot one: you've heard of the American Civil Liberties Union?
34 A. I have.
35

36 Q. What's your general thoughts about that organization?
37 A. I know very little about them.
38

39 Q. Do you--I know you've said you know very little about it, but would you guess that
40 more than 50 percent of your time your views are in agreement with or not in agreement with the
41 views taken by the ACLU?

42 A. Truthfully, I don't know enough to tell you that, you know.
43

44 Q. Well, if you were in trouble, and you couldn't afford a lawyer, and you thought
45 there was something wrong with what the Air Force was doing to you, and you thought the Air
46 Force was in some way not treating you in accordance with your legal rights, would you consider
47 going to an organization like the ACLU and say, "Will you provide me a lawyer?"

48 A. As I said, I would. Especially if I knew that I didn't do anything wrong, I would
49 go to all avenues.

1 Q. I'm not--I just want you to understand that I'm not a paid employee of the
2 American Civil Liberties Union and I'm not on their staff. I'm a lawyer in private practice,
3 and I've practiced in Washington for 27 years. I take one or two cases a year for free. I'm
4 on a list. The ACLU can call me up and say, "Will you be willing to take this case for free?"
5 That's where I am in this case and I'm from Seattle. Anything about that strikes you as odd
6 or--beyond the fact that you said it strikes you as odd that I'm not getting paid?

7 A. No.

8
9 Q. "No." Okay. Have you ever been to Washington State?

10 A. I have.

11
12 Q. Where have you been there?

13 A. The only place I've ever been--and I've been to Seattle a few times. I've been up
14 there to--once to a conference and once to one of the guard units up there.

15
16 Q. I don't know if I understand what that means. One of the "guard duties?"

17 A. Guard units.

18
19 Q. Oh.

20 A. National Guard units.

21
22 Q. Do you have any particular views about the Pacific Northwest or people who come
23 from Seattle, positive or negative? Besides we drink a lot of Starbucks coffee.

24 A. That would be a negative in my book. But the truth is, is that the time I spent
25 there was great. I played on a great golf course. The mountains--I mean I--the time I was up
26 there everything was--I have no really positive, really negative feelings toward it.

27
28 Q. Okay. Why would coffee drinking be a negative?

29 A. I don't drink coffee.

30
31 Q. Okay. I was just wondering if that had anything to do with a religious belief
32 about coffee. I'm familiar with at least one major religion that believes it's wrong to drink
33 coffee. Does that have anything to do with it?

34 A. I--you know more about that than I do. I've never heard of such a thing.

35
36 Q. Okay. And that takes us into that area; is religion an important part of your
37 life, sir?

38 A. It's a small part.

39
40 Q. Okay. Anything about homosexuality that strikes you as anti-religious or sinful?

41 A. Besides where it's being--specifically in the Christian--in the Bible, no, I
42 guess. The words are straight--straight out about it. But other than those words, no. As a
43 matter of fact, the last church that I was going to was an Episcopal church which was going
44 through everything, right now. And I think that the church, for instance, splitting up because
45 of homosexual people being allowed in the church was a bad idea.

46
47 Q. They were allowed to be minister, is that right?

48 A. Yes.

1 Q. So they divided it, and one way it allows it and one way it doesn't?
2 A. That's where they were going. And I kind of stepped away from the church since
3 then. So I haven't kept up with what's going on.
4
5 Q. Did you have any personal views about whether the church should or shouldn't allow
6 homosexuals as ordained ministers?
7 A. I think that if--I thought that splitting the church because of that was a bad
8 idea.
9
10 Q. What are the specific words that are in the Bible that you're referring to that,
11 if you recall?
12 A. You said that--I think the words, as I remember it was, "men should not lay with
13 men."
14
15 Q. Okay. I think that's in Leviticus, as I recall. And is that something that you
16 believe as a religious principle, "men should not lay with men"?
17 A. I want to say that one time I believed that a lot more than I do today.
18
19 Q. Okay. Well, then, I guess, a lot of people--to follow up, do you believe that
20 "women shouldn't lay with women"?
21 A. It's the same.
22
23 Q. Okay. Understanding that that's your view somewhat today, maybe you said less
24 than it was, can you assure me that that will not play a part in your decision in this case?
25 A. Absolutely not in any part of any decision.
26
27 Q. Okay. You can't hurt my feelings when I ask you this question, so don't worry
28 about that. Is there anything about me that rubs you the wrong way?
29 A. Not really.
30
31 Q. Okay. And you don't have much of a chance to interact with Major Witt, but as she
32 sits here and you get to observe her, is there anything about her that rubs you in the wrong
33 way?
34 A. No.
35
36 Q. Is there any reason that you can think of why you can't give her a fair hearing?
37 A. Absolutely not.
38
39 RC: Thank you, sir.
40
41 IA: Colonel Myers, thanks.
42
43 [There being no further question for Colonel Myers, he was excused and exited the hearing
44 room.]
45
46 [Colonel Giddings entered the hearing room.]

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INDIVIDUAL VOIR DIRE OF COLONEL GIDDINGS

[Questions by the Respondent's Counsel:]

Q. Colonel Giddings, I think you were a board member at a board that I, myself, worked on before. Is that correct?

A. Yes.

Q. Now the fact, sir, that I was on a board that you previously sat on, that wouldn't cause you to give my advocacy any greater weight than anybody else, would it?

A. Nah.

Q. And the fact that you heard me speak before wouldn't cause you to have less faith in me than other people here?

A. No.

Q. Okay, sir. And as mentioned before we took the break, this case involves allegations that Major Witt committed both homosexual conduct and made statements that she is a homosexual. So this case, basically, involves homosexuality. And I just have a few issues on that. Sir, do you have any moral or religious views on homosexuality?

A. No.

Q. Do you think that if a person is homosexual they would be less truthful, or more truthful, or would it make any difference to you?

A. No. I'd have no reason to make that assumption.

Q. Okay, sir. Do you have any beliefs or conceptions that people are either born with a particular sexual orientation, or that it's a conscious choice that they make, or you don't know?

A. I don't know.

Q. In your time in the Air Force, sir, have you ever had reason to suspect that somebody, a fellow servicemember, might be homosexual or bi-sexual?

A. I never think about it.

Q. Now is anybody close to you homosexual or bi-sexual?

A. I wouldn't know.

Q. Have you ever known somebody to be homosexual or bi-sexual, sir?

A. I've never met the person, but my brother-in-law's brother has--I heard my brother-in-law mention that his younger brother is homosexual. I've never met him. That's, I guess, as close as it comes.

Q. Okay, sir. And you say, of course, that you've never met him, so this would be a hypothetical question: if your brother-in-law's brother was present at some family event, maybe a holiday gathering, would you see yourself acting any differently to him knowing or suspecting that he was homosexual than if you thought he was heterosexual?

A. No. I wouldn't think anybody would point him out or say anything of it--I mean the family is aware of it, so it wouldn't be any issue.

1 Q. Okay. And finally, you know, in this case, it is expected you'll be receiving
2 documents and receiving a great deal of evidence that Major Witt's service record, to date, has
3 been exemplary and, you know, she's achieving things in the service. If, in presenting the
4 Government's case to you today, I happen to misspeak or do something that rubs you the wrong
5 way, would you agree, not necessarily, to hold that against my client, the Air Force?

6 A. Correct. No, I would not.

7
8 REC: Okay, sir. Thank you.

9
10 IA: Mr. Lobsenz?

11
12 RC: Thank you, sir.

13
14 [Questions by the Respondent's Counsel:]

15
16 Q. Morning, sir. It's still morning. Are you a parent, sir?

17 A. No, I'm not.

18
19 Q. Do you have brothers or sisters?

20 A. Yes, I do.

21
22 Q. How many?

23 A. I have two older sisters.

24
25 Q. Okay. And I take it that neither one of them has ever announced to the family
26 that they're homosexual, correct?

27 A. No, they've not.

28
29 Q. So I'd like you to consider for a moment the hypothetical situation of if one of
30 your sisters came to you and said, "I am a homosexual." And I'm wondering if you could tell
31 me, I mean specifically, what do you think your reaction to that would be? What personal
32 feelings would you have; positive, negative, any disappointment, how would you react to that?

33 A. I have no idea. It's still my sister.

34
35 Q. Do you think there would be any inclination on your part to either try to question
36 whether they were accurate, "Are you sure," "Maybe you're not sure and maybe you're confused"?
37 Any part of you think that you would want to challenge their assertion in any way or see if
38 they were really right?

39 A. I have no idea. I've never been confronted with the issue. They are still my
40 sisters, and you don't--you know, pick your family. I'm sure whatever family members discuss,
41 they will discuss.

42
43 Q. Let me put it, maybe, a different way then. How do you think your parents would
44 react if one of your sisters went to them and said she was a homosexual?

45
46 REC: Objection. Relevancy.

47
48 IA: I'm going to allow that at this point.

49
50 A. I have no idea.

1 Q. You don't know whether that would disturb them or not?
2 A. No, I don't.
3
4 Q. Okay. It sounds like it's not a topic that was discussed at home?
5 A. Not a big topic, I guess.
6
7 Q. Okay. Well, let me change the hypothetical then and ask you about it in the
8 context of the Air Force. I want you to assume that some officer, who you think is extremely
9 reliable and trustworthy, comes to and points to another officer, a man, and says, "I have just
10 learned that this other officer over here is homosexual." I want you to assume that you trust
11 this other officer enough so that whatever he tells you about how he knows you accept it. You
12 accept it as absolutely the gospel truth that this other member is homosexual, but it's just a
13 statement about orientation and it's not a statement about act. It's just the person is of
14 that orientation. In that situation, how do you think you would feel about continuing to have
15 that subject servicemember service under your command?
16 A. Well, to begin with, I don't think I would take that as gospel. I would challenge
17 the officer and say those are career-limiting statements, and you shouldn't be making them if
18 they're not true, unless you have specific information to the fact. Just making an assumption
19 is not relevant.
20
21 Q. Okay. And suppose that he says that's--"I agree, sir. And here's what I have to
22 base this," and whatever, and he convinces you it's not just speculation. He has very solid
23 proof. Then how do you feel, then about the subject that's been identified as a homosexual
24 remaining in the Air Force?
25 A. Still, to me, it's not relevant the statement. I would take it to the JAG to see
26 if it meets the criteria of the regs.
27
28 Q. And do you understand that if a person is homosexual but doesn't make a statement
29 that they are and doesn't engage in homosexual acts, their orientation is no bar to continued
30 service in the United States military?
31 A. Correct.
32
33 Q. So there is no reason, legally, why a homosexual member of the Air Force can't
34 serve for 50 years, if that's just all there is, just that's their orientation and somebody
35 else makes you aware of it, right?
36 A. According to the regs, correct.
37
38 Q. Do you have any problem with that?
39 A. No.
40
41 Q. Okay. And you don't have any desire to, personal desire, wish that the regs would
42 be changed back to the way they were about 20, 30 years ago where, no, if that's your
43 orientation, you're gone, that's enough?
44 A. No. The regs are specific and that's what I follow.
45
46 Q. Okay. Now I think you already said this, but you said you're not aware of anybody
47 that you've ever served with in the United States armed forces who was homosexual. Is that
48 right?
49 A. Correct.

1 Q. Okay. And are you--when you said there was some people that you suspected--did
2 you answer that question, "Was there anyone in the military that you ever served with that you
3 suspected was homosexual?"

4 A. I don't look at that. I have----

5
6 Q. So you've never----

7 A. Why would I--I don't pass judgment. Why would I do that? A person does their
8 job.

9
10 Q. Okay. You already answered that question for Major Davis. I want to ask you some
11 questions about your reaction to being selected for duty on this board. Colonel Childs
12 explained to me that nobody likes being on these boards. This is your second one. He also
13 explained to me that you don't find out the nature of the allegations until you're actually in
14 this room, so it wasn't until Major Davis advised you that you even knew the subject,
15 specifically?

16 A. Correct.

17
18 Q. So beyond your general--what I assume would be a general feeling of, "I've got to
19 do this duty again," but beyond that, do you have any reaction to finding out I have to be on a
20 board, and not only do I have to be on a board again, but it's about an allegation of
21 homosexual conduct?

22 A. The request was for volunteers. I had never done this before. I volunteered to
23 come sit on the board. I felt, I have never done it before, it's part of, I think,
24 professional growth. It's not, necessarily, desirable, but it's something that has to be
25 considered. I volunteered for it. It didn't matter the nature of the case. I knew it could
26 be anything, and I didn't know what it was until I got here.

27
28 Q. Okay. So the other board that you sat on, that would have been within the last
29 couple of weeks?

30 A. Right, 2 weeks ago.

31
32 Q. Okay, just in very general terms, can you tell me what the nature of the
33 misconduct was there?

34 A. It was just based on non-participation and a discharge action for non-
35 participation.

36
37 Q. Okay. How long have you been a colonel?

38 A. Since February.

39
40 Q. Do you have aspirations for further promotion in the Air Force?

41 A. No.

42
43 Q. Everybody says that.

44 A. If it happens it happens. You just do your job.

1 Q. Okay. Well, I hope you will not take offense at this, but I need to ask these
2 questions. Will you agree with me that as you sit on this board, at the end of it, if you find
3 that the allegations are proved and that there is a basis for discharge, there should be a
4 discharge, and if that's the findings that you returned that couldn't possibly have a negative
5 effect on your career, could it?

6 A. I never thought about it.
7

8 Q. Could you think of any way that would have a negative effect on your career?
9 A. No.

10
11 Q. Okay. On the other hand, if you were to find it in your heart, after thinking
12 over all the evidence and the argument that you believe that the right vote in this case was to
13 retain in the Air Force, would you agree with me that might, possibly, if you returned that
14 "verdict"--maybe, that's not the right word for that decision--it might, possibly, have a
15 negative impact upon your career somewhere down the line?

16 A. No, I don't see that.
17

18 Q. No?

19 A. I don't think so.
20

21 Q. At any rate, can you say with confidence that you will not let any thought about
22 how it will affect your career affect your decision making here?

23 A. Yeah, I can say that. My decision is my decision, and I see no reason how it can
24 affect my career. If it--well, I just don't see any kind of way it could.
25

26 Q. If, hypothetically, again, you were faced with administrative discharge
27 proceedings for some allegation, something--I don't know, I have used the example passing bad
28 checks or something, or not paying your income taxes, but if you were in trouble and you were
29 sitting where Major Witt is sitting, would you want a person like yourself on the board?

30 A. Yes.
31

32 Q. Okay. Why is that?

33 A. To be open to both sides of the story and apply the regs as they are written.
34

35 Q. Okay. I want to ask you some questions now about your views on lawyers. As you
36 can see, Major Witt has got two lawyers today.

37 A. Yes.
38

39 Q. Military and civilian. Does anything about that strike you as unusual?
40 A. No.
41

42 Q. I was under the assumption that, perhaps, that's a little bit rare in these
43 proceedings. In the last one that you sat, the board, was there both military and civilian
44 counsel?

45 A. No, there was not.
46

47 Q. Just military?

48 A. Yes.

1 Q. You make any assumptions about how it is that she gets to have two?
2 A. No.
3
4 Q. Okay. If you were in trouble and facing a discharge board, do you think you'd
5 want a civilian attorney as well as military counsel?
6 A. I'd want whatever legal counsel was appropriate to voice my case.
7
8 Q. Is there any part of you that feels that it's disrespectful of Major Witt to get
9 civilian counsel and not just--any part of you that thinks, too, that's not very respectful of
10 Captain Catron that she would go and get another lawyer?
11 A. No. With the military being different from civilian you probably augment each
12 other.
13
14 Q. Do you understand the regulations give her these rights to have both, right?
15 A. [Affirmative response.]
16
17 Q. Do you think that's a good thing that the regulations give Air Force members,
18 officers, the right to have both kinds of counsel?
19 A. Sure.
20
21 Q. Why?
22 A. Why not.
23
24 Q. Well, isn't one enough?
25 A. Why the limit for legal defense?
26
27 Q. Do you make any assumptions about her wealth? Do you assume that she's paying me?
28 A. No.
29
30 Q. Okay. And does it surprise you to hear that nobody is paying me and that I'm here
31 doing this without anyone paying me?
32 A. It's none of my concern.
33
34 Q. But does that surprise you at all?
35 A. I haven't given it any thought.
36
37 Q. If you--you've heard of the American Civil liberties Union, have you not?
38 A. Yes.
39
40 Q. Do you have any general thoughts about that organization?
41 A. They're quite varied across the board, border to border, coast to coast, so you
42 can't make an assumption about ACLU from one area to another. They're all different, so they
43 kind of run the gamut.
44
45 Q. You're not a member, are you?
46 A. No, I'm not.

1 Q. Okay. Do you think that--are you capable of saying--is it an organization that
2 more than half the time you tend to agree with them, or more than half the time you tend to
3 disagree with them?
4 A. I don't listen to all their cases, so I can't really run a tally sheet on one way
5 or the other.
6
7 Q. Are you familiar with any particular areas where you say, "Well, I don't agree
8 with that, and I know that's their position"?
9 A. Well, I'm sure there's ample times I have said that, but----
10
11 Q. Okay. If you were in trouble, and facing an administrative discharge, and you
12 couldn't afford a lawyer would you consider going to an organization like the ACLU to ask for a
13 free lawyer?
14 A. Sure.
15
16 Q. Okay. This--it's obvious I'm not from around here. I'm from Seattle, Washington,
17 sir. Have you ever been to Washington?
18 A. Just in relation to my job going to Portland.
19
20 Q. Okay. You've never been to McChord Air Force Base?
21 A. Only once for an inspection.
22
23 Q. Okay, that's right, an inspection.
24 A. Command inspection.
25
26 Q. And what unit did you inspect?
27 A. A reserve unit out there. I--was it the 446th--I can't remember.
28
29 Q. Do you remember the names of any officers that you came in contact with during
30 that inspection?
31 A. No, sir, it's been 3 or 4 years.
32
33 Q. Okay. "Walker," "Moore-Harbert," those were not names that sounded familiar to
34 you?
35 A. [Negative response.]
36
37 Q. Okay. I can't remember if Major Davis asked you this. Is religion or religious
38 beliefs an important part of your life, sir?
39 A. I believe in a supreme deity of that's, okay.
40
41 Q. Any particular religion?
42 A. No.
43
44 Q. Is there any part of you that thinks that homosexuality is sinful or irreligious?
45 A. I don't think--I think it's a personal choice.
46
47 Q. Okay. You can't hurt my feelings here. I just want to ask you, is there anything
48 about me that rubs you the wrong way?
49 A. Why--I don't understand the question.

1 Q. Are you sitting there, "I wish that she had some other lawyer, I don't like this
2 guy"?

3 A. Why would I wish that?

4

5 Q. I don't know. Just making sure, I guess. Just trying to find out if--and if you
6 had some feeling that developed in the course of sitting on the board, you know, actually, "Now
7 that I think about it, I really don't like that guy, Mr. Lobsenz," if that should happen, can
8 you assure me that you will not allow that feeling towards me to impact how you decide this
9 case?

10 A. Correct. That would not happen.

11

12 Q. I know you don't get to interact with her. You get to observe her, anyway. So
13 far, any way, is there anything you've observed about Major Witt that rubs you the wrong way?

14 A. No.

15

16 Q. Can you think of any reason why you couldn't give her a fair hearing?

17 A. No.

18

19 RC: Okay. Thank you, sir.

20

21 LA: All right, Colonel Giddings, if you wouldn't mind stepping out for just a minute,
22 and we should be able to bring all of you back in momentarily.

23

24 MBR[COL Giddings:] All right, sir.

25

26 [There being no further question for Colonel Giddings, he was excused and exited the hearing
27 room.]

28

29 LA: Please have a seat.

30

31 I am assuming, Ms. Perry, that the record has been reflecting the entry and exit of the
32 various board members, and we should now acknowledge that all the board members are absent.

33

34 Any--counsel for the government has any challenge for any of the board members?

35

36 REC: No, sir.

37

38 LA: Counsel for the Respondent?

39

40 RC: No, sir.

41

42 LA: My inclination is that we bring the board in, swear them, and then take our lunch
43 break. And we'll see how long the President wants for lunch. Anything else we need to address
44 before we bring them back in?

45

46 REC: Just, sir, if the--once the board gets seated, during the break, we can advise the
47 alternate members?

48

49 LA: Yes. Yes, you may. You can go ahead and release them.

1 RC: I'm assuming that it's sort of like the way it is with jurors. But do they--I
2 mean if I were to, for some reason, run into one of the members of the board during lunchtime,
3 I would not have any contact with him. Are they getting told that?
4

5 LA: They should, if I remember, and you just reminded me. Yes.
6

7 RC: I don't want them to think that if I run into one of them in the men's room that
8 I'm being impolite.
9

10 LA: I will address that.
11

12 Okay, Major Davis, you may get them.
13

14 [The members entered the hearing room.]
15

16 LA: All right, members of the board, it's now time for you to be sworn in. I have
17 previously been sworn as have the Recorder and the Assistant Recorder. If each of you would
18 stand and raise your right hand, Major Davis will swear you in.
19

20 [The members were sworn.]
21

22 LA: Members of the board, you've also been provided, a little earlier, with Board
23 Exhibit I, which was the document entitled "Initial Instructions." Have each of you had an
24 opportunity to review those?
25

26 [Affirmative responses from the members.]
27

28 LA: Affirmative response from the members. Any questions about those initial
29 instructions?
30

31 [Negative responses from the members.]
32

33 LA: A couple of additional instructions--and I'm about to propose, Mr. President, that
34 we take our lunch break for whatever period of time that the board members need. You should be
35 aware from here until you are finally released to begin deliberations you should not discuss
36 the case among yourselves or, of course, with anyone else. What will probably happen, once we
37 come back from lunch, both parties will have an opportunity to make an opening statement to
38 you, and then present to you the documentary evidence that has been admitted in the case. And
39 we'll then recess, for however long we need to, to give each of you an opportunity to review
40 the documents. But during that period of time and during any time, until the board is closed
41 for deliberations, you should not discuss the case or the evidence among yourselves or with
42 anyone else. And I would remind you that some of the evidence you will be reviewing has
43 personal information in it and is subject to the Privacy Act. Once you're finally excused from
44 the board, you may, of course, discuss your service in general terms with others, if you desire
45 to do so, but the specifics of the evidence should remain confidential.
46

47 The final instruction I want to give you, during the breaks or at any other time the
48 counsel for the parties and--they are under instructions to avoid even the appearance of any
49 effort to influence you, so if you may see them in the hallway or in the bathroom and they
50 appear to turn and run from you, they are, in fact, doing so. And if you'll excuse them for

1 not greeting or otherwise being cordial with you, understand that's to avoid any appearance of
2 impropriety.

3
4 Any question from the board before we recess for lunch, and is that satisfactory? Is
5 that what y'all want to do?

6
7 MBR[COL Childs:] Certainly.

8
9 IA: Okay. How long would you like for lunch?

10
11 MBR[COL Childs:] Reconvene at 1 o'clock. Is that satisfactory, or do you need less time
12 than that? It really doesn't matter to me.

13
14 IA: That is a practical matter. My experience is it'll take that long for everybody
15 to get back and get going again.

16
17 MBR[COL Childs:] Understood.

18
19 IA: Anything we need to address before we recess for lunch?

20
21 REC: No, sir.

22
23 RC: No, sir.

24
25 IA: Okay.

26
27 Then we'll be in recess until 1 o'clock.

28
29 [The proceedings recessed at 1212, 28 September 2006.]

30
31 [The proceedings were called to order at 1311, 28 September 2006.]

32
33 IA: The hearing will come to order.

34
35 REC: All parties present when the board last recessed are once again present. The
36 members are present. The Respondent is present.

37
38 IA: Major Davis, you may open.

39
40 REC: Yes, sir.

41
42 Members, I just want to take this time to provide you a bit of a roadmap of the various
43 types of documentary evidence you'll be receiving here today.

44
45 Today, of course, you'll be receiving a lot of information about the Respondent, Major
46 Witt. You'll see that she has a birth date of March 21st, 1964. And actually, even though the
47 years are a little off, she and I share the same birth date. So we have that, and you'll be
48 seeing evidence of that. You'll also be seeing that she came into the Air Force about March
49 1987, and she has 17 years towards--of satisfactory service towards retirement. As mentioned
50 before, at various points, you'll be receiving a lot of documentation about her career. You'll

1 be seeing that she came in for a while, she was a staff nurse, did a lot of great work. You'll
2 be seeing repeatedly things of the nature of her performing five emergency--excuse me--four
3 emergency cesarean operations in about a 5-day period. From a staff nurse, she went to being a
4 flight nurse, and then on to a flight nurse examiner, who provides not only patient care, but
5 also supervises the other flight nurses. And in all of her performance reports, you'll see,
6 you know, glowing achievements. She was responsible for providing urgent care to people. And
7 based on her actions, apparently, she's helped saved the sight of injured servicemembers;
8 helped saved the hearing of an infant that was being evacuated out of an area; provided
9 emergency care to a quadriplegic, who was suffering respiratory distress. So she's done a lot.
10 And you'll see, you know, her awards and citations reflect that. She has the Air Medal. She
11 has the Aerial Achievement Medal. And I always thought that, for officers, it was quite rare
12 for an officer to get an Air Force Achievement Medal, and she's been issued an Air Force
13 Achievement Medal at least on three separate occasions. So you'll be seeing all of this in her
14 career, and the Government will be providing you evidence of that. So this is not a case where
15 the Government is going to be saying she's a terrible person or she did any type of misconduct.
16 That's not what this case is about.
17

18 What this case is about, as I mentioned before, is, in the Government's view, there is
19 going to be a lot of evidence that you'll receive showing that she has stated that she's
20 homosexual and she has committed homosexual acts. You'll be seeing in this case that in 2004--
21 around the summer of 2004--there were Mr. and Mrs. McChesney. Civilians not associated with
22 the Air Force. None of them were civilian employees of the Air Force. They were a married
23 couple. They had been married about 22 years. All of a sudden in 2004, Mr. McChesney sent an
24 email to General Jumper, and in the email he basically said, "You know, my wife and I, we're
25 currently undergoing a divorce. There is a child custody issue involved, and one of the
26 reasons why we're getting divorced is my wife has had a lesbian affair with one of your
27 officers, Major Witt." And you'll see Mr. McChesney, he provided his name, he provided his
28 address, his contact information, and he said, "Don't just get in touch with me, but there are
29 these other people," and he provided their names and numbers, particularly the name and number
30 of a Ms. Tiffany Jenson. And Mr. McChesney said that, "Before my wife, my soon-to-be-ex-wife,
31 got involved with Major Witt, Major Witt had a lesbian relationship with Ms. Tiffany Jenson,
32 and here's her number. Contact her, if you want." This, as I said, came into General Jumper.
33 General Jumper sent it down to the NAF. The NAF commander initiated an investigation, and the
34 investigation was started. And you'll see that the then-Major Adam Torem was the investigating
35 officer. He's now a lieutenant colonel, and Lieutenant Colonel Torem, he called and spoke with
36 Mr. McChesney. And you'll see, as I said before, Mr. McChesney, at the time, he was undergoing
37 a contested divorce action with his wife. There was a child custody issue. So you'll see
38 that, of course--of course, Lieutenant Colonel Torem talked with Mr. McChesney, but maybe
39 there's some credibility issues there. However, Lieutenant Colonel Torem got in touch with
40 Tiffany Jenson. And Tiffany Jenson was not a party to the divorce proceeding. Didn't,
41 apparently, have a dog in that fight. And Tiffany Jenson did meet with Colonel Torem, and she
42 told Colonel Torem verbally, at first, only verbally at first, that Tiffany Jenson and Major
43 Witt had a homosexual relationship from about 1997 to 2003. They lived together. They
44 performed homosexual sexual acts together, and eventually the relationship didn't work out
45 because Tiffany Jenson wanted to have a child and Major Witt didn't want to become a parent.
46

47 Now concerning the McChesneys, Tiffany Jenson said, "You know, I talked with Major Witt a
48 couple of times about this affair that she's having with a married woman, Laurie McChesney. I
49 told her it's not right, "How can you do this?" And Major Witt hasn't said to me, "Yes, I'm
50 having a sexual, homosexual affair with this civilian woman, but she never denied it either."

1 Now when the investigating officer, met with Tiffany Jenson, you'll see Tiffany Jenson
2 didn't seem to have any axe to grind. Obviously, she hadn't reported Major Witt to the Air
3 Force through that 1997-to-2003 period, and Tiffany Jenson said, "The only thing, really, I
4 have against Major Witt is I don't think it was right for her to have an affair with an
5 otherwise married woman." And Tiffany Jenson, at first, she did not want to provide a written
6 statement. The investigating officer contacted her again, and said, "Hey, you know, I think we
7 really need a written statement here," and eventually, after it seemed a couple of months, Ms.
8 Jenson did provide a written statement to what was talked about before.
9

10 So there, members, you'll have evidence that Major Witt, from 1997 to 2003, had a
11 homosexual relationship that involved homosexual conduct, homosexual acts with Ms. Tiffany
12 Jenson. Also, you'll be receiving the evidence showing that in about 2003-2004, she had a
13 homosexual relationship with Laurie McChesney, causing the McChesneys' marriage to break up,
14 amongst other issues present in that marriage. So that's the evidence, really, that you'll be
15 receiving about the alleged homosexual conduct.
16

17 Concerning the homosexual statements, you'll be receiving evidence on that. First of
18 all, you'll be seeing that Major Witt did at one point file a lawsuit in federal court. And in
19 part of the lawsuit, part of the papers that she prepared and signed and gave to the court, she
20 stated in a court declaration that she was homosexual. That she had had a homosexual affair
21 involving homosexual conduct from 1997 to 2003 with a civilian woman. And even though no names
22 are mentioned in that declaration, one can assume that that was Ms. Tiffany Jenson that she was
23 referring to. Also, in the same document, Major Witt says that, "I never told anybody in the
24 Air Force about me being a homosexual except for Senior Master Sergeant James Schaffer. Senior
25 Master Sergeant James Schaffer was in my flight. He was in my unit. And one time he started
26 asking me questions about how long I had been with my partner, and I told him how long I had
27 been living with my partner." So that's another statement.
28

29 Now you'll also be receiving evidence today that after the federal lawsuit was filed both
30 Major Witt and her attorneys, who were representing her, made statements, some to the press,
31 admitting that Major Witt is homosexual. So in this case, as mentioned, there are two separate
32 bases here for discharge. Unfortunately, there is homosexual conduct that occurred with Ms.
33 Tiffany Jenson, and with, as the Government would allege, Laurie McChesney. And when you read
34 Tiffany Jenson's statement, towards the end, Tiffany Jenson states that when she and Major Witt
35 got involved, had started their relationship in 1997, Major Witt was just coming out of another
36 homosexual relationship. So there is also some evidence of yet even a third homosexual
37 relationship that occurred while Major Witt was in the Air Force. And that concerns the
38 homosexual conduct. The homosexual statements, as mentioned, you see that in the court
39 documents and in the statements that were issued to the press at various points.
40

41 Looking at her service career and looking at what we have stated, the Government will
42 show to you today that Major Witt's homosexual conduct was not just a departure from her
43 customary behavior. That based on the fact that she had the long-running homosexual
44 relationship with Tiffany Jenson, and then had a homosexual relationship prior to that, and
45 after that with Mrs. Laurie McChesney, that homosexual conduct is not a departure from Major
46 Witt's customary behavior and that it's very likely that her homosexual conduct will continue
47 in the future.
48

49 Concerning the homosexual statements, when you couple the homosexual statements with the
50 conduct, you'll see, as was mentioned before, this is not a case where Major Witt just says,

1 "I'm homosexual, but I'm celibate. I'm a non-practicing homosexual." This is a case where
2 Major Witt has stated that she is homosexual and has engaged in homosexual conduct. So in
3 measuring this case against her career, against the good service and efforts that she provided
4 to the Air Force, the Government will be recommending that she be discharged with an honorable
5 service characterization.

6
7 IA: Mr. Lobsenz, do you desire to open now or at the conclusion of the Government's
8 case?

9
10 RC: I would like to do that now, sir.

11
12 LA: Okay. You may proceed.

13
14 RC: Good afternoon.

15
16 As you know Major Witt has a long career already in the Air Force; a point that I'm going
17 to start with. She actually has 18 years of service. Not 17. As of the day that she was
18 suspended from points and pay back in November '05--'04--2004, she had 18 years of service in.
19 Had she not been suspended she would be before you with 19 plus years in. And had she not been
20 suspended, her career continued on a normal course, she'd reach her 20 years in March of next
21 year, 2007.

22
23 Her career has been characterized by exceptional professionalism, hard work, and
24 achievement. That isn't in dispute. Her private life is her private life. We aren't going to
25 be presenting any evidence about her private life. She has always kept her private life
26 private and it's never mixed with her professional life. You will have evidence, plenty of
27 evidence, to indicate that people in the 446th had no idea what her sexual orientation was.
28 Nothing that she ever did, no behavior that she ever engaged in gave them any reason to think
29 about it, and we won't be presenting any evidence about her private life.

30
31 We're going to be presenting evidence in three basic areas. One, the quality of her
32 service, which is not in dispute; it was exceptional. Two, we're going to bring out some
33 evidence regarding the way in which this investigation into her private life was initiated, and
34 specifically who it was that initiated the fact-finding inquiry in this case. And I'll be
35 submitting to you that the initiation of the fact-finding inquiry in this case by the NAF
36 commander, General Duignan, is illegal. It's in violation of the regulation. He does not have
37 the authority under the regulation to initiate this fact-finding inquiry, and he did. I don't
38 think that fact will be in dispute that he's the one that initiated it, contrary to the
39 regulation. The third area in which we will be presenting evidence is about the reaction of
40 people in her unit to discovering that she had been suspended, to hearing through the
41 grapevine, generally, that it had something to do with homosexuality, and what's their
42 reaction, what's the effect on unit morale, and you will hear--read mostly, I guess--we have
43 something like twenty or more declarations, and affidavits, and letters from members of her
44 unit all saying that it is her removal from the unit that was damaging to unit morale. That
45 people are upset that she was removed from the unit. They don't see any reason for it, and
46 they want her back. And every single one of those men and women represents to you that if she
47 were allowed to return it would be good for unit morale and discipline--if she were allowed to
48 return. And if she's not, and if she is discharged from the Air Force, that will be--have a
49 further negative impact on the morale and order of her unit.

1 So let me go back over those three areas now in some detail, starting with the quality of
2 her service and her career.
3

4 She grew up in what is today incorporated as the city of University Place. At the time
5 of her childhood it was a part of, unincorporated, Tacoma--Tacoma, Washington. That's in
6 Western Washington on the western side of the Cascade Mountains. Tacoma is the third largest
7 city, I think, in Washington State after Seattle and Spokane. It is located just about 15 to
8 20 miles north of McChord Air Force Base on Interstate 5 corridor.
9

10 She attended public schools in the Tacoma area. She graduated from high school in 1982,
11 and she then went to college at--a small--a college called "Pacific Lutheran University," which
12 is also in the Tacoma area, a small Lutheran college, and there she majored in nursing. She
13 wanted to be in nursing and she also, during her college years, was considering, more and more,
14 as time went on, a career in the Air Force. She had friends who were serving in the ROTC units
15 at Pacific Lutheran University. She also had a friend attending West Point. She realized that
16 if she could combine nursing and her service in the Air Force, she'd be able to serve her
17 country and pursue the career that she wanted to choose at the same time. She discussed it
18 with her parents. Her father was a veteran of the Korean War. He was a noncommissioned
19 officer in the Army, who served in the Korean War, and he encouraged her to pursue a military
20 career and to join the Air Force. She actually attended the graduation at West Point of her
21 friend in the Army, and she made a decision--she realized that she needed 6-months' experience
22 as an operating nurse before she could join the Air Force in the Nursing Corp. She'd lined up
23 a job after graduation at Tacoma General Hospital as an operating nurse to get that 6-months'
24 experience, and applied at the same time to the officer corps. and the Air Force. And just
25 about--well, the timing worked just about perfectly. She passed her nursing boards, she got
26 the 6-month experience she needed at Tacoma General, and then she was accepted to the Air
27 Force. She went to officer training in March of '87, and was commissioned as a second
28 lieutenant on April 11th, I think it is, 1987, 19 and 1/2 years ago.
29

30 Her initial duty assignment was to Castle Air Force Base in California. She served as an
31 operating room staff nurse for roughly 3 years. She was also given the job of being in charge
32 of a program, which I'm told you'll be familiar with, it's called the "Health Promotion
33 Program." It was a preventative health action program in the armed forces at that time, and
34 she was base-wide in charge of that program as the health promotion coordinator for the base.
35 After roughly 3 years at Castle Air Force Base, she was transferred in June of 1990 to
36 Wiesbaden--I can't remember if it would be West Germany there or Germany--I guess Germany. She
37 served as an operating room staff nurse at the Wiesbaden medical center for the 700th Combat
38 Support Unit. I don't know how much of this is already familiar to you, so excuse me if I'm
39 telling you what you already know. But Wiesbaden was primarily responsible for both casualties
40 from the theater of war from Operation Desert Storm. So anybody injured in the Middle East
41 theater, who really needed serious medical treatment, was--most of them were flown to
42 Wiesbaden. That was a part of the patient pool that she was taking care of. She had also
43 taken care of some of the very last hostages that were released from Iran. She was also, at
44 Wiesbaden, in charge--the nurse in charge of the flying ambulance surgical trauma team, which
45 is a--as I understand it a kind of empirical MASH unit that responds to major disasters. As
46 you'll see, she had superlative recommendations and evaluations throughout her time at
47 Wiesbaden, and she's still an operating nurse. Her goal all along was to get--has been to get
48 to the point where she can be a flight nurse. Right from the very start she wanted that, so
49 she applied for flight nurse training school. She was accepted. She went to Brooks Air Force
50 Base in San Antonio. Completed that course and--I'm not sure if she actually sort of returned

1 and touched base at Wiesbaden or not, but very shortly thereafter she was assigned as a flight
2 nurse to Scott Air Force Base.
3

4 She was then at Scott Air Force Base for I think, roughly, 4 years. At Scott she served
5 as a flight nurse, as a nurse scheduler, as flight nurse evaluator, and medical aircrew
6 training officer for the entire squadron that she was with, and eventually as chief of the
7 medical aircrew standards and evaluations for the wing, for the 375th. She also had a few
8 special assignments that she was specially selected for. She was picked by her commander to be
9 the flight nurse in charge of the medical transportation of the astronauts from Edwards Air
10 Force Base, where their shuttle landed, to Johnson Space Center. At that time, there were
11 medical experiments going on about the long-term effects of zero or low gravity on astronauts,
12 and they were being studied for that, because it was early in the shuttle program. She was
13 handpicked to be in charge of their medical transportation. She was chosen to brief the
14 Secretary of the Air Force, Sheila Widnall, on the Aeromedical Evacuation Squadron mission.
15 She was also chosen to brief General Shalikashvil, if I'm saying it right, at that time. She
16 also briefed him on the Aeromedical Evacuation mission.
17

18 Also, while she was serving at Scott, there was a disaster at Pope Air Force Base.
19 Again, I apologize if I'm telling you what you already know. One landing plane collided with
20 another plane on the runway, and also bounced into yet a third plane which was loading--which
21 was loading servicemembers who were going to leave for somewhere. There were over a hundred
22 number of seriously injured in this, and it was from Scott Air Force Base that she was
23 dispatched to be in charge of the medical crew for transportation of all the injured in that
24 disaster. Most of the people in that disaster got very badly burned and she coordinated the
25 emergency medical transport to get them from Pope to where they could get the necessary
26 treatment.
27

28 Toward the end of her time at Scott, she decided that she wanted to improve her
29 professional qualifications, and she wanted to get a master's degree in physical therapy. To
30 get a master's degree in physical therapy you have to go to school for, as I understand it, 3
31 years. In order to do that you need to transfer from active to reserve status. She did
32 transfer from active to reserves. She was reassigned to McChord Air Force Base in Western
33 Washington, and she applied and was accepted to Eastern Washington University to their master's
34 program in physical therapy. Eastern Washington is located--it's in a suburb of Spokane, but
35 for all practical purposes it's in Spokane. I think it might actually, technically, be in a
36 little town called "Cheney," but it's in, basically, Spokane.
37

38 Just one side note, her application for transfer to McChord was in part from the--by
39 Colonel Janette Moore-Harbert, today a "colonel." At that time, I believe, a "major." Colonel
40 Moore-Harbert met Major Witt at Scott Air Force Base, was impressed by her as everybody was,
41 and specifically encouraged her to do what she was doing, and specifically encouraged her to
42 come to the 446th AES at McChord.
43

44 And when she got to McChord, basically, she's not really there for any significant period
45 of time at this transfer, because she's almost immediately over in Eastern Washington in
46 Spokane attending this Eastern Washington University. She was there for 3 years, and she
47 received her master's degree from Eastern Washington in 1998. During that 3-year period of
48 time she was continuously performing reserve duty; flying most of the time, on weekends, to do
49 her reserve duty.

1 From roughly August of 1996 'til today, she has lived in the Spokane area. I'd say that
2 there are some extremely brief periods of time that I can't remember right now, but we will
3 clarify it for you, where she may have been living on the western side of the mountains for
4 brief periods of time. But for all practical purposes, for the last 8 years, or for longer
5 than that, she has been living in the Spokane area on the eastern side of the mountains. She
6 never lived on base at McChord.
7

8 In 2003, she returned to active duty and she was deployed to Seeb Air Force Base, Oman.
9 Her deployment there was to serve in Operation Enduring Freedom and Southern Watch. She was
10 stationed in Oman for 2 months as a part of the Expeditionary Aeromedical Evacuation Squadron--
11 I don't have the number--but her duties there, again, were medical transportation to serve as a
12 flight nurse. She flew a number of missions in the transportation of injured patients, injured
13 in either Afghanistan, or Saudi Arabia, or Iraq, or somewhere in that Middle East Theater. She
14 was, herself, injured while in Oman. Not in combat or anything, but as I understand it jumping
15 off of something--a truck or something she injured her knee that required surgery and
16 rehabilitation. So she was--after 2 months, came back to the States, back to Air Force Base
17 McChord--actually, I think, had surgery at the military hospital, which I think is at Fort
18 Lewis; had her knee repaired, went through the rehab. Remained on active duty for a few months
19 while having the surgery and going through the rehab, and then was demobilized in July of 2003,
20 and went back to reserve duty with the 446th AES.
21

22 At this point, most of her unit is deployed in the Middle East. Because it's deployed,
23 its ranks are somewhat thinned out. There are all kinds of jobs which were essentially vacant,
24 and she was asked to, because she was one of the few people who couldn't be deployed to the
25 Middle East Theater, she was asked to fill in in many of those jobs, which she did. So she
26 handled far more than the ordinary amount of duty. And because of the way in which she handled
27 these additional duties, she was selected as Officer-of-the-Quarter for the fall of 2003 for
28 exceptional professionalism, leadership, and service to the country. The commander who
29 selected her for that was Colonel Mary Walker, who was the same commander who was her commander
30 at the time the fact-finding inquiry was initiated--not by her.
31

32 She served with the 446th, then, from that summer of 2003, in the reserve, until she was
33 suspended in November of 2004. Had she not been suspended not only would she have additional
34 service that I mentioned and be closer to her 20, she would very likely be deployed again in
35 the Middle East. She would be there with--where most of her unit is?
36

37 Major Davis mentioned that she has been repeatedly decorated in the course of her career.
38 I won't mention them all, but she has received the Meritorious Service Medal, the Air Medal,
39 the Aerial Achievement Medal, Air Force Commendation medal more than once. She received two
40 medals for her service at Seeb Air Force Base in Oman. I'm not exactly sure myself what the
41 difference is in--between the two, but perhaps she'll explain that to you. She transported
42 over one hundred and fifty patients during eighteen aerial transports under hostile conditions.
43 That's the primary reason she received the Air Medal. She received one of her Air Force
44 Commendation Medals for saving the life of a civilian employee of the Defense Department on a
45 commercial flight, while she was off duty. As I understand it that employee had a heart attack
46 and she saved his life.
47

48 Major Davis mentioned a few other exceptional performances that she did; saving the sight
49 of a soldier, saving a child's life. We will be including that in--we have put in evidence
50 every officer performance report she has ever received over the last 18 years. So you'll have

1 them to read. I'm not going to read them all to you now, that's why we provided them to you.
2 But I want you--to stress the point--but, the last one, I'll read you some of the things from
3 the last one she received. This covers her time immediately during and up to her suspension in
4 November of 2004.
5

6 Major Thomas Hansen, the rater in that case, described her as: a dynamic senior nursing
7 leader recognized by her peers for strong character leadership skills and knowledge base;
8 excellent role model of professional military officership; sets the standard for professional
9 conduct by a junior officer in front of her peers; remarkable leader; exceeds expectations;
10 achieves the unexpected; and seeks out the best in other members; exhibited remarkable
11 leadership skills as Chief of Stan Eval meticulously monitoring crew standards. Just compare
12 that to the very first one she ever received, which is at Castle Air Force Base, roughly 1987,
13 or '88--'87, I believe. That one says: optimizes the skills of others; leads by example;
14 consistently sound judgment; professional in every respect; has greatly increased unit
15 cohesiveness and morale; manages health promotions program in a superb manner; ranks in the top
16 one percent of her peers; select for indefinite reserve status a must; promote. And you'll
17 read the ones in between. There's about fifteen or twenty of them. They will all be of that
18 category.
19

20 She was consistently promoted. She was promoted to captain in 1991. She was promoted to
21 major on October 1, 1999. She was eligible for promotion to colonel on October 1 of 2003. But
22 for this suspension and investigation, she'd be reaching her pin-on date. Next Monday, she'd
23 be pinned on as a colonel.
24

25 The Air Force was not indifferent to this record that she has created for herself. The
26 Air Force itself recognized that she was an exceptional officer, and they chose her to be,
27 literally, the poster child for the nursing corps in the U.S. Air Force. They photographed her
28 and they put her picture in their recruitment brochures and in the recruitment information. We
29 have copies of those recruitment brochures in the exhibits, and you'll have those as well.
30 Even after they suspended her in November of 2004, they continued to use those recruitment
31 brochures as recently--we know as recently as this summer. And so far as I know, they are
32 still being used. The Air Force is still using her photo to attract people to join the nursing
33 corps of the United States Air Force.
34

35 The second area that I wanted to discuss and the evidence we present involves the
36 initiating of the investigation in this case. We've already heard from Major Davis that the
37 investigation in this case was not triggered by a member of the military. It was triggered by
38 a civilian, a Mr. Pat McChesney; a civilian resident of Spokane, Washington, who lived somewhat
39 in the general neighborhood where she lived in, in Spokane. Mr. McChesney, as he was going
40 through a divorce proceeding--he initiated a divorce proceeding. That is set forth in his
41 email, I believe, to General Jumper. He filed for divorce. He was upset because he discovered
42 that his wife was a lesbian and she was leaving him. He sent an email--and, yes, there were
43 some child custody issues. I don't--I won't--I don't believe that any of the evidence you're
44 going to hear speaks to who was awarded custody, so I won't mention it. But there were
45 disputes about child custody between him and his wife, Laurie McChesney. He sent an email, "he
46 sent an email," to General John Jumper complaining that this was all Major Witt's fault that
47 his wife was a lesbian and that she was leaving him. General Jumper--we don't know how a
48 civilian in Spokane, Washington, would have the personal email of the Chief of Staff of the
49 United States Air Force. We don't know the answer to that question. At best we have a
50 speculative guess. It's sort of a well-informed guess. McChesney's own email to General

1 Jumpers says that--something along the lines of, "I did not contact my uncle Admiral Arnold."
2 It seems odd that it's sort of tossed into the email.
3

4 REC: Objection. Argumentative.
5

6 LA: I'm going to allow it.
7

8 RC: Perhaps, he got the email for General Jumper from his relative, Admiral Arnold.
9 But somehow he got it, but we do know that General Jumper, apparently, his staff then forwarded
10 this email to the wing commander at Air Force Base McChord. We do not have a copy of that
11 forwarding email. I'm not casting any aspersions upon Major Davis. I know he's looked for it,
12 but, apparently, it can't be found. So all we know is that it was forwarded through General
13 Jumper's staff to the 446th Wing, where it came to the wing commander, who was at that time
14 Colonel Eric Crabtree, now General Crabtree.
15

16 After receiving--essentially, all he got was what had been sent to Jumper, which was Mr.
17 McChesney's email. Colonel Crabtree contacted General Robert Duignan from the 4th NAF, which I
18 understand is stationed somewhere in California, and asked for guidance. The Government, I
19 believe, has already put into evidence as an exhibit General Robert Duignan's directive saying,
20 "I authorized a fact-finding inquiry." He did that on July 7th, 2004, and sent it back to
21 Colonel Crabtree authorizing the fact-finding inquiry despite the fact that under the clear
22 terms of the AFI, that you will have a copy of, he does not have the legal authority to
23 authorize a fact-finding hearing. The only person who did was Colonel Walker, the unit
24 commander of the 446th AES. She did not authorize a fact-finding inquiry. She didn't now
25 anything about this.
26

27 When the authority came back, "supposed authority came back," from General Duignan,
28 Colonel Crabtree then appointed, at that time, Major Adam Torem to conduct a fact-finding
29 inquiry. Major Torem conducted that inquiry in July of 2004. He traveled from McChord, on the
30 west side, to Spokane on the east side of the state. He, there, interviewed Mr. McChesney.
31 He, there, interviewed Tiffany Jenson, as Major Davis has said. And he returned after
32 conducting those interviews to McChord Air Force Base. Then he contacted Colonel Mary Walker,
33 the unit commander of the squadron, and notified her as to what he was doing. Notified her
34 that he needed to interview Major Witt, and then on the following day contacted Major Witt,
35 advised her of the allegation of homosexual conduct. He didn't press her for an immediate
36 response. He said she had the right to make a response to the allegations. She also had the
37 right not to make a response. She had the right to take some time and consult and get legal
38 advice before deciding what to do. She could exercise her options and take time and consult
39 with counsel before deciding what to do. She took--there was a bit of time. It took time for
40 her to find me as an attorney. It took time for me to ask then-Major Torem to help us get
41 military counsel appointed, but I wanted the assistance of military co-counsel before giving
42 her my advice. Eventually--a couple of months went by. There was also, I think, a personal
43 tragedy in Major Torem's family that caused a slight delay. Eventually, we reported that she
44 would not be making any response to the allegation at all. Therefore, on November 4th, 2004,
45 Colonel--now-Colonel Janette Moore-Harbert took Major Witt aside and advised her that by the
46 order of Colonel Walker, she was required to advise her that she was being suspended from
47 points-and-pay activity, that she had to leave the base.
48

49 Colonel Moore-Harbert carried out that order even though she was very upset by what she
50 was doing, and remarked to at least one person that it was the hardest thing she ever had to do

1 in her military career. Since November 4th, 2004, Major Witt has not been back on base at Air
2 Force Base McChord.

3
4 A very long period of time then elapsed before she received any official notice that
5 there would be a discharge proceeding at all. Roughly, I think, 16 months went by from
6 November 4--she got a letter from Colonel Walker that said, "I have suspended you." But then
7 16 months went by before she received her letter of notification from here at Warner Robins and
8 the AFRC personnel center here saying that a discharge proceeding was being initiated against
9 her, and that came in early March 2006--that notification came. So this hearing now comes on,
10 roughly, almost 2 years after her suspension from points and pay.

11
12 The third area that I said I would discuss with you is the reaction of the members of her
13 unit.

14
15 To a man and to a woman, they are upset that she has been suspended and that she is being
16 boarded. With very few exceptions, they have all said, "I never had a clue," or some have
17 said, "I sort of suspected she was homosexual, but I never knew it. She never told me." In
18 every single one of these letters of character reference and declarations they will tell you
19 that she's a very respected soldier/airman within the unit. Very professional officer. They
20 have said that it has been damaging to the morale of the 446th to have her suspended. I'm going
21 to read you just a few excerpts from--to give you the general flavor of those twenty-two
22 different exhibits from those people in her unit.

23
24 This is Sergeant Julian:

25
26 "I have talked to many other people in the 446th AES about the decision to initiate
27 separation proceedings against Major Witt, and in general they have reacted with shock,
28 confusion, and amazement."

29
30 "...in general everybody has responded by asking 'Why?'"

31
32 "...the [Commander's] decision to initiate an administrative discharge proceeding against
33 Major Witt has seriously hurt unit morale, and that morale would be further harmed if the Air
34 Force went ahead and discharged her. The incident has been seriously deflating to everybody in
35 the 446th AES. Everyone who has discussed it in my presence has said they think the decision
36 was a bad one."

37
38 In particular, Sergeant Julian said, "The Air Force's decision to initiate separation
39 proceedings against Major Witt was a factor that contributed to my decision to apply for
40 retirement from the service." He was so upset that he has decided to end his military career.

41
42 The declarations, and the affidavits, and the letters, they all, also, indicate no one
43 cares or would care if she returned to the unit, even if it's wearing, you know, some sign that
44 says, "I am a lesbian." Virtually all of them said, if command were to announce to the entire
45 squadron that Major Witt is a lesbian, and that, nevertheless, the decision has been made to
46 retain her, her return would have no negative effect on unit morale, and her return would be
47 met with strong approval. Virtually every one of them has attested to the fact that she is a
48 well-liked and well-respected member of the unit. They also, to man and to woman, have
49 attested to her exceptional skill, clinical skill.

1 Major Faith Muller [sic] [Major Scott] says, among other things:
2

3 "People go to her with problems, because she solves them. In the field of aeromedical
4 evacuation you have to be able to think quickly and to deal with rapidly changing medical
5 situations. She has these qualities. The bottom line is that people like Major Witt save
6 lives."
7

8 They say, each and every one of them, that they are honored to serve with her. They say
9 things like, "I suspected Major Witt was a lesbian," "I can say without reservation this makes
10 absolutely no difference to me"--that's Major Faith Muller.
11

12 Major Scott:

13
14 "I didn't really know that she was a lesbian, but I was relatively certain that she was.
15 After a while you put two and two together."
16

17 Major Schindler:

18
19 "...I have long assumed that she was a lesbian. Assuming [that] she is [a lesbian]...this
20 [fact] makes absolutely no difference to me.
21

22 Sergeant Brinks:

23
24 "...she [has] never said a word to me about her sexual orientation or sexual conduct, but I
25 have long assumed that she was..."
26

27 So no one in her unit cared. No one knew and no one cared. I guess we will present a
28 little bit of evidence to tell you what I'm sure you already know of. We are at war and there
29 is a critical shortage of qualified flight nurses at this present time. The last time we
30 checked some website, I could not tell you the name of, the highest number of vacancies for any
31 duty position in the Air Force was for flight nurses in the rank of major. She is one of the
32 best flight nurses the Air Force has ever had in their own opinion.
33

34 So at the conclusion of this hearing, I will ask you to find that the inquiry into--this
35 inquiry was illegally initiated not by her unit commander, the only person with the authority
36 to initiate it. I will ask you to find that she did not make a statement. And I--Major Davis
37 has referred to a statement that you will receive. That statement was filed in connection with
38 her lawsuit, which you've heard about. Her lawsuit was filed later in March after she received
39 official notification from Warner Robins that she was going to have a discharge proceeding.
40 This discharge proceeding was not initiated because she made a statement. She made that
41 statement in defense of what was being done to her in an attempt to exercise her right to go to
42 court and ask the judiciary to support her in her legal arguments, which I'm not going to make
43 here. But I'm just pointing out that in no way did they rely upon that statement----
44

45 REC: Speculation. Objection.

46
47 LA: I'm going to allow the argument--the opening.
48

49 RC: At the conclusion of the hearing, I'm going to ask you to find that there's no
50 basis for discharge. There is no basis for belief that whatever her private life is that it

1 has any adverse impact upon her unit. This inquiry should never have started and I will ask
2 you to vote to retain her in the United States Air Force.
3

4 Thank you.
5

6 LA: Major Davis, you may present the Government exhibits.
7

8 REC: Yes, sir. At this time, I am publishing to the members Government Exhibits 1
9 through 7, holding off on publishing Government Exhibit 8 to the members now.
10

11 [The Recorder handed the members Government Exhibits 1 through 7.]
12

13 LA: And, Respondent, you may present yours.
14

15 [The Assistant Respondent's Counsel handed the members Respondent Exhibits 1 through 21.]
16

17 LA: And these will be 1 through 21?
18

19 RC: Yes, sir.
20

21 LA: Colonel Childs, our proposal at this point would be to recess to allow the board
22 members to review all of the exhibits. Do you have some estimate as to how much time you would
23 like?
24

25 MBR[COL Childs:] I would estimate, minimum, an hour and a half, if not 2 hours.
26

27 LA: All right. I've got, essentially, 2 o'clock. Is that right?
28

29 [Affirmative response from the Recorder.]
30

31 LA: I'm sorry. I refuse to set my clock to this time, so I have to make some
32 adjustments. So that would be 3:30. I would ask---
33

34 MBR[COL Childs:] We'll begin with 3:30, and that's insufficient time, I will report---
35

36 LA: Obviously, you can take as much time as you need, but I will have--in essence,
37 turn the parties loose until 3:30 with instructions that they need to be here ready to go at
38 3:30.
39

40 MBR[COL Childs:] Okay, sir.
41

42 LA: Is there anything else we need to address?
43

44 REC: No, sir.
45

46 RC: No, sir.
47

48 LA: All right. I remind you, of course, that you should not discuss any of this at
49 this time. This is simply an opportunity to review these exhibits. And we'll be back and
50 ready to go at 3:30. I may check in with you at 3:30 and see how things are going.

1 MBR[COL Childs:] Will we have access to this room or just the room next door, if we need
2 to spread out with all the books and everything?
3

4 LA: Normally, this room sort of stays open for the parties to mess with their stuff.
5 If you think you need it, we can. But otherwise we ask that you--recommend in there.
6

7 MBR[COL Childs:] Very well. That's fine.
8

9 LA: That's where you deliberate and review the exhibits.
10

11 MBR[COL Childs:] Understood. Understood.
12

13 LA: Okay, if there is nothing else, we'll be in recess until 3:30.
14

15 [The proceedings recessed at 1400, 28 September 2006.]
16

17 [The out-of-board hearing was called to order at 1632, 28 September 2006.]
18

19 LA: This hearing will come to order.
20

21 REC: All parties present when the board last recessed are once again present. The
22 members are absent. The Respondent is present.
23

24 LA: I just wanted to advise the parties that when I went in to tell the members where
25 we were on things and ask about how our drop-dead-at-5-o'clock time was, number one, I was
26 surprised that one of them has--the latest he can stay is 5:30. But then the President wanted
27 to know if they could ask me something, and they wanted to know whether they--there would be a
28 time when they can ask questions. I explained to him, and then he said, generally, "What's the
29 order of things?" And I explained, generally, that the Government can put on whatever case it
30 had followed by the Respondent's case. If there were any witnesses, they would have an
31 opportunity to ask questions of the witnesses. And that they also have the right to ask for
32 witnesses on their own or to ask that evidence be produced. If they thought that there was
33 evidence that they want produced, then we might take that up early on so that we could go about
34 seeing if we could produce it, and I can make a determination about whether it's admissible.
35 And that was followed, then, by questions from the President who asked, "Well, can we ask what
36 her--[I assume meaning Major Witt's]--living arrangements are now?" And I said, "Well, why
37 don't you hold that question until the conclusion of the evidence, and then you can determine
38 whether that's still something that the board wants to inquire into or not."
39

40 So I just wanted the parties to be aware that I had that conversation with them and was
41 given that question as something that the board was interested in, so that the parties are
42 aware of it. Do any of you have any questions about my conversation with them?
43

44 RC: No, sir, but my understanding is that Major Witt has the right to make either a
45 sworn or unsworn statement, and it's our plan that she make an unsworn statement which would
46 not give them a right to question her.

47 LA: That's correct.
48

49 RC: And I don't know where the President of the board is thinking going after that,
50 but I trust and hope he's not thinking of asking me questions. If they want---

1 LA: I'm not going--I'm not going to allow him to ask the counsel questions, nor,
2 obviously, am I going to allow him to ask questions following an unsworn statement.
3

4 RC: Okay.
5

6 LA: I just wanted the parties to be aware that that conversation had occurred, so that
7 if you had any questions about it, you could ask me, or if anybody felt for some reason--well,
8 I've now put on the record what happened. If anybody felt any further inquiry was needed, I
9 wanted to give you that opportunity.
10

11 RC: And I've discussed with Captain Catron the time cutoff at 5:00, 5:30, and,
12 frankly, I don't want to make it hard for anybody. We don't, particularly, mind being
13 interrupted in the middle of Major Witt's unsworn testimony. There are logical stopping
14 points, so if somebody just tells me that they'd like us to stop around, you name it, 4:45,
15 5:00, 5:15, we'll stop whenever anybody wants.
16

17 LA: Well----

18
19 RC: We don't have a need to do it all in one day uninterrupted.
20

21 LA: Then that's fine. Why don't we see how quickly we finish here. If you want to
22 start with that, you can. And depending on how it's going, we'll stop somewhere between 5:00
23 and 5:15. I--my inclination--and I'll let Respondent's counsel determine whether you want this
24 done or not--my inclination is, given the question I just got asked, is when Major Witt, before
25 she begins the unsworn statement, is to advise the board something like, "I remind you that an
26 unsworn statement is a proper method for the Respondent to place information before the board.
27 She is not subject to questioning from the Government or the board with respect to that
28 statement." I don't want to, unnecessarily, emphasize that fact, but at the same time if you'd
29 rather see me do that to cut off something from the board, then I will do so.
30

31 RC: I think I would prefer to do that rather than have to be pressed into saying----
32

33 LA: Does the Government have any comment with respect to that?
34

35 REC: No, sir. The Government would agree with letting the members know that it's a
36 proper vehicle.
37

38 LA: Anything else we need to address?
39

40 RC: No.
41

42 LA: Okay.
43

44 Would you mind getting the board?
45

46 REC: No, sir.
47

48 [The out-of-board hearing terminated at 1637, 28 September 2006.]

1 [The proceedings were called to order at 1637, 28 September 2006.]
2

3 LA: The hearing will come to order.
4

5 REC: All parties present when the board last recessed are once again present. The
6 members are present. The Respondent is present.
7

8 LA: Members, have you had an opportunity to go through the exhibits that have been
9 provided to you so far?

10
11 [Affirmative responses from the members.]
12

13 LA: Okay.
14

15 Major Davis, you may proceed.
16

17 REC: Yes. At this time, the Government wishes to publish to the members Government
18 Exhibit 8. It is a video clip. It is not intended to be given to you when you go back to your
19 deliberations.
20

21 [Government Exhibit 8 was played for the members.]
22

23 LA: What was that term we use, "technical difficulties?"
24

25 [The visual portion blacked out, but the audio portion continued to play.]
26

27 REC: Yes, sir, sometimes more difficult than technical. And that's it, sir. Subject
28 to----
29

30 LA: Well, before we do--my inclination from having you--earlier I said that,
31 essentially, it all played before that came up. Unless you have any objection, I intend to--I
32 don't intend to ask you to replay it.
33

34 REC: That's correct, sir.
35

36 LA: Any problem with that?
37

38 [Negative response from the Respondent's counsel]
39

40 LA: Okay. I'm sorry. Go ahead.
41

42 REC: And with that, subject to rebuttal, the Government rests.
43

44 LA: All right, Mr. Lobsenz, you may proceed.
45

46 RC: Thank you, sir. We would call the Respondent at this time to give an unsworn
47 statement at this time. My understanding from Captain Catron is that one way of doing things
48 is to rearrange things so that I might stand at the podium in the back, and Major Witt might be
49 out there where she will be easily seen by all the members.

1 LA: That will be fine. In fact, why don't we just pull your chair around since it's
2 the one on the end. I would only ask that you sort of stand off at an angle so that there's no
3 suggestion that you can see any of the board members' notes.
4

5 Board members, I would remind you that an unsworn statement is an authorized method for
6 Major Witt to provide information to the board, and she is not subject to questioning on an
7 unsworn statement from the Government, or from board members, or from me.
8

9 [Major Margaret H. Witt, United States Air Force Reserve, 446th Aeromedical Evacuation Squadron,
10 McChord Air Force Base, Washington, was called as a witness by the Respondent's Counsel to make
11 the following unsworn statement:]
12

13 [Questions by the Respondent's Counsel:]
14

15 Q. Ma'am, would you give your name and your rank?
16

17 A. Major Margaret H. Witt.

18 Q. Major Witt, where were you born?
19

20 A. I was born in Tacoma, Washington.

21 Q. Did you grow up there?
22

23 A. I grew up in a suburb of Tacoma called "University Place."

24 Q. Did you go to school in University Place?
25

26 A. I went to University Place School District, yes.

27 Q. Did you graduate from high school in University Place High School?
28

29 A. I finished high school in 1982.

30 LA: And you might want to speak up just a little.
31

32 RES: Yes, sir.
33

34 LA: Because I'm about the closest one and I'm having a little trouble.
35

36 RES: I apologize.
37

38 Q. That was-----
39

40 A. 1982.

41 Q. "82." And that's in Tacoma, correct?
42

A. Yes.

1 Q. Where is Tacoma just graphically in Washington State, exactly?
2 A. Tacoma is approximately half way between the state capital of Olympia and Seattle.
3 It's about 30 miles to each one of those towns. It's about right in the middle of the west
4 side of the state.
5
6 Q. And where is Tacoma in relation to McChord Air Force Base?
7 A. McChord Air Force Base is about 15 miles out.
8
9 Q. Okay. After graduation from high school, did you attend college?
10 A. Yes, I did.
11
12 Q. And where was that?
13 A. Pacific Lutheran University.
14
15 Q. And geographically where is Pacific Lutheran or "PLU?"
16 A. In Parkland, actually just outside of McChord Air Force Base, a few miles out of
17 Tacoma. It was consider a part of Tacoma at the time.
18
19 Q. What was your field of study at PLU?
20 A. Nursing.
21
22 Q. While you were attending college and studying nursing, did you give any thought to
23 joining the Air Force?
24 A. Yes, I did.
25
26 Q. What were your thoughts at that time?
27 A. I'd considered ROTC. We had some nursing students that were in the ROTC program,
28 and I looked at that a great deal; and I had some friends that weren't in the nursing program
29 that were actually ROTC; and one of my friends growing up went to West Point at that time.
30
31 Q. Did you make a decision?
32 A. I made a decision. I didn't join the ROTC at the time. Five years seemed like a
33 lifetime to obligate to anyone, but I still pursued the dream of being in the Air Force after I
34 graduated.
35
36 Q. Did you discuss these career plans with you parents?
37 A. Yes, I did.
38
39 Q. What input, if any, did they have?
40 A. My father was pretty excited that I was talking about it and he encouraged me to
41 go in, and my mom thought it would be a great experience.
42
43 Q. Did either of your parents serve in the armed forces?
44 A. My father was in during the Korean War. He was----

1 Q. What branch was that?
2 A. Army. He was a noncommissioned officer.
3
4 Q. Okay. Upon graduation from college, how did you pursue your plan to join the Air
5 Force?
6 A. Well, my goal was to be an operating room nurse, and in order to be an operating
7 room nurse for the Air Force you needed to be accepted into their special program when you were
8 on active duty--their special training program or you could get 6-months' experience as an
9 operating room nurse in the civilian sector and then apply for that special position in the Air
10 Force.
11
12 Q. So what did you do?
13 A. I got a job at Tacoma General Hospital, actually where I was born, and I proceeded
14 to work for those 6 months during the time that I was applying for the Air Force and waiting to
15 take my nursing boards--waiting for the results actually of my nursing boards.
16
17 Q. You passed the nursing boards?
18 A. I passed my nursing boards in March of that year.
19
20 Q. And about that time did you get accepted into the Air Force Officer Corps?
21 A. Immediately following the release of my board results, yes, I did.
22
23 Q. You said that your plan was to be an operating nurse, I take it, as a short-term
24 plan. Did you have a long-term plan?
25 A. The reason I chose the Air Force was the opportunity to fly, and there aren't many
26 opportunities--there weren't really such things as civilian flight nurses at the time, and it
27 was quite an exciting idea that I might get to be a flight nurse and do my job in the air, so
28 that was...
29
30 Q. When were you commissioned, then, as a lieutenant?
31 A. I was actually commissioned at the beginning of April, I think. It was when I
32 completed the military indoctrination for medical officers.
33
34 Q. Okay. And where was your first duty assignment?
35 A. Castle Air Force Base, California.
36
37 Q. And what was your assignment there?
38 A. I was an operating room staff nurse, and I was in charge of sterile supplies,
39 central supply.
40
41 Q. In addition to those duties, did you have any additional duties that were assigned
42 to you later?
43 A. As a second lieutenant, I was asked to be the health promotions officer for the
44 base. It was, at the time, a brand-new program to promote health, and----
45
46 Q. If you could explain what was that brand-new program for?
47 A. It was a program not only for active duty, but for retirees, and a community-wide
48 program that encompassed a lot of education and educational opportunities, to go to different
49 squadrons or the community or run health fairs and discuss fitness, nutrition, smoking
50 secession, weight management.

1 Q. Okay. And why were you chosen and who chose you?
2 A. Actually, the chief nurse came in to my supervisor and asked me to take the
3 position.
4
5 Q. And while you were--what unit were you assigned at Castle?
6 A. It was U.S. Air Force Hospital Castle, at the time.
7
8 Q. Okay. And who were your--your unit commander and your immediate commander there?
9 A. My immediate supervisor when I arrived there was Captain Imgard Rondeau, and when
10 she PCS'd it became Captain--Major Scott McDonald.
11
12 Q. How many years were you stationed at Castle?
13 A. About 3 years.
14
15 Q. And then where were you stationed?
16 A. And then I PCS'd to Wiesbaden, Germany.
17
18 Q. What unit were you attached to in Germany?
19 A. The 7100th Combat Support Wing Hospital, Wiesbaden.
20
21 Q. And what was your duty there?
22 A. Operating room staff nurse.
23
24 Q. Okay. Could you give the board members an idea how--the general patient
25 population that you were treating at the Wiesbaden Medical Center?
26 A. Prior to Desert Storm it was all active duty, DoD, and those retirees or even
27 reservists that were stationed overseas. And with Desert Storm, we actually took the majority
28 of the casualties that came out of theater. They were all brought into Rhein Main and
29 transported over to us, and I was there. It was an interesting time, because at the same time
30 we had the last Iranian hostages, I think, maybe 3 or 4; Terry Anderson and some others that
31 were actually released when I was there.
32
33 Q. Okay. In addition to working as an operating nurse at Wiesbaden, did you have
34 another position?
35 A. I was selected to be the nurse in charge of the Flying Ambulance/Surgical Trauma
36 Team or the "FAST team." It's somewhat of a flying MASH unit. It was a brand-new program at
37 the time. It was before I was--before I was actually in charge as the nurse, they responded
38 to--there was a diplomat whose plane crashed in Africa and they were on the response team for
39 that. And then we were a big part of--I'm sorry--I believe it was Restore Hope with the Kurds
40 in Turkey. We were mobilized to do that.
41
42 Q. And who selected you to be the nurse in charge of that team? You called it the
43 "FAST Team?"
44 A. The "FAST Team." And actually, I think the chief of anesthesia.
45
46 Q. And how long were you stationed at Wiesbaden Medical Center?
47 A. Just over 2 years.
48
49 Q. And while you were there, did you apply for any different duty?
50 A. I still wanted to be a flight nurse.

1 Q. So that led you to what?
2 A. I had to apply for school. Which was kind of a shot in the dark, because at the
3 time they weren't taking operating room nurses at all to be flight nurses, because that was
4 already kind of a special duty assignment and they didn't want a shortfall of OR nurses. So I
5 was very fortunate to be selected for flight nurse training. And I was told I had a small
6 chance of ever realizing that dream, so...
7
8 Q. So how do you explain that, if you had such a small chance and you were in the--
9 you were told they don't generally take operating nurses, how do you explain the fact that you
10 were selected?
11 A. I was very fortunate.
12
13 Q. Where is flight nurse training school located?
14 A. San Antonio, Texas, Brooks----
15
16 Q. Brooks?
17 A. Yes.
18
19 Q. And how long is that training?
20 A. I believe it was at least 6 weeks.
21
22 Q. I'm not sure that I recall when--when you were done with that training, did you
23 process back to Wiesbaden?
24 A. I did go back. It was a TDY school, and so I went back to Wiesbaden.
25
26 Q. And then what happened?
27 A. And I applied for my next assignment. Wiesbaden was drawing down at the time and
28 you couldn't continue on and ask for an extension of your tour, and I applied for different
29 assignments, and my number one choice was any flight nurse position that I could get.
30
31 Q. What were those spots?
32 A. I was actually assigned to Scott Air Force Base as a flight nurse.
33
34 Q. Who was your immediate commander at Scott?
35 A. Actually, I think it was Colonel Scott.
36
37 Q. Right. And when you got Scott what were your duties there?
38 A. I----
39
40 Q. Initially----
41 A. Initially, I started as a basic flight nurse, and I was assigned to scheduling and
42 nurse-of-the-day in charge of all the drugs and ratings of the crew. And then I was selected
43 by my peers as a--or, actually, by the chief nurse as an instructor flight nurse; and then I
44 was assigned to the training office, and I worked in the training office; from there, I was
45 recommended for flight nurse examiner; became an examiner, and then I was moved into the Stan
46 Eval office; and from Stan Eval they had just opened up a position at the wing for flight
47 nurses, which was a new position, and I was selected to be the chief of aircrew Stan Eval at
48 the wing.

1 Q. And I apologize to the board members if everyone knows this except me. But could
2 you just explain what are the duties of an examiner--a "flight nurse examiner?"

3 A. A flight nurse examiner is responsible for evaluating a nurse during flight duties
4 to make sure that they are interpreting the regulations, following the regulations correctly,
5 following their procedures, and that they're a safe, effective flight nurse.
6

7 Q. And similarly, what are the actual duties of chief of Stan Eval?

8 A. As chief of Stan Eval at the wing, I actually oversaw the Stan Eval section at the
9 unit, and would receive information from headquarters and translate that information and send
10 it down to the unit, and make sure that the unit was following all protocol and regulations for
11 their Stan Eval office.
12

13 Q. In addition to these duties, did you have any specific assignments that took you
14 off the base during this time that you were on Scott--special assignments?

15 A. I was fortunate enough to be selected by my commander to transport the astronauts
16 from one of the shuttles--from Edwards, on landing, to Johnson Base, sir.
17

18 Q. And why did the astronauts need medical transport?

19 A. It was the mission when they were studying the anti--the lower anti-gravity
20 effects of space on the body, and it was necessary that they remain in an anti-gravity position
21 and be medically monitored during their transport directly from the shuttle to Johnson Base.
22

23 Q. And do you recall who selected you for that duty?

24 A. That was the commander, Margaret Siebold--Colonel Margaret Siebold.
25

26 Q. Were you selected to give any special briefings to visiting high ranking officers?

27 A. I was selected to do many briefings for local groups and local dignitaries, as
28 well as for the Secretary Sheila Widnall, Secretary of the Air Force, and also for General
29 Shalikashvil ----
30

31 Q. And you were briefing them on what?

32 A. The overall mission of aeromedical evacuation.
33

34 Q. While you were stationed at Scott, can you recall there being a particular air
35 disaster at Pope Air Force Base?

36 A. Yes, sir.
37

38 Q. Did you have a specific assignment in connection with that disaster?

39 A. At the time, I was the medical crew director responsible for responding to that
40 disaster.
41

42 Q. You know, maybe, you could describe what the disaster was--who needed treatment?

43 A. Well, an explanation: there was an F-15 and then a 130 on approach and they
44 actually collided. And the 130 landed safely, and the F-15 lost control and rolled into a 141
45 that was parked on the flight line and loading special ops paratroopers that were getting ready
46 to go out for an exercise, so everyone had all of their gear on. And there were over a hundred
47 paratroopers, some on the aircraft and some waiting to load on to the aircraft.
48

49 Q. And what kinds of injuries were sustained?

50 A. Almost all were total body burns.

1 Q. And what was your job in respect to these injured airmen [sic] [Army paratroopers]?
2 A. I had to coordinate with GPMRC and the Air Evac Control Center back at Scott to
3 make sure we had as many aircraft there that we could get and also to coordinate the
4 preparation and transport along with the Brooke Army Burn Team on the number of patients that
5 we could possibly take with us on the, eventually, four aircraft that arrived by--well, within
6 hours. And we had to--I had to coordinate positioning and the amount of equipment that was to
7 be brought in for every patient that we needed, and I had to direct my crew within the hospital
8 to prep and care and help within the hospital taking care of patients while they were there,
9 and transport--loading and transporting those patients back to Brooke Army Medical Center.
10
11 Q. And when your duties were done in connection with this disaster at Pope Air Force
12 Base, were you recognized for any special honor?
13 A. I believe I received, and my crew also received, an achievement medal. One of my
14 crew was selected for Aircrew of the Year for that...
15
16 Q. And I may have already asked you, but how long, total, were you at Scott Air Force
17 Base?
18 A. Almost 4 years.
19
20 Q. Toward the end of your time at Scott, did you make a career decision about getting
21 further training?
22 A. I'd decided to pursue a master's degree in physical therapy. My original intent
23 was to do that in the military. There were slots at the Army Belar program for Navy, Air
24 Force, as well as Army, for those who wanted to.
25
26 Q. So what did you do?
27 A. Those slots went away with the drawdown and it was recommended by the lead
28 physical therapist in the force to me to get out, pursue my degree, and come back into the Air
29 Force as a physical therapist.
30
31 Q. So did you change your status?
32 A. Yes, I did. I applied for school--I applied for school specifically within an
33 area that had--that I could get to at least McChord, if not a unit in California, to continue
34 being a flight nurse.
35
36 Q. And what happened?
37 A. I was accepted at Eastern Washington University and was--that's exactly where I
38 wanted to be, because I wanted to be at the 446th at McChord. I----
39
40 Q. How did you know anything about the 446th at McChord, at this point?
41 A. During one of our inspections, I had met Lieutenant Colonel Moore-Harbert and
42 talked with her quite a bit about the unit. And I had met other people in my career who had
43 flown at McChord and it was a very well-respected unit.
44
45 Q. Okay, so you applied for transfer to McChord?
46 A. Yes, sir. Through Lieutenant Colonel Moore-Harbert, who wanted me there.
47
48 Q. And you also applied for a transfer to reserve status. Isn't that right?
49 A. Yes.

1 Q. And were you accepted at a school that would give you a master degree in physical
2 therapy?
3 A. Eastern, yes.
4
5 Q. And where, physically, is Eastern located?
6 A. In Eastern, Washington, approximately 300 miles from McChord Air Force Base. It's
7 about a 6-hour drive.
8
9 Q. Okay. Do you recall the date of your transfer to reserve duty?
10 A. I left Active duty on 15 December '95, and effective 16 December I was a
11 reservist.
12
13 Q. And at that time, was it your intention for that change in status to reserve to be
14 permanent or not?
15 A. Not at that time, no.
16
17 Q. At that time, what was your intent?
18 A. My intent was to continue in the reserves during my master's program and then come
19 back on to active duty. That was my plan.
20
21 Q. Okay. So how many years did you attend Eastern Washington University?
22 A. Almost 3.
23
24 Q. Did you finish that master's program and obtain a master's?
25 A. Yes, I did.
26
27 Q. When did you graduate?
28 A. December 1998.
29
30 Q. And during those 3 years--roughly, 3 years, I take it--from '95 to '98, were you
31 continuously doing reserve duty at McChord?
32 A. Yes.
33
34 Q. And maybe it's obvious, but how would you continue to do reserve duty on one side
35 of the state, if you're taking master's courses on the other side of the state?
36 A. I would fly or drive over for my UTA weekends and try to arrange my annual tours
37 around my school schedule.
38
39 Q. When did you start living in Spokane?
40 A. From August of----
41
42 Q. '96?
43 A. That's when I started school, yes. I'm sorry.
44
45 Q. And have you lived there ever since?
46 A. Yes, I have.

1 Q. And I take it there are some very brief periods of times when you did not live
2 there?

3 A. With--yeah. With the exception of two rotations, probably, a couple of months
4 where I had to leave the area to complete rotations in hospitals outside of Spokane.
5

6 RC: Sir, there was an indication that 5:15 was the absolutely latest. I can keep
7 going, but now is a fairly logical stopping point.
8

9 LA: Okay. Then, Mr. President, with your consent, we'll--since we're already at 5
10 o'clock, we'll quit for the evening?
11

12 MBR[COL Childs:] Very well.
13

14 LA: Okay. Why don't you go ahead and resume your seats, and we'll figure out what we
15 want to do in terms of in the morning.
16

17 [The Respondent and Respondent's Counsel resumed their seats at Respondent's counsel's table.]
18

19 MBR[COL Childs:] I appreciate you working with the board's schedule.
20

21 LA: Have you discussed what time y'all would like to start in the morning?
22

23 MBR[COL Childs:] Do you have a--Government? Earlier, the better for us, but I know
24 it's--some of us may not be used to early mornings.
25

26 LA: I had kicked around with the--with the parties, 7:30. Is that--did you have in
27 mind something earlier than that? Is that early enough?
28

29 MBR[COL Childs:] 7:30 is acceptable.
30

31 LA: Okay.
32

33 Would that work for everybody?
34

35 REC: Yes, sir.
36

37 RC: Yes, sir.
38

39 LA: Is there anything that we need to address before we recess for the evening, either
40 with or without the board here?
41

42 REC: No, sir.
43

44 LA: Okay. Then I'll remind the board members that you should not discuss this case
45 among yourselves or with anyone else during the recess. And if there is nothing further, we'll
46 be in recess until 7:30 in the morning.
47

48 [The proceedings recessed at 1703, 28 September 2006.]

1 [The proceedings were called to order at 0742, 29 September 2006.]
2

3 LA: The hearing will come to order.
4

5 REC: All parties present when the board recessed yesterday are once again present. The
6 members are present. The Respondent is present.
7

8 LA: Mr. Lobsenz, you may continue.
9

10 RC: Thank you, sir.
11

12 [Major Margaret H. Witt, United States Air Force Reserve, continued unsworn statement:]
13

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

16 Q. When we left off yesterday, I think I had gotten to the point where you had
17 completed your master's program at Eastern Washington University. At that point, and--I got
18 past that. We'd gotten to the point where you were back on base, as I recall. So we're up to
19 about 2003; did your duty assignment change at that time?

20 A. I was deployed for an expeditionary mission for Operation Enduring Freedom and
21 Southern Watch.
22

23 Q. And where were you deployed to?

24 A. Seeb Air Force Base, Oman.
25

26 Q. And what did you do while you were at Seeb?

27 A. I was assigned to the expeditionary aeromedical evacuation squadron there.
28

29 Q. And that squadron was responsible for what?

30 A. Transport of sick, injured, wounded from throughout the Middle East to Germany.
31

32 Q. Okay, and did you fly transport flights during that duty?

33 A. I believe I flew 18 sorties.
34

35 Q. Did you happen to be injured while you were in Oman?

36 A. Yes, I was. I hurt my right knee.
37

38 Q. How did that happen?

39 A. I partially tore my cruciate ligament when I jumped off the back of a flatbed
40 truck.
41

42 Q. Did that put an end to your duty at Seeb?

43 A. I was scheduled to go back at the end of that month, so...

1 Q. So you did go back at the end of that month?
2 A. Yes, I went back to McChord at the--the 28th of February.
3
4 Q. Did you have surgery at that time?
5 A. I had surgery on the 31st of March of that year.
6
7 Q. And then what happened?
8 A. I remained in active status because I was undergoing rehabilitation for my knee
9 until July of that summer.
10
11 Q. And then at the end of the rehabilitation at the end of July you transferred back
12 to the reserve?
13 A. I was put back on reserve status.
14
15 Q. Then what kind of duty did you have at McChord?
16 A. What status--my usual reserve status plus additional mandays and active duty days
17 to pick up for a number of people that were still deployed and activated.
18
19 Q. Did you receive any special recommendation for your duty in the latter part of
20 2003?
21 A. I was selected as officer-of-the-quarter.
22
23 Q. Who selected you as officer-of-the-quarter?
24 A. My immediate supervisor and commander, Colonel Mary Walker.
25
26 Q. That would be the squadron commander?
27 A. Yes.
28 Q. So then you served for, roughly, another--slightly more than a year until you were
29 suspended?
30 A. Yes.
31
32 Q. Do you recall when that was?
33 A. November 4th of the next year.
34
35 Q. If you had not been suspended on November 4th, 2004, most likely where would you be
36 today?
37 A. Probably still activated with my unit or deployed, I'm sure.
38
39 Q. Your unit is deployed today, most of it?
40 A. Most of it.

1 Q. And they are mostly where?
2 A. Germany, Iraq, the Middle East, some stateside.
3
4 Q. And if you had not been suspended how many years of service would you have as of
5 today?
6 A. 19 years, 7 months.
7
8 Q. And if you had not been suspended, did you anticipate a promotion?
9 A. Lieutenant colonel, I probably would have pinned on Monday.
10
11 Q. Over the course of your career you've received a number of decorations. I'm not
12 going to ask you about all of them, but I will ask you about four--a couple of them. First,
13 have you received the Meritorious Service Medal?
14 A. Yes, sir.
15
16 Q. And can you tell the board what you received that for?
17 A. I received the Meritorious Service Medal when I left Scott from active duty in
18 1995 for my 4 years of service there and the number of positions I held and the different
19 responsibilities I had.
20
21 Q. Okay. And this may be totally clear from the paper exhibits that have been
22 submitted, but just in case it isn't, is there some problem with that showing up on your paper
23 records for a time?
24 A. Yes. Evidently, when I transferred from active duty to reserve status they lost
25 the award, and it's only on my 214, and it was never transferred to my reserve unit.
26
27 Q. But it is on your 214?
28 A. But it is on my DD 214.
29
30 Q. You received the Air Medal and the Aerial Achievement Medal, correct?
31 A. Yes, sir.
32
33 Q. When did you receive those medals?
34 A. I received the medals in 2003.
35
36 Q. And what was that in recognition of?
37 A. Of the number of--the number and type of missions that I flew during Operation
38 Enduring Freedom.
39
40 Q. You received a number of Air Force Commendation Medals?
41 A. Yes, sir. The last two were for that same deployment.

1 Q. And what was the other one?
2 A. The last two?
3
4 Q. No, the--I may be incorrect, but one, I thought, was for a duty you performed
5 while off duty on a commercial flight?
6 A. That was on my flight back from Bahrain--out of Bahrain. The flight attendant,
7 about an hour out, called that there was a medical emergency and was there anybody on board
8 that could help. So my sergeant and I jumped up and discovered that there was, approximately,
9 a 60-year-old man collapsed on the floor, and we had to render aid with what we had on the
10 aircraft, which wasn't much, and communicate with the pilot. And we decided to actually direct
11 back to Bahrain instead of going into Egypt, and he was off-loaded back in Bahrain. But----
12
13 Q. What was it?
14 A. --we weren't sure if was a cardio problem or neuralgic shock.
15
16 Q. Oh, I see. Were you able to stabilize his condition?
17 A. We were able to stabilize him until he was off-loaded there, yes.
18
19 Q. And how did he do, ultimately?
20 A. I actually was able to track him down a few months after that, and they're still
21 trying to figure out what's going on with him.
22
23 Q. Was there another Air Force Commendation Medal you received in connection with
24 medical care you rendered to a firefighter?
25 A. I just found out I received that one. That was--another nurse and I were off duty
26 on Seeb, and there was a fire in one of the trailers, and one of the firefighters got some sort
27 of PBC--some nitric liquid or something in his eyes. I don't know how. But we pulled him out
28 and just irrigated and irrigated and irrigated his eyes and got him to a hospital.
29
30 Q. Was his eyesight preserved?
31 A. I hope so.
32
33 Q. You said something about--to the effect of you only recently learned that you
34 received that---
35 A. Uh----
36
37 Q. --the Air Commendation Medal?
38 A. A senior master sergeant called me from the unit a couple of days ago and said
39 that they'd----
40
41 Q. So would I be right----
42 A. --sent that award to personnel.

1 Q. Would that particular decoration be reflected in your personal--personnel jacket
2 that was submitted in evidence?

3 A. Depending upon when it was last pulled up. I don't know if it's on there--on the
4 record or not. I can't answer that...

5
6 Q. I need to ask you some questions about November 4th, 2004; you're acquainted with--
7 you already testified, I think, that you're acquainted with Colonel Janette Moore-Harbert,
8 correct?

9 A. Yes, sir.

10
11 Q. And did you have contact with her on November 4th, 2004?

12 A. Yes, I did.

13
14 Q. And how did that come about?

15 A. Excuse me. [Emotional pause.]

16
17 Q. Take your time. This was at McChord Air Force Base, correct?

18 A. Yes, sir.

19
20 Q. And---

21 A. She came to my office and asked me to come to the commander's conference room with
22 her.

23
24 Q. Did you do that?

25 A. I told her I really didn't want to do that, and she said, "Come on, Margie," and
26 she put her arm around me and took me down the hall.

27
28 Q. And when you got to the commander's conference room was there anyone else there?

29 A. Yes, Major Vera Madison.

30
31 Q. Was your squadron commander there?

32 A. No, sir.

33
34 Q. What happened in the conference room?

35 A. Colonel Moore-Harbert said that she was asked--she said that Colonel Walker wasn't
36 there that day--thank you very much--[accepted tissue from the Assistant Respondent's Counsel]-
37 -Colonel Walker wasn't there that day. She would probably be in--I think it was a Thursday,
38 and she said she'd probably be in Friday morning, and that she had called her the night before
39 and had told her that she had to let me know that she would be sending me a letter. Colonel
40 Walker would be sending me a letter in the next couple of days telling me that I was no longer
41 able to drill or able to perform any duty and that I was being suspended of points and pay, and
42 she said I needed to gather my things and leave.

1 Q. Did Colonel Moore-Harbert have any personal remarks for you at that time of her
2 own?

3 A. She kept saying, "I'm so sorry. This is the hardest thing that I've ever had to
4 do in my career." And she said, "I'm sorry, Margie, my hands are tied."
5

6 Q. And Major--you said Major Madison was present at this time?
7 A. Yes.
8

9 Q. And how did--she participate in any way in the conversation?
10 A. She just kept saying she was just disgusted and she--she couldn't believe it, and
11 she just wanted to take the uniform off.
12

13 Q. And when Colonel Moore-Harbert said "our hands are tied," who did you understand
14 "our" to be?
15 A. The first thing I thought was she and Colonel Walker, but the unit.
16

17 Q. Did she explain that remark herself?
18 A. No, she did not.
19

20 Q. I want to ask you some questions about the manpower needs of the Air Force at the
21 current time. Did you make any effort to determine the current manpower needs of the Air Force
22 for flight nurses?
23 A. When I was able to check out the MPF, I would pull up how many positions were
24 available. I thought it was interesting that the number of nurse slots kept increasing and--
25 because I kept hearing about people coming back and leaving--leaving the reserves and getting
26 out. And so I'd check them every now and then, and sure enough the last time I checked there
27 was, like, over 120 just major slots for flight nurses.
28

29 Q. For flight nurse. And when, roughly, was the last time you checked?
30 A. I think it was April.
31

32 Q. And if you recall, how many flight nurse vacancies are there in your unit, the
33 446th?
34 A. What I understand is that they are currently in a recruiting process for 10 more
35 crews, so that would be twenty more nurses for the unit.
36

37 Q. Now, Major Witt, why are you fighting this discharge?
38 A. I want to keep the job that I have had. I love--I love what I do. I love the Air
39 Force. It's----
40

41 Q. It's what?
42 A. It's who I am. It's been what I've done for almost half my life. It's what I've
43 trained for--particularly now. I feel like I've trained for all this time and now is when I
44 feel like I'm really needed. I have a purpose. I have a point. And I'm not able to help--

1 help those airmen, those soldiers, those marines that--that's what I was here to do. That's my
2 purpose.

3
4 Q. If you were allowed to remain in the Air Force, would you stay until--just until
5 you reached your 20?

6 A. At least until I reached my 20--I mean, maybe, 30. I don't know--yeah, I can't
7 imagine leaving any time soon, and that's what so hard. That's what--it's like taking away a
8 part of me to think about losing my career at this point.

9
10 Q. Do you have a feeling as to how your unit would react if you were allowed to
11 return?

12 A. Well, I know--I know that I was asked to come back for one of my sergeants'
13 retirement next weekend. And I was able to tell a few people that, and they said that they
14 were going to start calling people. They were pretty excited, and that made me feel good.

15
16 Q. Major Witt, is there anything else you'd like this board to know?

17 A. I would just like the chance to continue to do, to continue to serve, and continue
18 to do the job that I've been trained to do. Please continue to let me stay.

19
20 Q. One last question, if you were permitted to remain in the Air Force, can you give
21 this board any reassurances that you would not use the--that you would not draw any attention
22 to yourself or----

23 A. Hah.

24
25 Q. Not make any comments about your orientation and----

26 A. I didn't----

27
28 Q. --simply return to the quiet performance of your duties that----

29 A. I didn't before. That's not really the type of person I am, and I wouldn't now.
30 I would just do my job.

31
32 RC: Thank you, sir.

33
34 LA: You can take your seats.

35
36 [The Respondent and Respondent's Counsel resumed their seats at Respondent's counsel's table.]
37

38 LA: Members of the board, we need to take a recess to see if we can locate a witness.
39 If you'd just excuse yourselves, and we'll let you know as soon as we think we can proceed. As
40 I've also told you, we're going to have to break probably between 8:30 and 8:45 for 30 minutes
41 or so to give them this room, if that's all right, sir.

42
43 MBR[COL Childs:] Okay.

44
45 LA: But we'll be right back with you and let you know where we stand.

1 [The proceedings recessed at 0800, 29 September 2006.]
2

3 [The out-of-board hearing was called to order at 0815, 29 September 2006.]
4

5 LA: The hearing will come to order.
6

7 REC: All parties present when the board recessed are once again present. The members
8 are absent. The Respondent is present.
9

10 LA: Y'all talked about this?
11

12 RC: Yes, sir. I have presented you with an offer of proof regarding a witness,
13 Colonel Janette Moore-Harbert. I want the record--I'm offering it because I want the record to
14 reflect our efforts to obtain the testimony of Colonel Moore-Harbert, and our reasons for doing
15 so, and our reasons for believing that her testimony would be helpful. I suppose most,
16 specifically--you can see from my offer of proof I attached the email exchange that I had with
17 her on March 14th of this year. March 14th would have been just about 6 days, I think--or, 8
18 days after Major Witt received her letter of notification from Warner Robins, I had a telephone
19 conversation with her. During that conversation, she did assure me that in her opinion
20 separation of Major Witt would not be in the best interest of the Air Force. She said she
21 thought she could help me, she thought she could testify, and she would get back to me. She
22 had to check with somebody. You can see from her email response that she says, "Thank you.
23 I'll be getting back with you soon." She did not get back with me soon. I don't know who she
24 checked with. About a month went by and she had not gotten back to me. I did call her. I had
25 a number of phone numbers for her. I was able to reach her at that time, and she just would
26 say, "I'm sorry, but I cannot participate." That's all she could say.
27

28 LA: Is this something you're offering to go before the board?
29

30 RC: Both. I'm offering it--I would like it to go to the board. I think it is
31 somewhat of the same nature as the documentary exhibits submitted by the Government, where they
32 have their investigator, Colonel Torem--has submitted his report. In that sense, I was
33 functioning here as an investigator and--it's hearsay, but so is the Government's entire case.
34

35 LA: Do you have a response?
36

37 REC: Yes, sir, several responses. First of all, the Government would have no problem
38 with the email coming in as a Respondent's Counsel exhibit. And the Government would object to
39 any of this document coming in as a Board Exhibit. It's offered by one party's side, and a
40 board exhibit----
41

42 LA: That one I can solve. I think if it comes in it's as a respondent's exhibit, it's
43 something the Respondent is offering for the board's consideration. So that one, you've won
44 that one.
45

46 REC: Fine.
47

48 LA: Now what about the exhibit?

1 REC: Now about the exhibit; once again, no problem with the email, several problems
2 with the offer of proof. First all, in--before we get to the numbered paragraphs, I thought we
3 resolved on the record yesterday whether the Respondent wanted Colonel Moore-Harbert made
4 available in person--however, it starts off saying, "In support of her request that the colonel
5 be made available in person or to testify over the phone." One we resolved on the record
6 whether Respondent wanted the colonel brought here in person. Secondly, as far as the colonel
7 being made able to testify, if need be, Captain Catron and myself have been in dialogues over
8 the phone and had a verbal conversation over at the base gym on Monday afternoon as to whether
9 Respondent's counsel wanted the colonel made available, so I have a problem with this
10 supercilious language in support of her ongoing request that the colonel be made available.
11

12 RC: Can I solve that by saying, I--I didn't really think about that, but I'd be happy
13 to remove the--what you have identified as the "supercilious language." And that--I fully
14 recognized that we have--that you made a good faith attempt to help me get a hold of her. So
15 that's not important to me.
16

17 ARC: I'd just like to clarify any conversations we had. There is a difference between
18 being made available and being made present here. I don't believe the conversation Major Davis
19 and I had early this week had anything to do with being made available. It had to----
20

21 LA: Well----

22
23 ARC: --do with being made present, and we don't contest that we did, yesterday, talk
24 about that and we said that's fine, we're not moving with our request to be--have her made
25 available here in person. But we've never discussed----
26

27 LA: I don't understand this to be a request for--essentially, a request either for her
28 presence telephonically or in person. I understand this to be offered, essentially, as an
29 explanation for why she's not testifying. Is that correct?
30

31 RC: Yes, sir.
32

33 REC: Right. Now moving to the substantive parts; the Government can allow some of this
34 to come in about the attempts on the Respondent's counsel's part. The contact, however, there
35 is some language here, some paragraphs that the Government would object to. First, the
36 Government would object to paragraph 10. Paragraph 10 states what the Respondent herself
37 believes a certain conversation to be. That is not related to Respondent's counsel's attempts
38 to obtain this witness.
39

40 LA: Okay.

41 REC: Then the other paragraphs that the Government would object to are 2 and 3, because
42 they are substantive in what the colonel told Respondent's counsel. They are not related to
43 the Respondent's counsel's attempts to obtain this witness. Now with the exception of
44 paragraphs 10, 2, 3, and the introductory language talking about in support of continuing
45 requests, Government would allow this to come in as a Respondent's exhibit. The Government
46 believes that things here could be mentioned in the argument, also, by Respondent's counsel.
47

48 RC: I guess----

1 LA: Hold on a minute.

2
3 Okay. I'm sorry, Mr. Lobsenz, you had something to say?

4
5 RC: Well, I guess I realize that there's some substantive things in here, but there
6 are substantive things in Colonel Torem's report, too. So that's not what I'm really
7 understanding.

8
9 LA: Okay. Number one, with respect to paragraph 10--well, let me ask, you don't have
10 an objection to the attached email. Is that correct?

11
12 REC: No, sir.

13
14 LA: Okay. With respect to paragraph 10, in my opinion, that is, in essence, an
15 unsworn statement submitted by the Respondent, which I think she has a right to do. I mean,
16 basically, the rule says she can do it any way she wants to. Now arguably, I suppose you could
17 make an argument, which, maybe, it ought to be separate from here, but it's a matter of, I
18 think, efficiency. I'm not going to require that.

19
20 With respect to paragraphs 2 and 3, as I read the rules, the rules are extremely relaxed
21 in terms of what the Respondent can offer. And I don't--I tend to buy, technically, your
22 argument, but I think under the rules the Respondent can probably get away with it and I'm
23 going to allow that.

24
25 Now I do--if this is going before the board, I think it's a respondent's exhibit. Does
26 that affect your decision to offer it?

27
28 RC: No, sir. I'm afraid I really didn't understand until just a moment ago the
29 difference between labeling a respondent's exhibit and labeling a board exhibit.

30
31 LA: Now with respect to the introductory language, I think Major Davis makes a point
32 to avoid any confusion, and frankly, so that it's clear on the record that this not a request
33 for the presence of the witness, I think that language ought to be redrafted into something--in
34 essence, I guess, what this really is is an offer of proof of your efforts to have her present
35 or to have her--well, to have her testimony. And if we could redraft that to be a little more--
36 a little less like a request for her presence, my understanding is that would satisfy the
37 Government, and I would feel more comfortable with it.

38
39 Anything with respect to this? And I guess, at this point, we're not going to get
40 anywhere near--so if you want to work on that during the break.

41
42 ARC: So we have it marked as Respondent's 22, and then we offer it at this time
43 contingent upon redacting or changing that language.

44
45 LA: Let's just--instead of offering this, let's just change it and we'll make that one
46 what 22.

47
48 RC: All right. I have one other--I'm probably going to give it the wrong name. I
49 don't think of it as an exhibit to go to the board, but I ask----

1 LA: If it's not, then it probably will be a board exhibit.
2

3 RC: Okay. But I have a legal memorandum regarding our position regarding the
4 initiation of the fact-finding inquiry in this case, which we believe was illegal. We alluded
5 to that in opening statement.
6

7 LA: But this is not something you're offering before the board?
8

9 RC: No, I'm not.
10

11 ARC: We are offering that it be marked as a board exhibit and not a respondent's
12 exhibit.
13

14 RC: I just want that in the record for--in the event that they do decide to discharge
15 then it will be there for a legal review later.
16

17 LA: Okay. All right, I'm going to make--I know we have not actually offered Boards
18 Exhibits II and III, but to keep from confusing anybody, we're going to make this Board Exhibit
19 IV. II and III will be the final written instructions--II, is normally the final written
20 instructions; III, is normally the findings and recommendations worksheet. I'm comfortable
21 though they haven't been offered that they will be in some form, so let's make this Board
22 Exhibit IV.
23

24 RC: Before closing arguments begin will you read the board your instruction regarding
25 the protective nature of filing a lawsuit?
26

27 LA: My inclination, since that is part of the written instructions, is to simply--and
28 they're given in the written instructions just to make it a part of that, and I know that
29 Captain Catron had asked that it be read. I see--were you waving at me?
30

31 [Reporter gave a negative response.]
32

33 LA: Okay. I think it's an instruction that needs to be given, but I don't see any
34 particular justification for emphasizing it over the other instructions they receive. It was
35 simply that it would be a part of the written instructions.
36

37 Do you have any objection to this as a board exhibit?
38

39 REC: Yes, sir. Because, you know, it's unfortunate--one, was just given notice of
40 this. In Section IV, paragraph 1, it states that "It is undisputed that the fact-finding
41 hearing was not initiated." It is not undisputed at this time.
42

43 LA: But this is a brief--I mean this is an argument, obviously, for the purpose of the
44 commander. It's not going before the board.
45

46 REC: Understood, sir. But the reason that Respondent's counsel is offering it is for
47 finder--for reviewers, whether it be JAA, the Board for the Correction of Military Records,
48 convening authority, whatever, to look at this. That is the expressed only reason that
49 Respondent's counsel is offering this. And in this they make allegations that some facts are
undisputed. It's not just legal arguments here.

1 LA: Well, I--okay. I understand that. I see this, frankly, as sort of the defense--
2 or, Respondent--corollary to the sort of legal review that this office will--this may not be
3 the exact form. I mean, maybe, the same thing can be done, essentially, by filing this after
4 whatever the board proceeding is. But I'm not--I'm not prepared to pick apart, internally,
5 whether his argument is entirely accurate--thinking more comprehensively, given the particular
6 problem with us simply treating this brief as a board exhibit, so it's in the record and it can
7 go.

8
9 REC: And understood, sir. And the Government understands your position. Respectfully,
10 though, for purposes of the record, the Government at this time does not say that it does not
11 dispute the facts that are contained in Board Exhibit IV.

12
13 LA: I've got no problem with that. All right, I'm going to admit that as Board
14 Exhibit IV. It is not to go in front of the board members.

15
16 Anything else from either side?

17
18 REC: No, sir.

19
20 RC: No.

21
22 LA: Then I have a couple of things, and one of them is--and I don't need answers to
23 both of these at this point, but I at least want the parties thinking about it. One is, from
24 looking at 36-3209 and particularly Attachment 11, it certainly appears that there may be an
25 issue as to whether the--whatever the command--the 4th Air Force Commander, whoever, that
26 authorized the homosexual inquiry had the authority to do so. And I can conceive the board
27 having issues with respect to what effect, if any, that might have on their findings and
28 recommendations. I think my immediate reaction as to whether or not it was done properly is
29 not a matter for the board. The board is simply concerned with "X," findings and
30 recommendations, and once the evidence is in front of them, how it got to them is an issue for
31 somebody else, not the board. But in the event that we have that issue come up, I would
32 appreciate it if the parties would be thinking about their position, because I'm not sure what
33 mine is.

34
35 The second one is, I can anticipate the possibility of this board returning findings
36 that--that the homosexual acts or statement occurred and nevertheless recommending retention--I
37 mean, obviously, that's the direction Respondent is going in terms of argument. And I have--
38 and my question is, if we get to that, is that--can they do that? Can they make a finding "X"
39 happened, but we recommend retention--I mean under the instructions, I understand that if there
40 is a finding, then discharge is, in essence, automatic. But my question is whether that is,
41 nevertheless--whether the board, nevertheless, has the authority to say, "This is what we're
42 finding, and you can't tell us that that's an irregularity"--well, I'm not even sure I know how
43 to express the question. But I think you've figured out where I'm going, and I would be
44 interested in, at some point, the parties' positions on what I can and cannot instruct the
45 board with respect to that, because I'm not sure what the answer is. So----

46
47 RC: Do you want that position now or----

48
49 LA: No. And in part, because I think we're about to--I want to get the board back in
50 here and make sure we break in plenty of time for the promotion ceremony. That's something we

1 can talk about even after the board recesses to begin deliberation, because I don't think I
2 need to know any of that ahead of time. But I can see the positions coming up and we ought to
3 be thinking about it.

4
5 Anything else we need to talk about?

6
7 REC: Has Respondent's case--has it closed at this point?

8
9 LA: Are you about to rest?

10
11 ARC: Yes, about to. But we can't rest until----

12
13 LA: Okay, if there isn't anything else we'll bring the board in. My thought is, we'll
14 let them rest--you do not have rebuttal?

15
16 REC: No, sir.

17
18 LA: Okay. And then we'll just go ahead and recess until about 9:15.

19
20 AREC: We still need to get one exhibit to the board before they rest, sir.

21
22 LA: Yes.

23
24 RC: If it helps, I can say we rest subject to offering one final respondent exhibit.
25 Does that make sense?

26
27 AREC: I think, if they can go get it--if they can correct it right now, we can get it
28 in, and rest, and be done.

29
30 LA: Let's do that, and then we'll--I'll let the board know.

31
32 REC: Also, sir, for the board--not to be a pain about things--if we can reconvene,
33 like, 9:25? Because I think 9:15 will catch us right in the middle of things. We would want
34 to----

35
36 LA: Major Hankins said it's a 5-minute affair.

37
38 REC: I think 9:25 would be more realistic, sir.

39
40 LA: Okay. Y'all get that done right quick.

41
42 [The out-of-board hearing recessed at 0833, 29 September 2006.]

1 [The out-of-board hearing was called to order at 0845, 29 September 2006.]
2

3 LA: This hearing will come to order.
4

5 REC: All parties present when the board last recessed are once again present. The
6 members are absent. The Respondent is present.
7

8 LA: Are you prepared to offer 22?
9

10 RC: Yes.
11

12 LA: Any objection?
13

14 REC: No, sir.
15

16 LA: Okay. 22 will be admitted. Anything else we need to address before we bring the
17 board in?
18

19 RC: No, sir.
20

21 ARC: We just ask to publish, once we reconvene, if we can publish it before recess?
22

23 LA: Yes.
24

25 [The out-of-board hearing terminated at 0846, 29 September 2006.]
26

27 [The proceedings were called to order at 0846, 29 September 2006.]
28

29 LA: The hearing will come to order.
30

31 REC: All parties present when the board last recessed are once again present. The
32 members are present. The Respondent is present.
33

34 LA: Mr. Lobsenz, you may proceed.
35

36 RC: The Respondent would offer Exhibit 22.
37

38 LA: Okay. If you want to publish that to the board, you may.
39

40 [The Respondent's Counsel published Respondent Exhibit 22 to the members.]
41

42 RC: With that, the Respondent has no further evidence and we rest.
43

44 LA: Does the Government have any rebuttal?
45

46 REC: No, sir.
47

48 LA: Are there any witnesses that the board desires to be called or any evidence that
49 the board is seeking?

1 MBR[COL Childs:] Not at this time, no.
2
3 LA: That's a negative response from all members.
4
5 Then, members of the board, what would happen--what will happen next is the parties will
6 make closing argument. I will provide you some final written instructions, and then you'll
7 close for deliberations. My proposal, Mr. President, is that we recess until the--so they can
8 do their promotion ceremony. I'm told, probably, it'll be 9:20 or 9:25 before we can get the
9 room back--if that's satisfactory?
10
11 MBR[COL Childs:] We'll reconvene at 9:30.
12
13 LA: That'll be fine.
14
15 Anything else we need to address?
16
17 REC: No, sir.
18
19 RC: No.
20
21 LA: Then the board will be in recess.
22
23 [The proceedings recessed at 0848, 29 September 2006.]
24
25 [The out-of-board hearing was called to order at 0936, 29 September 2006.]
26
27 LA: The hearing will come to order.
28
29 REC: All parties present when the board last recessed are once again present. The
30 members are absent. The Respondent is present.
31
32 LA: I've been provided with a copy of Board Exhibit II, which is the final
33 instructions, and Board Exhibit III, which is the findings and recommendations worksheet.
34
35 Respondent, have you had an opportunity to review those?
36
37 RC: I have not. But the findings and recommendations worksheet, Major Davis, hasn't
38 changed since the one that I took downstairs, correct?
39
40 REC: No.
41
42 RC: So I have reviewed it.
43
44 LA: Okay.
45
46 ARC: Quick blurb on the service characterization there. It says in here about the
47 Respondent's current enlistment.
48 LA: Do you want to give me a page?
49
50 ARC: Page 2, bottom.

1 LA: Okay. And I just--well, I just don't want--I think the findings and
2 recommendations worksheet is pretty consistent and on point.
3

4 AREC: But she does have prior service.
5

6 REC: She does have prior service.
7

8 AREC: Where she was issued a DD 214.
9

10 ARC: I think my biggest concern is it identifies the three types of service
11 characterization, but not identifying for homosexual conduct cases. The more controlling
12 language of the AFI says, you know, "Will be honorable, unless certain things are met." I----
13

14 REC: But there is a reference there to that paragraph.
15

16 ARC: Well----
17

18 REC: It says governed by both Attachments 2 and----
19

20 ARC: And I know, in the past, we've kept out--well, we've kept out language that floats
21 either way, and we merely kept in the identifying language of "your service characterization
22 will be controlled by X, Y, and Z." And I think in this case it makes sense to say your
23 service characterization will be controlled by whatever the provision is on homosexual conduct
24 or statements.
25

26 LA: I'm not sure I understand.
27

28 [The Respondent's counsel conferred.]
29

30 ARC: I withdraw the objections.
31

32 LA: Okay. Then no objection to either II or III?
33

34 RC: No, sir.
35

36 LA: All right, Board Exhibits II and III are admitted.
37

38 Anything else we need to address before the board members come in?
39

40 RC: No, sir.
41

42 LA: Both sides ready to argue?
43

44 REC: Yes, sir.
45

46 RC: Ready, sir.
47

48 LA: All right. Would you mind getting them, Major Davis?
49

50 REC: No, sir.

1 [The out-of-board hearing terminated at 0939, 29 September 2006.]
2

3 [The proceedings were called to order at 0939, 29 September 2006.]
4

5 LA: The hearing will come to order.
6

7 REC: All parties present when the board last recessed are once again present. The
8 members are present. The Respondent is present.
9

10 LA: Major Davis, you may argue.
11

12 REC: Yes, sir.
13

14 Members, by this time, you've received all the evidence in the case that you're going to
15 receive. At this point, whatever I say, what Respondent's counsel say, is just argument. It's
16 just meant as a way to kind of help you--guide your way through the different types of
17 evidence, and maybe make some comments on it. But anything at this point that the attorneys
18 say, it's not evidence, it's just argument. You already have all the facts that you're going
19 to receive in the case.
20

21 Throughout the week, I was always wondering, really, how I would, you know, give an
22 argument in this case. Because, unfortunately, really, what's at heart is discrimination--I
23 mean there is discrimination present in this case. And there is something about the word
24 "discrimination." It doesn't sound nice. It goes against our instincts as Americans, based on
25 equality. It goes against a little bit of the history of the service, being meritocracy where
26 people rise according to their merits. So discrimination, at first blush, seems something bad,
27 something wrong.
28

29 But the thing is, members, we discriminate all the time. What's really at stake is
30 whether something is unjust discrimination, whether it's illegal discrimination. Because we
31 discriminate all the time; we tell our kids, "Don't take candy from strangers," "Don't get in a
32 stranger's van"--I mean that's discrimination. When we're parked on the side of the road, if
33 we see a person in normal dress approach our car, we're going to get nervous. We're definitely
34 not going to roll down the window and see what they want. But if a police officer in police
35 uniform approaches our vehicle, you know, we will roll down the window. We will see what that
36 officer wants. We don't know, in that sense, who's a good person, who's a bad person. We're
37 just going by the facts that we have at the time, and that's discrimination.
38

39 In the military, there is always discrimination. The key point is, is it unjust
40 discrimination? Is it illogical discrimination? I mean the types of discrimination that occur
41 in the military for valid military purposes:
42

43 First of all, of course, a person has to be able to serve. They have to be fit--I mean
44 in the civilian sector, people who are blind, people who have hearing problems, people who are
45 missing limbs, who can't walk, a lot of civilian jobs have to be governed by the American with
46 Disabilities Act. Not so in the military--I mean a person who can't walk really can't go on a
47 deployment. Now does that mean that that person is bad, that that person is immoral, that
48 there is something wrong with that person? No. It's just based on military need. You can't
49 have that type of person in the service. Same thing--you know, Air Force fitness program. I
50 mean, if a person tries and they're not meeting the standards, does that mean that the person