

**COURT REPORTER'S CHRONOLOGY**

**in the case of**

***UNITED STATES***

**v.**

***LIEUTENANT COLONEL JAMES H. WILKERSON***

Arraignment/Motions.....26 Oct 12  
Weekend ..... 27-28 Oct 12  
Case-in-chief..... 29-31 Oct & 1-3 Nov 12  
Transcription of *US v. Williams*..... 5-10 Nov 12  
Weekend (Sunday)..... 11 Nov 12  
Federal Holiday..... 12 Nov 12  
Counsel Review of *US v. Williams* Completed/MJ Authentication ..... 13 Nov 12  
Forwarded *US v. Williams* Electronically to Incirlik Base Legal Office for Assembly ... 14 Nov 12  
Transcription Began\* ..... 15 Nov 12  
Arraignment/Motions Hearing – *US v. Henne*..... 20 Nov 12  
Transcription Completed ..... 4 Dec 12  
ATC Review Completed..... 7 Dec 12  
Authentication by Military Judge ..... 10 Dec 12  
ROT Assembled..... 11 Dec 12

(b)(6)

DONALD U. LUCAS  
Court Reporter

\*Transcript forwarded to ATC daily; after ATC review, transcript forwarded to ADC. After ADC was given an opportunity to review the unauthenticated transcript, the transcript was forwarded to the MJ for his review/authentication.

**ATTESTATION OF TRANSCRIPT**

**in the case of**

***UNITED STATES***

**v.**

***LIEUTENANT COLONEL JAMES H. WILKERSON***

I hereby attest and affirm that I have reviewed the transcript of this record in its entirety and that it is an accurate reflection of the proceeding of the court.

(b)(6)

\_\_\_\_\_  
DONALD U. LUCAS  
Court Reporter

11 Dec 12  
DATE

**REQUEST FOR APPELLATE DEFENSE COUNSEL**

DATE  
20121103

**PRIVACY ACT STATEMENT**

**AUTHORITY:** 10 USC 8013, 10 USC 966 and 870, E.O. 11476 and 9397.

**PRINCIPAL PURPOSE(S):** To provide information relating to appointment of appellate defense counsel. To authorize appellate defense counsel to enter into an attorney-client relationship with the accused. To document an accused's election concerning appointment of appellate defense counsel.

**ROUTINE USE(S):** None.

**DISCLOSURE:** Disclosure is voluntary, however, failure to provide the information may adversely affect the pursuit of the accused's appeal.

TO:  
**THE JUDGE ADVOCATE GENERAL  
HEADQUARTERS USAF  
WASHINGTON, DC 20330-5120.**

NAME OF ACCUSED (Last, first and middle initial)

WILKERSON, JAMES H.

GRADE

O-5

(b)(6); (b)(7)(C)

ORGANIZATION AND STATION  
31ST OPERATIONS GROUP  
AVIANO AIR BASE, ITALY

I have been advised by my defense counsel of my appellate rights under Article 70, Uniform Code of Military Justice (UCMJ) and RCM 1202, Manual for Courts-Martial, United States, 1996. I am entitled to request that appellate defense counsel represent me before the Air Force Court of Criminal Appeals if the record of my trial is referred to that court under Article 66 or Article 69, UCMJ. I also understand that I am entitled to retain civilian counsel at no expense to the government, to represent me before the court.

Read the statements that follow and place an "X" in the box next to your response. Check one only.

I REQUEST APPELLATE DEFENSE COUNSEL TO REPRESENT ME before the Air Force Court of Criminal Appeals (if my case is referred to it) and to urge in my behalf all efforts or other matters which appellate counsel may discover from the record of trial and accompanying papers.

The name and address of civilian counsel (if any) provided by me to represent me before the court is:

FRANK J. SPINNER, P.O. Box 38463  
Colorado Springs, CO 80937

I will provide the name and address of civilian counsel on the following date:

(Must be within ten days of the date of this Request.)

Please send future correspondence concerning this case to the address below:

(b)(6)

TELEPHONE NUMBER (Optional)

AFLDA/JAG/A, 1500 W. Perimeter Rd., Ste 1100, Joint Base

I realize it is my responsibility to provide my appellate defense counsel (AFLSA/JAG/A, 112 Luke Avenue, Suite 343, Bolling  
AFB DC 20332-8060, (1-800) 414-8847, (202) 767-4662 or DSN 247-4662) with any changes to this address.

Andrews NAF - Washington, MD 20762

If and when appropriate, I request my appellate defense counsel to advise me as to whether, in his opinion, there are meritorious grounds for petitioning the U.S. Court of Appeals for the Armed Forces for a grant of review and, if appropriate, further petition to the Supreme Court, and to render me all assistance necessary should I decide to petition.

I DO NOT REQUEST APPELLATE DEFENSE COUNSEL TO REPRESENT ME.

SIG (b)(6)

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS THIRD AIR FORCE (USAF)  
APO AE 09094-3270

General Court-Martial Order  
No. 10

26 February 2013

LIEUTENANT COLONEL JAMES H. WILKERSON III, (b)(6) United States Air Force, 31st Operations Group, was arraigned at Aviano Air Base, Italy, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 120. Plea: NG. Finding: G.

Specification 1: Did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, engage in sexual contact with Ms. (b)(6) to wit: fondling her breast with his hands, doing so when Ms. (b)(6) was substantially incapable of appraising the nature of the sexual contact. Plea: NG. Finding: G.

Specification 2: Did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, engage in a sexual act with Ms. (b)(6) to wit: digital penetration of her vagina, doing so when Ms. (b)(6) was substantially incapable of appraising the nature of the sexual act. Plea: NG. Finding: G.

CHARGE II: Article 133. Plea: NG. Finding: G.

Specification 1: A married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully enter a bed occupied by Ms. (b)(6) a woman not his wife, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman. Plea: NG. Finding: G.

Specification 2: A married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully engage in sexual contact with Ms. (b)(6) a woman not his wife, to wit: fondling her breasts with his hands, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman. Plea: NG. Finding: G.

Specification 3: A married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully engage in a sexual act with Ms. Ms.(b)(6) a woman not his wife, to wit: digital penetration of her vagina, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman. Plea: NG. Finding: G.

SENTENCE

Sentence adjudged by officer members on 3 November 2012: Dismissal and confinement for 1 year.

ACTION

In the case of LIEUTENANT COLONEL JAMES H. WILKERSON III, (b)(6), United States Air Force, 31st Operations Group, Aviano Air Base, Italy, the findings of guilty and the sentence are disapproved. The charges are dismissed.

/s/Craig A. Franklin  
CRAIG A. FRANKLIN  
Lieutenant General, USAF  
Commander

FOR THE COMMANDER

(b)(6)

JOSEPH P. BIALKE, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION:

- 1 – Lieutenant Colonel James H. Wilkerson (ACC), NAVCONBRIG Charleston, Det 2, HQ AFSFC/CCQ, 1050 Remount Rd Bldg 3107, Charleston SC 29406-3515
- 1 – Col Jefferson Brown (MJ), Unit 5210 Box 170, APO AE 09461-0170
- 1 – Colonel Don M. Christensen (STC), AFLOA/JAJG, 1500 W. Perimeter Rd, Ste 1190, JB

Andrews NAF Washington MD 20762

- 1 – Capt Benjamin A. Beliles (STC), AFLOA/JAJG, Unit 3270 APO AE 09094-3270
- 1 – Capt Vy S. Nguyen (ATC), 31 FW/JA, Unit 6140 Box 115, APO AE 09604-0115
- 1 – Mr. Frank Spinner (DC), Attorney at Law, P.O. Box 38463, Colorado Springs CO 80937
- 1 – Capt Jeff Martin (ADC), 343 Thornall St, Edison NJ 08837
- 1 – Major Pilar G. Wennrich (SDC), 9 AF/JA, 524 Shaw Drive, Shaw AFB SC 29152-5029
- 1 – 3 AF/CC, Unit 3050, Box 120, APO AE 09094-0100
- 1 – 31 OG/CC, Unit 6170 Box 310, APO AE 09604
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- 1 – 31 FW/JA, Unit 6140, Box 115, APO AE 09604-0115
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- 1 – 31 CPTS/FMFM, Unit 6142 Box 145, APO AE 09604-0145
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- 1 – Professor Law (MADN-LAW) United States Military Academy, Official Mail & Distribution Ctr, 646 Swift Rd, West Point NY 10996-1905
- 1 – Professor of Law, U.S. Coast Guard Academy, 15 Mohegan Ave, New London CT 06320-4195
- 1 – Holm Center/CRDP, Attn: Curriculum Manager 1, 551 East Maxwell Blvd, Maxwell AFB AL 36112-6106
- 1 – AFPC/DPSOS, 550 C St West, Ste 3, Randolph AFB TX 78150-4713
- 1 – USAFE/A1, Unit 3050 Box 25, APO AE 09094-5025

\*Recipients of unexpurgated CMO

# RECORD OF TRIAL

of

**WILKERSON, JAMES H.**

Exemption 6

**LIEUTENANT COLONEL**

(Name: Last, First, Middle Initial)

SSN

(Rank or Grade)

**31<sup>ST</sup> OPERATIONS  
GROUP (USAFE)**

**U.S. AIR FORCE**

**AVIANO, AIR BASE,  
ITALY**

(Organization)

(Branch of Service)

(Station or Ship)

## GENERAL COURT-MARTIAL

Convened by THE COMMANDER

(Title of Convening Authority)

HEADQUARTERS THIRD AIR FORCE (USAFE)

(Command of Convening Authority)

Tried at

AVIANO AIR BASE, ITALY

(Place of Trial)

on 26, 29-31 OCTOBER, 1-3 NOVEMBER 2012

(Dates of Trial)

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**WITNESS TESTIMONY**

**in the case of**

*United States v. Lieutenant Colonel James H. Wilkerson*

*Direct/Redirect      Cross/Recross      Court*

**Name of Witness**

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**DEFENSE**

**DR. FRANK,**

Rex Allen

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Re. Prosecution Motion Objecting to Testimony For Character For Truthfulness of Ms. Exemption 6

**Exemption 6**

**DEFENSE**

**BRIG GEN MILLIGAN,**

Pamela K.

545-549

549-555

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555-557

Re. Defense Motion to Take Testimony of Witness for Later Use Should Character for Truthfulness Become an Issue

**DEFENSE**

**DR. EDRINGTON,**

David

513

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Re. Defense Objection to Foundation for Lack of Good Military Character Witness.

**PROSECUTION**

**TSGT SPEED,**

Jameon D.

860-864

864

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<b>DR. EDRINGTON,</b> David	501-504	-----	-----
<b>COL (R) HARVEY,</b> Robert	520-521 523	522	-----
<b>LT COL WILLINGHAM,</b> Paul	524-526 527-529	527 529	-----
<b>COL WALKER,</b> David	530-533 537-538 540	533-537 539-540 540-541	-----
<b>MRS. PONE,</b> Cheryl E.	571-574	-----	904 (Stip)
<b>MAJ GOLDSBERRY,</b> Gerremy	576-587 594-595	588-594 595-596 610	597-599 607-609
<b>MS. BERRONG,</b> Suzanne	612-618 622-626	626-627	628 904 (Stip)
<b>DR. TAYLOR,</b> Eugene Howard	630-637	637-638	639-640 904 (Stip)

**Witness Testimony (Continued)**

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<b>DR. FRANK,</b> Rex Allen	642-651 656-657	651-656 658 661-662	659-661
<b>MRS. WILKERSON,</b> Beth	664-675 680-737 769-772 780 918-919	738-767 773	774-778 920
<b>MRS. OZGUL,</b> Emily Ann	787-790 797-798	-----	-----
<b>MRS. HARVEY,</b> Connie	800-802	-----	-----
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## EXHIBITS

in the case of

*United States v. Lieutenant Colonel James H. Wilkerson*

### PROSECUTION EXHIBITS

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V	Declaration of Brig Gen John L. Dolan, 16 Oct 12	807	810
W	Affidavit Brig Gen Joseph T. Guastella, Jr., 11 Oct 12	807	810
X	Affidavit of Col (ret) Omer Lydell Ward, 17 Oct 12	807	810
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ACCUSED'S RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a copy of the record of trial in the case of *United States* verse  
*Lieutenant Colonel James H. Wilkerson*, delivered to me at The United States <sup>Army</sup> Regional ~~Regional~~ Correctional Facility  
this 20<sup>th</sup> day of December 2012. Coleman Barracks, Mannheim Germany.

Exemption 6



accused

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS THIRD AIR FORCE (USAFE)  
APO AE 09094-3270

SPECIAL ORDER  
A-29

2 August 2012

Pursuant to authority contained in Special Order G-12-001, Department of the Air Force, dated 20 March 2012, a general court-martial is hereby convened. It may proceed at Aviano Air Base, Italy, to try such persons as may be properly brought before it. The court will be constituted as follows:

MEMBERS

COLONEL WILLIAM C. STENTZ	86 DS	USAFE
COLONEL TIMOTHY L. BRAY	HQ USAFE	USAFE
COLONEL BARBARA JEFTS	86 MDS	USAFE
COLONEL JAMES W. HERRON	HQ USAFE	USAFE
COLONEL ROBERT J. MARKS	HQ USAFE	USAFE
COLONEL RONALD M. HARVELL	HQ USAFE	USAFE
COLONEL ANDRA B. CLAPSADDLE	HQ USAFE	USAFE
COLONEL DAVID L. CUNNINGHAM	86 AMDS	USAFE
COLONEL MICHAEL E. CALTA	<del>HQ USAFE</del>	USAFE
LIEUTENANT COLONEL TROY MCGILVRA	HQ USAFE	USAFE
LIEUTENANT COLONEL BRADLEY LLOYD	86 MDS	USAFE
LIEUTENANT COLONEL ROB R. ROOD	<del>HQ USAFE</del>	USAFE

CRAIG A. FRANKLIN  
Lieutenant General, USAF  
Commander

FOR THE COMMANDER

Exemption 6

CHRISTINE A. LAMONT, Lt Col, USAF  
Deputy Staff Judge Advocate

DISTRIBUTION  
1-Ea Individual  
1-Ea Orgn  
15-31 FW/JA

(SO A-35, dated 27 September 2012, was the last Special Order of this headquarters published in FY12)

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS THIRD AIR FORCE (USAFE)  
APO AE 09094-3270**

SPECIAL ORDER  
A-1

5 October 2012

The following members are detailed to the general court-martial convened by Special Order A-29, this headquarters, dated 2 August 2012, vice COLONEL TIMOTHY L. BRAY, COLONEL ANDRA B. CLAPSADDLE, and LIEUTENANT COLONEL BRADLEY LLOYD, relieved.

**MEMBERS**

COLONEL CORYDON L. DOERR	86 DS	USAFE
COLONEL ROBERT B. ROTTSCHAFFER	86 MDOS	USAFE
LIEUTENANT COLONEL ROBERT LEHMAN	86 MDG	USAFE

CRAIG A. FRANKLIN  
Lieutenant General, USAF  
Commander

FOR THE COMMANDER

Exemption 6

JOSEPH P. BIALKE, Colonel, USAF  
Staff Judge Advocate

DISTRIBUTION  
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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE

13 Aug 12

MEMORANDUM FOR: TC (COL CHRISTENSEN, CAPT BELILES, CAPT NGUYEN)  
DC (MR. SPINNER, MAJ WENNRICH, CAPT MARTIN)

FROM: HQ USAF/JAT (European Region)  
Unit 10305 Box 390  
APO AE 09094

SUBJECT: *United States v. Lt Col James H. Wilkerson (Aviano AB, Italy)* - Confirmation of  
“Initial Trial Date”

1. This will confirm that I have set “the initial trial date” in the case of *United States v. Lt Col James H. Wilkerson* as 4 Dec 12. The court will convene at 0830 unless the trial judge sets a different time. Trial is estimated to last four (4) days.

2. I have detailed Col Jefferson Brown as the military judge.

3. The following information is confirmed:

Referral Date: 2 Aug 12

Date Charges Served: 7 Aug 12

Date Case Called In: 7 Aug 12

Presumptive Trial Date: 13 Aug 12

Government Ready Date: 27 Aug 12

Defense Ready Date: 13 Nov 12

Date “Initial Trial Date” Set: 12 Aug 12

4. The time period from 27 Aug 12 to 3 Dec 12 is excluded for speedy trial computation IAW RCM 707.

5. IAW the Uniform Rules of Practice before Air Force Courts-Martial dated 1 Oct 10:

a. Notice of appearance for trial and defense counsel will be filed immediately with the Central Docketing Office (CDO) in accordance with the Air Force Uniform Rules of Practice, Rule 2.3. Be aware of Rule 2.4 should counsel wish to request withdrawal once detailed.

b. Defense counsel will file a notice of probable pleas and choice of forum, in writing, with the Court (with a copy to trial counsel and the court reporter) NLT 24 hours after the accused is served with referred charges or *7 calendar* days prior to the scheduled trial date, whichever is later. The pleas will be expressed in the precise form counsel anticipate announcing them in open court. Defense counsel will promptly notify the judge and trial counsel of any change in anticipated plea or choice of forum. If a case previously scheduled as a litigated trial turns

into a guilty plea, defense counsel shall notify the CDO and/or judge who will conduct an additional docketing conference, if feasible, to see if the trial can be moved to an earlier date.  
*Rule 3.2(A)*

c. Counsel for both sides will file a notice with the Court of the *substance* of any anticipated motions, including motions in limine, in accordance with any Scheduling Order or other order of the Judge, and in any event NLT 14 *calendar* days prior to trial. *Rule 3.2(D)*.

d. Motions will be in writing and filed in accordance with the Scheduling Order or other order of the judge and signed by at least one counsel of record. Responses will be filed by the date specified in the Scheduling Order. *Rule 3.6(A)*

e. Counsel for both sides will file with the Court a list containing each anticipated witness' full name, unit/duty station (as applicable), address and telephone number NLT five days after receipt of discovery or the date specified in the judge's Scheduling Order, whichever is earlier (with a copy to opposing counsel and the court reporter). *Rule 3.2(E)*

f. NLT three *duty* days prior to trial or the date specified in the judge's Scheduling Order, whichever is earlier, the parties will provide a written copy of their proposed voir dire to the judge and opposing counsel. Unless otherwise directed by the judge, counsel will conduct voir dire. *Rule 3.2(F)*

g. Any other notifications required by the Manual for Courts-Martial or other authority (such as alibi, M.R.E. 304(d), 404(b), 412, 413, and innocent ingestion of controlled substances) will be provided in accordance with any Scheduling Order or other order of the judge. *Rule 3.2(H)*.

h. If you have not already done so, make sure you comply with all other Air Force Uniform Rules of Practice notice requirements in a timely fashion. The more obvious requirements are noted here for your reference:

**Defense: see Rules 2.4(B), 3.2, 3.7 and 5.7**

**Government: see Rules 2.4(A), 3.2, 3.3 and 3.7**

6. Counsel are encouraged to file notices electronically. Pleadings may be filed with the Court at Exemption 6 \_\_\_\_\_ or Exemption 6 \_\_\_\_\_ as applicable.

7. Please advise the Central Docketing Office immediately of any problems which may unavoidably impact on the trial date. Once the "initial trial date" has been established, consider it immutable, short of problems of a Constitutional dimension.

//signed//

DAWN R. EFLEIN, Colonel, USAF  
Chief Regional Military Judge



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**PROCEEDINGS OF A GENERAL COURT-MARTIAL**

The military judge called the Article 39(a) session to order. The court met at Aviano Air Base, Italy, at 0936 hours on 26 October 2012, pursuant to the following order:

[The convening order, Special Order A-29, dated 2 August 2012, is numbered as page 1.1. The amending order, Special Order A-1, dated 5 October 2012, is numbered as page 1.2. The USAF/JAT (European Region), memorandum dated 13 August 2012, detailing the military judge is numbered as pages 1.3, 1.4, and 1.5.]

1 **ARTICLE 39(A) SESSION**

2 MJ: This Article 39(a) session is called to order.

3 ATC1: Your Honor, this court-martial is convened by Special Order A-29, Headquarters  
4 Third Air Force (USAFE), dated 2 August 2012, as amended by Special Order A-1, same  
5 headquarters, dated 5 October 2012, copies of which have been furnished to the military judge,  
6 counsel, and the accused, and which will be inserted at this point in the record.

7 The charges have been properly referred to this court for trial and were served on the  
8 accused on 7 August 2012. The prosecution is ready to proceed in the case of *United States*  
9 *versus Lieutenant Colonel James Wilkerson*.

10 MJ: And trial counsel, before you continue, as to those convening orders, have any  
11 members been subsequently excused apart from A-29 and A-1?

12 ATC1: Yes, Your Honor.

13 MJ: Let's go ahead and – first of all, if you could just say who it was that was excused,  
14 and then we will have those additional documents marked as appellate exhibits.

15 ATC1: Your Honor, the following members have been excused at the direction of the  
16 convening authority: Colonel James. W. Herron and Lieutenant Colonel Robert Lehman.

17 MJ: Now was that a written release? How – what was the mechanism for releasing those  
18 two individuals?

19 ATC1: That was a written release, Your Honor.

20 MJ: Those releases – and you can provide that at the next break. I think the court  
21 reporter may actually have it, but those releases will be marked as Appellate Exhibit I.

22 ATC1: Yes, Your Honor.

1 MJ: And you may continue when ready.

2 ATC1: The accused, Lieutenant Colonel James H. Wilkerson, and the following persons  
3 detailed to this court are present:

4 **Colonel Jefferson B. Brown, Military Judge (MJ)**

5 **Colonel Don M. Christensen, Trial Counsel (TC)**

6 **Captain Benjamin A. Beliles, Assistant Trial Counsel (ATC)**

7 **Captain Vy S. Nguyen, Assistant Trial Counsel (ATC1)**

8 **Captain Jeffrey S. Martin, Defense Counsel (DC)**

9 **Mr. Frank J. Spinner, Civilian Defense Counsel (CIV DC)**

10 **Mr. Donald U. Lucas, Court Reporter (RPT)**

11 The members named in the convening order are absent.

12 Mr. Lucas, the detailed reporter, has previously been sworn.

13 Colonel Christensen, Chief, Government and Appellate Counsel Division, Air Force  
14 Legal Operations Agency, detailed himself to this court.

15 Captain Beliles was detailed by Lieutenant Colonel Taylor Smith, Chief Senior Trial  
16 Counsel, Government Trial and Appellate Division, Air Force Legal Operations Agency.

17 I have been detailed to this court-martial by Lieutenant Colonel Bryan D. Watson, Staff  
18 Advocate, 31<sup>st</sup> Fighter Wing, Aviano Air Base, Italy.

19 All members of the prosecution are qualified and certified under Article 27(b) and sworn  
20 under Article 42(a), Uniform Code of Military Justice. No member of the prosecution has acted  
21 in any manner which might tend to disqualify us in this court-martial.

22 MJ: Thank you.

1 MJ: Colonel Wilkerson...

2 [The accused stood.]

3 MJ: Thank you for standing. You may remain seated.

4 [The accused sat.]

5 MJ: I'll let you know when and at what time if you need to stand, but thank you.

6 You have the right to be represented by Captain Martin, your detailed military defense  
7 counsel. He is provided to you at no expense to you.

8 You also have the right to request a different military lawyer to represent you. If the  
9 person you request is reasonably available, he or she would be appointed to represent you free of  
10 charge. If your request for this other military lawyer were granted, however, you would not have  
11 the right to keep the services of your detailed defense counsel because you are entitled only to  
12 one military lawyer. You may ask your detailed counsel's superiors to let you keep him on your  
13 case, but your request would not have to be granted.

14 In addition, you have the right to be represented by a civilian lawyer. A civilian lawyer  
15 would have to be provided by you at no expense to the government.

16 If you are represented by a civilian lawyer, you can also keep your military lawyer on the  
17 case to assist your civilian lawyer, or you could excuse your military lawyer and be represented  
18 only by your civilian lawyer. Do you understand that?

19 ACC: Yes, Sir.

20 MJ: Do you have any questions about your rights to counsel?

21 ACC: No, Sir.

22 MJ: By whom do you wish to be represented?

1 ACC: By Captain Martin and Mr. Spinner.

2 MJ: And by them alone?

3 ACC: Yes, Sir.

4 MJ: Were you previously represented by Major Wennrich?

5 ACC: Yes, Sir.

6 MJ: And you elected to release her as counsel. Is that correct?

7 ACC: Yes, Sir.

8 MJ: Defense counsel, is there a written release?

9 DC: There is, Your Honor. I believe it's with the court reporter.

10 MJ: The written release will be marked as the appellate exhibit next in order, which will  
11 be Appellate Exhibit II

12 Other than Major Wennrich, Colonel Wilkerson, have any other lawyer represented you  
13 in the matters before this court-martial?

14 ACC: No, Sir.

15 MJ: Defense counsel will announce by whom he was detailed and his qualifications.

16 DC: Your Honor, my name is Captain Jeffrey Martin, one of the Area Defense Counsels  
17 at RAF Lakenheath, United Kingdom. I was detailed to this court-martial by Lieutenant Colonel  
18 Conrad Huygen, Chief Senior Defense Counsel for the East and European Regions. I am  
19 qualified and certified under Article 27(b) and sworn under Article 42(a) of the Uniform Code of  
20 Military Justice, and I have not acted in any manner which might tend to disqualify me in this  
21 court-martial.

22 MJ: Mr. Spinner?

1 CIV DC: Yes, Sir. I'm Frank J. Spinner. I am a civilian defense counsel out of  
2 Colorado Springs, Colorado. I am a member in good standing with the State Bar of Texas, and  
3 admitted to practice before the highest courts of that state. I'm also admitted to practice before  
4 the United States Air Force Court of Criminal Appeals, the United States Court for the Armed  
5 Forces, and the Supreme Court of the United States.

6 I'm not aware of any manner that would disqualify me from representing Colonel  
7 Wilkerson in this proceeding.

8 MJ: Thank you. Please raise your right hand.

9 [The civilian defense counsel complied.]

10 MJ: Do you, Mr. Spinner, swear that you will faithfully perform the duties of individual  
11 [sic] defense counsel in the case now in hearing so help you God?

12 CIV DC: I do.

13 MJ: You may be seated.

14 [The civilian defense counsel sat.]

15 MJ: I have been properly certified and sworn, and detailed by Colonel Dawn Eflein, the  
16 Chief Military Judge in the European Region to this court-martial.

17 Counsel for both sides appear to have the requisite qualifications, and all personnel  
18 required to be sworn have been sworn.

19 Prior to trial this morning, I did have an 802 with both trial counsel and defense counsel  
20 present. During that 802, counsel notified the court of anticipated pleas and forums today, as  
21 well as potential *voir dire* questions and the general logistics of what trial and defense counsel  
22 expected to accomplish today.

1 MJ: I've not made any rulings and have not taken any evidence during that 802.

2 Trial counsel or defense counsel, do either side object to or would like to supplement  
3 what was discussed?

4 ATC1: No, Your Honor.

5 CIV DC: No, Sir.

6 MJ: Trial counsel will announce the general nature of the charges.

7 ATC1: Yes, Your Honor. The general nature of the charges in this case is one charge  
8 and one specification of aggravated sexual assault and one specification of abusive sexual  
9 contact, in violation of Article 120, Uniform Code of Military Justice, and one charge and three  
10 specifications of conduct unbecoming an officer, in violation of Article 133 of the Uniform Code  
11 of Military Justice.

12 The charges were preferred by Major Eric N. Weber, 31<sup>st</sup> Fighter Wing, Aviano Air Base,  
13 Italy, forwarded with recommendations as to disposition by Brigadier General Scott J. Zobrist,  
14 Commander, 31<sup>st</sup> Fighter Wing, Aviano Air Base, Italy, and investigated by Lieutenant Colonel  
15 Paula B. McCarron.

16 Your honor, are you aware of any matter which might be a ground for challenge against  
17 you?

18 MJ: I am not. Does either side desire to question or to challenge me?

19 ATC1: No, Your Honor.

20 CIV DC: No, Sir.

21 [Long pause.]

1 MJ: Colonel Wilkerson, you have a right to be tried by a court consisting of at least five  
2 officer members.

3 You are also advised that no member of the court would be junior in rank to you. Do you  
4 understand what I have said so far?

5 ACC: Yes, Sir.

6 MJ: Now, if you are tried by court members, the members will vote by secret, written  
7 ballot and two-thirds of the members must agree before you could be found guilty of any  
8 offense. If you were found guilty, then two-thirds must also agree in voting on a sentence and if  
9 that sentence included confinement for more than 10 years, then three-fourths would have to  
10 agree.

11 You also have the right to request a trial by military judge alone, and if approved there  
12 will be no court members and the judge alone will decide whether you are guilty or not guilty,  
13 and if found guilty, the judge alone will determine your sentence. Do you understand the  
14 difference between trial before members and trial before military judge alone?

15 ACC: Yes, Sir.

16 MJ: By what type of court do you wish to be tried?

17 ACC: A trial before members, Sir.

18 **ARRAIGNMENT**

19 MJ: The accused will now be arraigned.

20 ATC1: Your Honor, all parties to the trial have been furnished with a copy of the  
21 charges. Does the accused want them read?

22 CIV DC: Colonel Wilkerson waives the reading of the charges.



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MJ: The reading may be omitted.

(The charge sheet is pages 9.1, 9.2, and 9.3.)

1 ATC1: The charges are signed by Major Eric N. Weber, a person subject to the code, as  
2 accuser; are properly sworn to before a commissioned officer of the armed forces authorized to  
3 administer oaths; and are properly referred to this court for trial by Lieutenant General Craig A.  
4 Franklin, Commander, Third Air Force, the convening authority.

5 MJ: Accused and defense counsel please rise.

6 [The accused and his counsel stood.]

7 MJ: Colonel Wilkerson, how do you plead? Before receiving your plea, I advise you  
8 that any motions to dismiss or to grant other appropriate relief should be made at this time. Your  
9 defense counsel will speak for you.

10 CIV DC: Your Honor, we have no motions to dismiss. We do anticipate some other  
11 motions and we do not feel that they need to be raised at this time, and we're prepared to enter  
12 pleas.

13 MJ: You may do so.

14 **PLEAS**

15 **CIVDC: Colonel Wilkerson pleads to the charges and**  
16 **specifications: Not guilty.**

17 MJ: Thank you. Please be seated.

18 [The accused and his counsel sat.]

19 MJ: The flyer will be marked as Appellate Exhibit III.

20 Trial counsel, I had copies previously provided to me. Have you previously provided a  
21 copy to the defense?

22 ATC1: Yes, Your Honor.

1 MJ: Is there any objection to the flyer as provided, defense?

2 DC: No, Sir.

3 MJ: Has at least one individual from both the trial counsel and the defense counsel had  
4 an opportunity to review all of the information packets in front of the members to confirm that it  
5 only contains questionnaires, note paper, the convening orders, as well as the flyer?

6 ATC1: Yes, Your Honor.

7 CIV DC: Yes, Sir.

8 MJ: Thank you.

9 Prior to trial, I did receive several motions. I did not rule on those motions. But I  
10 received several motions. At this point we will go ahead and at least mark what I've got – what  
11 I've received up to this point.

12 First, there is a motion to compel discovery by the defense, and that's discovery  
13 specifically of emails. That will be Appellate Exhibit IV. And if -- let me know if for some  
14 reason there's been any amendments or changes to those motions since they've been provided,  
15 let me know. I'll let you provide these documents to the court reporter during the recess. I just  
16 want to make it clear what those documents are going to be.

17 I also have a response to the motion to compel, which will be Appellate Exhibit V, from  
18 the government.

19 As to that motion to compel, is there any additional information that the court needs to  
20 review, and I'm not talking about live witnesses; I'm talking specifically about documentation –  
21 that either trial or defense counsel would like to have marked at this time?

22 ATC1: Nothing from the government, Your Honor.

1 DC: Nothing from the defense, Sir.

2 MJ: Appellate Exhibit VI is a defense motion requesting the members be allowed to visit  
3 the scene of the alleged incident. Appellate Exhibit VII is the government response.

4 As to that motion, do either sides have any documentary evidence that they would like to  
5 have marked at this time?

6 CIV DC: We, do, Your Honor.

7 ATC1: The government does not, Your Honor.

8 MJ: Mr. Spinner, you may continue. And we are on Appellate Exhibit VIII. The last  
9 exhibit that I just marked was Appellate Exhibit VII.

10 CIV DC: Yes, Your Honor. I've had them stamped, but not marked, but I have three  
11 separate exhibits. So, as Appellate Exhibit VIII, I guess, is a seven-page document that's a  
12 statement made to the OSI by Exemption 6. Appellate Exhibit IX would be a diagram that  
13 was drawn by her, a one-page document. And then Appellate Exhibit X would be a five-page  
14 document that is the summarized Article 32 testimony of Exemption 6

15 Would you like me to provide those to the court reporter at this time?

16 MJ: Please. Thank you.

17 CIV DC: And, Your Honor, I've already provided copies to the government and I'm  
18 providing working copies to you.

19 MJ: Thank you very much.

20 [Said documents were provided to the court reporter.]

1 CIV DC: Sir, do you need a copy of the motion itself?

2 MJ: I have a copy of the motion as long as it's the same motion that was previously  
3 provided to the court.

4 CIV DC: It is, Your Honor.

5 MJ: Thank you.

6 [Long pause.]

7 MJ: And, defense I understand that you are anticipating potentially calling a witness for  
8 purposes of this motion, although we're not going to do it at this time. Is that correct?

9 CIV DC: Correct, Your Honor.

10 MJ: I don't have any other motions – written motions that have been submitted from the  
11 defense at this time. I did receive a 412 motion from the government. That motion will be  
12 marked as Appellate Exhibit XI, and it will be sealed.

13 Is there any other – at this point, any other written documentation that either trial or  
14 defense counsel would like to have marked?

15 ATC1: No, Your Honor.

16 CIV DC: No, Sir.

17 MJ: That being the case, we will be in recess to await the arrival of the members.

18 (The Article 39(a) session terminated and the court-martial recessed at 0955 hours, 26  
19 October 2012.)

20 **END OF PAGE**

21

1 (The court-martial was called to order at 1018 hours, 26 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 Trial counsel?

5 ATC1: Thank you, Your Honor.

6 This court-martial is convened by Special Order A-29, Headquarters Third Air Force  
7 (USAFE), dated 2 August 2012, as amended by Special Order A-1, same headquarters, dated 5  
8 October 2012, copies of which have been furnished to each member of the court.

9 The accused, Lieutenant Colonel James H. Wilkerson, and the following persons detailed  
10 to this court-martial are present:

11 Colonel Jefferson B. Brown, Military Judge

12 Colonel Don M. Christensen, Trial Counsel

13 Captain Benjamin Beliles, Assistant Trial Counsel

14 Captain Vy Nguyen, Assistant Trial Counsel

15 Captain Jeffrey Martin, Defense Counsel

16 Mr. Frank Spinner, Civilian Defense Counsel

17 Mr. Donald Lucas, Court Reporter

18 The following members (MBR) are present:

19 **Colonel William C. Stentz**

20 **Colonel Corydon L. Doerr**

21 **Colonel Barbara Jefts**

22 **Colonel Robert J. Marks**

1 ATC1: **Colonel Ronald M. Harvell**

2 **Colonel David L. Cunningham**

3 **Colonel Michael E. Calta**

4 **Colonel Robert B. Rottschafer**

5 **Lieutenant Colonel Troy McGilvra**

6 **Lieutenant Colonel Rob R. Rood**

7 The following members have been excused at the direction of the convening authority:

8 Colonel James W. Herron and Lieutenant Colonel Robert Lehman.

9 Your Honor, the prosecution is ready to proceed with trial in the case of the *United States*  
10 *versus Lieutenant Colonel Wilkerson.*

11 MJ: The members of the court will now be sworn. All persons in the courtroom please  
12 rise.

13 [Everyone stood, with the exception of the military judge and the court reporter.]

14 ATC1: Members, would you please raise your right hand?

15 [The members complied.]

16 ATC1: Do you swear or affirm that you will answer truthfully the questions concerning  
17 whether you should serve as a member of this court-martial; that you will faithfully and  
18 impartially try, according to the evidence, your conscience, and the laws applicable to trials by  
19 court-martial, the case of the accused now before this court; and that you will not disclose or  
20 discover the vote or opinion of any particular member of the court upon the findings or sentence  
21 unless required to do so in the due course of law, so help you God?

22 MBRS: We do.

1 ATC1: Thank you.

2 MJ: Please be seated.

3 [The members sat.]

4 MJ: The court is assembled.

5 Members of the court, it is appropriate that I give you some preliminary instructions. My  
6 duty as military judge is to ensure this trial is conducted in a fair, orderly, and impartial manner  
7 according to the law. I preside over open sessions, rule upon objections, and instruct you on the  
8 law applicable to this case. You are required to follow my instructions on the law and may not  
9 consult any other source as to the law pertaining to this case unless it is admitted into evidence.  
10 This rule applies throughout the trial including closed sessions and periods of recess and  
11 adjournment. Any questions you have of me should be asked in open court.

12 As court members, it is your duty to hear the evidence and to determine whether the  
13 accused is guilty or not guilty and if you find him guilty, to adjudge an appropriate sentence.

14 Under the law, the accused is presumed to be innocent of the offenses. The government  
15 has the burden to prove the accused's guilt by legal and competent evidence beyond a reasonable  
16 doubt.

17 A "reasonable doubt" is a conscientious doubt, based upon reason and common sense,  
18 and arising from the state of the evidence. Some of you may have served as jurors in civil cases,  
19 or as members of an administrative board, where you were told that it is only necessary to prove  
20 that a fact is more likely true than not true. In criminal cases, the government's proof must be  
21 more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable  
22 doubt is proof that leaves you firmly convinced of the accused's guilt. There are very few things



1 in this world that we know with absolute certainty, and in criminal cases the law does not require  
2 proof that overcomes every possible doubt. If, based on your consideration of the evidence, you  
3 are firmly convinced that the accused is guilty of the offense charged, you must find the accused  
4 guilty. If, on the other hand, you think there is a real possibility that the accused is not guilty,  
5 you must give the accused the benefit of the doubt and find the accused not guilty.

6 MJ: The fact that charges have been preferred against this accused and referred to this  
7 court for trial does not permit any inference of guilt. Similarly, any labels used by counsel, court  
8 or witnesses such as “victim” or “accused” are just labels, and you shall not infer anything from  
9 their use. They are merely labels that may be used for the convenience of counsel or the court.  
10 It is your decision alone whether the accused is guilty or not guilty of the charged offenses as  
11 defined by the law as I will instruct you.

12 You must determine whether the accused is guilty or not guilty based solely upon the  
13 evidence presented here in court and upon the instructions I will give you. Because you cannot  
14 properly make that determination until you have heard all the evidence and received the  
15 instructions, it is of vital importance that you keep an open mind until all the evidence has been  
16 presented and the instructions have been given. I will instruct you fully before you begin your  
17 deliberations. In so doing, I may repeat some of the instructions which I will give now or,  
18 possibly, during the trial. Bear in mind that all of these instructions are designed to help you  
19 perform your duties as court members.

20 The final determination as to the weight of the evidence and the credibility of the  
21 witnesses in this case rests solely upon you. You have the duty to determine the believability of  
22 the witnesses. In performing this duty you must consider each witness’ intelligence and ability

1 to observe and accurately remember, in addition to the witness' sincerity and conduct in court,  
2 friendships, prejudices and character for truthfulness. Consider also the extent to which each  
3 witness is either supported or contradicted by other evidence; the relationship each witness may  
4 have with either side; and how each witness might be affected by the verdict. In weighing a  
5 discrepancy by a witness or between witnesses you should consider whether it resulted from an  
6 innocent mistake or a deliberate lie. Taking all these matters into account, you should then  
7 consider the probability of each witness' testimony and the inclination of the witness to tell the  
8 truth. The believability of each witness' testimony should be your guide in evaluating testimony,  
9 rather than the number of witnesses called.

10 MJ: Counsel soon will be given an opportunity to ask you questions and exercise  
11 challenges. With regard to challenges, if you know of any matter that you feel might affect your  
12 impartiality to sit as a court member, you must disclose that matter when asked to do so. Bear in  
13 mind that any statement you make should be made in general terms so as not to disqualify other  
14 members who hear the statement.

15 Any matter that might affect your impartiality is a ground for challenge. Some of the  
16 grounds for challenge would be if you were the accuser in the case, if you had investigated any  
17 offense charged against this accused, or if you have formed or expressed an opinion as to the  
18 guilt or innocence of the accused. To determine if any grounds for challenge exist, counsel for  
19 both sides are given an opportunity to question you. These questions are not intended to  
20 embarrass you. They are not an attack upon your integrity. They are asked merely to determine  
21 whether a basis for challenge exists.

1 MJ: It is no adverse reflection upon a court member to be excused from a particular case.  
2 In fact, it is quite common for court members who are competent and professional in every way  
3 to be excused from courts-martial when prior knowledge or other background suggests they  
4 should not serve in the particular case at hand.

5 You may be questioned either individually or collectively, but in either event, you should  
6 indicate your own and your own individual response to the question asked. Unless I indicate  
7 otherwise, you are required to answer all questions.

8 You must keep an open mind throughout the trial. You must impartially hear the  
9 evidence, the instructions on the law, and only when you are in your closed session deliberations  
10 may you properly make a determination as to whether the accused is guilty or not guilty or as to  
11 an appropriate sentence if the accused is found guilty of any offense. With regard to sentencing,  
12 should that become necessary, you may not have a preconceived idea or formula as to either the  
13 type or the amount of punishment that should be imposed if the accused were to be convicted.

14 Counsel are given an opportunity to question all witnesses. When counsel have finished,  
15 if you feel there are substantial questions that should be asked, you will be given an opportunity  
16 to do so. The way we handle that is to require you to write out the question and sign legibly at  
17 the bottom. This method gives counsel for both sides and me an opportunity to review the  
18 questions before they are asked since your questions, like questions of counsel, are subject to  
19 objection. There are forms provided for you for your use if you desire to question any witnesses.  
20 When you open the folder, which we're not at that point yet, but when you open the folder, you  
21 will see those questionnaires.

1 MJ: Now as to questions from the members, I will conduct any needed examination.  
2 There are, however, a couple of things you need to keep in mind concerning member  
3 questioning.

4 First, you cannot attempt to help either the government or the defense.

5 Second, counsel have interviewed the witnesses and know more about the case than we  
6 do. Very often they do not ask what may appear to us to be an obvious question because they are  
7 aware that this particular witness has no knowledge on the subject.

8 Rules of evidence control what can be received into evidence. As I indicated, questions  
9 of witnesses are subject to objection. During the trial, when I sustain an objection, disregard the  
10 question and answer. If I overrule an objection, you may consider both the question and answer.  
11 If that comes up, I'll do my best to make sure that's clear for you. If for any reason you're  
12 unsure of what you're supposed to consider, raise your hand or similarly indicate and I'll make it  
13 clear for you at that time before we proceed in the trial.

14 During any recess or adjournment, you may not discuss the case with anyone, not even  
15 among yourselves. You must not listen to or read any account of the trial or consult any source,  
16 written or otherwise, as to matters involved in the case. You must hold your discussion of the  
17 case until you are all together in your closed session deliberations, where you determine guilt or  
18 innocence, so that all of the panel members have the benefit of your discussion.

19 And to be clear as to that, often I will return you – I will recess you to the deliberation  
20 room. That is a recess; that is not deliberations. So during the normal recesses prior to you  
21 receiving all the evidence and the instructions from me, that would not be a time – not be a time  
22 to discuss the evidence you've seen, your thoughts about a witness, cross-examination or

1 anything else. That discussion amongst you or amongst anyone for that matter, would happen at  
2 some subsequent time once we get there.

3 MJ: Now do not purposely visit the scene of any incident alleged in the specifications or  
4 involved in the trial. You must also avoid contact with witnesses or potential witnesses in this  
5 case. If anyone attempts to discuss the case in your presence during any recess or adjournment,  
6 you must immediately tell them to stop and report the occurrence to me at the next session. I  
7 may not repeat these matters to you before every break or recess, but keep them in mind  
8 throughout the trial.

9 Now we will try to estimate the time needed for recesses or hearings outside of your  
10 presence. You may hear me or counsel refer or request a 39(a) hearing. A 39(a) is merely our  
11 legalistic way of referring to a hearing outside of your presence. Frequently their duration is  
12 extended by consideration of new issues arising in such hearings. Your patience and  
13 understanding regarding these matters will contribute greatly to an atmosphere consistent with  
14 the fair administration of justice.

15 While you are in your closed session deliberations, only the members will be present.  
16 You must remain together and you may not allow any unauthorized intrusion into your  
17 deliberations.

18 Each of you has an equal voice and vote with the other members in discussing and  
19 deciding all issues submitted to you. However, in addition to the duties of the other members,  
20 the senior member will act as your presiding officer during your closed session deliberations, and  
21 will speak for the court in announcing the results.

1 MJ: This general order of events can be expected at this court-martial: Questioning of  
2 court members, challenges and excusals, opening statements by counsel, presentation of  
3 evidence, substantive instructions on the law to you, closing argument by counsel, procedural  
4 instructions on voting, your deliberations, and announcement of the findings. If the accused is  
5 convicted of any offense, there will also be a sentencing proceeding.

6 What I anticipate, at least with you to get resolved today, is the *voir dire* – the  
7 questioning of members – the challenges. I do not expect that we will begin the other portions  
8 that would begin with the opening statement, until Monday morning.

9 The appearance and demeanor of all parties to the trial should reflect the seriousness with  
10 which the trial is viewed. Careful attention to all that occurs during the trial is required of all  
11 parties. If it becomes too hot or cold in the courtroom, or if you need a break because of  
12 drowsiness or for comfort reasons, please tell me so that we can attend to your needs and avoid  
13 potential problems that might otherwise arise.

14 Now each of you may take notes if you desire and use them to refresh your memory  
15 during deliberations, but they may not be read or shown to other members. They are merely a  
16 way that you personally can remind yourself of what happened during the trial. At the time of  
17 any recess or adjournment, you may leave your notes in the deliberation room and I'll ensure the  
18 room is secured during your absence.

19 One other administrative matter: if during the course of the trial it is necessary that you  
20 make a statement, if you would please preface the statement by stating your name. That will  
21 make it clear on the record which member is speaking. To my left here is the court reporter. He  
22 is going to be writing what everyone says. He can pick out, fortunately, my voice as well as trial

1 counsel and defense counsel, but it's probably a bridge too far for him to be able to individually  
2 pick out each of your voices.

3 MJ: So, as we continue through this questioning process, that's also why you will hear  
4 me say "All members say yes," "all members say no," "Colonel so and so says yes." That's just  
5 to make it a lot easier for him as we go forward.

6 At this point before we continue, members, do you have any questions?

7 And that's a negative response from all members.

8 Please take a moment to open the folders before you and read the charges on the flyer  
9 provided to you. Ensure that your name and organization is correctly reflected on the convening  
10 order. If it's not, please let me know. Look up at once you've had an opportunity to review the  
11 matters in front of you. At that point we will continue.

12 Before I proceed, did any of the members notice any typos with your organization or your  
13 name, or is all the information correct?

14 And I've got an affirmative response. Lieutenant Colonel – is McGilvra?

15 MBR (Lieutenant Colonel McGilvra): Yes, Sir.

16 MJ: And what did you notice?

17 MBR (Lieutenant Colonel McGilvra): As the date of the letter, my organization was  
18 Headquarters USAFE, but as of 1 October had changed to TRANSCOM.

19 MJ: Thank you.

20 And also, Colonel – is it Calta?

21 MBR (Colonel Calta): Colonel Calta, yes. Same issue. My organization is now  
22 Headquarters USAFE, not 435<sup>th</sup> CRG.

1 MJ: Thank you very much. At the time of the order, was that your correct organization?

2 MBR (Colonel Calta): No. At the time of the orders, Headquarters USAFE.

3 MJ: All right. So, is there – the spelling of your name is correct?

4 MBR (Colonel Calta): Yes, Sir.

5 MBR: No doubt in your mind that you are the person who that is supposed to be on the  
6 convening order; it's just the wrong organization?

7 [Laughter by all.]

8 MBR (Colonel Calta): [Nodded in the affirmative.]

9 MJ: And I say that because that is actually a critical issue to ensure that there is not  
10 another – I know “Colonel Calta” is not a common name, but if you know of another Colonel  
11 Calta that is up at Ramstein, then please let me know.

12 And then at the end I've got Lieutenant Colonel Rood; is it?

13 MBR (Lieutenant Colonel Rood): Correct. The same; my organization is Headquarters  
14 USAFE. At the time of the orders, it was Headquarters USAFE.

15 MJ: Thank you very much.

16 Trial counsel, you may announce the general nature of the charges.

17 ATC1: Yes, Your Honor.

18 The general nature of the charges in this case is one charge and one specification of  
19 aggravated sexual assault and one specification of abusive sexual contact, in violation of Article  
20 120 of the Uniform Code of Military Justice; and one charge and three specifications of conduct  
21 unbecoming an officer, in violation of Article 133 of the Uniform Code of Military Justice.



1           ATC1: The charges were preferred by Major Eric Weber, 31<sup>st</sup> Fighter Wing, Aviano Air  
2 Base, Italy, forwarded with recommendations as to disposition by Brigadier General Scott J.  
3 Zobrist, Commander, 31<sup>st</sup> Fighter Wing, Aviano Air Base, Italy, and investigated by Lieutenant  
4 Colonel Paula B. McCarron.

5           The records of this case disclose no grounds for challenge. If any member of the court is  
6 aware of any matter which he or she believes may be a ground for challenge by either side, such  
7 matter should now be stated.

8           MJ: And apparently not.

9           ATC1: That's a negative response, Your Honor.

10          MJ: Thank you.

11          Before counsel ask you any questions, I will ask a few preliminary questions. If any  
12 member has an affirmative response to any question, I ask your assistance to please raise your  
13 hand and hold it up until I see and acknowledge your response. If any member has a negative  
14 response, shake your head from side to side so I can see that as well. Just please exaggerate your  
15 no nods, and that way I will – I can tell whether you are just considering the question or whether  
16 you have reached an answer to the question and you're expressing what that answer is.

17          I will tell you, however, that any of my questions or the questions of counsel are not  
18 intended to be trick questions. However, if they are confusing in any way, just let us know and  
19 we can restate it to ensure that you understand what we're asking or at least what we're trying to  
20 ask, which sometimes are two different things.

21          The other piece, as far as I go through, I'm going to be writing down the response of all  
22 of you, as well as I anticipate probably counsel will, which is another reason that if several

1 people are nodding yes or saying yes, I will acknowledge you as I go through, so in that way you  
2 can – you know when you can put down your hand or stop your “no” nod if that’s where you are.

3 MJ: Does anyone know the accused in this case

4 And that’s a negative response all.

5 Does anyone know any person named in any of the specifications?

6 A negative response all.

7 Having seen the accused and having read the charges and specifications, does anyone feel  
8 that you cannot give the accused a fair trial for any reason?

9 Negative all.

10 Does anyone have any prior knowledge of the facts or events in this case?

11 And that’s a negative all; affirmative, Lieutenant Colonel McGilvra, and we’ll talk about  
12 that a little bit later. Thank you.

13 Has anyone or any member of your family ever been charged with an offense similar to  
14 any of those charged in this case?

15 That’s a negative response all.

16 Has anyone, or any member of your family, or anyone close to you personally, ever been  
17 the victim of an offense similar to any of those charged in this case?

18 And that’s a negative response all.

19 A show of hands; how many of you have previously served as court members in a trial by  
20 court-martial?

1 MJ: All right, I've got an affirmative response from Colonel Doerr, affirmative response  
2 from Colonel Jefts, affirmative response from Colonel Calta and an affirmative response from  
3 Colonel – is it Rottschafer?

4 MBR (Colonel Rottschafer): [Nodded in the affirmative.]

5 And that's a negative response from the other members.

6 Now as to the four members that answered yes to those questions, if you can think back  
7 to those courts-martials, did any of those courts involve offenses similar to the ones before you  
8 today?

9 And I've got a negative response from three and then an affirmative response from  
10 Colonel Jefts.

11 This is to all four of the members that originally said that they had sat as a court member,  
12 can you, as a court member, put aside anything you may have heard in any previous proceeding  
13 and decide this case solely on the basis of the evidence and the instructions as to the applicable  
14 law that I will provide you?

15 That's affirmative response by all. Thank you.

16 Is there anything about those other cases that you believe would interfere with your  
17 ability to be fair and impartial in this case?

18 And that's a negative response from those four members. Thank you.

19 The accused has pleaded not guilty to all charges and specifications, and is presumed to  
20 be innocent until guilt is established by legal and competent evidence beyond a reasonable doubt.  
21 Does anyone disagree with this rule of law?

22 Negative all.

1 MJ: Can each of you apply this rule of law and vote for a finding of not guilty unless you  
2 are convinced beyond a reasonable doubt that the accused is guilty?

3 That's affirmative all. Thank you.

4 You are all basically familiar with the military justice system, and you know that the  
5 accused has been charged, the charges were forwarded to the convening authority and referred  
6 to trial. None of this warrants any inference of guilt. Can each of you follow this instruction and  
7 not infer that the accused is guilty of anything merely because the charges were referred to trial?

8 Affirmative all.

9 On the other hand, can each of you vote for a finding of guilty if you are convinced that,  
10 under the law, the accused's guilt has been proved by legal and competent evidence beyond a  
11 reasonable doubt?

12 Affirmative all.

13 Does each member understand that the burden of proof to establish the accused's guilt  
14 rests solely upon the prosecution and the burden never shifts to the defense to establish the  
15 accused's innocence?

16 Affirmative all.

17 Does each member understand, therefore, that the defense has no obligation to present  
18 any evidence or to disprove the elements of the offenses?

19 Affirmative all.

20 Has anyone had any legal training or experience other than that generally received by  
21 military members of your rank or position?

22 And I've got negative all except – negative, with the exception of Colonel Rottschafer?

1 MBR (Colonel Rottschafer): Yes.

2 MJ: Thank you.

3 Has anyone had any specialized law enforcement training or experience, to include duties  
4 as a security forces member, off-duty security guard, civilian police officer or comparable duties  
5 other than the general law enforcement duties common to military personnel of your rank and  
6 position?

7 That's a negative all.

8 As military members, I assume that everyone has been briefed about sexual assault as  
9 well as even viewing commercials or posters about sexual assault. What a commercial, poster or  
10 training may have said is not necessarily the law. I will provide you the law in this case, and it  
11 will be your responsibility to apply that law to the facts of this case. Do all the members  
12 understand this?

13 Affirmative all.

14 Can all members agree to follow the law as I instruct and not based on what you believe  
15 the law is or should be?

16 Affirmative all.

17 I have previously advised you that it is your duty as court members to weigh the evidence  
18 and to resolve controverted questions of fact. In so doing, if the evidence is in conflict, you will  
19 necessarily be required to give more weight to some evidence than to other evidence. The  
20 weight, if any, to be given all of the evidence in this case is solely within your discretion, so it is  
21 neither required nor expected that you will give equal weight to all of the evidence. However, it  
22 is expected that you will use the same standards in weighing and evaluating all of the evidence,

1 and the testimony of each witness, and that you will not give more or less weight to the  
2 testimony of a particular witness merely because of that witness's status, position, or station in  
3 life. In other words for example, you would not give more or less weight to the testimony solely  
4 based on the witness being a Security Forces member, OSI agent, officer or NCO. Will each of  
5 you use the same standards in weighing and evaluating the testimony of each witness, and not  
6 give more or less weight to the testimony of a particular witness solely because of that witness's  
7 position or status?

8 MJ: That's affirmative all.

9 Is any member of the court in the rating chain, supervisory chain, or chain of command,  
10 of any other member?

11 And affirmative – I've got potential affirmative from – which we'll talk about in just a  
12 second – Colonel Marks, Colonel Doerr, and Colonel Stentz, and a negative from the others.

13 Colonel Stentz, what is the supervisor, rating chain or chain of command that you refer  
14 to?

15 MBR (Colonel Stentz): Colonel Doerr is my Commander.

16 MJ: Okay. Thank you.

17 And Colonel, Doerr, is that the relationship that you were thinking about when you raised  
18 your hand?

19 MBR (Colonel Doerr): That's correct.

20 MJ: And Colonel Marks, was there someone that...

21 MBR (Colonel Marks): Colonel McGilvra. His unit was previously assigned under  
22 mine.

1 MJ: So he was previously assigned, but not currently assigned? Is that correct?

2 MBR (Colonel Marks): Yes, Sir.

3 MJ: Thank you.

4 As to Lieutenant Colonel McGilvra and Colonel Stentz, will you feel inhibited or  
5 restrained in any way in performing your duties as a court member, including the free expression  
6 of your views during deliberation, because another member holds a position of authority over  
7 you?

8 MBR (Colonel Stentz): No, Sir.

9 MBR (Lieutenant Colonel McGilvra): No, Sir.

10 MJ: That's a negative response by both of those members.

11 Okay, as to Colonel Doerr and Colonel Marks, will you be embarrassed or restrained in  
12 any way in performing your duties as a court member if a member over whom you hold or held a  
13 position of authority should disagree with you?

14 And that's a negative response from both of those members.

15 Has anyone had any dealings with any of the parties to the trial, to include me and  
16 counsel, which might affect your performance of duty as a court member in any way?

17 And that's a negative response from the members.

18 Is any member of the court a member of the Air National Guard or the Air Force  
19 Reserve?

20 Negative all.

21 By your responses, I understand that all members of the court are on active duty in the  
22 United States Air Force. Am I correct?

1 MJ: That's affirmative all.

2 Bearing in mind that I can't predict exactly how many days this trial may last or how late  
3 we may go on any particular day, I expect at this time that this trial should take no longer than  
4 three or four days, which will take us into next Wednesday or Thursday. Does anyone know of  
5 anything of either a personal or professional nature which would cause you to be unable to give  
6 your full attention to these proceedings throughout the trial?

7 That's a negative all.

8 It is a ground for challenge if you have an inelastic predisposition toward the imposition  
9 of a particular punishment based solely on the nature of the crime or crimes for which the  
10 accused is to be sentenced if found guilty. Does any member, having read the charges and  
11 specifications, believe that you would be compelled to vote for any particular punishment, if the  
12 accused is found guilty, solely because of the nature of the charges?

13 That's a negative response all.

14 If sentencing proceedings are required, you will be instructed in detail before you begin  
15 your deliberations. I will instruct you on the full range of punishments from no punishment up to  
16 the maximum punishment. It is your military duty to consider the full range of punishment from  
17 no punishment to the maximum punishment available. You must consider all forms of  
18 punishment within that range. Consider doesn't necessarily mean that you would vote for that  
19 particular punishment. Consider means that you think about and make a choice in your mind,  
20 one way or the other, as to whether that's an appropriate punishment. Each member must keep  
21 an open mind and neither make a choice, nor foreclose from consideration any possible sentence,  
22 up to the maximum until the closed session for deliberations and voting on the sentence. If the



1 government proves the accused's guilt beyond a reasonable doubt, will each of you do your duty  
2 and consider the full range of punishment, from no punishment to the maximum punishment?

3 MJ: That's affirmative all.

4 Can each of you be fair, impartial, and open-minded in your consideration of an  
5 appropriate sentence, if called upon to do so in this case?

6 Affirmative all.

7 Can each of you reach a decision on sentence if required to do so on an individual basis  
8 in this particular case and not solely upon the nature of the offenses of which the accused may be  
9 convicted?

10 Affirmative all.

11 With regards to the Legal Office, do any members have any pressing personal or  
12 professional business with this Legal Office, other than this court-martial, that cannot wait until  
13 the end of these proceedings?

14 That's a negative all.

15 Now for the sake of appearance if nothing else, I'm going to direct that you not engage in  
16 any business with the Legal Office during the pendency of these proceedings. Now it is not  
17 enough that the military justice process must actually be fair, it must also be perceived as fair.

18 Now on a related matter, counsel in this court-martial are outgoing, courteous, and  
19 professional. However, I am hereby instructing them, for the sake of appearance, that they are to  
20 have no contact with you, court members, except as unavoidable or specifically directed by this  
21 court. Thus, I am directing them, should they encounter you outside this courtroom, to avoid any

1 discussion of matters related to this case or otherwise, other than a short military greeting as  
2 appropriate.

3 MJ: And I instruct you, members, to behave with similar restraint.

4 Members, will you all be able to do that?

5 Affirmative all.

6 Finally, before I turn this over for some questioning from counsel, is any member aware  
7 of any matter which might raise a substantial question concerning your participation in this trial  
8 as a court member?

9 And that's a negative response from the members.

10 Do counsel for either side desire to question the court members?

11 ATC: We do, Your Honor.

12 MJ: You may continue.

13 ATC: Thank you, Your Honor.

14 Good morning, Colonel Stentz, members of the panel. I am Captain Ben Beliles, I am a  
15 Senior Trial Counsel stationed at Ramstein Air Base, Germany. I want to introduce you to the  
16 rest of the prosecution team. This is Colonel Don M. Christensen, my boss, stationed at Joint  
17 Base Andrews. He's the Chief Prosecutor of the Air Force. Assisting, is Captain Vy Nguyen.  
18 He's stationed here at the Aviano Legal Office as the Chief of Justice. We, together, represent  
19 the United States in this case.

20 Now I'll ask you to answer the questions – my questions the same way you were Colonel  
21 Brown's questions with a nod of you head or a shake of your head, and I'll record that on the  
22 record.

1           ATC: I'm going to read a list of witnesses – potential witnesses in this case. I'm going  
2 to ask you to please affirm or let us know if you know the individual either professionally or  
3 socially. It's quite a long list, so I'll go ahead and get started with that.

4           Miss Exemption 6

5           That is a negative response from all members.

6           Master Sergeant Danielle Dunnivant?

7           That is a negative response from all members.

8           Captain Dawn Brock?

9           That is a negative response from all members.

10          MJ: Well, actually, there is one; it's an affirmative response from Colonel Rottschafer.

11          MBR (Colonel Rottschafer): I believe I know her.

12          ATC: That is an affirmative response from Colonel Rottschafer; a negative response  
13 from all other members.

14          MJ: Thank you.

15          ATC: Major Jeremy Goldsbury?

16          That is a negative response from all members.

17          Major Tanya Manning?

18          That is a negative response from all members.

19          Major Michael O'Keefe?

20          That is a negative response from all members.

21          Colonel Marks: Unsure. I think I might.

22          Affirmative from Colonel Marks. Negative response from all other members.

1 ATC: Tech Sergeant John Fernandez?  
2 That is a negative response from all members.  
3 Major Albert Lowe?  
4 That's a negative response from all members.  
5 Dr. Ellen Dar?  
6 Negative response from all members.  
7 Major Jarrett Jack?  
8 That's a negative response from all members.  
9 Master Sergeant Cynthia Porras?  
10 Negative response from all members.  
11 Lieutenant Teresa Humphrey?  
12 Negative response from all members.  
13 Special Agent (b)(7)(C) [REDACTED]  
14 Negative response from all members.  
15 Special Agent (b)(7)(C) [REDACTED]  
16 Negative response from all members.  
17 Special Agent (b)(7)(C) [REDACTED]  
18 Negative response from all members.  
19 Lieutenant Colonel Ted Gatlin?  
20 Negative response from all members.  
21 Colonel Dean Ostovich?  
22 Negative response from all members.

1 ATC: Mr. Scott Cusimano?  
2 Negative response from all members.  
3 Staff Sergeant Evelyn Chavez?  
4 Negative response from all members.  
5 Mr. John Zettl?  
6 Negative response from all members.  
7 Dr. Gabriel Holguin?  
8 Negative response from all members.  
9 Ms. Suzanne Berrong?  
10 Negative response from all members.  
11 Ms. Rebecca White  
12 Negative response from all members.  
13 Mrs. Beth Wilkerson?  
14 Negative response from all members.  
15 Retired Colonel Robert Harvey?  
16 Negative response from all members.  
17 Dr. David Edrington?  
18 Negative response from all members.  
19 Ms. Darlene Bradley?  
20 Negative response from all members.  
21 Ms. Susan Schriver?  
22 Negative response from all members.

1 ATC: Brigadier General Pamela Milligan?

2 Negative response from all members.

3 Mrs. Angela Newbill?

4 Negative response from all members.

5 Lieutenant Colonel Paul Willingham?

6 Negative response from all members.

7 Lieutenant Colonel Paul Wilkerson?

8 Negative response from all members.

9 Dr. Rex Frank?

10 Negative response from all members.

11 Dr. Howard Taylor?

12 Negative response from all members.

13 Mrs. Connie Harvey?

14 Negative response from all members.

15 Lieutenant Colonel Ben Bradley?

16 Negative response from all members.

17 Lieutenant Colonel John Vargas?

18 Negative response from all members.

19 Mrs. Cheryl Pone?

20 An affirmative response from Lieutenant Colonel McGilvra; a negative response from all  
21 other members.

22 Retired General Ashy?

1 ATC: Negative response from all members.

2 Brigadier General Guastella?

3 MBR (Colonel Calta): Joseph?

4 ATC: Yes, Sir.

5 MBR (Colonel Calta): Yes.

6 ATC: Affirmative response from Colonel Calta. A negative response from all other  
7 members.

8 Retired Major General Blume?

9 Negative response from all members.

10 Colonel Sam Ward?

11 Negative response from all members.

12 Brigadier General Dolan?

13 Negative response from all members.

14 All right, that's the entire list. Thank you.

15 After being in the Air Force for a little while, most of us start to realize it's a pretty small  
16 Air Force. You start to know a lot of people, especially here within USAFE. And so I'd like to  
17 ask just if you've had any professional or social interaction with either defense counsel – either  
18 Captain Martin or Mr. Spinner?

19 That's a negative response from all members.

20 Members, during the trial you are going to hear about sexual assault and matters related  
21 to that alleged sexual assault. Bearing in mind that sex is not something that a lot of us can

1 easily talk about in public, will any of you have any difficulty in sitting, listening to, and then  
2 discussing matters of a sexual nature?

3 ATC: A negative response from all members.

4 Now the judge just gave you a specific instruction on the definition of “proof beyond a  
5 reasonable doubt.” Protecting the rights of the accused is vital to our living in an open and free  
6 society, and the government embraces that burden. Will everyone agree to follow the judge’s  
7 instructions on reasonable doubt?

8 That’s an affirmative response from all members.

9 During our case, there will be no DNA evidence or CSI evidence. Proof beyond a  
10 reasonable doubt does not require this type of evidence. With that being said, is there any  
11 member here who would require this type of evidence to find the accused guilty beyond a  
12 reasonable doubt?

13 That’s a negative response from all members.

14 Now your duty as court members in this case will require you to vote guilty if you find  
15 beyond a reasonable doubt that the accused committed the acts he is charged with. Is anyone  
16 here unable, either religiously, morally, or philosophically, to sit in judgment of another person?

17 That’s a negative response from all members.

18 If you are convinced beyond a reasonable doubt that the accused committed the acts of  
19 which he is charged, are each of you comfortable voting for a verdict of guilty?

20 That’s an affirmative response from all members.

21 Would every one of you agree that discussing the intimate details of a sexual assault with  
22 a total stranger might be uncomfortable for a victim of sexual assault?



1 ATC: That's an affirmative response from all members.

2 Will all of you consider these difficulties, that uncomfortable feeling, when evaluating  
3 the testimony of the victim in this case?

4 That's an affirmative response from all members.

5 Has everyone here ever had to fill out a report for the police or for an insurance company  
6 following some sort of an event or interaction?

7 That's an affirmative response from all members.

8 When you filled out that report, did you fill it out to the best of your ability?

9 That's an affirmative response from all members.

10 Were there things later that you remembered that you forgot to put in that report?

11 [Laughter by members.]

12 MBR (Colonel Jefts): I'm a yes.

13 ATC: Thank you.

14 Is it possible – let me rephrase the question.

15 MJ: Well, you may want to – they may not actually remember now. So, but yeah, go  
16 ahead and rephrase the question if you'd like.

17 ATC: Thank you.

18 Is it possible that there were things that you remembered later that you forgot to include  
19 in the original report?

20 Affirmative response from all members.

21 Would all of you agree with me then that there is no checklist, no set of operating  
22 instructions on how a victim of a sexual assault should act either during or after a sexual assault?

1 ATC: An affirmative response from all members.

2 If a victim's behavior after a sexual assault was not exactly what you expected, would  
3 any of you assume that she must be lying about that assault?

4 MBR (Colonel Harvell): I'm not certain.

5 A potential yes from Colonel Harvell; a negative response from all other members.

6 Along those same lines, if the victim's behavior on the stand is not what you expected, if  
7 she doesn't come off the way you expect, will any of you assume that she's lying?

8 That's a negative response from all members.

9 Colonel Doerr, negative?

10 MBR (Colonel Doerr): Negative.

11 ATC: Will all of you agree with me that individuals of any status or age could be victims  
12 of sexual assault?

13 That's an affirmative response from all members.

14 Will all of you agree with me that people of any rank or status could also be perpetrators  
15 of sexual assault?

16 That's an affirmative response from all members.

17 Would all of you agree with me that the accused in this case should not be given more  
18 deference or afforded more rights at this court-martial merely because of his rank in the United  
19 States Air Force?

20 That's an affirmative response from all members.

21 Will all of you agree that it's important to hold accountable those in positions of power or  
22 authority who break the law, especially when it comes to sexual assault in the military?

1 ATC: Affirmative response from all members.

2 Will all of you also agree that sometimes people whom you trust disappoint you?

3 Affirmative response from all members.

4 Would you also agree that sometimes people whom you believe to have excellent  
5 character act contrary to that belief?

6 Affirmative response from all members.

7 Would you agree that sometimes people act different in front of their superiors than they  
8 do in front of their subordinates?

9 Affirmative response from all members.

10 And would you also agree that sometimes people's private life can be very different than  
11 their public life?

12 Affirmative response from all members.

13 Do all of you believe that victims of sexual assault might respond in a variety of ways to  
14 the trauma of assault?

15 Affirmative response from all members.

16 I want to talk a little bit about alcohol. There will be evidence presented in this court-  
17 martial that the victim and the accused may have been drinking alcohol on the night the alleged  
18 sexual assault. Does anyone have any strongly held religious or moral beliefs about the use of  
19 alcohol?

20 That is an affirmative response from Colonel Harvell and a negative response from all  
21 other members.

1 ATC: Does anyone here believe that just because a person drinks alcohol they are  
2 indicating that they are available for sex?

3 That's a negative response from all members.

4 Does anyone believe that just because a person drinks alcohol that they assume the risk of  
5 a sexual assault?

6 Negative response from all members.

7 Now members, voluntary intoxication is not a defense to sexual assault. The law says  
8 that in deciding whether someone was consenting or not must be viewed from the perspective of  
9 an ordinary, prudent, sober person. Basically, someone can't say that because they were drunk  
10 they couldn't tell whether or not the other person was consenting and thus be let off the hook.

11 Does anyone disagree with this rule of law?

12 Negative response from all members.

13 Are all of you willing to follow that instruction from the military judge?

14 That's an affirmative response from all members.

15 Does anyone here think that the victim of a sexual assault is ever responsible or deserves  
16 what happens to her?

17 Negative response from all members.

18 Does anybody believe it is any less of a crime because she made herself vulnerable to that  
19 assault?

20 Negative response from all members.

1           ATC: Assuming the accused is convicted, a possible sentence could include  
2 confinement. Does anyone here have any religious or philosophical objections to voting for  
3 confinement as a possible sentence in this case?

4           Negative response from all members.

5           Assuming the accused is convicted, a possible sentence could include a dismissal from  
6 the service. Does anyone here have any religious or philosophical objection to that kind of  
7 punishment?

8           That's a negative response from all members.

9           Would each of you agree with me that enforcing discipline in the military is not  
10 particularly enjoyable, but is, in fact, necessary?

11          Affirmative response from all members.

12          Would all of you also agree that enforcing discipline exists not just for the accused, but  
13 also for the Air Force in maintaining good order, morale, and discipline?

14          Affirmative response from all members.

15          Thank you, Your Honor. I have no further questions.

16          MJ: Defense?

17          CIV DC: Yes, Your Honor.

18          Colonel Stentz, members of the court, I am Frank Spinner. I'm a retired Air Force JAG.  
19 I live in Colorado Springs, Colorado. I've been retained to represent Colonel Wilkerson in this  
20 proceeding. I formerly served in my last duty assignment as Chief Appellate Defense Counsel  
21 for the Air Force.

1           CIV DC: My co-counsel is Captain Jeff Martin. Captain Martin is the Area Defense  
2 Counsel assigned to Lakenheath in England. He's a detailed defense counsel in this proceeding.

3           Now I have a few more questions to ask, when you would think the whole territory has  
4 already been covered, but it hasn't. And some of my questions may just have a slight nuance  
5 that's different from the questions you've already been asked. So please listen very closely to  
6 the questions, and if you're not sure what I'm asking, raise your hand and I will attempt to  
7 clarify.

8           Do you all understand and agree that Lieutenant Colonel Wilkerson, who sits before you  
9 today, is presumed to be innocent of the allegations?

10          Affirmative response by all members.

11          Now, as you have already been shown with the flyer, he has been charged with multiple  
12 offenses. Does the mere fact that there are several charges cause any of you to believe that he is  
13 probably guilty of some of them?

14          Negative response by all members.

15          Now the prosecution, as we all know, gets to present their case first, to be followed by the  
16 defense presentation of its case. And they will also be able to make arguments before the  
17 defense has the opportunity to present argument. If the military judge instructs you that you are  
18 to keep an open mind, and he will be instructing that, and not to come to a decision in this case  
19 until all the evidence has been heard, all the arguments have been made, and all the instructions  
20 have been given, will you be able to keep an open mind until that point?

21          Affirmative response by all members.

1 CIV DC: In any type of legal case, have any of you or any family member or a close  
2 friend had a negative experience with an attorney, whether it was a civilian or a military counsel?

3 Negative response by all members.

4 Now, in representing Colonel Wilkerson through the course of this trial, if there is  
5 something in any of the defense counsel's style, questions or arguments that you think is not  
6 appropriate, will you hold that against Colonel Wilkerson?

7 Negative response by all members.

8 Now I think you've been asked whether you know Colonel Wilkerson. I understand  
9 everybody's was "no." But do you even know him by reputation?

10 Affirmative Negative response by all members.

11 In terms of what you may have heard about this case and I believe your responses earlier  
12 was no one was familiar with the facts of this case, except Colonel McGilvra.

13 MBR (Lieutenant Colonel McGilvra): Yes, Sir.

14 CIV DC: But have you, looking at the charge sheet that you looked at earlier, have you  
15 heard about any kind of case with similar allegations, that may not be specific to this case –  
16 that's very similar to this case?

17 We have an affirmative response by Colonel Jefts; Colonel Rottschafer, affirmative  
18 response. Is that an affirmative response?

19 MBR (Lieutenant Colonel Rood): Yes.

20 CIV DC: And Colonel Rood, an affirmative response.

21 MBR (Colonel Doerr): Can you repeat – Colonel Doerr – can you repeat the question?

1 CIV DC: Yes. Basically, have you heard about any cases that are similar to this case,  
2 even though you may associate it specifically with the charges in this case?

3 MBR (Colonel Doerr): In the past?

4 CIV DC: In, let's say, in the last six months?

5 [The members responded in the negative.]

6 CIV DC: Yeah, here's the point. You may not associate, as you look at the charge sheet,  
7 you may not be familiar in this case. However, you may have read in the *Stars and Stripes* or  
8 *The Air Force Times* about something that sounded like this case; you just don't remember the  
9 name. That's what I'm getting at.

10 A negative response from all members. I apologize.

11 Now since you have been selected to serve on this court, has anyone talked to you about  
12 the facts of this case?

13 Negative response from all members.

14 MJ: Colonel Doerr?

15 MBR (Colonel Doerr): Ah...

16 MJ: Yeah, I think you're thinking at this point. Is that...

17 MBR (Colonel Doerr): I'm not sure.

18 CIV DC: We have individual *voir dire* and talk about that.

19 Now we know that there are some questions that may be sensitive and personal, but these  
20 are questions that we ask you to be honest about, based on your personal beliefs and experience,  
21 regardless of any position you may feel you are required to as a military officer. First of all,



1 have you ever been briefed on the Air Force policy regarding – on sexual harassment or sexual  
2 assault?

3 CIV DC: Affirmative response by all members.

4 Do you understand that Air Force policy is not relevant in this proceeding, and that  
5 includes everything. In other words, will you agree to decide the issues in this case based on the  
6 facts and the law as the Judge instructs you? Will you agree to do that?

7 [The members nodded in the affirmative.]

8 CIV DC: And so in that sense, do you understand that Air Force policy is not relevant to  
9 this proceeding?

10 An affirmative response on the first question by everyone. I have some puzzled looks  
11 there.

12 Colonel Stentz, just let me ask you, what is your question or hesitation?

13 MBR (Colonel Stentz): If the government is accusing the accused of these things, you  
14 would think that we would be going by the policy of the Air Force and their definition.

15 MJ: And, actually, let me make that really clear for you – is that the policies or what you  
16 may have been briefed is not necessarily the law.

17 MBR (Colonel Stentz): Okay.

18 MJ: That's an administrative sort of policy which is and can be very different than a  
19 criminal case with specific laws and everything else. And for that reason, that's one of the  
20 reasons that it is necessary for you to wait until you get the law so that you understand what the  
21 law is. And, to add to it, if you think that the law is somehow a little bit different than what you

1 remember from an AFN commercial or from some briefing, then you follow the law. You know  
2 whatever was told or said to you before about a policy would not have any relevance.

3 MJ: Does that make it clear for the members?

4 I see an affirmative response from all.

5 Mr. Spinner, you can dive in further on that if you'd like or...

6 CIV DC: That's the point I was trying to get to, Your Honor. I'm satisfied with that.

7 MJ: Thank you very much.

8 CIV DC: Okay, does anyone believe that simply because a woman says she has been  
9 sexually assaulted she's telling the truth?

10 Negative response from all members.

11 I have a puzzled look from Colonel McGilvra. Do you understand?

12 MBR (Lieutenant Colonel McGilvra): I understand.

13 CIV DC: And Colonel Harvell, do you understand?

14 MBR (Colonel Harvell): I understand.

15 MJ: And I believe that was Colonel Harvell, was the second "understand" nod, just  
16 making it clear for the court reporter. Thank you.

17 CIV DC: Yes, Your Honor.

18 Have you, a family member or a close personal friend been a victim advocate of any  
19 kind, such as in a rape counseling center or something like that?

20 I have a negative response by everyone except Colonel Harvell and Colonel Rottschafer.

21 Have you, a family member or a close personal friend worked as a counselor for alleged  
22 victims for sexual assault, whether on or off duty?

1 CIV DC: And again, we have two affirmative responses by Colonel Harvell and Colonel  
2 Rottschafer. All the rest are negatives.

3 And I just have some final general questions. Based on what you know about yourself,  
4 do you believe you can be fair in deciding Colonel Wilkerson's case?

5 Affirmative response by all members.

6 Do you agree that you will be fulfilling your sworn duty if you find Lieutenant Colonel  
7 Wilkerson not guilty of the allegations because the government has failed to prove his guilt  
8 beyond a reasonable doubt?

9 Affirmative response from all members.

10 Is there – this is sort of a catch all kind of question – is there anything that you all believe  
11 that we need to know, as the lawyers and judge in this case, that could have an impact on  
12 whether you can fairly sit as a court member in this case?

13 Negative response by all members.

14 Colonel Harvell?

15 MBR (Colonel Harvell): I'm just trying to think of a whole array of things that go with  
16 my makeup and work that might affect that, but I don't think there is, so...

17 CIV DC: Thank you, Sir.

18 Even if you have no question whether you can be fair in this case, is there anything at all  
19 that you believe could be viewed by others as raising a question of whether you can sit fairly in  
20 this case?

21 Negative response from all members.

22 Thank you, gentlemen, ma'am. That's all the questions I have at this time.

1 MJ: Members of the court, there are some matters we must now consider outside of your  
2 presence. We will be bringing you back – at least some of you – to ask some follow-up  
3 questions based on our general questions.

4 Members, you are excused to the deliberation room.

5 (The members left the courtroom at 1120 hours, 26 October 2012.)

6 **END OF PAGE**

1 (The court-martial was called to order at 1121 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The 39(a) session is called to order.

4 The members are absent. All other parties are present.

5 MJ: I intend to bring the following three individuals back for individual *voir dire*: That  
6 would be Colonel Harvell, Colonel Rottschafer, and Lieutenant Colonel McGilvra.

7 Trial counsel, do you request individual *voir dire* on any additional members?

8 ATC: Sir, I believe we need to do it on Colonel Doerr, who said that he may have talked  
9 to someone about the case, I believe.

10 MJ: I agree. We will bring him in.

11 ATC: If I may have one moment, Sir, as well?

12 MJ: You may.

13 [The trial counsel conferred.]

14 ATC: And, Sir, if I could also request individual *voir dire* of Colonel Calta. He indicated  
15 he may know one of the potential witnesses in this case – of the general – I can't remember  
16 which one – one of the Brigadier Generals.

17 MJ: All right, and I don't have the spelling. I've got Brigadier General – is it Guastella?

18 ATC: Sir, it is spelled G-U-A-S-T-E-L-L-A – Guastella, I believe.

19 MJ: Thank you.

20 MJ: I will bring Colonel Calta back as well.

21 ATC: And you indicated you are bringing back Colonel McGilvra, I believe?

22 MJ: That is correct.

1 ATC: Thank you, Sir.

2 MJ: All right, so defense, just an update as to the individuals we're bringing back right  
3 now – Colonel Doerr, Colonel Harvell, Colonel Calta, Colonel Rottschafer and Lieutenant  
4 Colonel McGilvra. Are there any additional?

5 CIV DC: Your Honor, I'm working from the other end...

6 MJ: Fair enough.

7 CIV DC: ...who I do not want.

8 MJ: That's fine, too.

9 CIV DC: The only two I do not want are Colonel Cunningham and Colonel Rood. With  
10 the Colonel Stentz and Colonel Doerr, I'd like to address the rating chain because one of them  
11 said the other was his commander, and so that's an additional matter I'd like to inquire into.

12 MJ: That's fine.

13 Okay, as to – since I understand defense counsel kind of knows what they want to get to,  
14 I'll kind of turn the floor over to you on any of the members that I didn't otherwise have listed  
15 that I wanted to discuss and allow you to kind of get to the point that you want to get to.

16 CIV DC: Yes, Sir.

17 MJ: Before we – we have been going for some time – before we begin with individual  
18 *voir dir*, would you like to have a short comfort recess?

19 ATC: Yes, please, Your Honor.

20 MJ: All right. Will 10 to 15 minutes – will that be sufficient for counsel?

21 ATC: Yes, Sir.

22 CIV DC: Ten minutes is fine, Sir.

1 MJ: We'll be in recess for 15 minutes.

2 (The Article 39(a) session terminated and the court-martial recessed at 1123 hours, 26  
3 October 2012.)

4 **END OF PAGE**

1 (The court-martial was called to order at 1142 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent

5 We will not rise for each individual member as they arrive and depart; only as the  
6 members as a whole.

7 And, defense, I believe that you said that you would like to – you had a couple of  
8 questions for Colonel Stentz?

9 CIV DC: Correct, Your Honor.

10 MJ: Bailiff, if you will please bring Colonel Stentz out.

11 (The bailiff left the courtroom and returned with Colonel Stentz.)

12 MJ: You can just sit in the center there. That would be great. Actually, your seat is  
13 perfectly fine.

14 Mr. Spinner?

15 CIV DC: Yes, Sir, thank you.

16 **INDIVIDUAL VOIR DIRE OF**

17 **COLONEL STENTZ**

18 **Questions by the civilian defense counsel:**

19 Q. Colonel Stentz...

20 A. Good morning.

21 Q. ...we asked you to come back because of the response that you make about Colonel --  
22 is it Due-er?



1 A. Doerr.

2 Q. Doerr. Colonel Doerr, this is your commander?

3 A. Yes.

4 Q. And is he also your rater?

5 A. Yes.

6 Q. How – when did he last rate you?

7 A. May. May of `12.

8 Q. Here's the concern in a military court, when you have a rater and a subordinate, a  
9 commander and a subordinate. I mean it's going to be sort of a strange thing; if you remain on  
10 the court and he remains on the court, you're going to be the court president, even though he's  
11 your commander. You understand that?

12 A. Right.

13 Q. So part of the concern of the defense counsel in the military justice system, is  
14 unlawful command influence. First of all, do you understand that each member has equal voice  
15 regardless of rank?

16 A. Yes, Sir.

17 Q. How close is your actual relationship with him?

18 A. Not very close, actually. I'm actually the Deputy Commander, but that position just  
19 changed in August or so, and we really don't have the working relationship that I think we  
20 should have at this point. But he is just more of micromanager, if I could use that term, so he  
21 just takes care of everything himself. So I'm not having daily interaction with him or any after-  
22 hours interaction, if that's your question.

1 Q. That's part of my question. The other part is, have you had occasion where, in a  
2 profession role, you've had to disagree with him about something? I know, from having served  
3 in the military, that sometimes you're allowed to express a contrary opinion up to a point, and  
4 then the commander makes the final decision.

5 A. Right.

6 Q. Have you had any occasion where you had to actually disagree with him about  
7 something or express a contrary view?

8 A. Yes.

9 Q. And have you been able to do that?

10 A. To say my part?

11 Q. Yes.

12 A. Yes.

13 Q. Would you feel any discomfort being on this court in terms of maintaining your own  
14 personal views or opinions, if they're contrary to his?

15 A. Well, I could maintain my own personal views, but I would wonder what he thought  
16 of my personal view.

17 Q. The concern is whether you would fear any kind of ramifications after the trial if –  
18 because sometimes it can get pretty heated in that deliberation room with the views of the  
19 evidence. And so my concern is whether you would feel free to express a strong contrary view?  
20 And, quite frankly, it might be that's he's for not guilty and you're for guilty. It could go the  
21 other way. Do you feel you can truly be free and independent in voicing your vote with him on  
22 the panel?

1 A. Yes.

2 Q. Why?

3 A. Because it's my position as being a court member to do what I think is correct – I hate  
4 to use the word “just,” but based on the evidence presented, I will have to make my own decision  
5 about what it is, and if that doesn't agree with his, so be it.

6 Q. And so you, even if you ended up on different sides of the fence, so to speak, you're  
7 not worried about that spilling over into your professional relationship in any way?

8 A. No, Sir.

9 CIV DC: No further questions, Your Honor.

10 MJ: Thank you.

11 Government?

12 ATC: No questions, Your Honor.

13 MJ: Thank you very much, Colonel Stentz. You may return to the deliberation room.  
14 Please have Colonel Doerr come out. Thank you.

15 [Colonel Stentz left the courtroom. Colonel Doerr entered the courtroom.]

16 MJ: Colonel Doerr, if you could just please have a seat in the center area there. That  
17 would be great – specifically since that microphone is kind of in front of you. It doesn't amplify,  
18 but it just makes it a little bit easier for the court reporter to hear what you're saying.

19 **INDIVIDUAL VOIR DIRE OF**

20 **COLONEL DOERR**

21 **Questions by the military judge:**

1 Q. First, I believe that when asked whether since being selected for this court, has  
2 anyone tried to talk to with you about the facts of this case. You were trying to think if anyone  
3 had tried to talk to you, if any information to come to you. Have you had an opportunity to think  
4 about that any further?

5 A. Well, I have. I have. Should I just describe it?

6 Q. Sure. Please.

7 A. I'll be honest with you, yesterday, when I was in my office, one of my Captains in my  
8 Clinic came in and said, "Hey, I got a call from someone talking about a case down in Aviano."  
9 And it wasn't much beyond that. I think she felt that it was her duty to let me know that she had  
10 been contacted by someone outside the unit. She didn't discuss anything. She didn't really tell  
11 me why she was contacted, other than she said she wasn't sure either, but that you know she  
12 might be a witness or something. Other than that, so when you said that, it was just a little – it  
13 seemed a little unusual to me, and I told her why, you know – she didn't realize I was coming  
14 down here. And so I said, you know I'm actually going down to Aviano, and you know I don't  
15 want to hear anything. Don't talk to me about anything. So I didn't really hear any facts other  
16 than she said that she was contacted.

17 Q. What's the name of the Captain?

18 A. Rebecca Knightski.

19 Q. Okay. Thank you.

20 DC: Sir, I'm sorry. I couldn't hear the last name. Can you repeat it?

21 Q. The name?

22 A. Rebecca, first name. Last name is Knightski.

1 DC: Knightski. Thank you, Sir.

2 A. She's a Dentist in my clinic.

3 MJ: All right, defense counsel, based on that or on anything else that you'd like to ask?

4 CIV DC: Yes, Sir. Thank you.

5 **Questions by the civilian defense counsel:**

6 Q. Sir, one of the concerns the defense counsel has in a military court-martial proceeding  
7 is potential for any kind of unlawful command influence. And as had become clear, apparently  
8 you are Colonel Stentz's Commander. Is that correct?

9 A. That's correct.

10 Q. And you are his rater?

11 A. That's correct.

12 Q. And what's really interesting is that even though you're his commander/rater,  
13 apparently, by rank, he would be the court president if both of you sit on the panel. You  
14 understand that?

15 A. Yes, I understand.

16 Q. The concern I have is just whether both of you or either way – and quite frankly, my  
17 concern is more him than you, that he would be able to exercise an independent and vote in this  
18 proceeding. I mean, technically, you know you all have your rank and positions, but rank and  
19 status has no privilege when it comes to deliberations in the courtroom. Do you understand that?

20 A. Absolutely.

1 Q. Do you have any concerns, based on your relationship with him, that he would be  
2 reluctant or hesitant in any way to express his own independent voice and to vote independently  
3 if both of you sit on the panel?

4 A. I don't believe so. I mean we interact quite often, just – I've been a peer of his before  
5 I became the Commander at the clinic that I'm at. So we were in similar roles. Actually, at one  
6 point he was an interim commander where I was falling under him. So it's been switching back  
7 and forth. You know there's a couple of year's difference between us, and it – technically, yes.  
8 I understand what you're saying, but the way we interact with each other, I don't see that that  
9 would be an issue.

10 Q. And I respect that because I know that within the professional community, sometimes  
11 the military side gets very unclear at some times. I hope you can understand the concern that we  
12 have that if a commander and a subordinate end up on the same panel, sitting next to each other  
13 in a court-martial, from just an appearance standpoint, there might be some conflict.

14 A. Well, I understand it. I mean I never had this happen to me before, so this is a unique  
15 experience for me, also.

16 Q. Thank you. The bottom line is you feel that that's not an issue – you don't see that as  
17 being an issue if you both end up on the panel?

18 A. I don't think that's going to affect either of us you know in the decision that we come  
19 up with, is what I'm saying.

20 Q. I do have another question – well, two more questions. We were provided these  
21 questionnaires. You may recall filling this out.

22 A. Yes.

1 Q. And it indicates that you were on a discharge board in October of '08 that involved  
2 the commission of a serious offense. Then it says "sexual child abuse."

3 A. That's correct.

4 Q. Usually that's a court-martial, not a discharge board. So is...

5 A. I've been – this – I had this question before, and I cannot really explain it exactly,  
6 other than my recollection of this, I was at Langley Air Force Base. There was some issue with  
7 when they tried to proceed with a court that they could not do a court. And so what happened  
8 with this individual is they did the discharge, and then I think the civilian authorities...

9 Q. ...took action?

10 A. Yes. Because he ended up – I know that he went to prison. But it was – it was like a  
11 child molestation thing.

12 Q. Right. Is there anything about that experience that would make it difficult for you to  
13 be impartial in this proceeding?

14 A. I don't think so. I mean they're separate facts you know, and I felt like at that time  
15 when I was involved in that case, you know my decision was based on the facts of that case.

16 Q. Now, it says, also, as I understand, you've only sat on one court-martial?

17 A. That's correct.

18 Q. Was that a guilty plea or a not guilty plea?

19 A. Ah, it was a guilty plea.

20 Q. And so does that mean all you were involved with was sentencing in that proceeding?

21 A. No, it wasn't just – no – so it must have been a not guilty, because we had to – let me  
22 back up. No, we had to say whether he was guilty or not.

1 Q. It says October 12. So that is just within this past month?

2 A. Oh, no. That's – the `12 is incorrect. It was – I think it was actually October of `10.

3 Q. Of `10?

4 A. Yes, I'm sorry.

5 Q. So where was that trial?

6 A. At Ramstein.

7 Q. Were you the court president or do you recall?

8 A. I was. Yes.

9 Q. Okay, so as I understand it, it was a litigated case, you were court president, and so  
10 ultimately you had to determine guilt or innocence?

11 A. That's correct.

12 Q. And then I assume you found him guilty?

13 A. That's correct.

14 Q. And do you recall what the punishment was in that proceeding?

15 A. Ah, he had – I think it was confined to base, extra duty. He wasn't discharged.

16 Q. Is there anything, again, about that proceeding that would make it difficult for you to  
17 be impartial in this case?

18 A. No.

19 CIV DC: No further questions, Your Honor. Thank you.

20 MJ: Government?

21 ATC: The government has no questions for this member, Your Honor.

22 MJ: Thank you.



1 MJ: Colonel Doerr, you may return back to the deliberation room. If you could please  
2 have Colonel Jefts come out. Thank you.

3 [Colonel Doerr left the courtroom.]

4 [Knock on the courtroom door.]

5 MJ: You can come in, please.

6 [Colonel Jefts entered the courtroom.]

7 MJ: Colonel, if you can just sit – actually just right in front of the microphone would be  
8 great, on the lower level.

9 Defense, so you have any questions?

10 CIV DC: Yes, Sir.

11 Good morning, Ma'am.

12 MBR (Colonel Jefts): Good morning. Can you speak up? My hearing aids are not  
13 working properly today.

14 CIV DC: Yes, Ma'am.

15 **INDIVIDUAL VOIR DIRE OF**

16 **COLONEL JEFTS**

17 **Questions by the civilian defense counsel:**

18 Q. First of all, we have a questionnaire, and I think you responded to some of the  
19 questions that you'd previously sat on a court-martial?

20 A. Yes, Sir.

21 Q. And at least your questionnaire indicated that was a sexual assault?

22 A. That's correct.

1 Q. In the fall of 2011?

2 A. Yes.

3 Q. Where did that take place?

4 A. At Ramstein.

5 Q. And were you the court president based on your rank?

6 A. Yes, I was.

7 Q. Now, was there a guilty plea or a not guilty plea?

8 A. There was a not guilty plea.

9 Q. And do you recall what the finding was?

10 A. Yes, I do.

11 Q. What was that?

12 A. Am I allowed to say that?

13 MJ: Not your individual vote, but just what was announced in open court.

14 A. Not guilty.

15 Q. Now, you've seen the charges here...

16 A. Yes.

17 Q. ...and you know what you went through there.

18 A. Yes.

19 Q. Is there anything about that case that would make it difficult for you to sit as a court  
20 member in these proceedings?

21 A. No, Sir.

22 Q. Do you know if the accused had a civilian attorney or just a military attorney?

1 A. The accused had a civilian attorney.

2 Q. Do you just recall who that was?

3 A. I don't recall the name. I do know that it wasn't you though.

4 [Laughter by the member.]

5 Q. And you don't know who I am, correct?

6 A. I know your name.

7 Q. Okay.

8 A. But I have never met you before.

9 Q. And how is it that you know my name?

10 A. You represented a medical provider that I was familiar with.

11 Q. Okay, and that was while you were at Fairchild?

12 A. Yes, Sir.

13 Q. That was a fairly contested type of situation?

14 A. Yes, Sir.

15 Q. Is there – I'm concerned that in my course of my representing that client, whether or  
16 not that may – that created any hard feelings or ill will that would impact on my work here.

17 A. May I answer with more than just a yes or no?

18 MJ: That would be great. Yes.

19 A. Okay. You have a job to do, Mr. Spinner, and I fully appreciate the job that the  
20 defense needs to do in this case, and that the government has the responsibility of proving the  
21 guilt of the accused. So I actually have no negative feelings about you at all. I know that you're  
22 very good at what you do, and you're smarter than a lot of our captains, which does the people

1 that you serve well. So it's incumbent upon the government to present their case, and it's  
2 incumbent upon you to present a good defense, and I appreciate both sides.

3 CIV DC: Yes, Ma'am.

4 No further questions.

5 MBR (Colonel Jefts): Thanks.

6 [Jet noise.]

7 MJ: Government?

8 TC: Your Honor, we have no questions.

9 **Questions by the military judge:**

10 Q. Colonel, just a couple of things you had mentioned – your hearing aid?

11 A. Yeah. I will just get a new battery.

12 Q. Is that just a temporary issue?

13 A. Yes.

14 Q. Great. Thank you.

15 A. As long as people speak up, I'm having no problems whatsoever.

16 Q. That sounds good. And if you sit as a panel member, if for any reason you're having  
17 difficulty hearing either counsel or hearing the witness, obviously, just bring it to our attention.

18 A. Yes, Sir.

19 Q. But it does look as though now it's just a temporary problem.

20 A. It just decided to misbehave.

21 MJ: All right. Thank you very much Colonel. You may return to the deliberation room.

22 Please have Colonel Marks come out.

1 MBR (Colonel Jefts}: Colonel Marks? Yes, Sir.

2 MJ: Yes. Thank you.

3 [Colonel Jefts left the courtroom. Colonel Marks entered the courtroom.]

4 MJ: Colonel, if you can just please come in and just sit in the center so the microphone is  
5 front of you. The microphone does not amplify your voice, but it does make it easier for the  
6 court reporter to hear what you're saying.

7 Defense?

8 CIV DC: Good morning, Colonel Marks – well, I guess we're still in morning.

9 MBR (Colonel Marks): Yes, Sir.

10 **INDIVIDUAL VOIR DIRE OF**

11 **COLONEL MARKS**

12 **Questions by the civilian defense counsel:**

13 Q. I have a couple of questions. First of all, I believe you said that you rated Colonel  
14 McGilvra?

15 A. I was his supervisor. We never actually got through a performance report. We were  
16 in the process of moving his unit off of the USAFE books into TRANSCOM, and his supervisor  
17 at the time had PCSed. So they needed some place to, I guess "park" him for about three  
18 months.

19 Q. How long ago are we talking about?

20 A. As of October 1<sup>st</sup>, they moved.

21 Q. Of this year?

1           A. Yes. I still sign his leave stuff because that all hasn't transitioned yet, but that's  
2 pretty much it.

3           Q. So, in terms of contact, how much contact did you actually have with him?

4           A. Ah, once or twice a month.

5           Q. Were you required to write any sort of LOE or do they still do LOEs?

6           A. No, Sir. I never wrote a – didn't have enough time to write a performance report.

7           Q. But at this point there is no supervisory role?

8           A. Correct.

9           Q. And you would feel comfortable sitting with him on this panel?

10          A. Yes, Sir.

11          Q. Now I think you indicated you may know Major O'Keefe?

12          A. I believe so. One of my roles is the Chief Nurse for USAFE, and if it's the same  
13 Major O'Keefe that works in the OR at the Med Group here, I know of him, just professionally.  
14 I've shook his hand a couple of times.

15          Q. You've never had to actually interact with him professionally, other than just shaking  
16 hands?

17          A. That's it. No, Sir.

18          Q. And I assume then no social involvement?

19          A. No, Sir. I've come here a couple of times for sight visits and just whatever happens  
20 along with those visits would be it. You know if we go out to dinner and he happens to be one of  
21 the people at the dinner, then that would be it, but not on a one-to-one basis. I can't ever recall  
22 that happening there.

1 CIV DC: One moment, please, Your Honor.

2 [The defense counsel consulted.]

3 CIV DC: No further questions, Your Honor.

4 MJ: Trial counsel?

5 ATC: No questions for Colonel Marks, Sir.

6 MJ: Colonel Marks, thank you very much. You may return to the deliberation room. If  
7 you could please have Colonel Harvell come out.

8 MBR (Colonel Marks): Harvell; yes.

9 [Colonel Marks left the courtroom. Colonel Harvell entered the courtroom.]

10 [Jet noise.]

11 MJ: Colonel, if you can just sit in the center there so that's microphone is in front of you.  
12 It doesn't amplify but it does make it easier for the court reporter to hear what you're saying.

13 [Jet noise.]

14 **INDIVIDUAL VOIR DIRE OF**

15 **COLONEL HARVELL**

16 **Questions by the military judge:**

17 Q. I believe you said that you, a family member or a close personal friend has been a  
18 victim advocate or – and, I guess, worked as a counselor for alleged victims of sexual assault. Is  
19 that correct?

20 A. Yes, it's correct.

21 Q. Tell me a little bit more about that. When you answered yes to that question, who  
22 were you thinking of?

1 A. Myself, primarily.

2 Q. And so what is – tell me, when have you been a victim advocate?

3 A. Most specifically a victim...

4 [Jet noise.]

5 A. To the question of being a victim advocate, that was people on our Chapel staff who  
6 worked on the sexual assault hotlines before I worked in the Victim Advocate Program. So at  
7 several different bases there have been members of our staff. In regards to the question of  
8 counseling, it was person, me counseling folks.

9 Q. Now, and the individuals that you counseled, that included counseling individuals that  
10 had alleged that they were sexually assaulted. Is that correct? So alleged victims that you've  
11 personally...

12 A. Yes. Yes.

13 Q. How often has that happened, where you have counseled alleged victims of sexual  
14 assault?

15 A. I'd probably say over the course of 20 year, 24 people maybe.

16 Q. And when was the last time, just generally speaking, that you had an opportunity to  
17 counsel an alleged victim? I mean are we talking in the last year, the last month, ten years ago?

18 A. I think the last time would have been 2009, when I was the Wing Chaplain at Qatar.

19 Q. Have you had the opportunity to counsel an alleged perpetrator – someone that has  
20 been accused of committing a sexual assault as well?

21 A. I have not. Let me correct myself; prior to military service, I did in a civilian  
22 situation.



1 Q. And so how about how long ago was that?

2 A. That would have been 1985.

3 Q. Do you, based on the role that you have had, on at least approximate 24 times over  
4 the last 20 years, where you have counseled alleged victims, do you believe that role, in any way,  
5 would impact your ability to sit as a court member in this case?

6 A. I don't.

7 Q. And why not?

8 A. Because the – while there is certain a sympathy for folks that have been victims, there  
9 is also a sense to discern the difference between – there's also knowledge that there could be a  
10 false charge that would come against someone, and the person needs to be tried according to the  
11 facts of the case – the particular case. And in that regard, the person that's accused could  
12 possibly be the victim, in a sense, as well. So that just needs to be determined by the facts of the  
13 case.

14 Q. When you have counseled alleged victims in the past, is one of your roles as a  
15 counselor to determine whether or not the alleged victim is telling the truth or not, or is that not  
16 your role?

17 A. It is always assumed they are telling the truth to me because of the traumatic state  
18 they're coming in and the situation.

19 Q. Do you recognize that your role sitting as a panel member, where you are going to  
20 have to make determinations regarding credibility and whether or not the government has proven  
21 their case beyond a reasonable doubt, do you have any discomfort with actually – well, with  
22 actually making a determination as to credibility regarding an alleged victim?

1           A. Absolutely not. I've counseled around 3,000 people, total, as a chaplain, and I feel  
2 like I'm fairly good at that – accessing their credibility.

3           Q. And in this particular case, you understand that you are not to necessarily – your role  
4 is not to assume that anyone is telling the truth; you've got to make a credibility determination  
5 kind of from scratch. Do you understand that?

6           A. Yes.

7           Q. And you'll be able to do that in this case?

8           A. Yes.

9           MJ: Defense counsel, anything further?

10          [The defense counsel conferred.]

11          CIV DC: [No response.]

12          ATC: Sir, I actually had a couple of questions.

13          MJ: What's that?

14          ATC: I actually have a few questions.

15          MJ: That's sounds good. I'm waiting for defense. If I said "trial counsel," I misspoke. I  
16 meant to ask defense counsel first.

17          CIV DC: No, I apologize, Your Honor. I do have a few questions.

18          MJ: Okay. Thanks.

19          **Questions by the civilian defense counsel:**

20          Q. Sir, just to sort of follow up on that, with respect to the people that you counseled,  
21 were they ever caught up within the military justice or civilian criminal system, whether they  
22 were a victim or not, that was being litigated in a court of law?

1 A. Yes, some went to that state. Yes.

2 Q. And in terms of counseling them, do you know – did you have to deal with situations  
3 where they may have testified, and while you may have believed them, in the court proceeding  
4 there may have been an acquittal for whoever...

5 A. Right.

6 Q. ...the perpetrator. Did you have any situation like that?

7 A. No, I didn't.

8 Q. Did you have any situations where they actually testified and someone was convicted  
9 of a sexual assault?

10 A. In most of the cases I dealt with, they didn't go to court. They didn't report that they  
11 had been assaulted, and it was in an institution. And so while I know it was happening and being  
12 very familiar with it, working the helping agencies on the base, I, myself, was never involved in  
13 the courtroom with those cases.

14 Q. And so you had no memorable circumstance where your counseling interfaced with  
15 the military justice or civilian criminal justice system?

16 A. No, it didn't.

17 Q. One of the concerns in terms of accessing credibility, I think you said you assumed  
18 that when someone came to you for counseling, you assumed that they were being truthful. Now  
19 we're not asking for names or specific situations here, but did you determine that in any of those  
20 24 plus or minus – whatever – counseling situations, did you actually come to the conclusion that  
21 the person was not being truthful?

22 A. Ah, no.

1 Q. And is it reasonable for me to assume that all of these individuals were women or  
2 were any of them men?

3 A. Well, one was male.

4 Q. And all the rest were women?

5 A. Right. Two were male; one civilian one, so two male cases – one a military case.

6 The – may I follow up on...

7 MJ: You may.

8 A. ...that statement?

9 Q. Yes.

10 A. There have been many counseling cases in which – of other types where someone  
11 believed what they were saying to be true, that they themselves, in the course of counseling, it  
12 was realized that that wasn't as accurate in their own understanding of themselves or the  
13 circumstances as it needed to be – not in a sexual assault case.

14 Q. I understand. I'd like you then to also address, beyond just this issue, your moral,  
15 religious feelings about alcohol and they play in your ability to be impartial.

16 A. Can you read the exact question?

17 Q. I think it may have been a government question.

18 MJ: I can read it for you.

19 CIV DC: I had down questions 21 and 22.

20 MJ: That's what I have as well.

1 MJ: “There will be evidence presented that the victim and the accused were drinking  
2 alcohol on the night the assault allegedly occurred. Does anyone have any strongly held  
3 religious or moral beliefs about the use of alcohol?”

4 A. Yes, I believe that it is a responsibility of faithful people to not let alcohol control  
5 their lives, but to be in control of that. That is a religious tenant of my faith. I don’t see that as a  
6 “Okay, this person is going to go to hell because they allowed themselves to drink drunk,” but it  
7 is, for me, a Biblical responsibility to not allow things outside of – substances of any kind to  
8 control us, but we’re supposed to control them. So when a person gets drunk, they’re not where  
9 they’re supposed to be. And that’s a faith-based philosophy or ethic, and that’s why I answered  
10 “yes” to that question.

11 Q. Now, the concern is that you may -- well, first of all, I assume that you respect that  
12 others, even of the Christian faith, may believe that consuming alcohol to some degree is  
13 permissible even within their religious beliefs. You would agree with that?

14 A. Yes, and that’s not at all what I said.

15 Q. No, no, I’m not...

16 A. Right.

17 Q. ...going onto a different tangent, because I’m going to follow up on that.

18 A. Okay. Sure.

19 Q. Is it your own personal view that you do not drink alcohol, religiously, or do you  
20 drink alcohol in small amounts?

21 A. We drink alcohol in small amounts.

1 Q. Okay. And you respect that there may be people of no religious persuasion here that  
2 either they do not drink or they do drink?

3 A. Sure.

4 CIV DC: One moment, please, Your Honor.

5 [The defense counsel conferred.]

6 CIV DC: One moment, please, Your Honor.

7 [Civilian defense counsel conferred with the defense expert consultant.]

8 Q. Sir, do you have any specialized training when it comes to counseling victims of  
9 sexual assault or was your counseling more of a general pastoral counseling?

10 A. I've had so much training, I'm trying to think of those particular things. I don't – yes,  
11 but not at a level of an expert counselor, like a mental health professional had. So I've had basic  
12 victim response counseling and then pastoral counseling training that's been specific, but not at  
13 the level of a mental health person who would be an expert in that.

14 CIV DC: Thank you.

15 I have no further questions, Your Honor.

16 MJ: Thank you.

17 Government?

18 ATC: Thank you, Your Honor.

19 **Questions by the assistant trial counsel:**

20 Q. Just to clarify your position on alcohol, you do believe, morally, it's okay to drink  
21 within moderation, essentially?

22 A. Yes.

1 Q. And you're not going to hold it against the accused for merely the fact that he drank  
2 some alcohol?

3 A. No.

4 Q. Okay. You mentioned that you've counseled approximately 24 individuals who  
5 believed that there were victims of sexual assault. Is that correct?

6 A. [Nodded his head in the affirmative.]

7 Q. During your counseling with those individuals, Sir, in your experience, did you ever,  
8 for whatever reason, come to doubt the veracity of that person's allegations?

9 A. No.

10 Q. Sir, you also mentioned – I believe you said one potential perpetrator of sexual assault  
11 you counseled back in 1985. Is that correct, Sir?

12 A. Accused.

13 Q. Accused of a sexual assault?

14 A. Yes.

15 Q. Can you tell me a little bit about where that was?

16 A. That was in Weatherford, Texas, and it was an accusation of a father – kids – that a  
17 father had sexually assaulted his children.

18 Q. So an allegation of child sexual abuse?

19 A. Yes, Sir.

20 Q. Did that case – I think I may have asked you – that case did not go to a trial that you  
21 know of?

22 A. No. I mean it was handled not at a formal trial.

1 Q. Not a formal trial. Did it –were there any legal proceedings at all, that you remember,  
2 that did occur because of that?

3 A. Yes. The father lost custody of his children.

4 Q. Okay, so there were some civil proceedings – custody hearing?

5 A. Right.

6 Q. In your counseling of that individual, did you come to form any opinion as to whether  
7 or not the person was guilty or innocent of the allegations made?

8 A. My impression was, at the time, was that he was innocent of the charges.

9 Q. You became to believe that the allegations were false?

10 A. Right.

11 Q. Thank you, Sir. Sir, I asked a question, I believe it was – this question I will just  
12 repeat it for you again. I asked, “If a victim’s behavior was not what you expected, would any of  
13 you assume that the victim was lying about being assaulted?” I believe you said “yes” to that  
14 question.

15 A. I think I said it would – I may have said yes, and the reason would be that I don’t  
16 know what this particular situation or case is, but open-ended, whatever that you know there  
17 would be no situation of behavior that would cause me to question veracity based upon having a  
18 traumatic event like this would not necessarily be true. There could be circumstances or  
19 situations in the evidence that I would certainly question if it’s truthful or not, based upon you  
20 know behavior set, just an experience in counseling people experiencing traumatic events. It’s  
21 wide; it’s a huge array of things, but I wouldn’t be able to say *carte blanche* that I wouldn’t be  
22 able to draw that conclusion based upon behavior set or credibility.



1 Q. So you'd – I'm sorry.

2 A. It's just that you ask a credibility question, if there are certain things that did or didn't  
3 happen. I mean I would ask – I wouldn't be able to say a hundred percent that I wouldn't use  
4 that as a determining factor in deciding my belief in the person's veracity.

5 Q. Just to be clear, Sir, you're saying you'd have to consider all of the reactions and  
6 responses to kind of decide their credibility?

7 A. Right.

8 Q. Thank you. When the defense counsel asked his final questions about, in general, did  
9 you feel like you can sit on this panel and perceive to be fair, you seemed to have some  
10 hesitancy, perhaps, about answering that question. Was there any reason for the hesitancy  
11 related to your role as a chaplain, at all?

12 A. Well, the chaplains on courts-martials juries has its own issue, which I've had to work  
13 through to be able to say that I certainly will be able to follow my – you know the question of,  
14 for me, was the wide array of things that go into play that you have to put aside to be fair and  
15 honest and to be able to make an assessment based on the facts of the law in the case, and for me  
16 you know it's sympathy to victims, but it's also the recognition of the need for a sense of grace  
17 for people and what's actually happening and the accusations. You know I've been around all of  
18 the different sides of this, and so for me it's just a complex deal. So the answer would be I  
19 believe I can be fair and just and assess access the situation with the laws to come to that  
20 conclusion. But, for me, there's a lot of history in the situation that will have to be balanced out  
21 to be able to keep that clarity of thought to be able to make the right decisions for everyone  
22 involved.

1 Q. Sir, you mentioned that sense of grace that you'd give consideration for you doing  
2 your job, and we've heard that basis. When you're thinking about sentencing, particularly,  
3 assuming this case will get that far, would that sense of grace or compassion be something that's  
4 so a part of you that have to take that into consideration before...

5 A. Well, I think that's a – yes, and that's grace for all involved; what's the best – what's  
6 the right thing to do for everyone, including the Air Force; the victim; if proven to be guilty, the  
7 accused – what's the right thing to do, and that would be, for me, the most graceful thing to do.

8 Q. Along those lines, Sir, do you believe – not on this case particularly – but do you  
9 believe you are capable of considering lengthy periods of confinement as an appropriate sentence  
10 or punishment in some cases?

11 A. Yes.

12 ATC: Thank you.

13 No further questions, Your Honor.

14 CIV DC: No follow up, Sir.

15 MJ: Thank you.

16 Thank you, Colonel Harvell. You can return back to the deliberation room. And please  
17 have Colonel Calta come out.

18 [Colonel Harvell left the courtroom. Colonel Calta entered the courtroom.]

19 MJ: Colonel, if you can just come in. Please sit on the lower level in the center, right by  
20 Colonel Stentz's seat, just so the microphone is right in front of you.

21 **INDIVIDUAL VOIR DIRE OF**

22 **COLONEL CALTA**

1           **Questions by the military judge:**

2           Q. I believe that you said that you know Brigadier General Joseph Guastella?

3           A. Guastella.

4           Q. How do you know him?

5           A. We were at the Air Force Academy together a long time ago.

6           Q. Have you stayed in touch since that time?

7           A. No.

8           Q. How long ago was that, approximately?

9           A. Well he left – I would say he – I think he was an `87 grad, so probably the last time I  
10 saw him was in 1987.

11          Q. So you were not in the same class; you just happened to be at the Academy at the  
12 same time?

13          A. Right. We were in the same squadron, but not in the same class.

14          Q. How would you characterize your interactions with him back at the Academy? Were  
15 you friends?

16          A. I was an underclassman, he was an upperclassman, so it was a one-way relationship.

17          [Laughter by all.]

18          MJ: Trial counsel, do you have any follow up?

19          ATC: Could I have one moment, Your Honor?

20          MJ: You may.

21          [The trial counsel conferred.]

22          ATC: No questions, Your Honor.

1 MJ: Defense?

2 CIV DC: Just a couple of follow-up.

3 **Questions by the civilian defense counsel:**

4 Q. Just as an aside, I taught the class of `87.

5 A. Oh, did you?

6 Q. But you were a duly when he was a firsty, is that right?

7 A. No, I think he was a junior.

8 Q. Okay, so I may have gotten the date wrong. You're class of `90?

9 A. I am `90. Yeah.

10 Q. Okay. From a separate – well, given the nature of that relationship, it was during  
11 your duly year?

12 A. Yes.

13 Q. And so were there any interactions between you and him that were memorable?

14 A. None, really.

15 Q. Beyond that, let me just ask, I think you said when the judge asked if you'd ever  
16 previously sat on a court-martial, that you said yes.

17 A. Yes.

18 Q. And we were provided questionnaires and it didn't indicate here that you had sat on  
19 one. When did you sit on a court?

20 A. Last December, at Ramstein.

21 Q. And what was the nature of the case?

22 A. It was a DUI, among other things.

1 Q. Did the accused plead guilty?

2 A. He pleaded not guilty.

3 Q. Do you recall the other charges of the proceeding?

4 A. There were actually three charges. The most serious charge was, basically, stealing a  
5 car, and we found him not guilty of that. We found him guilty of the DUI, and I can't remember  
6 what the third one was, but – I'm trying to think what the third one was right now. Essentially, it  
7 was the prosecution didn't get everything that wanted; the defense didn't get everything they  
8 wanted either.

9 Q. What was it; enlisted members?

10 A. Enlisted, right.

11 Q. And do you recall the punishment?

12 A. Yes. It was – I think he was an E-4 at the time. We busted him down to an E-1; four  
13 months confinement on base; I think it was three months additional duty. I think that was the  
14 max that we could give him.

15 Q. Was there anything about that experience that would make it difficult for you to be  
16 impartial in this proceeding?

17 A. No.

18 CIV DC: One moment, please, Your Honor.

19 [The defense counsel conferred.]

20 CIV DC: No further questions, Your Honor.

21 MJ: Government, based on that?

22 ATC: Nothing, Your Honor.

1 MJ: Thank you, Colonel. You may return back to the deliberation room, and please have  
2 Colonel Rottschafer come out.

3 [Colonel Calta left the courtroom. Colonel Rottschafer entered the courtroom.]

4 MJ: Colonel, if you'd just sit in the lower level in front of the microphone, that would be  
5 great.

6 **INDIVIDUAL VOIR DIRE OF**  
7 **COLONEL ROTTSCHAFER**

8 **Questions by the military judge:**

9 Q. I believe you said that you have had some legal training or experience other than that  
10 generally received by military members of your rank and position. Is that correct?

11 A. Yes, It is.

12 Q. And what is that experience?

13 A. As a psychologist, I've been to a couple of forensic psychology workshops.

14 Q. What types of things were discussed during those workshops?

15 A. Ah, expert witnessing, evaluating competence for trial for possibly parenting you  
16 know for divorce cases, those type of things.

17 Q. So when you saying "evaluating competence for trial," you're talking about  
18 evaluating competence of a parent or someone to...

19 A. Or the defendant, if there's a question about their mental status.

20 Q. I believe you also said that either you, a family member or close personal friend has  
21 been a victim advocate. Is that correct?

22 A. Yes, Sir.

1 Q. And what were you thinking about when you said yes to that?

2 A. Again, as a psychologist, I've, on occasion, had to advocate for my patient.

3 Q. Now when you say you "had to advocate" for your patient, what do you mean when  
4 you say you had to advocate for them?

5 A. Occasionally, I would be asked you know would – potentially by a court or by an  
6 attorney – would testifying in this court-martial as a victim be detrimental to the mental health of  
7 my patient. And on occasion I've had to say yes, and this is why – those types of things.

8 Q. And are those the same circumstances that you were talking about – well, actually,  
9 I'll ask this in a slightly different way. You, a family member or close personal friend worked as  
10 a counselor to alleged victims of sexual assault; is that your work as a psychologist? Is that what  
11 you were referring to or...

12 A. Yes, and my father is a psychologist as well.

13 Q. Approximately how many individuals do you believe that are alleged victims of  
14 sexual assault that you believe that you have counseled?

15 A. Sir, that's a very difficult question to answer. I've been in the Air Force for 20 years,  
16 and the first several years, doing therapy was my primary duty, so – but that was a long time ago.  
17 I would venture to say 20, maybe, but it's been a long time.

18 Q. So when you're talking about the times where you counseled as a psychologist, this  
19 was early in your military career or have you done it recently?

20 A. I'm currently in my second command tour, so I have, I think, between 2010 and 2012,  
21 I saw three patients, possibly none of which had any – sexual assault was not a factor in any of

1 those. And I was covering for this psychiatrist who – they were on leave, the patient had a  
2 medication issue, and I covered for that.

3 Prior to that, I was a Mental Health Flight Commander, and so there was – I was mostly  
4 in an administrative position, although I did see patients.

5 Q. So the bulk of the time that you're thinking about, where you actually firsthand  
6 counseled or worked with alleged victims, was in the first several years of you coming into the  
7 Air Force? Is that correct?

8 A. Yes, Sir. In 2004, I went for a fellowship in psychopharmacology, which is the  
9 psychiatric medications, and so from – so I was in a fellowship from '04 to '06, and then because  
10 we have a shortage of psychiatrists in the Air Force, the majority of my work in the mental  
11 health field has been prescriptions and not doing a lot of counseling, other than what would have  
12 in the course of a medication evaluation or an adjustment session.

13 Q. Have you had an opportunity to counsel individuals that have been accused of sexual  
14 assault or some type of sexual assault?

15 A. Yes.

16 Q. How many times? About how many times has that happened?

17 A. Ah, that actually is a fairly rare occurrence. I did it when I – the case that I'm  
18 thinking of was when I was stationed at RAF Chicksands, and I was the sole mental health  
19 provider, and so doing family advocacy as well, and so I was kind of a capacity. That was '94 to  
20 '95, so it's been a very long time.

21 Q. Have you testified as a witness or an expert witness in a court-martial?

22 A. Yes, Sir.



1 Q. How often?

2 A. Again, I would estimate 12 times.

3 Q. What was the area of expertise that you were testifying about in those courts-martial?

4 A. Ah...

5 Q. What opinion just were you being asked in those courts-martial to discuss or describe  
6 or what?

7 A. So, on 12 occasions I've been called for defense counsel. Typically, it's not for  
8 findings, but for sentencing. And then several times I have been an expert time to the court, just  
9 on mental health and you know potential impact of different things.

10 MJ: Trial counsel, do you have any follow up questions?

11 ATC: No, Sir.

12 MJ: Defense?

13 CIV DC: Yes, Sir.

14 **Questions by the civilian defense counsel:**

15 Q. Sir, first of all, just completely separate from your work as an expert, I think you  
16 indicated that you knew Captain Brock?

17 A. The name is familiar. I can't place her.

18 Q. And I say Captain Dawn Brock.

19 A. The name is familiar. I don't know why or from where. If I saw her face, I might  
20 recognize her. I'm trying to be honest with answering the question.

21 Q. Right. Right. So at least you recognize the name, but you're not drawing any  
22 specific memory of interaction with her?

1           A. I can't – I can't draw a face. I don't know where or why or how I have heard that  
2 name or if I've ever met her, but the name is familiar.

3           Q. Now, as far as, on the one hand you've appeared as a witness – an expert witness in  
4 courts-martial, have you ever previously sat as a court member?

5           A. I did in 2001 – early 2001, I believe. It was for sentencing only. It was a desertion  
6 case.

7           Q. Do you recall where that was?

8           A. Anderson Air Force Base.

9           Q. Do you recall what the sentence was?

10          A. I don't – not – I don't. I think he got confinement, but I don't know how long or for  
11 what.

12          Q. Let's go back now and talk a little bit about your work as an expert witness. First of  
13 all, have you sat on sanity boards. I mean that was sort of the impression we had.

14          A. I've done sanity boards.

15          Q. And when was the last time you sat on a sanity board?

16          A. Ah, 2011, I believe. I did not do the interviewing of the individual, but I reviewed the  
17 sanity board, and I was a signatory on it.

18          Q. How many sanity boards would you say you've been on?

19          A. That I have personally done the interviews or...

20          Q. First, interviews, and then secondly, as a reviewer or approver?

1           A. Ah, gosh, I'm guessing, again, somewhere – five, maybe five that I have actually  
2 done the interviewing and written it up. And then to be a signature or to review the package and  
3 then be a signature on the sanity board, probably another four or five after that.

4           Q. Now, I'm not sure I was tracking you in the terms of the times you've testified as an  
5 expert witness. Were there some of those occasions where you appeared and testified for the  
6 defense regarding potential for rehabilitation or something of that sort?

7           A. Correct.

8           Q. And how many times – and did you conduct forensic evaluations of the accused in  
9 those cases?

10          A. In those cases, no. Typically, the member was one of my patients, and so they just  
11 wanted some information on what did I think about the prognosis and the potential for  
12 rehabilitation – those types of things – or recidivism as well.

13          Q. Right. Have you ever conducted a forensic evaluation of an accused in a sexual  
14 assault case?

15          A. Not to my memory.

16          Q. Now, you said testified for the defense. Are you talking about patients who were  
17 accused or patients who were alleged victims?

18          A. I have done both. I've testified for the defense in sentencing more times than I – I  
19 think I've only testified for trial counsel in sentencing on one occasion.

20          Q. So, at the beginning of the questioning, when the Judge was asking you, you said  
21 there may been 20 or so, as I understood it, individuals, presumably women – correct me if I'm

1 wrong – that were sexual assault victims that you provided counseling for. Did I say that  
2 correctly?

3 A. So, yeah, and I'm guessing. I am...

4 Q. I'm not concerned about...

5 A. I am guessing...

6 Q. Okay.

7 A. ...on the number.

8 Q. But I'm more concerned about the fact that you were providing counseling for women  
9 who were claiming to be sexual assault victims.

10 A. For both men and women, correct.

11 Q. And do you recall what the approximate ratio was?

12 A. Men to women?

13 Q. Right.

14 A. It was only one male, and all the rest were females.

15 Q. Just one?

16 A. Yes.

17 Q. Now, of those, if you recall, how many actually ended up in the court-martial system  
18 where there was a legal determination that they were a victim as opposed to just counseling?

19 A. Ah, that's a pretty small number. Most of the work that I've done with the victims  
20 was childhood or pre-military kind of assault. So I think there has only been – I'll say less than  
21 five where I was working with a victim that the trial was going on and I was providing  
22 supportive care to the victim to help them get through the trial.

1 Q. Did you have any occasions, whether you were working for the defense or working  
2 for the prosecution, where there was a bad experience with the military justice system? In other  
3 words, an innocent person may – that you believed was innocent and may have been convicted  
4 or someone may have been acquitted that shouldn't have been, and you've been aware of that,  
5 would you have any experience like that?

6 A. No.

7 Q. Did you have any bad experiences dealing with either prosecutors or defense counsel  
8 just working as part of – as an expert consultant or a witness?

9 A. Ah, there was one time they asked me to – defense counsel – asked me to – I was at  
10 Spangdahlem, and they asked me to come to Ramstein to do something, and they were getting  
11 the orders cut and so forth. And then when I got to Ramstein, there were no orders. Other than  
12 that – but they put me on – they called back to my Commander back at Spangdahlem and he put  
13 me on verbal orders, and everything was fine. So it was frustrating that they didn't get it sorted  
14 out beforehand. But other than that, it was an administrative thing.

15 Q. Now, in terms of your degrees, I was looking at your degrees and your background,  
16 and it lists a bachelor's degree and then a PhD. What is your actual PhD in?

17 A. Clinical psychology.

18 Q. Thank you, Sir. Have you ever had to work any cases dealing with alcohol  
19 consumption and you had to determine or assess level of alcohol as it relates to blackout or  
20 passed out or things like that – substantial incapacitation ? Have you had to deal with that kind  
21 of issue in any case?

1           A. I'm not sure I understand – typically, when I work with patients and there's been an  
2 alcohol – alcohol has been involved, usually I'll have a BAT or some sort of objective measure  
3 of what the level of alcohol was.

4           Q. Have you had any case where there was no objective measure, and you were just  
5 asked to assess an individual's degree of intoxication just based on your training and  
6 experience, but there was no objective measure?

7           A. Well, there would need to be some sort of – I mean the number of drinks or whatever  
8 in order for me to be able to do something like that. Other than that, you know...

9           Q. Right, and I'm just asking if you ever been asked to do that, to make a...

10          A. Not.

11          Q. In a subjective way, I suppose...

12          A. No.

13          Q. ...to make an assessment?

14          A. No.

15          Q. Now, one of the concerns that I have as a defense counsel, is that there may be some  
16 expert testimony presented by psychologists – forensic psychologists, and the concern I have is  
17 that with someone of your educational background and experience, sitting on a panel, that when  
18 you would get into deliberations, the other members may turn to you as an expert and ask for  
19 your assessment based on your specialized training and background, and, in fact, make you an  
20 expert witness in the deliberation room. Do you understand that concern?

21          A. I do.

1 Q. Do you believe that you would be able to refrain from becoming an expert witness  
2 where there's no opportunity to cross-examine you one way or the other – would you be able to  
3 restrain yourself in deliberations in that way?

4 A. Yes. It would actually be an ethical violation for me to render an opinion on a patient  
5 that I haven't evaluated.

6 Q. No, no rendering an opinion so much on a patient, but rendering an opinion and  
7 assessing the skills of the expert or experts that may testify.

8 A. I can – I could avoid that because, again, I didn't do the evaluation; I didn't have a  
9 chance to review the evaluation done by the forensic; look at the data; look at the evidence – that  
10 sort of thing. And so for me to second guess what another professional is saying or conclusions  
11 that are being drawn when I don't have access to all of the information, I think would also be an  
12 ethical violation.

13 Q. Do you understand thought that nonetheless the members may look to you because of  
14 your training and background for assistance in helping them resolve some of the issues in the  
15 case?

16 A. And I would resist it.

17 CIV DC: One moment, please, your Honor?

18 MJ: You may.

19 [The civilian defense counsel conferred with the defense expert consultant.]

20 Q. Do you have any specialized experience or training dealing with biofeedback?

21 A. Yes.

22 Q. And can you describe that?

1 A. What the training is?

2 Q. Right, your level of training and experience in biofeedback.

3 A. When I was an intern from `92 to `93, that was one of the modalities that we were  
4 trained in. And then in `95, I was instrumental in getting biofeedback equipment at  
5 Spangdahlem, and part of the purchase of that was that I got sent to a week-long training course  
6 for that. I haven't done biofeedback probably since `98. Yeah, Spangdahlem, I believe, was the  
7 last place that I was at that even had biofeedback equipment.

8 CIV DC: Thank you, Sir.

9 No further Questions.

10 MJ: Trial counsel, anything further?

11 ATC: Briefly, Your Honor.

12 **Questions by the assistant trial counsel:**

13 Q. Sir, just to focus in on your experience in counseling alleged victims of sexual  
14 assault, there were quite a few of them, correct?

15 A. Yes.

16 Q. In your experiences with them, in your discussions with them, did you ever come to  
17 form any opinions about their veracity – the veracity of their allegations? First, and I'm not  
18 saying you expressed that to them.

19 A. Right. When I'm doing therapy with somebody, as opposed to a forensic evaluation,  
20 when I'm doing therapy, my mindset is working with the patient's perception of what happened.  
21 So it's not – I'm not looking at objective data or that sort of thing. It is me and her talking. And



1 the only information that I have in that is potentially her account of what happened. Does that  
2 make sense?

3 Q. Yes.

4 A. I have no other objective information on that. And so what I'm working with is that  
5 individual's recollection and how that recollection has impacted their life and helping them get  
6 past that. I think there always has to be, just because of my training, there is always the question  
7 you know that could this be some sort of larger mental illness, and if things start not making  
8 sense or the story changes – not that it changes, but the story – there are implausibilities that  
9 they're talking about, then I need to start thinking about is there another disease process going on  
10 here, a psychotic disorder, a delusional disorder, those types of things. But I can't imagine – I  
11 can't remember a time when that's really ever happened. I think, as a psychologist, that's a part  
12 of the training, as you always are kind of making sure that your assessment and treatment plan  
13 are consistent with whatever is going on with the patient. But I don't remember a time where  
14 I've ever questioned the sanity of the individual that I was working with. Does that make sense?

15 Q. Yes. Thank you, and I didn't intend to ask you whether you question their sanity, but  
16 whether or not they actually were telling the truth about the situation.

17 A. About the actual assault?

18 Q. Do you ever ask yourself, "I can't believe this is true"?

19 A. I don't recall that happening. If, again, what I'm working with is the account of the  
20 patient, and if their account is such that they believe that happened, and we're dealing with the  
21 after – I'm not working with them on whether or not it happened. I'm working with them on the

1 impact – potential impact that it had on their lives, in helping them minimize the negative of  
2 impact of whatever event that was. Does that make sense? Is that more helpful?

3 Q. Yes. And just let me ask one more follow up question, and I apologize.

4 A. Okay.

5 Q. Has the thought ever crossed your mind in getting that patient focused on therapy,  
6 that perhaps their perceptions of what happened are different than what actually happened?

7 A. I would imagine that in people’s memory we know, not in sexual assault cases, but  
8 people remember things differently, and there typically is at least some degree of difference  
9 between if we had a videotape and we’re actually looking at you know what happened and  
10 people’s recollection. I think there is almost always some degree of difference there. But, again,  
11 that’s not what I’m – I’m not looking at that. When I’m working with a victim, it’s really what  
12 they recall, because what they recall and what they perceived is what’s going to be the basis for  
13 the impact on their life. That’s what I’m working with.

14 Q. You are not there to pass judgment?

15 A. I am not there to pass judgment in any way. And, in fact, you know if the patient  
16 comes later and says, “Well, I remember this or I talked to somebody who was there, and this is  
17 what they said happened.” Okay, fine. Then that’s the direction we go, again, looking at the  
18 impact of whatever it was that they remember or believed happened to them, and minimizing that  
19 impact.

20 Q. Is that something that you have experience with, that a victim has come back and  
21 said, “Now I remember something different”?

22 A. Yes.

1 ATC: No further questions.

2 CIV DC: No further questions.

3 MJ: Thank you. You may return to the deliberation room. If you could please have  
4 Lieutenant Colonel McGilvra come out.

5 MBR (Colonel Rottschafer): Yes, Sir.

6 MJ: Thank you.

7 [Colonel Rottschafer left the courtroom. Lieutenant Colonel McGilvra entered the  
8 courtroom.]

9 Colonel McGilvra, if you could just please sit in the front seat there with the microphone  
10 that is in front of you.

11 **INDIVIDUAL VOIR DIRE OF**  
12 **LIEUTENANT COLONEL MCGILVRA**

13 **Questions by the military judge:**

14 Q. I believe that you said that you might have some prior knowledge of the facts or  
15 events in this case. Is that correct?

16 A. Yes, Sir.

17 Q. Tell me a little bit about that. What do think that you've heard, and where do you  
18 think you heard it from?

19 A. I'm on a mail group that goes to COMUSAFE regarding public affairs  
20 announcements, and there was a translation of a newspaper article in the local Italian newspaper  
21 detailing some of the events. And I read that before I was appointed to the trial.

22 Q. About when was that that you read that?

1 A. June-July timeframe, to the best of my recollection.

2 Q. What, if anything, do you remember reading in that article about this case or about  
3 what supposedly had happened?

4 A. A brief summary was that a high-ranking official, as part of the Wing staff, had been  
5 alleged to commit an assault of some kind.

6 Q. You had an opportunity to look over the flyer that was provided to you. Do you  
7 remember, was there any information beyond what that flyer would have that you read in that  
8 article?

9 [The member looked at the flyer.]

10 A. I don't recall any information that would be in more detail than this, no.

11 Q. After reading that email, were there any comments? Did you have any meetings  
12 about the email or about this article?

13 A. No. It's just a daily summary of articles. You know there are about ten or so that  
14 come on the email, and that was one of the ten that day.

15 MJ: Trial counsel, do you have any additional questions?

16 ATC: Yes, Your Honor.

17 **Questions by the assistant trial counsel:**

18 Q. Sir, you mentioned that you may know or do know a Mrs. Cheryl Pone?

19 A. Yes.

20 Q. How do you her?

21 A. I was a fellow squadron commander with her deceased husband, Kermit Pone, at the  
22 same time here in Aviano. And I had met her on probably three or four social occasions.

1 Q. So when, in fact, were you a squadron commander here at Aviano?

2 A. That was my last assignment here. I've been in Germany for three years, so the three  
3 years prior to that.

4 Q. We're talking about 2006 to 2009?

5 A. Right. Exactly. Yeah.

6 Q. And Colonel Pone, how long did he approximately overlap with your time here?

7 A. We were for the full two years. We took squadron command about the same time.

8 Q. You were not in the same career field, but just different groups?

9 A. Different groups. I was in the Med Group and he was in the Ops Group.

10 Q. Your relationship with Colonel Pone, was that a personal relationship or was it  
11 merely a professional relationship?

12 A. Primarily professional. I didn't see him outside the base activities, but you know a lot  
13 of those events are social in nature, like the honorary squadron commander events, where we  
14 meet with the Italian counterparts. There's a lot of mandatory fun events for squadron  
15 commanders that are social in nature, but still considered official duty. And then we meet  
16 weekly with the Wing Commander, so I would see him at those meetings.

17 Q. Is he someone that by the time your assignment ended, you would have considered  
18 him a friend?

19 A. Yeah. He came to my change of command ceremony when I relinquished command.

20 Q. Mrs. Pone, would you have considered her a friend as well?

21 A. Acquaintance. Like I said, I only saw her three or four times.

22 Q. Were you here when he actually passed away?

1 A. No. We were in Germany by then.

2 Q. Did you travel down for the memorial?

3 A. [Head in the negative.]

4 Q. Based upon your interactions with Mrs. Pone when you did interact with her, did you  
5 form any opinions about her as a person?

6 A. A very nice person. I mean very personable. I enjoyed talking with her.

7 Q. Did you form any opinions about whether or not she is a truthful or an untruthful  
8 person, or do you feel like you do not know that?

9 A. I probably didn't have enough experience. We didn't talk about controversial issues.

10 Q. But, in general, would you say that you have a very positive impression about Mrs.  
11 Pone?

12 A. Yes.

13 ATC: Thank you. One moment, Sir?

14 MJ: [No response.]

15 [The trial counsel conferred.]

16 Q. The facts are going to come out that Mrs. Pone is a friend of the Wilkerson family,  
17 and, in fact, her boys may be, in some sense, a part of the fact pattern of this case. Based upon  
18 your relationship with the Pone family previously, do you believe it could be awkward for you to  
19 pass judgment on whether or not a friend Cheryl Pone did or did not commit a sexual assault?

20 A. Can you rephrase that?

21 Q. Let me try again. Based upon your relationship, previously, with the Pone family...

22 A. Roger.

1 Q. ...the fact that she has a close relationship with the Wilkerson family, as you will find  
2 out, and that her children was present in the house of the alleged sexual assault, will that make it  
3 hard for you to pass judgment whether or not that happened. Will that be uncomfortable for  
4 you?

5 A. Not awkward. No.

6 Q. Well, what are you thinking right now? You seem a little bit hesitant.

7 A. Ah, I guess part of the instructions that was given was not giving – to give equal  
8 weight to testimony. And based on that instruction set, it would be difficult not to give her more  
9 weight because I know of her – more of her character than a typical witness. So that would be  
10 difficult.

11 Q. It would be difficult not to give her more weight?

12 A. Right.

13 ATC: Nothing further.

14 MJ: Defense?

15 CIV DC: I think all of my questions have been asked, Your Honor.

16 MJ: All right. Thank you very much.

17 You may return to the deliberation room. Thank you.

18 MBR (Lieutenant Colonel McGilvra): Send in anyone else?

19 MJ: Nope. No one else needed at this point. Thank you.

20 [Lieutenant Colonel McGilvra left the courtroom.]

21 MJ: All right, counsel, we will have a short comfort recess before – well, let me ask you,  
22 I believe we've got all of the members that we wanted individual *voir dire* on. Is that correct?

1 ATC: Yes, Your Honor.

2 CIV DC: Yes, Sir.

3 MJ: All right, we will have a short comfort recess and then we'll come back for  
4 challenges.

5 (The Article 39(a) session terminated at 1303 hours, 26 October 2012.)

6 **END OF PAGE**



1 (The court-martial was called to order at 1317 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order

4 The parties are present. The members are absent.

5 Trial counsel, do you have any challenges for cause?

6 ATC: We do, Your Honor.

7 MJ: Who is that?

8 ATC: We have two challenges, Your Honor, and that would be Colonel Rottschafer and  
9 Lieutenant Colonel McGilvra.

10 MJ: Defense counsel, do you object?

11 CIV DC: We have no objection with respect to Lieutenant Colonel McGilvra. We do  
12 object on Colonel Rottschafer.

13 MJ: All right, trial counsel, your basis for objection on Colonel Rottschafer?

14 ATC: Yes, Your Honor. I would point to the fact, obviously, that he's counseled 20,  
15 approximately, victims of sexual assault; that he has been an expert witness; that he's worked  
16 with both the defense, the government; that he is someone very familiar with the legal world  
17 when it comes to mental health. I would point to the fact that he has a lot of insight into  
18 recollection, recall memory, which is going to be, I believe, at the very crux of this case, if not  
19 the entirety of the case, really – memory and recall. I don't believe – I believe it is a bridge too  
20 far to ask him to separate that knowledge, that experience, that expertise from his ability to  
21 evaluate the evidence in this case and present an opinion as to the credibility of a witness, back  
22 there in that deliberation room.

1 MJ: Thank you.

2 Defense, response?

3 CIV DC: Yes, Your Honor.

4 Actually, we found him to be quite thoughtful and reflective that he's not served in the  
5 expert role in a few years. Apparently, also, he's not served in a clinical role in a number of  
6 years. To the extent that he performed a clinical role, it sounded like it was actually a long time  
7 ago, Your Honor. He seemed to understand his ethical limitations if he were to remain in the  
8 deliberation room. And so, quite frankly, we debated at some length whether or not we would  
9 want to challenge him, and we certainly don't think that there should be a *per se* rule that just  
10 because he has been a – served in a forensic role as a psychologist that that disqualified him from  
11 sitting on a panel. So he appeared to us to be fair and impartial and understood the limitations of  
12 his duties sitting on a panel. So we do not think this indicates any either actual bias or implied  
13 bias, Your Honor.

14 MJ: At this point, defense, are you anticipating that there is going to be expert testimony  
15 by either trial or defense counsel?

16 CIV DC: There is a reasonable likelihood. In good faith, Your Honor, there is a  
17 reasonable likelihood that we will have expert forensic psychologist testimony in this case.

18 MJ: Thank you.

19 Both of those challenges for cause are granted.

20 Defense counsel, do you have any challenges for cause?

21 CIV DC: Yes, Sir, we have two challenges for cause. First, Colonel Jeffs. Your Honor,  
22 despite her responses about me when I asked her questions...

1 TC: Your Honor, we don't have an objection.

2 CIV DC: I'm sorry?

3 TC: We have no objection.

4 CIV DC: Oh, you have no objection.

5 MJ: All right. Thank you.

6 So there is no objection Colonel Jeffs, okay.

7 CIV DC: The other is Colonel Harvell, the chaplain.

8 TC: And, again, no objection.

9 MJ: Okay. That makes it easy for you, doesn't it?

10 CIV DC: Okay. I'm pretty set...

11 [Laughter by all.]

12 MJ: All right, both the challenge for cause as to Colonel Jeffs as well as Colonel Harvell  
13 – is that correct – that was the challenge for cause – is Colonel Harvell?

14 CIV DC: Yes, that's correct.

15 MJ: Both of those challenges for cause are granted.

16 Trial counsel, do you have a peremptory challenge?

17 ATC: We do not, Your Honor.

18 MJ: Defense counsel, do you have a peremptory challenge?

19 CIV DC: Colonel Doerr, Sir,

20 MJ: That is granted. That leaves us with, my count, of five officer members, Colonel  
21 Stentz, Colonel Marks, Colonel Cunningham, Colonel Calta and Lieutenant Colonel Rood. That  
22 is a quorum for a general court-martial.

1 MJ: Is there anything further before we call the members?

2 ATC: No, Your Honor.

3 CIV DC: No, Sir.

4 MJ: Call the members.

5 [The bailiff left the courtroom.]

6 (The Article 39(a) session terminated at 1322 hours, 26 October 2012.)

7 **END OF PAGE**

1 (The court-martial was called to order at 1323 hours, 26 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, the following persons have been excused and will not serve as members in this  
6 court-martial: Colonel Doerr, Colonel Jefts, Colonel Harvell, Colonel Rottschafer and  
7 Lieutenant Colonel McGilvra.

8 That means that the following five individuals will serve as court members in this court:  
9 Colonel Stentz, Colonel Marks, Colonel Cunningham, Colonel Calta and Lieutenant Colonel  
10 Rood.

11 Before I excuse all of you, as to the five members that will be continuing in this case as  
12 members, I instruct you as follows: From news media and otherwise, you are probably familiar  
13 with civilian criminal trial and how they the sequester jury members, taking them away from  
14 their families and homes for the duration of the trial. Now I understand in this case I think all or  
15 most of you actually have been brought here from your normal duty station. Never the less, in  
16 military trials we don't sequester; we don't isolate you in a hotel room and tell you you can't  
17 leave the hotel room until the end of the trial. But we have in the military many of the same  
18 concerns that our civilian court counterparts do, that jury members not be exposed to improper  
19 information or influences during the trial. The difference is that we trust your professionalism  
20 and your ability to doggedly abide by the directions of the court to not expose yourself to  
21 information about the case or inappropriately begin considering the evidence.

1 MJ: Hence, my repeated instruction to you that during any recess or adjournment – and I  
2 will be recessing those five members for this weekend. You may not discuss the case with  
3 anyone, not even among yourselves. You must not listen to or read any account of the trial or  
4 consult any source, written or otherwise, as to matters involved in the case.

5 Do not purposely visit the scene of any incident alleged in the specifications or involved  
6 in the trial. You must also avoid contact with witnesses or potential witnesses in this case. If  
7 anyone attempts to discuss the case in your presence during any recess or adjournment, you must  
8 immediately tell them to stop and report the occurrence to me at the next session.

9 If you inadvertently read something or hear something about this case, similarly, you  
10 must stop reading/listening once you realize what it is, and then report the occurrence to me as  
11 well at the next session.

12 Now for those five members that will remain as members in this court, we will continue  
13 at least with you at 8:00 in the morning on Monday, and we will begin with opening statements  
14 for those five members.

15 Trial counsel or defense counsel, is there anything further before I excuse these  
16 members?

17 ATC: No, Your Honor.

18 CIV DC: No, Sir.

19 MJ: Members, you are released.

20 (The members left the courtroom at 1326 hours, 26 October 2012.)

21 **END OF PAGE**

1 (The court-martial was called to order at 1327 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Counsel, we have several motions that we will be resolving this afternoon. Before we get  
6 to that, obviously, I'd like to take a lunch break. Based on what we need to accomplish, the  
7 question for counsel is does reconvening at 2:30 or 1430 or 1500 make more sense, based on  
8 what you need to accomplish and ensuring that you have an opportunity to have lunch?

9 Trial counsel, do you have a preference?

10 ATC: We propose 1430, Your Honor.

11 CIV DC: We concur.

12 MJ: We are in recess until 1430.

13 (The Article 39(a) session terminated and the court-martial recessed at 1430 hours, 26  
14 October 2012.)

15 **END OF PAGE**

**CHARGE SHEET**

**I. PERSONAL DATA**

1. NAME OF ACCUSED ( <i>Last, First, MI</i> ) WILKERSON, JAMES H.		2. SSN [426594] Exemption 6	3. GRADE OR RANK Lt Col	4. PAY GRADE O-5
5. UNIT OR ORGANIZATION 3 1st Operations Group (USAFE) Aviano Air Base, Italy			6. CURRENT SERVICE	
			a. INITIAL DATE 15 February 1992	b. TERM N/A
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None	
\$8,199.30	\$0.00	\$8,199.30	9. DATE(S) IMPOSED N/A	

**II. CHARGES AND SPECIFICATIONS**

10. CHARGE I: Violation of the UCMJ, Article 120

Specification 1: In that LIEUTENANT COLONEL JAMES H. WILKERSON, United States Air Force, 31st Operations Group, Aviano Air Base, Italy, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, engage in sexual contact with Ms. Exemption 6 to wit: fondling her breasts with his hands, doing so when Ms. Exemption 6 was substantially incapable of appraising the nature of the sexual contact.

Specification 2: In that LIEUTENANT COLONEL JAMES H. WILKERSON, United States Air Force, 31st Operations Group, Aviano Air Base, Italy, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, engage in a sexual act with Ms. Exemption 6 to wit: digital penetration of her vagina, doing so when Ms. Exemption 6 was substantially incapable of appraising the nature of the sexual act.

CHARGE II: Violation of the UCMJ, Article 133

Specification 1: In that LIEUTENANT COLONEL JAMES H. WILKERSON, United States Air Force, 31st Operations Group, Aviano Air Base, Italy, a married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully enter a bed occupied by Ms. Exemption 6 a woman not his wife, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman.

Specification 2: In that LIEUTENANT COLONEL JAMES H. WILKERSON, United States Air Force, 31st Operations Group, Aviano Air Base, Italy, a married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully engage in sexual contact with Ms. Exemption 6 a woman not his wife, to wit: fondling her breasts with his hands, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman.

**III. PREFERRAL**

11a. NAME OF ACCUSER ( <i>Last, First, MI</i> ) WEBER, ERIC N.	b. GRADE O-4	c. ORGANIZATION OF ACCUSER 31st Fighter Wing
d. SIGNATURE OF ACCUSER Exemption 6	e. DATE 14 June 2012	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 14th day of June, 2012, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

R. AUBREY DAVIS III  
*Typed Name of Officer*

31st Fighter Wing  
*Organization of Officer*

Major  
*Grade*

Deputy Staff Judge Advocate

*Official Capacity to Administer Oath  
(See R.C.M. 307(b)(1) - must be commissioned officer)*

Exemption 6

*Signature*



12. On ~~19 June~~ 19 June 20 12, the accused was informed of the charges against him/her and of the names(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

DAVID W. WALKER  
Type Name of Immediate Commander

31<sup>st</sup> Operations Group  
Organization of Immediate Commander

Colonel

Exemption 6

Signature

IV. RECEIPT BY SUMMARY COURT MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1710 hours, 19~~th~~ 20 June 20 12, at 31st Fighter Wing  
Designation of Command or

Aviano Air Base, Italy  
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE <sup>1</sup> COMMANDER

BRYAN D. WATSON  
Type Name of Officer

Staff Judge Advocate  
Official Capacity of Officer Signing

Lieutenant Colonel  
Grade

Exemption 6

Signature

V. REFERRAL, SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY HEADQUARTERS THIRD AIR FORCE (USAFE)	b. PLACE RAMSTEIN AB, GERMANY	c. DATE 2 AUGUST 2012
--	----------------------------------	--------------------------

Referred for trial to the general court-martial board convened by Special Order A-29  
this headquarters

dated 2 August 20 12, subject to the following instructions: <sup>2</sup> None.

FOR THE COMMANDER   
Command or Order

CHRISTINE A. LAMONT  
Typed Name of Officer

Deputy Staff Judge Advocate  
Official Capacity of Officer Signing

LIEUTENANT COLONEL  
Grade

Exemption 6

Signature

15. On 7 AUGUST 20 12, I (caused to be) served a copy hereof on ~~(each of)~~ the above named accused.

VY S. NGHIYEN  
Typed Name of Trial Counsel

CAPTAIN  
Grade or Rank of Trial Counsel

Exemption 6

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.  
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

**CHARGE SHEET**

*(Continuation)*

**CHARGES AND SPECIFICATIONS**

Specification 3: In that LIEUTENANT COLONEL JAMES H. WILKERSON, United States Air Force, 31st Operations Group, Aviano Air Base, Italy, a married man, did, at or near Roveredo in Piano, Italy, on or about 24 March 2012, wrongfully engage in a sexual act with Ms. Exemption 6 a woman not his wife, to wit: digital penetration of her vagina, which act, under the circumstances, constituted conduct unbecoming an officer and a gentleman.

1. NAME OF ACCUSED (*Last, First, MI*)  
WILKERSON, JAMES H.

2. SSN

Exemption 6

1 (The court-martial was called to order at 1434 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Before we get to the earlier motions that were previously marked, I'll mark a couple of  
6 additional exhibits.

7 Appellate Exhibit XII will be the court's ruling regarding the mental health records of the  
8 alleged victim. It is the court's understanding that there was one document that had not yet been  
9 provided to counsel.

10 Appellate Exhibit XIII is an order to provide those documents – mental health records of  
11 the alleged victim.

12 If there are any issues that trial counsel or defense counsel see with either that ruling or  
13 that order at a future point please bring it to the court's attention and we certainly will resolve it.  
14 Otherwise, I will work under the assumption that trial and defense counsel have what they need.

15 DC: Sir, just getting off the phone with Mental Health and talking generics, we believe  
16 there might be one additional form, other than the whole OQ45, so just for a heads up, we're still  
17 examining that right now.

18 MJ: Thank you very much. And I attempted, recognizing there potentially might be  
19 another document other than the particular form that both trial counsel and defense counsel are  
20 aware of, my attention on both the ruling, as well as the order, is to make it clear that all of the  
21 mental health records of the alleged victim will be provided, and, again, if there's anything else

1 that I need to be involved in with that, bring it to my attention. Otherwise, I'll consider it  
2 resolved.

3 MJ: All right, defense, you have two motions – the motion for the viewing as well as the  
4 motion to compel discovery. Do you have a preference as to which motion to handle first?

5 CIV DC: The viewing, Your Honor.

6 MJ: Do you have any witnesses that you would like to have testify regarding this  
7 motion?

8 CIV DC: We do, Your Honor.

9 [Trial counsel stood.]

10 TC: Your Honor, we don't believe it's necessary to call a witness. The government will  
11 stipulate as a matter of fact that Ms. **Exemption 6** does not have a good recollection of the layout  
12 of the house that she was in seven or eight months ago for a matter of a few hours, and that the  
13 drawing that she did at the Article 32 likely is not accurate. That is not the issue before this  
14 court, and it's not going to be a facts issue.

15 I do not believe that Mrs. Wilkerson is going to come in and lie about the layout of her  
16 house. I believe she will lie about a lot of things, but not the layout of her house. That is not an  
17 issue before this court.

18 MJ: All right, let me ask you this, defense counsel: What information are you intending  
19 to elicit from – is it Mrs. Wilkerson who you are planning to have testify?

20 CIV DC: It is Mrs. Wilkerson, yes.

1 MJ: All right. So I can determine whether, for purposes for this motion, if there is  
2 anything that she is going to testify about that the government is not going to concede – is not  
3 going to concede. I mean what are you intending to elicit at this point from this witness?

4 CIV DC: Right, Your Honor. She's going to describe access and egress to the house,  
5 such as parking in front, how you have to hit a buzzer that opens the gate to let people in, and  
6 she's also going to talk about how Ms. Exemption 6 left the house that night, and how there's a back  
7 gate and a back driveway with a yellow flashing light and bright lights, and how you go down  
8 stairs and then out the driveway. She's going to testify, within the house, about the various  
9 rooms in the house in relation to each other. So, for instance, she's going to testify that there's  
10 no bedroom just off the kitchen, which is what Ms. Exemption 6 has described; that there's only one  
11 bedroom at that level, that's at the far end of the hall; and that the – you've heard some questions  
12 about the Pone children, that the Pone children were actually in that bedroom. So it's not a  
13 bedroom that was occupied by Exemption 6 that night.

14 She's then going to describe how the master bedroom is up two flights of stairs, and that  
15 that's where my client slept that night. And then she's going to describe how the bedroom where  
16 the alleged offense occurred is actually two flights of stairs down and then down a hall below the  
17 main level, and so that basically between the master bedroom and the room where the alleged  
18 offense occurred, you have, basically, four flights of stairs.

19 She's going to testify that the area where she found Exemption 6 that night when she came  
20 down, that that floor is very creaky, and so it's not just a matter of that she found her there, but  
21 that's what stirred her and caused her to come down, and that where she found Exemption 6 .

1 CIV DC: She's going to testify about the lighting in the house because Exemption  
2 describes a very bright light; that actually the room that Exemption was sleeping in, when you  
3 turn on the light, it's actually very low, and it's only over time that the light becomes brighter.

4 And then she's going to testify – we believe that Exemption is going to testify that there  
5 was a lamp stand next to the bed where the alleged offense occurred, and, in fact, she's going to  
6 testify – Mrs. Wilkerson – that there is not lamp stand next to that bed.

7 Furthermore, Ms. Exemption testifies how she climbed over a wall that night that surrounded  
8 the perimeter of the house, and Mrs. Wilkerson is going to talk about the fact that this is a very  
9 high wall on the street side and that there are a lot of trees and vegetation and thorn – rosebushes  
10 along that wall, and that even at certain points of the wall, there are little nails sticking up from  
11 the top.

12 So she's just going to give a fairly thorough description of the house that night, and then  
13 – and, of course, we have the burden of establishing that these are extraordinary circumstances in  
14 terms of this case, showing why a visit is necessary.

15 And, furthermore, let me just add, Your Honor, even apart and separate from her  
16 testimony, we are inviting you to come to the house so that you can see the actual layout that I've  
17 just described. One of the concerns we have is you know in a courtroom she can describe the  
18 floor as creaking, but unless you actually walk on it and see how it creaks, it's hard to really  
19 understand how significant that is. I mean – and so we were going to ask you to actually visit the  
20 house, and invite the trial counsel if they want to come along, and under whatever procedure you  
21 want to engage. We don't think the court reporter would be required for you to visit it just to,  
22 you know, have a better basis upon which to make your ruling.

1 MJ: Drill down a little bit more for me, Mr. Spinner. What is the – you described, if you  
2 called Mrs. Wilkerson, what she will testify to, but drill it down a little more, from that testimony  
3 you talked about, what is relevant for purposes of your motion to have the members view the  
4 alleged crime scene? What are those factors that you anticipate to have her testify would be  
5 relevant for this court’s consideration of your motion.

6 CIV DC: Well, she’s going to describe the house as I’ve stated it. And she is going to –  
7 for instance, there are a pair of French doors, and Ms. Exempt – in the kitchen. Now on one side,  
8 you can go out one door, down to the back gate; on the opposite side of the room, there are a pair  
9 French doors. Well, Ms. Exempt is saying that she went out these French doors, whereas...

10 MJ: I understand that, but why do I need to hear from this witness to make a  
11 determination on the motion. I mean I understand that for the findings of the case, you may very  
12 well want to have her testify about all of this, or someone else, but for the purpose of why you’re  
13 requesting a viewing or why this is an extraordinary circumstance, what...

14 CIV DC: Well, it’s a combination of her testimony and then seeing what Ms. Exempt has  
15 described to see the inconsistencies in terms of what one lays out and what the reality is.

16 MJ: All right, so if – then driving to what the government said, which...

17 CIV DC: Because the central issue is Ms. Exempt credibility because there’s no – you  
18 see there’s no physical evidence in this case.

19 MJ: I understand. So the government, as I understand it, they are – they haven’t gotten  
20 into specifics about where there may or may not be inconsistencies, but they’re conceding that  
21 there are inconsistencies between what Mrs. Wilkerson is going to say the layout was and,  
22 potentially, what happened that night, as well as what other individuals. So why does the

1 defense believe I need to, if I take it for granted that there are inconsistencies, and I take it that an  
2 issue in this case is going to be the alleged victim's ability to perceive and recall what occurred  
3 that night, why do I need to hear from Mrs. Wilkerson at this point?

4 CIV DC: Well, what they were asking me to agree to on a proffer is that Ms. Exem  
ption 6  
5 doesn't remember the layout. And my position is it's not that she doesn't remember; it's that  
6 she's giving descriptions that are inconsistent with the actual layout of the house.

7 MJ: All right, let me do this: Based on the...

8 CIV DC: And if I may add just one last point, the point of the creaking was that that's  
9 something that cannot be simulated in a photograph; that's something that has to be experienced  
10 to fully appreciate or understand.

11 MJ: And that does not necessarily go to an inconsistency; that just goes to one of the  
12 reasons you believe that a viewing would be appropriate so they could actually...

13 CIV DC: Correct.

14 MJ: ...listen to the creaking themselves, right?

15 CIV DC: Yes. So part of it is inconsistency; part of it is just to – there's no way replicate  
16 a creak in a floor.

17 MJ: All right.

18 Government?

19 TC: Your Honor, they have Mrs. Pone that's going to testify. She's been in the house.  
20 She can talk about the creaking floor. Colonel Wilkerson, if he so chooses, can testify about the  
21 creaking. Beth Wilkerson can testify about the creaking of the floors. The creaking floor is not  
22 going to be an issue in this case. The issue is whether – first, there is no doubt, whatsoever, that



1 Exemption was in the house for several hours. That's not at issue. The accused admitted it; his  
2 wife has admitted it; five other witnesses have placed her there. That's not the issue – whether  
3 or not she was in the house. This goes to perception. I believe Ms. Exemp admitted, at the 32, on  
4 the stand that she doesn't know the layout of this house. It's a large, Italian house with many  
5 rooms. There is nothing about this case that makes it any different than any other crime that  
6 occurs outside of a courtroom. Somebody has to describe it. It's only in extraordinary  
7 circumstances that we'd go have a viewing. There's nothing unique about this house that calls  
8 for that extraordinary viewing.

9 TC: Additionally, photographs were submitted of this house, of the wall, of the shrubs,  
10 of the stair cases, of the room – all that was submitted at the Article 32. There's no reason those  
11 photographs cannot be submitted before the members. There is absolutely no reason to believe  
12 that the members are going to be confused about whether or not Mrs. Wilkerson knows what her  
13 house looks like. That is not the issue.

14 CIV DC: I agree that what he's saying is not the issue. The issue, though, is the  
15 sensation that comes with the knowledge, and, for instance, if Mrs. Wilkerson was in her  
16 bedroom upstairs, one of the issues is can you hear – it's not "is the floor creaking?" It's but can  
17 you hear the floor creaking from two flights of stairs up. The turning the light on. We anticipate  
18 Ms. Exem is going to testify that she was in this dream and suddenly there was a bright light.  
19 We believe it's important for the members to see, when that light comes on, how dim it is and  
20 how it gradually brightens over time.

21 CIV DC: So those are the matters that are critical. Now I've defended capital murder  
22 cases, Your Honor, and I understand that even in capital murder cases you don't have members

1 visit the crime scene. But, usually, there's a lot of other evidence. There's DNA tests, there's  
2 weapons, there's a lot of other evidence that helps establish whether the crime was committed or  
3 not. And so visiting the crime scene is less critical. The reason visiting the crime scene we  
4 believe is critical in this case is because there is no, as the trial counsel pointed out in their *voir*  
5 *dire*, there's no DNA, there's no torn clothes, there's no semen, there's no blood, there's no – it's  
6 a pure credibility contest, and so once it becomes a pure credibility contest, that means the scene  
7 takes on a much great significance than in another case.

8 MJ: All right, defense, thank you. If you believe witness testimony regarding the  
9 creaking of the floor as well as this light, if you believe that's testimony this court needs to hear  
10 to make a determination as to whether a viewing is appropriate, I will certainly let you put on  
11 that testimony. If you would like to argue that for purposes of this motion, I will assume for  
12 purposes of this motion that there's an issue with the creaking of the floor – how loud it is and  
13 there's an issue regarding how quickly the light goes on – you're welcome to put on testimony  
14 regarding that.

15 As to whether or – as to her going through and describing her house and how that might  
16 be inconsistent, it is not necessary – the court does not believe it is necessary for us to hear that  
17 testimony in order to make a determination as to your motion.

18 So it's up to you, defense, do you want to put Mrs. Wilkerson up for that?

19 CIV DC: Given that perimeter, Your Honor, I am not going to put the witness on. Now,  
20 having said that, I maintain there is no substitute for you to be able to rule judiciously without  
21 visiting and seeing it for yourself what we're talking about. Because for me, I wasn't here for  
22 the 32. I wasn't a counsel at that time. So I relied on all the things that were sent me from the

1 32. And I found – the first thing I did when I arrived in Italy was I went directly to the house  
2 because I had read these things, but I found in my own personal experience that being there made  
3 a world of difference, and putting everything in order made significance for me, as a defense  
4 counsel, to recognize and understand just how significant these issues were. And so I maintain  
5 that where we have the burden of proof to show that there are extraordinary circumstances, I  
6 don't see how I can meet that burden of proof without the court personally viewing the scene to  
7 make a ruling. So I'm willing to forego having her testify and, quite frankly, without her  
8 testimony, you can see for yourself or experience for yourself the things that I'm talking about  
9 and I maintain that would have more impact than anything that she would say to you.

10 TC: If I can...

11 MJ: You may – and I'll tell you, before you respond because it may impact how you  
12 choose to respond, my inclination at this point is to hear argument from counsel. After I hear  
13 argument from counsel, at that point I'll make a determination as to whether I believe in some  
14 way it would be beneficial or necessary for this court to do a separate viewing to make a ruling.  
15 But, I do believe, as an initial matter, I would like to hear argument from trial and defense  
16 counsel on the underlying motion before I resolve that issue.

17 In light of that, is there anything else that you'd like to respond to?

18 TC: No, Your Honor.

19 MJ: Defense, are you prepared to argue?

20 CIV DC: Yes, Sir.

21 MJ: Argue when ready.

1           CIV DC: Okay, first of all, let me emphasize that in the case of *United States versus*  
2 *Huberty*, I was both the trial defense counsel and the appellate defense counsel in *US v. Huberty*.  
3 So I'm intimately familiar with the facts and circumstances there, and I think as you well know,  
4 Your Honor, when an appellate court says the judge did not abuse his discretion, that doesn't  
5 mean that another judge, sitting with the same facts, would have abused their discretion if they  
6 had allowed the viewing. So we have to be very careful, in my mind, about how you read and  
7 apply *Huberty*. To me, what *Huberty* stands for, if it stands for anything, is just that a view or  
8 inspection should be permitted only in extraordinary circumstances. It pretty much lays out the  
9 test. And then it says – and I think in that case it was Judge Mahoney – was the trial judge –  
10 they're basically saying he abused his discretion.

11           So there's very case law that really has to do with the crime scene issue. And, in fact, in  
12 those cases where the judge does authorize a viewing of the crime scene, it's been done, so it's  
13 not like it's an appellate issue. So you're not going to have appellate cases that are telling you  
14 the judge abused his discretion by allowing a crime scene visit. That's not an issue on appeal,  
15 Your Honor.

16           MJ: So I take it you – defense's position in reading *Huberty* is that the judge erred, but  
17 did not abuse his discretion, so, therefore, it was in the realm that, I guess, reasonable judges  
18 could disagree. That's your reading of *Huberty*?

19           CIV DC: *Huberty*; yes, Your Honor. And, furthermore, because of extraordinary  
20 circumstances as listed in the discussion under the rule, and it's not – says that that's the rule, the  
21 other aspect of *Huberty* was saying you know that is you know this court is saying that that's the  
22 burden the defense has to meet. So that's the other thing I think *Huberty* did for the Air Force.

1           CIV DC: Now, having said all that, we have, basically, the alleged victim in this case is  
2 – has made statements about her movements within the house that night. She makes a statement  
3 to the effect that there is – that she – the bedroom where the alleged act occurred was just off the  
4 kitchen, maybe a few steps down. The reality is that it was two flights of stairs and  
5 approximately 17 steps down, and at the base of those stairs, you come to a relatively long  
6 hallway, and then you end up in a larger room. So when you get into that room, there are  
7 basically just two overhead lights, and she says that there was sort of a daybed that she was  
8 provided for her to sleep on, and she was having a sexually erotic dream. She wakes up from  
9 this dream, and there's a man's face six inches away, and that my client's wife was there, and  
10 that there was some statements that were made at that point. She'll testify – anticipating this is  
11 consistent with her testimony that you have before you – that there was a bright light.

12           And so, Your Honor, the second point that I think is significant here about besides the  
13 fact that the room is flights of stairs down and away from what she describes, is that there is no  
14 bright light in the room when you flip on the switch. And so what she describes is inconsistent  
15 with the physical impact of the lighting in that room.

16           Finally, whether she's testified anywhere or not, we have reason to believe that she's  
17 going to testify that there was a lamp or a light right next to the bed. And, Your Honor, there is  
18 no lamp or light next to the bed, and there wasn't on that particular night.

19           Now the government just said a few minutes ago that they believed that Mrs. Wilkerson  
20 won't lie about the layout of her house, but she may lie about other things. Well, another big fact  
21 that's going to be in issue in this case is whether or not Mrs. Wilkerson, who was sleeping next  
22 to Colonel Wilkerson in their bed two flights upstairs, would have heard this creak that was

1 actually Ms. Exemption coming upstairs, from the bedroom where she had been left, to the main  
2 level, and that this creak was of sufficient volume that it would have caught her attention two  
3 flights up the stairs. She's going to say she came down there and there she confronted Ms.  
4 Exemption and that Ms. Exemption was at the entryway to a bedroom. Now this bedroom, which is at  
5 the far end of the hall from the kitchen, in that bedroom there were two boys sleeping – the Pone  
6 boys. And Mrs. Wilkerson's concern was that Ms. Exemption by coming upstairs and walking  
7 through the house you know at 3:00 in the morning or whatever it was – 2:30 in the morning,  
8 that that was going to awaken these boys, and so that she was very concerned about, number one,  
9 why Ms. Exemption was walking around the house in the middle of the night, making noise, and,  
10 number two, that she would actually wake up and startle these boys.

11 CIV DC: And so if the members have the opportunity to see the house, it will assist them  
12 in resolving or accessing the credibility of Mrs. Wilkerson relative to the credibility of Ms.

13 Exemption In fact, the real credibility contest in this case, Your Honor, was typically it might be a  
14 "he said, she said"; Ms. Exemption says my client sexually assaulted her; he says "No, I didn't."  
15 Well, we anticipate, if he testifies, it would be something to the effect of "I was asleep. I did not  
16 – in my own bed." But Ms. Exemption places Mrs. Wilkerson at her bed at the time the sexual  
17 assault is taking place. And so when the issues are finally joined and all the evidence is heard,  
18 we believe that Mrs. Wilkerson's credibility, in some respects, is more in issue than Colonel  
19 Wilkerson's testimony.

20 So, at the point that Mrs. Wilkerson confronts her in front of the bedroom where the Pone  
21 boys are located, she and Ms. Exemption come straight down the hall to the kitchen area. And in the  
22 kitchen there are two sets of doors. On the one side there's a door going to a driveway out back,

1 down some stairs and out a gate. And then there are two sets of double doors. We anticipate that  
2 Ms. Exem is going to testify she went through the double doors and out that way into a front  
3 yard. Mrs. Wilkerson is going to testify that Ms. Exem went down the stairs and down to a  
4 driveway; that right next to that door, there's a button that you push that automatically opens the  
5 gate; that a flashing red light – and this is in the middle of the night, Your Honor, so if there is a  
6 flashing, observable red light going off there; and then there's a well-lit road right behind their  
7 house. Ms. Exem is going to testify, we anticipate, though that she didn't take that route, that, in  
8 fact, she went out these doors and that she somehow got over a wall, out into the street. Well,  
9 this is the last aspect that we think is a critical junction, Your Honor, because when you see that  
10 wall, there are trees and rosebushes and shrubbery that are all along that wall, and that while on  
11 the one side of the wall – the yard side of the wall, there might be a couple of places where a  
12 person could get over the wall, the relative height is only three or four feet, that on the street side  
13 of the wall, from the top of the wall to the street is a five-foot drop. And so this would, we  
14 believe, would make her testimony that she went over this wall less creditable.

15 CIV DC: So the key points are the room – the location of the actual bedroom that she  
16 was in is inconsistent with her description of where she was; the way the light comes on is  
17 inconsistent with the description she's given, that, in fact, it is a different light than the light she  
18 describes in the room; that she was causing creaking on the floor, which caught Mrs.  
19 Wilkerson's attention two fights away from where the creaking took place, and that Mrs.  
20 Wilkerson actually found her – that when she actually confronted Ms. Exem, it wasn't down in  
21 the bedroom, with my client in the bed with Ms. Exem, but, in fact, it was at the Pone bedroom  
22 where the boys were sleeping; and then that once they end up in the kitchen, there's a divergence

1 in their stories there; and then, finally, the actual nature of this yellow light flashing would have  
2 been inescapable for Ms. Exem, whereas this claim that she climbed over a wall is incredible  
3 because of the size of the wall.

4 MJ: A couple of things. First, the – defense, are you, effectively, conceding that she was  
5 there that evening? That’s what I’m hearing, is that she was...

6 CIV DC: Oh, yeah. Yes.

7 MJ: ...there.

8 CIV DC: No, there’s no contest about her being there.

9 MJ: All right, and so as far as the wall is concerned, outside, is there – presumably,  
10 you’re saying that somehow she got outside the wall?

11 CIV DC: Right.

12 MJ: You just question the way – whether or not the way she said makes sense?

13 CIV DC: Right. And, that because she was awake at that time that this flashing yellow  
14 light would have caught her eye, and she should have been aware of that. But, yeah, we dispute  
15 her path in her departing the home.

16 MJ: How is the path in which she departed the home, how is that a critical fact? Does it  
17 just go to her ability to recall what actually did occur and perceive what was actually happening  
18 or does it go to something else?

19 CIV DC: It goes to her credibility. We believe she didn’t go over the wall, and she’s  
20 lying about going over the wall because she would have – because the drop is five feet from the  
21 top of the wall out onto the street.



1 MJ: Okay. Last question for you before I hear from the government: So, why does the  
2 defense believe that a floor diagram, a video, a photography, an audio recording, why those  
3 would be insufficient to explain or to allow the defense to explain these inconsistencies that  
4 you've just explained to me – very effectively, I might add.

5 CIV DC: Well, right, but the problem is until you are in the house and you're in the  
6 master bedroom, and asked somebody to walk along that floor to see, in a quite house, how the  
7 creaking can be heard, I don't think that can be effectively presented in the courtroom, Your  
8 Honor. I just don't see how that can be presented. And so my guess is the government is, in  
9 fact, going to say Mrs. Wilkerson is lying about this, that that's what caused her to come down  
10 and confront Mrs. **Exem** I'm anticipating they're going to say that's not true; it didn't happen.  
11 They're going to say "No, you went all the way down to the bedroom because you discovered  
12 your husband wasn't in bed with you." And so our counter to that is "No, Ms. **Exem** came  
13 upstairs, was on the main floor, was walking in such a way that caused this creaking, and that's –  
14 it's not the absence of her husband that caused Mrs. Wilkerson to come down, it was this  
15 creaking." I can't replicate that in a courtroom.

16 MJ: Is there anything -- houses with wooden floors or otherwise that creak seem to be –  
17 I would say it tends to be sort of a common sort of understanding that people go "Hey,  
18 sometimes houses creak."

19 CIV DC: The government is going to say it didn't creak.

20 MJ: I understand. Is there anything – I understand – is there anything that makes this  
21 creaking somehow unique or different than creaking that you would see in some other  
22 circumstance?

1           CIV DC: The question is: If you're two flights of stairs up, is it possible to hear that  
2 creak? That's the issue. It's not that houses creak. It's common knowledge people know  
3 houses creak. The issue is, in this house, could a person actually hear a creak and...

4           MJ: So, is what you're asking of this court – I don't think it is, but I'll ask it nonetheless  
5 – so you want the members to hang out upstairs in the bedroom and then someone walk across  
6 the floor?

7           CIV DC: No, I don't want to do a demonstration, but more information is better than less  
8 information.

9           MJ: Okay.

10          CIV DC: I want them to hear the creak in the floor for themselves. And, ultimately, we  
11 can't replicate what happened in the middle of the night in March, and I'm not saying that. But  
12 when you see the layout, it will help the court members, I think, resolve some of these credibility  
13 issues that are at the heart of this case.

14          MJ: I understand your position. Thank you.

15          Government, response?

16          TC: Yes, Your Honor.

17          First, there's nothing that defense has said that could not be explained, other than the  
18 creaking, that couldn't be explained with the photographs. If I had presented photographs at the  
19 Article 32 – sent someone from Alert Photography out there and there are plenty of photographs  
20 – photographs showing the walls, they show the height of the wall, they show rosebushes, they  
21 show other bushes, they show the driveway, they rooms inside the house. There is nothing. The  
22 government is not going to be challenging Mrs. Wilkerson on her description of the house. The

1 government will not be challenging Mrs. Wilkerson on the creaking in her house. I'll stipulate  
2 the house creaks. I don't care. That is not the issue for the government. As far as the lamp, a  
3 viewing of the house will do nothing now. This was back on March 23<sup>rd</sup> and 24<sup>th</sup> of 2012. Now  
4 we're in almost November of 2012. I don't trust Colonel Wilkerson to the extent I could throw  
5 him across this room; I don't know what he did or didn't do with the lamp. That is nine months  
6 later and it's totally ridiculous that the government is going to concede that the members should  
7 go look over and not see a lamp, and say "Oh, there's never been a lamp there before." As far as  
8 the light, Mrs. Wilkerson can testify about the light. But Beth – excuse me – Exemption 6 says  
9 the light was from a lamp; she never said it was an overhead light. So it's immaterial. She just  
10 said a "bright light." And then going and viewing that is not going to change the story. The  
11 question of a lamp being there or not being there is not resolved by the viewing.

12 TC: The locations of the room; there is not going to be a single issue in this trial of  
13 whether or not Exemption 6 was in the room described by the defense. Exemption 6 will say she  
14 was in a room. If Colonel Wilkerson testifies, he'll have to admit she was in that room. Beth  
15 Wilkerson says she was in that room. It's not a question if she was in that room. They have the  
16 ability to describe all those things. There is absolutely nothing about this that calls for  
17 extraordinary deviations from normal procedure to go and have a view.

18 And finally, as far as exiting from the driveway, that has nothing to do with viewing this  
19 house. The defense wants you to believe that the only possible way Ms. Exemption 6 could have left is  
20 the way that Beth Wilkerson said, through the back door with the flashing light. Exemption 6 says  
21 she left through a different door, through the front. That is the credibility issue. Whether or not  
22 a light flashing in the back isn't an issue because Exemption 6 says she didn't leave from back

1 there. That has nothing to do with viewing this house. There' s absolutely no reason for this  
2 court to grant this extraordinary relief, and I would say that this is basically a waste of the court's  
3 time to even consider it.

4 TC: And I would also finally say, especially at this time, there's no reason for this court  
5 to do that. This court can listen to the entire government case; listen to the defense case; and if  
6 the court is dissatisfied at that time that the layout of the house is insufficiently described for the  
7 members to understand, then the court can say "I'm going to reconsider."

8 MJ: Defense, anything final, or have you satisfactorily explained your position?

9 CIV DC: I'm satisfied with my argument, Your Honor.

10 MJ: At this time, the court does not believe that it would helpful in resolving this issue  
11 for the court to do a viewing of the accused's residence.

12 As to the motion, first the facts. The alleged offenses occurred in the off-base residence  
13 occupied by Lieutenant Colonel Wilkerson and his family. The alleged victim has not  
14 previously been a guest at the accused's residence. It appears, however, uncontroverted by either  
15 trial or defense counsel that the alleged victim was at the accused's residence of the alleged  
16 assault.

17 The government, at least at this point, the government has asserted and defense counsel  
18 has also asserted the same thing, that the government does not have any scientific or physical  
19 evidence of a sexual assault or a touching. As to the law, I accept the law as set forth by both  
20 trial counsel and defense counsel, specifically RCM 913, as well as the *US v. Huberty* case.

21 Defense, as the moving party, does have the burden of proof.

1 MJ: The ability of the alleged victim to perceive and recall what occurred that evening,  
2 because of alcohol consumption or otherwise, is at issue. That, however, does not resolve how  
3 such information could be or should be presented to the members. There is a preference for  
4 evidence being presented in court, at least absent extraordinary reasons. After reviewing the  
5 items provided to both trial counsel and defense counsel and the arguments of both trial counsel  
6 and defense counsel, the court is not convinced, at least at this time, that this is an extraordinary  
7 situation requiring a viewing or inspection.

8 There's been no adequate showing, at least to this court, why a video, floor diagram or  
9 photography would be insufficient to potentially demonstrate the witness' inability to perceive or  
10 recall events of that night. As to that, the court does note that the defense counsel, although I  
11 didn't hear from the witness, but the defense counsel was able to articulate, very effectively,  
12 where he believes those inconsistencies may be and to what extent. As such, I, at this point,  
13 intend to and will deny the defense's motion for a viewing. At the conclusion or prior to the  
14 conclusion of the defense's case, or at least prior to the defense resting, I will certainly entertain  
15 at that point, after I have had an opportunity to see how the government's case as well as the  
16 defense's case, if any, how it comes out, to entertain a motion at that point.

17 As such, at least at this point, the defense motion is denied.

18 Would counsel like a short recess or are you prepared to discuss the motion to compel the  
19 discovery of the emails?

20 ATC: We're ready to proceed, Your Honor.

1 DC: And, Sir, the defense does not request oral argument on the motion. I didn't know  
2 whether trial counsel wanted oral argument on the motion, but we're ready to proceed. I just  
3 wanted to put that out there.

4 MJ: Okay. I've got a couple of questions for defense, and then after that, I will probably  
5 have a short recess before making a determination.

6 Defense counsel, have you requested or have you, in fact, interviewed either the special  
7 court-martial convening authority here at Aviano or the general court-martial convening  
8 authority that referred this to trial?

9 DC: Sir, we have not requested that they be made available for an interview, nor have we  
10 interviewed them.

11 MJ: Okay. So my quick question for you, defense, is what, if anything, makes it in your  
12 mind – I mean why is this not just a fishing expedition? There's witnesses that you could have  
13 talked to to say "Hey, were there conversations?" What makes you think that there's something  
14 out there that is discoverable for the defense?

15 DC: The timing, especially, Sir. One, going in and talking to witnesses generally, as any  
16 counsel would like to do, they'd like to have some information available to them before they go  
17 interview any witnesses. But the timing of this, specifically as set forth in the written portion of  
18 the motion, you had receipt of charges, 19 June; shortly thereafter, the Article 32 hearing. On  
19 the 29<sup>th</sup> of June, you had the forwarding of charges from the special court-martial convening  
20 authority to the general court-martial convening authority, at which point it wasn't referred until  
21 over a month later, all, during this time the general court-martial convening authority, his rater,  
22 General Welsh, was being questioned by Congress on sexual assault cases in the military. And

1 so it's the timing of this, especially this over a month period at the exact same time that the  
2 general court-martial convening authority's rater is testifying before Congress about sexual  
3 assault cases in the military, specifically in the Air Force, that causes the defense to have a lot of  
4 concern about unlawful command influence.

5 MJ: Thank you. And one final question: Has defense counsel asserted previously or at  
6 any point that the Article 32 officer in this case was either not impartial or, in fact, did not  
7 recommend referral of these charges to a general court-martial? At any point, have you attacked  
8 the impartiality of the Article 32 officer?

9 DC: No, Your Honor.

10 MJ: All right, so to the extent that the government's motion references the IO being an  
11 impartial Article 32 officer that reviewed this evidence and recommended referral to a general  
12 court-martial, the defense is not contesting that? Is that correct?

13 DC: We are not contesting her impartiality or that she did, in fact, refer it...

14 MJ: Or recommended referral.

15 DC: Yes, exactly.

16 MJ: All right. I understand. Thank you.

17 Government, you don't request any additional argument, do you?

18 ATC: No, Your Honor.

19 MJ: I'll have a recess prior to me ruling on that. However, is there an additional issue  
20 that we need to discuss? I understand there's a 412, and I don't know if it's a 412 motion or if  
21 it's something that we don't need to close the court for. Defense, what is the issue to the extent  
22 you can talk about it in open court?

1 CIV DC: Your Honor, I'd prefer to have an 802 to talk about it. Then I'll know what I  
2 can talk about in open court.

3 [Laughter by the civilian defense counsel and the military judge.]

4 MJ: All right, that sounds fine.

5 Trial counsel, anything further?

6 ATC: I was just going to suggest we do it in a closed hearing, Your Honor.

7 MJ: Okay. All right.

8 [Long pause.]

9 MJ: Are trial and defense counsel prepared to go into a closed hearing at this point or, as  
10 defense counsel requested, would you like to discuss this amongst yourself before we proceed on  
11 the record, even if it's in a closed hearing? My intention was to go into a closed hearing to hear  
12 what the issue is, and then, based on that, we will – I think we can resolve it. But I just assume  
13 have it on the record rather than an 802 if we're going to be talking about it anyway.

14 ATC: Sir, I'm just requesting a brief comfort break before we begin that hearing, if  
15 we're going to do that.

16 CIV DC: That's fine.

17 MJ: Fair enough. We are in recess.

18 (The Article 39(a) session terminated and the court-martial recessed at 1521 hours, 26  
19 October 2012.)

20 **END OF PAGE**



1 (The court-martial was called to order at 1534 hours, 26 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Regarding the motion to compel the email, as to the facts, I adopt the agreed facts as set  
6 forth in paragraph 1, 2, 3 and 7 of defense counsel's motion. I also find, for purposes of this  
7 motion, the facts as set forth in paragraph 5 of defense counsel's motion.

8 As to *voir dire*, defense counsel was not restricted in anyway regarding questions of  
9 potential members. In addition, the defense's two challenges for cause were unopposed. An  
10 impartial Article 32 officer reviewed this evidence and recommended referral to a general court-  
11 martial.

12 As the law, I adopt and accept the law as set forth in both trial counsel and defense  
13 counsel's motions.

14 As to analysis, where the defense has requested specific items of evidence, that evidence  
15 is material if there is a reasonable probability the evidence would affect the outcome of the trial.  
16 The defense has failed to demonstrate any probability that the requested emails would affect the  
17 outcome of the trial. The defense has elected not to interview either the special court-marital  
18 convening authority or the general court-marital convening authority regarding the basis for their  
19 decision to forward or refer this case to a court-martial. Wherefore the defense motion is denied.

20 MJ: In addition, I did have a short 802 with trial counsel and defense counsel during the  
21 recess. During that 802, defense counsel notified the court of the subject of their motion and of

1 their request which, in short summary, was an opportunity to interview the alleged victim  
2 regarding a matter that would otherwise be covered by 412.

3 MJ: Do either trial counsel or defense counsel, would you like to object to or request a  
4 supplement to that 802?

5 ATC: No, Your Honor.

6 CIV DC: No, Sir.

7 MJ: At this point I will close the hearing pursuant to MRE 412. The individuals that will  
8 stay in the court will be the court participants, to include experts, the court reporter, counsel, the  
9 accused, this judge.

10 Bailiff, if you would please position yourself outside of the courtroom, and just notify  
11 any individuals that we're in closed session, and we will be reopening the hearing shortly.

12 TC: And, Your Honor, for the record, Ms. **Exem** has indicated that she does not want to  
13 be here at this stage.

14 MJ: Thank you.

15 [At 1537 hours, 26 October 2012, the courtroom was cleared except as noted by the  
16 military judge.]

17 **END OF PAGE**

**In accordance with Military Rule of Evidence 412(c)(2) pages 136 through 162 are sealed.**

**A complete record of trial, to include pages 136 through 162, is kept at AFLOA/JAJM and may be examined under such conditions as the record custodian prescribed.**

1 **OPEN SESSION**

2 MJ: All right, the court is now open.

3 A question for counsel is currently we are set to begin with opening statements at 8:00 in  
4 the morning on Monday. If it is necessary to have a subsequent 412 hearing, which we're not at  
5 that point yet, but if that is necessary, is this something that trial counsel or defense counsel  
6 believes needs to be resolved prior to opening statement or is this something that we can resolve  
7 at a later break in the case we proceed? And I'm just trying to figure out whether or not on  
8 Saturday or Sunday I should block off a time to potentially have a 412 hearing in case that's  
9 needed.

10 TC: Your Honor, Ms. **Exem** will be the first witness on Monday, so I would assume the  
11 defense would like to have that issue resolved before then, and we propose either tomorrow or  
12 Sunday for the hearing.

13 And I'm confident I'll talk to Ms. **Exem**. We talked about this possibility. I'm confident  
14 she'd prefer to be done in court in a 412 hearing.

15 MJ: All right. Thank you.

16 Defense, as far as – is there a preference from defense regarding when that would occur,  
17 either on Sunday, late afternoon, evening or some other time.

18 CIV DC: My preference would be tomorrow afternoon, Your Honor, because we have  
19 witnesses coming in on Sunday, and we do have other things that we have to prepare for before  
20 trial. So my preference would be tomorrow afternoon.

21 MJ: Is there a reason that we could not do it the first thing in the morning tomorrow  
22 morning, like at 9:00 in the morning? And, again, we don't know – I don't know. I'm expecting

1 to get an email from both trial counsel and defense counsel stating “Yes, we’ve resolved it” or  
2 not, but assuming the answer is we’ll have a 412 hearing, is there a reason 9:00 in the morning  
3 will not work – the defense will not be prepared?

4 CIV DC: One moment, please, Your Honor.

5 MJ: Thank you.

6 [The defense counsel conferred.]

7 CIV DC: Yes, Your Honor, I believe we would need prep time, and so I would prefer to  
8 say like noon or one o’clock – something like that.

9 TC: Your Honor, perhaps we could, upon a recess, take this up or in an 802, because I’m  
10 not sure what Ms. Exempti schedule is tomorrow. I know she will be available at some time  
11 tomorrow, but I don’t what time that is right now.

12 MJ: All right, so what we will do is this, is that I’ll allow trial counsel to engage. It  
13 sounds to me like one way or the other, to the extent that it’s possible, we’ll have a 412 hearing  
14 tomorrow if that’s necessary. And so I will wait to hear from trial counsel, defense counsel. I’ll  
15 wait afterwards and we can figure out when it’s going to be. I’ll be available, but other than that,  
16 I don’t think that there’s anything additionally that we need to discuss on the record today.

17 Are there any other matters from trial counsel or defense counsel?

18 ATC: No, Your Honor.

19 CIV DC: No, Sir.

20 MJ: We are in recess.

21 (The Article 39(a) session terminated and the court-martial recessed at 1631 hours, 26  
22 October 2012.)

1 (The court-martial was called to order at 0806 hours, 29 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Is there anything we need to discuss on the record before we go into a closed 412  
6 hearing?

7 ATC: No, Your Honor.

8 CIV DC: No, Sir.

9 MJ: Okay, we will go into a closed 412 hearing. Bailiff, please clear the courtroom with  
10 the exception of specific participants for the trial or defense team. And just put yourself outside  
11 the door. We will let you know once you have reopened the court.

12 BAILIFF: Yes, Sir.

13 [At 0808 hours, 26 October 2012, the courtroom was cleared except as noted by the  
14 military judge.]

15 **END OF PAGE**

**In accordance with Military Rule of Evidence 412(c)(2) pages 166 through 184 are sealed.**

**A complete record of trial, to include pages 166 through 184, is kept at AFLOA/JAJM and may be examined under such conditions as the record custodian prescribed.**

1 **OPEN SESSION**

2 MJ: The court is now open.

3 Just to make it clear for the open portion of the record, the defense counsel, at least at this  
4 time, does not intend to get into any of the information that was discussed during the closed  
5 session. If, at some point, defense counsel believes it is appropriate to get into it, then we'll  
6 address it outside the presence of the members at that time.

7 Trial and defense counsel, are there any other matters to discuss prior to calling the court  
8 members?

9 ATC: No, Your Honor.

10 CIV DC: No, Sir.

11 MJ: Bailiff, please call the court members.

12 [The bailiff left the courtroom.]

13 (The Article 39(a) session terminated at 0939 hours, 29 October 2012.)

14 **END OF PAGE**



1 (The court-martial was called to order at 0940 hours, 29 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Court members, at an earlier session, the accused pled not guilty to all charges and  
6 specifications.

7 Next, I advise you that opening statements are not evidence; rather, they are what counsel  
8 expect the evidence will show in the case. Does the government have an opening statement?

9 ATC: Yes, Your Honor.

10 MJ: Proceed.

11 ATC: Thank you, Your Honor.

12 Colonel Stentz...

13 MBR (Colonel Stentz): Good morning.

14 ATC: ... members of the panel, good morning.

15 On the night of 24 March 2012, Lieutenant Colonel James Wilkerson, the accused in this  
16 case, Colonel Dean Ostovich, high ranking members of the Wing staff of this base, engaged in  
17 conduct that was not in conformity of Air Force standards or expectations. They acted  
18 recklessly, they acted self-destructively and contrary to what was expected of officers of their  
19 position, and Lieutenant Colonel James Wilkerson sexually assault Ms. Exemption 6, whom  
20 you will meet in a few minutes.

21 Now you're going to meet a number of players in this story. I'm going to lay that out for  
22 you a little bit here. You're going to meet seven people who were there, who were present, who

1 were transported that evening in a vehicle driven by Colonel Dean Ostovich, then the Vice Wing  
2 Commander of this base, from the Club to a house in Roverado in Piano, the residence of  
3 Lieutenant Colonel James Wilkerson.

4 ATC: The individuals in that car were Colonel Dean Ostovich, obviously. He was  
5 driving. Lieutenant Colonel James Wilkerson was sitting in the front seat. Captain Dawn Brock,  
6 who is a psychologist who works in the Medial Group here, was sitting on the console in the  
7 front seat, without a seat belt. In the back seat there were four people. We have Ms. Exemptio  
8 Exemp whom you will meet briefly; Captain – at that time – Tanya Manning, now Major  
9 Manning, you will also hear from; Major Gerremy Goldsberry, a friend of the accused, a fellow  
10 pilot; and Major Albert Lowe, also a friend of the accused, also a pilot.

11 These seven individuals meet up at the club. And you're going to hear about a USO  
12 concert, a Seether concert, a rock band who was traveling around for the USO. The concert  
13 began here at about 7 o'clock here on base. Colonel Ostovich, Colonel Wilkerson, and Major  
14 Goldsberry and Major Lowe all attended that concert. They had a few drinks before they came  
15 over to the event. You will hear from Ostovich they had some drinks at the event. And they met  
16 up at the Club somewhere around 9:00-9:30. That's where they came into contact with this  
17 group of three females, all who worked at the Medical Group. Ms. Exemption 6 is not an  
18 officer in the United States Air Force, however, unlike Captain Brock and, at that time Captain  
19 Manning, Ms. Exemption 6 is a Exemption 6 – Exemption 6  
20 works at the medical group. She's been here working at the Air Force as a contractor since  
21 approximately August of 2011. She is single. She is not married. She was divorced in 1992.

1 Exemption 6

And at that time, on

2 March 23<sup>rd</sup> and 24<sup>th</sup>, she was not in a relationship at all.

3 ATC: Now you're going to hear that they had a few drinks – all seven of them – at the  
4 Club, that they bumped into each other and met, and eventually a decision was made to take the  
5 party elsewhere. You are going to hear that there were discussions, and I ask you to pay  
6 attention to the different versions of events. You're going to hear very divergent versions of how  
7 they left that club. Listen to what Captain Brock says; listen to what Ms. Exemp  
8 going to hear – and also listen to what the Major says. They eventually left that club after  
9 discussions about going to a pub or a bar in Aviano village. They all went out to the parking lot  
10 and piled into Colonel Otovich's four-door sedan – a black Mercedes four-door sedan, and the  
11 seven of them piled in and drove on over to Roverado in Piano, just a mile or two down the road,  
12 just south of base, and ended up in front of Colonel Wilkerson's residence.

13 And you're going to hear that Captain Dawn Brock and Ms. Exemp  
14 they were going to Colonel Wilkerson's residence. They thought they were going to a bar or a  
15 pub. You're going to hear other stories from other individuals in that vehicle. You're going to  
16 hear that they were invited into Colonel Wilkerson's house. You're going to hear that they met  
17 Beth Wilkerson, the accused's wife. You're going to hear that she was hospitable, that they  
18 popped open a couple bottles of wine; that Major Lowe, Colonel Ostovich had some Jack and  
19 Coke. You're going to hear that they got tours of the house. You're going to hear that they were  
20 there for several hours; that there were, in fact, a couple of children there – Cheryl Pone's  
21 children that several of the individuals in the group met up with/interacted with. And you're

1 going to hear that they had a social evening of drinking, of socializing – not a wild party, not an  
2 out-of-control party by any means, but at some point people started to leave that party.

3 ATC: You're going to hear that Colonel Ostovich took Captain Manning and drove her  
4 home, leaving Exemption 6 in that residence. You're going to hear that Miss or Mrs.  
5 Wilkerson, pardon me, drove Dawn Brock home, to the front gate and dropped her off right  
6 outside the front gate.

7 Captain Brock, Captain Manning, and Ms. Exemption 6 had all reserved TLF quarters so that  
8 they could drink and not drive. They all lived off base, however they all had reservations here in  
9 billeting so they could drink, attend the event, go to the Club and not drive. So none of them had  
10 cars with them at the residence and all of them were planning on staying here on the base.

11 You're going to hear varying versions of what – for what reasons Ms. Exemption 6 stayed at the  
12 residence – she couldn't find her shoes; she wasn't present when Mrs. Wilkerson drove Captain  
13 Brock home. I ask you to pay close attention to the seven different versions of events about what  
14 happened in that house.

15 You're going to hear that eventually Mrs. Wilkerson offered Beth – pardon me; Mrs.  
16 Wilkerson is Beth – Mrs. Wilkerson offered Exemption 6 a place to stay and she showed her a place to  
17 stay downstairs, and she made her some tea. You're going to hear that Exemption 6 had a conversation  
18 with Ms. Suzanne Berrong, who you're going to hear about, and she was offered a ride home,  
19 but she chose to stay at the house because she had been offered a place to stay. She went  
20 downstairs, she went to sleep at some point in the early morning hours of 24 March 2012.

21 The next thing she remembered was feeling like she was in a dream. And it was a  
22 pleasant dream and she felt like she was being touched, sexually, on her breasts, but what made

1 her realize she was not in a dream, that this was real, was that she felt a person's hand in her  
2 pants, and what woke her up was the pain in her left inner labia as a hand, in her pants, was  
3 uncurled, causing some friction in her left inner labia. At that point she became aware that she  
4 was awake because this was a real experience. She opened her eyes; the lights came on; and a  
5 face, the face of the accused, as you're going to learn, was six inches from her face. His eyes  
6 were squinted shut. And a woman was standing in the doorway behind him. You're going to  
7 hear that Mrs. Wilkerson said, "What the hell is going on?" That he took his hand out of  
8 Exemption 6 pants. You're going to hear that Mrs. Wilkerson, who was the woman behind  
9 them in the doorway, said, "Get the hell out of my house" to Ms. Exemp  
tion 6

10 ATC: You're going to hear about how Ms. Exem was confused and bewildered by what  
11 had happened. You're going to hear how she felt. You're going to see that her clothes were on –  
12 most of her clothes were still on; how she got up and made the way up, out of the house.

13 You're going to hear about interactions with Mrs. Beth Wilkerson before she leaves the  
14 house. And you're going to hear that Mrs. Exem left the house at approximately 0300 hours in  
15 the morning – 3 o'clock in the morning, she left the house without shoes, having been drinking,  
16 pushed out of the house into a cool, brisk March morning, not even knowing where she was.  
17 And that will be corroborated by Master Sergeant Danielle Dunnivant, who also works for the  
18 Medical Group, who was called by Ms. Exem, who had her cell phone on her, who called her.  
19 She's going to take the stand; she's going to talk about getting that call in the early morning  
20 hours, and going to pick up Ms. Exem at approximately 0300 hours or slightly thereafter.

1 ATC: Ms. Exem told her about what had happened to her, how Ms., Exem was  
2 emotional, how she was crying, how she was tearing up, and how Master Sergeant Dunnivant  
3 drove her on the base and dropped her off at the TLF.

4 You're also going to hear form Ms. Exem about how she originally made this a restricted  
5 report. She went in that morning, actually, to the Medical Clinic at approximately 0900 hours,  
6 and she had herself tested for drugs. She felt like perhaps she'd been drugged. She felt odd; she  
7 felt weird because of such a bewildering, confusing, shocking experience, so she had herself  
8 tested for Rohypnol GHB. You're going to hear that that test came back negative for any of  
9 those drugs.

10 You're going to hear that she told Major O'Keefe – Major O'Keefe also works in the  
11 medical group – he performed – he ordered those tests to be done. You'll hear that she told him  
12 about what had happened and that she asked him not to tell anyone, to keep it on the DL. You're  
13 going to hear that Ms. Suzanne Berrong drove her there to the Medical Clinic at approximately  
14 0900 that morning.

15 Now you're going to hear that Ms. Exem did not make this a formal report until  
16 sometime later. Ms. Exem went to the SARC on approximately 29 March 2012, about five days  
17 after the incident, and she made a restricted report. It wasn't until she was informed that she did  
18 not the right as a civilian to make a restricted report, approximately two weeks later, that she  
19 decided, eventually, that the right thing to do was to make this an unrestricted report.

20 And you're going to get to hear her talk about why she made that decision and why she  
21 chose to put herself through the ordeal of this trial and this experience, and why she's subjecting  
22 herself to this ordeal in order to achieve justice.

1 ATC: You're going to hear that she did not even know Colonel Wilkerson's name that  
2 night, even after this had happened. She had never met him prior to that night, you're going to  
3 hear. She did not even know his name or his rank. It wasn't until she decided to make that  
4 unrestricted report that she went and asked who was the individual who owned that house – to  
5 her friend, Tanya Manning, "What is his name and what is rank?" She didn't even know who he  
6 was. You're going to hear that she had no motive to fabricate the sexual experience at the hands  
7 of the accused.

8 Now I ask you to focus on that complete absence of a motive for Ms. Exemption 6 to fabricate  
9 any of this. When you're hearing the evidence, focus on the complete absence of motive to  
10 fabricate.

11 You're also going to hear an approximately two-hour interview of the accused that  
12 occurred on 19 April 2012. After Ms. Exemption 6 made this an unrestricted report, OSI brought in the  
13 accused and he made a statement. You're actually going to get to watch that because it was  
14 videotaped – approximately two hours of him talking about the events of that night.

15 And you are going to hear what, at first blush, may appear to be a very credible denial of  
16 her allegations. You may come away with the impression that he's denying the allegations  
17 credibly. The government asks you to pay very close attention to his statements about that  
18 evening. You're going to hear him claim that he was asleep the entire night, that he woke up at  
19 approximately 7 o'clock in the morning, that he had no idea what happened, that he had no idea  
20 that Ms. Exemption 6 was even thrown out of his house at 3 o'clock in the morning.

21 You're going to hear him tell you that his wife informed him in the morning that she had  
22 to address or confront Ms. Exemption 6 at about 3 in the morning because she was being too loud; she

1 was on the phone; she was making too much noise, and so she had forcibly ejected her from the  
2 house in the middle of the night, but had chosen not to wake up Colonel Wilkerson, not to tell  
3 him that she'd been, according to her story, relayed by Colonel Wilkerson, then went out in the  
4 night and seeing if she could find her after she felt bad for kicking her out. You're going to hear  
5 that she didn't wake up Colonel Wilkerson and say, "Hey, I'm leaving the children. I'm going  
6 out and go look for Ms. Exemp<sup>tion 6</sup>" You're going to hear that it wasn't until he was making  
7 breakfast the next morning that she informed him that she had ejected Ms. Exem<sup>tion 6</sup> from the house.

8 ATC: And I ask, when you're thinking about this and you're hearing this evidence, when  
9 you're watching the interview of the accused, ask yourselves what would cause a responsible Air  
10 Force mother and wife to throw a woman out on the street, who didn't know where she was, with  
11 no shoes, in the middle of a brisk March morning after she'd been drinking. Ask yourself what  
12 might cause a responsible Air Force mother and wife to do that.

13 When you're hearing the evidence, listen what is either supported or contradicted by  
14 other evidence and other testimony in this case. And you're going to hear the accused's  
15 statements to OSI on 19 April 2012 continually rebutted by factually objective evidence. So  
16 listen closely to the details of his statement on 19 April 2012. And when you're listening to his  
17 statements that are inconsistent with other factually objective evidence in this case, ask  
18 yourselves why would an innocent person have to lie. Likewise, when you're hearing Ms. Exem<sup>tion 6</sup>  
19 on the stand, and you're going to get to hear from her for quite some time this morning, ask  
20 yourself why would this Exemption 6 woman lie about what happened to her. Why would she  
21 accuse a man of sexual assault whom she didn't even know prior to that evening, and never even  
22 learned his name that evening? What possible motive could she have?



1           ATC: Now you've heard an instruction by the military judge to withhold your opinions  
2 about witnesses and their credibility until the end of this case. And so you're back there in that  
3 deliberation room. We ask you to take that very seriously. We ask you to withhold judgment  
4 about witness credibility until you've heard all of the evidence in this case.

5           It's going to be difficult sometimes to not judge just based upon their testimony, their  
6 demeanor. I ask that you hear all of the evidence before you judge their credibility.

7           Ask yourselves, when you're listening to the evidence, who has the most to lose in this  
8 case? Who has the most to lose to...

9           CIV DC: Your Honor, I'm going to object. I think this is more argument that should be  
10 given at the end of the case, not at the beginning.

11          MJ: Counsel, focus on what you expect the evidence to show.

12          ATC: Thank you, Your Honor.

13          MJ: You may continue.

14          ATC: Keep an open mind until you've heard all of the evidence, until you've heard all of  
15 the testimony, all the factual evidence. When you have heard all of the evidence, the  
16 government is absolutely confident that you will be convinced to find the accused guilty beyond  
17 a reasonable doubt. We are convinced that you will believe it's your duty to do so.

18          Thank you.

19          MJ: Defense, opening or would you like to reserve?

20          CIV DC: Opening at this time, Your Honor.

21          MJ: You may proceed.

1           CIV DC: Colonel Stentz, members of the court, first of all, let me just apologize if my  
2 teeth start chattering. It's very cold, and we've already been in this room for a while, and  
3 something tells me that CE is not going to get this changed before this hearing is over. So I  
4 apologize up front. If I'm rubbing my hands, they're actually cold.

5           Trial counsel just gave you his version of what he thinks the evidence will be in this  
6 proceeding. I'm going to use the next 30 to 40 minutes to talk to you about the defense view of  
7 the evidence. And what I like to do with a court-martial at this stage of the proceeding, is not  
8 argue the case, but just try you to think about why things happen. I'm just going to walk you  
9 through the evidence and then give you some tools that you can use to evaluate and access the  
10 evidence.

11           Now we will have an opportunity for closing arguments at the end of the receiving of  
12 evidence, and at the end of the Judge's instructions. So I just ask you to bear with me and  
13 understand that this is my view of what the evidence will be.

14           One of the challenges in a court-martial is that not only is this a very cold environment,  
15 but this is a very formal environment. We're all in suits and ties. We just have the four walls or  
16 so of this courtroom. We have a judge sitting here. It's a real challenge for trial attorneys just to  
17 try to recreate what happened. We don't have a videotape of what happened that night. If it  
18 were that easy, we could just play the tape and then you could draw whatever conclusions you  
19 want to draw. But we don't have a videotape. And so recognizing that there are going to be, at  
20 the end of the case, differences about what the facts are, I want to give you a different version  
21 than what you just heard from trial counsel.

1           CIV DC: Now, another thing I want you to be aware of before I get into that, is that  
2 when the witnesses come in and testify, you can understand that they've already been  
3 interviewed. The lawyers have talked to them. The OSI has talked to them. They have made  
4 multiple statements to various parties about what happened that night.

5           And the fact of the matter is, while trial counsel told you this is what he thought the  
6 evidence would be, it's been my experience that that when witnesses actually take the stand,  
7 sometimes they say things that are different, under oath and in front of a judge or in front of  
8 court members than what they've said to those other parties.

9           So, while I'm going to walk through what I think the evidence will show right now,  
10 understand that we have to have some degree of variability and recognizing that it may be a little  
11 bit different than what he just said and even what I've just said.

12           Understand right up front, that Colonel Wilkerson pled not guilty because, as trial  
13 counsel just said, when he was interviewed, cooperated with and interviewed by OSI, and asked  
14 about Ms. Exempti claims, he said, "I was sleeping." This is not a case where some activity was  
15 engaged in he's saying it was consensual and she's saying it's not consensual. This is a case  
16 where Colonel Wilkerson is telling you and will be telling you that he was asleep, and this did  
17 not happen.

18           Now what makes this – you've heard, you know, cases referred to whether it's a friend's  
19 rape or date rape or whatever you want to say, it's a "he said; she said." We only have the  
20 testimony of the two people who were involved. Well, in this case, if he wasn't doing anything  
21 with her, then there no issue of consent or non-consent. But I tried to think of a way to describe  
22 this case and simplify it for you all, and the way I want to put it is this way: This is a "she said;

1 she said” case. The one she being Ms. Exemption, who is coming in to make her claims to everyone,  
2 but the other she being Beth Wilkerson, Lieutenant Colonel Jay Wilkerson’s wife. She’s going  
3 to tell you it didn’t happen, that she did not go down into the room where Ms. Exemption was  
4 sleeping and find her husband involved with a sexual act with Ms. Exemption. It did not happen  
5 [paused between words].

6 CIV DC: Now let’s get back. I want to get into a little bit more detail into that evening  
7 than what trial counsel just told you. There was a Seether concert – USO concert – here on  
8 Aviano Air Base. And so as the evening before the concert itself, as the evening was developing,  
9 you had different groups of people who had decided to go to the concert with their respective  
10 groups. I anticipate that you’re going to hear that Ms. Exemption was with Sergeant Dunnivant and  
11 with some other folks that work –and Exemption who worked in one of the medical groups.  
12 Then, as trial counsel eluded to, there’s a Captain Manning – I think she’s Major Manning now –  
13 and a Captain Brock – they had obtained a room together at the TLF, and they were basically  
14 coming together to the concert.

15 Ms. Exemption had a room, I think, in the base lodging here that night. So some of them,  
16 knowing that they were going to the concert, had basically already made a decision “We’re going  
17 to be drinking alcohol. We don’t want...” I mean very prudently they had decided “We don’t  
18 want to drink and drive, so we’re going to stay in lodging on base, near the concert, near the club  
19 so that we don’t have to drive.”

20 Now, completely separate from this group you have Colonel Wilkerson and the other  
21 officers and pilots that the trial counsel has already told you about.

1           CIV DC: Now one of the facts that you should be tracking as you hear the evidence is  
2 who was drinking and how much were they drinking? Now let me just say right up front, you  
3 have the folders in front of you, and one of the nice things about courts-martial is that you can  
4 take notes. You can take notes so that you know that you don't have to rely on the attorneys to  
5 tell you what the evidence is, but you can keep track of the evidence yourself.

6           Well, one of the things I'm going to ask you to keep track of is how much drinking was  
7 going on? How much – to what extent was alcohol a factor in what happened that night, because  
8 alcohol can be a factor in multiple ways, but one way is ability to perceive what was going on,  
9 and another way has to do with memory – do you remember what happened when you were  
10 drinking?

11           Now you'll note in that regard that one of the reasons that I want to ask you to keep track  
12 of the amount of alcohol being consumed, primarily by the key players, so by Beth Wilkerson,  
13 by Exemption 6, and by my client. But because if you see in the flyer that's also in your folder,  
14 you're going to see that it talks about whether or not Ms. Exem was substantially incapable of  
15 appraising the nature of the sexual contact. And so this issue of whether she was substantially  
16 incapable relates to either of two possibilities. One, she was substantially incapable because of  
17 the amount of alcohol she consumed or she was substantially incapable because she was asleep,  
18 and alcohol was not a factor.

19           In any event, I anticipate that she's going to tell you that at the beginning of the evening  
20 she had some wine, and that this wine was a mixture and that she's not sure how much alcohol  
21 was in it, but she may have had a cup or a cup and a half of wine at the beginning of the evening  
22 before going to the concert.

1 CIV DC: And then she's going to tell you that at the concert she really didn't have  
2 anything to drink at all. She might have tasted an alcoholic drink that one of the other women  
3 had, but she didn't drink anything else. And so I ask you, as you sort of see things coming  
4 together, she will have a little bit of wine; some of the others may have had some drinks. They  
5 meet at the lodge, they walk over to the concert, and then for about an hour to an hour and a half  
6 at the concert, and sometime after the concert, there was really no alcohol consumed of any great  
7 degree.

8 Now once they are at the concert, the people who associated at the concert are, to some  
9 degree, are the people from the Medical Group – Captain Manning, Captain Brock, Sergeant  
10 Dunnivant and Exemption . They know each other and they just sort of keep track of each other  
11 through the course of the concert, but nothing of a great moment really happens at the concert,  
12 it's just that time elapses.

13 Now, in this regard, let me add that in great part there's not going to be a big dispute over  
14 these facts, these preliminary facts, the facts that led up to whatever happened or as the defense  
15 would say, "didn't happen" in the Wilkerson home.

16 So I'd like to at least give you a sense of where the fight is and where the fight isn't. And  
17 I don't think there is going to be a lot of dispute between the government and the defense about  
18 how people gravitated together through the course of the evening until they end up at the  
19 Wilkerson home.

20 So, in any event, Ms. Exemption has had some wine before the concert. She doesn't really  
21 drink much at the concert. And then some of them stick around immediately after the concert – I  
22 think to get some autographs or something. And, eventually, these different groups, Colonel

1 Wilkerson and his group, Exemption and her group, they end up at the Club. Now you have  
2 officer and enlisted personnel all at the Club getting drinks after the concert; no, no big surprises;  
3 sort of what you would expect. And the Club was not too far from the lodging and the TLF so  
4 the people could walk from the concert over to the Club. To the extent that they wanted to drink  
5 more alcohol, they could drink. And then they would go from the club – well, where ever they  
6 went, they could back to their rooms or do whatever they wanted to do.

7 CIV DC: Now at this point you have a great deal of mingling going on. You have  
8 different ranks at the club and you have these groups we've talked about. So at the Club, Ms.  
9 Exemption has some more drinks. Now it's not entirely clear how much she had to drink, but it may  
10 have been just beer. And she bought a couple of beers; she bought a beer for herself and for  
11 somebody else. There were some others who were buying some drinks. I think Major Manning  
12 – then Captain Manning – may have bought some drinks for some folks – some cranberry and  
13 vodka or something like that. But, again, not a lot of heavy drinking; just drinking some alcohol  
14 at the Club after a concert; you know a typical kind of experience and nothing unusual. Again,  
15 no big dispute between the parties about what happened at the Club.

16 But at the Club, that's where people started to meet each other. Sergeant Dunnivant goes  
17 her way. The other people that Exemption was with – was with initially in the course of the  
18 evening when she walked out of the concert, sort of go their separate ways. They don't stay at  
19 the Club. And so Ms. Exemption finds herself, now, being introduced to Colonel Ostovich and to  
20 some of the officers who were with Colonel Wilkerson. And I think she's going to tell you that  
21 Major Goldsberry, that his wife works with Exemption, so she knew him; she wasn't just  
22 meeting him for the first time that night.

1           CIV DC: So at the Club they start talking and socializing and visiting, and at least two  
2 different groups have now come together. And, again, they're at the Club for a while, and  
3 somehow a conversation comes up about "Okay, what are we going to do now?" And as it plays  
4 out, there's talk about going to a pub or a bar off-base. Now this was not part of the original plan  
5 that Captain Brock or Captain Manning had or that Exemption had. It just sort of evolved over  
6 the course of the evening that there was talk about going to this club off-base. And so as trial  
7 counsel told you, everybody – I say "everybody"; there's a group of about seven people and they  
8 decide to jump in the Colonel's car and they head off base.

9           Now the evidence is going to disclose, and I'm not sure who's going to tell you, but it's  
10 going to come out through one of them, and there's no issue here, that the Wilkerson residence  
11 was just a couple of minutes off the base. Basically, you go out the gate by the Club, and drive  
12 down the main highway, and you're there. I mean it is not very far at all from the base – just a  
13 couple – literally, just a couple of minutes away.

14           Now, the witnesses are going to tell you that there was some confusion about this,  
15 about why they were going to Colonel Wilkerson's house. And it certainly wasn't Colonel  
16 Wilkerson's plan, and you'll hear evidence to this effect – to have a bunch of people to show at  
17 his house on this particular evening. I know the Air Force sometimes have what's called a "no  
18 notice hospitality check," but that's not what was going on this night. Colonel Wilkerson wanted  
19 to go home, and then if the others wanted to go do a pub crawl or whatever they wanted to do,  
20 that was just fine with him.

21           Because here's the situation they found. Now there is nobody at this point that's drunk,  
22 the evidence will show. There has been some drinking of alcohol. People may have a buzz, but



1 nobody is out of control, nobody is stumbling, nobody is having trouble getting around. In fact,  
2 if anything, the game plan was still to go drink off base and come back and spend the night in the  
3 TLF or the lodge.

4 CIV DC: But here's what the situation was at the Wilkerson residence: There was a  
5 friend of the family, Cheryl Pone. She had entrusted her two sons with Beth Wilkerson. Their  
6 father had died in an accident some time ago, and Beth was reaching out to Cheryl to take care of  
7 her boys that night. And Beth had great concern about the boys; their emotional state; staying  
8 away from their own home and their own mom and just how they would be able to handle that  
9 situation.

10 And so while Colonel Wilkerson is at the concert and at the Club, she's taking care of the  
11 boys. And then they have their son, the Wilkersons' son, who is at home. And so she's home.  
12 She's in a living room area with one of the two boys, and when all of a sudden this group shows  
13 up on her doorstep, unexpected. Now there may be some talk about "Okay, why are we going to  
14 the Wilkerson's or going to this house?" And it may well be that Ms. Exem didn't know whose  
15 house this was. She had no idea where she was. She was just tagging along. She knows  
16 Manning and Brock. She knows them, so she's just sort of tagging along to see where they're  
17 going and what they do, and you know have a night on the town.

18 But Colonel Ostovich decides, once they get to the Wilkersons', where Colonel  
19 Wilkerson think thinks he's just being dropped off to go home. He's not going on any kind of  
20 pub-drinking event. So they show up at her doorstep and Colonel Ostovich is basically "Hey,  
21 let's have some wine and just visit here." And so this is a big surprise, as you can imagine. This  
22 is a big surprise for Mrs. Wilkerson to have all these people show up at that point.

1 CIV DC: In any event, being the gracious person that she is, she welcomes them into her  
2 home – their home, and also being the gracious people that they are, they offer them some wine.  
3 In fact, I think it’s actually *prosecco*. And so at this point you have this group of about seven  
4 people, including Colonel Wilkerson, who show up at his home. And it actually is not a party.  
5 This is not a planned event. As I said earlier, this is just how the evening sort of evolved, and so  
6 it’s not even that late in the evening at this hour. It’s – I think we’re talking about 11 o’clock,  
7 10:30-11:00. We’ll get into a timeline as each of the witnesses testify.

8 But not very much drinking occurs at this point. People may have one glass of *prosecco*  
9 or a glass of wine, and that’s it.

10 As individuals sort of pair off, I think the evidence is going to show that Colonel  
11 Ostovich and Captain Manning sort of step outside. There’s a patio area in the front yard, and so  
12 they step outside while they carry on a conversation out there. And then Ms. Exempt  
13 couple of people, but I think the evidence is going to show that she gravitated toward Beth  
14 Wilkerson, and so they start talking with each other.

15 Now Ms. Exempt recollection of this evening – you know with the layout of the house,  
16 you’re going to discover, is very poor. She’s going to describe where she was and where she  
17 went and who she saw, but she’s going to be contradicted at a number of points by the testimony  
18 of other witnesses, both about the layout of the house, as well as who was there.

19 Ms. Exempt is going to tell you that she did interact with these boys – the Pone boys, and  
20 that they were in a bedroom. Now it’s not going to be clear whether she thinks this bedroom was  
21 upstairs or where it was. And so what I’m going to ask you to do – I asked you earlier to keep  
22 track of alcohol – how much alcohol did she have to drink, how much alcohol has Beth had to

1 drink, how much alcohol had Colonel Wilkerson had to drink. Also, I'm going to ask you to  
2 keep track of Ms. Exempti movement within the house and her description of the house and where  
3 people were, because she, I believe, will tell you the boys were upstairs in an upstairs bedroom,  
4 and that's where she found them.

5 CIV DC: Now Beth Wilkerson is going to tell you that they were not in an upstairs  
6 bedroom. She's going to tell you that the boys were in a bedroom that was on the same level as  
7 the main living area. When you come into the house, you have an open living room type area.  
8 As you go to the left in the house, you have a dining room immediately to the left. Just ahead of  
9 the dining room, you have some stairs that go up and some stairs that go down. But if you go  
10 from the dining room to the left, you're going to run into a hallway. And at the far right end of  
11 the hallway is the bedroom where the Pone boys were sleeping and spending the night.

12 There's a bathroom off of that bedroom. As you came out of that bedroom, there's  
13 another bathroom. As you come further down the hall on your right, going away from the  
14 bedroom, there's a study – Colonel Wilkerson's study. Then as you keep proceeding down the  
15 hall, there's sort of a little bar area. And then, finally, you end up in the kitchen.

16 And Ms. Exem is going to tell you that the bedroom where this alleged offense occurred  
17 was in a bedroom just off the kitchen, just a couple of steps – maybe a couple of steps down  
18 from the kitchen. Mrs. Wilkerson – Beth is going to tell you, first of all, she's going to tell you it  
19 didn't happen, that she didn't come into this room and find her husband involved in some sexual  
20 act with Exem. But what Beth is going to tell you is that the room where this allegedly occurred  
21 was down two flights of stairs, 17 steps, and then down a hall, and then in a room off the end of  
22 that hall, that's sort of a game room, a big open room with a daybed in it.

1 CIV DC: So going back to how the evening developed, at some point while Exemption s was  
2 talking with Beth Wilkerson and she became aware of the presence of the Pone boys, she's going  
3 to tell you that Cheryl – she doesn't know her name, she doesn't know the boys' names, but  
4 she's going to tell you there was another woman there. Presumably she may have believed that it  
5 was the boys' mother. Well, Beth Wilkerson is going to tell you "No, there was no other woman  
6 there. The only women there were the women that came with Colonel Ostovich and Colonel  
7 Wilkerson – Manning and Brock and Exemption and Beth Wilkerson. There was no other  
8 woman, even though I anticipate Ms. Exemption is going to tell you there was another woman there.

9 Furthermore, there's a point where she goes into the bedroom where the boys are, and  
10 Colonel Wilkerson is telling the boys a story. Now it's not clear whether she'll say he was  
11 reading them a story in a book or whether he was just telling them a story, but she was in that  
12 room where the boys were located.

13 You're also going to hear Beth Wilkerson talk about the fact that one of the boys – the  
14 Pone boys – had been in a bicycle injury and he had gotten his foot caught in the spokes or  
15 something like that, and so his ankle and his foot which had been injured had been wrapped up.  
16 And they received some help from Exemption in sort of putting a clean wrap round that leg.

17 Now one of the issues in this case is going to be, what happened to Exemption ' shoes? I  
18 think the trial counsel alluded to this in his opening statement when he talked about the fact that  
19 Exemption was out on the street at 3 o'clock in the morning, and didn't have any shoes on.

20 Well, what the evidence is going to disclose is that she had taken her shoes off at some  
21 point in the evening and lost track of her own shoes. Ultimately, Beth will testify that the shoes  
22 were found in the bedroom where the Pone boys were sleeping, and that they were back –

1 because they had looked for her shoes. Earlier in the evening, different people in this party were  
2 looking for shoes because she couldn't find her own shoes, and it was only the next day – I think  
3 it was the next day – but it was only later, after she had departed from the house, that they  
4 actually found the shoes.

5 CIV DC: Nonetheless, there was some interaction between Exemption 6 and Colonel  
6 Wilkerson and the Pone boys, and actually some talk about the boys and their names, and so I'm  
7 not going to get into any more detail than that at this point.

8 But, given the time that has elapsed, the evidence will show that Exemption 6 was not  
9 drunk, was not intoxicated, had had some alcohol that night, but she otherwise was walking, was  
10 talking, and was interacting with people who were there in the Wilkerson residence up until the  
11 point where she went to sleep.

12 Now I anticipate there is going to be some dispute about just when she went to sleep and  
13 the circumstances of her staying there to go to sleep. There are some tools that you're going to  
14 have – that you have which the judge will instruct you about at the end of the case, about  
15 accessing witness credibility. And so I am going to go into the facts as I understand them to be  
16 from this point forward. With those tools, the government kept saying, "Well, what motive to  
17 misrepresent would Exemption 6 have? What motive to misrepresent would Exemption 6 have?"  
18 Well, you're going to be instructed by the Judge about ways to assess credibility of witnesses.  
19 First of all, one of those ways of accessing someone's credibility has to do with perception. Did  
20 the person have the ability to perceive what was going on? And each witness who testifies will  
21 testify about their perceptions of that evening.

1 CIV DC: The second is memory. How well does any one individual recall what  
2 happened? Again, alcohol can impact perception reception and alcohol can impact memory. So  
3 as you assess a person's credibility or their powers of observation and memory, recognize that  
4 those are two issues.

5 Now another is corroboration. When you assess credibility, you ask yourself "Is this  
6 witness' testimony corroborated by something objective?" Now, for instance, corroboration can  
7 be offered as evidence, such as DNA or hair samples or fingerprints. Now using sort of a  
8 scientific approach, you can sometimes corroborate some of these things. Well, in this case,  
9 understand that there's not going to be any scientific evidence. There's no DNA, there's no  
10 evidence that either side will be presenting along those lines.

11 So, basically, that's why I said this is a "She said; she said" case – it's coming down to a  
12 credibility contest.

13 Motive to misrepresent; that's one of the other tools we have. Do different parties have a  
14 motive or reason why they would lie about what happened?

15 Another way to assess credibility is a prior inconsistent statement. Has this witness made  
16 a prior inconsistent statement, either to the OSI or during an Article 32 hearing or something like  
17 that?

18 And so as you hear the witnesses testify, you may see that they are confronted by other  
19 statements that they've made on other occasions that may be different than what they're saying  
20 in court today.

21 Another way you test the credibility of a witness is called contradiction. In other words,  
22 one witness says one thing and another witness says another thing.

1 CIV DC: Immunity; a witness can be given immunity, and that may have an impact on  
2 their credibility, and the judge has to instruct you regarding immunity, that you'll hear, I  
3 anticipate, at the end of this proceeding.

4 So recognizing that you have those tools to assess individual witness' credibility, and the  
5 great thing about the tools is because they're tools, they apply to witnesses called by the  
6 government and they apply equally to the witnesses called by the defense. So you use these tools  
7 because at the end of the proceeding, you're going to have to assess credibility, and to the extent  
8 that you can, try to decide who is reliable and who is credible in terms of the evidence they  
9 present.

10 So that leads me back to the house and what was going on at the house at approximately  
11 11:00-11:30 at night. I told you that the evidence is going to show that Colonel Ostovich and  
12 Captain Manning were outside on the patio. Well, Captain Brock was inside, and she basically  
13 makes a decision "This isn't what I thought this was going to be. I thought we were going to a  
14 pub. I didn't know we were going to someone's house." And she basically makes it clear that  
15 she would like to go back to the base.

16 MJ: Mr. Spinner?

17 CIV DC: Yes.

18 MJ: We're just going a little bit longer than I expected, so we're going to have a – and I  
19 hate to cut you off about halfway, but I anticipate that there's probably going to be some stuff  
20 you're going to say here, so we will go ahead and have a short recess of about five to ten  
21 minutes, and then I'll let you continue at that point.

22 CIV DC: Yes, Sir.

1

MJ: We are in recess.

2

(The court-martial recessed at 1028 hours, 29 October 2012.)

3

**END OF PAGE**



1 (The court-martial was called to order at 1042 hours, 29 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Mr. Spinner, you may proceed.

6 CIV DC: Thank you, Your Honor.

7 Colonel Stentz, hopefully we're all a little bit warmer now.

8 So, anyway, I was at the point where it's probably somewhere between 11:00 or 11:30  
9 PM, not particularly late. Again, there hasn't been a whole lot of drinking. But Captain Brock  
10 basically makes it clear someway, somehow that she doesn't want to stay. Colonel Ostovich and  
11 Captain Manning have sort of paired off outside. And so Beth Wilkerson offers to take Captain  
12 Brock back to the base, which, as I said before, the evidence will show is only a couple of  
13 minutes away.

14 Now, I said keep track of who's having how much to drink. Beth maybe has had at this  
15 point a glass of wine or two, but she had some wine or *prosecco* at the point that everybody  
16 arrived, and when they were having something to drink. So clearly Beth would prefer not to  
17 drive through the gate, but it's common knowledge that if she can get up to the gate, the gate  
18 that's near the Club. I don't know if it's called the main gate or what. But she can get up the  
19 gate, and then Captain Brock can walk just across the field there to the TLFs off in the distance.

20 So at that point, Beth communicates that she's willing to give Ms. **Exem** a ride home if  
21 she wants to go. And so she – **Exem** is offered the opportunity to ride with Brock to the base,  
22 and she elects not to leave.

1 CIV DC: Now this is where I said – I talked earlier about contradictions – I’m not sure  
2 who’s going to say who offered who a ride or how that came about, but that message was  
3 conveyed. Furthermore, I think Captain Manning, now Major Manning, when she testifies, she’s  
4 going to say something to the effect that she thought that Brock and Exemption 6 had already left, and  
5 so when she leaves with Colonel Ostovich, and so, apparently, they were outside and they just go  
6 to Colonel Ostovich’s car and they leave with Manning thinking that both Brock and Exemption 6 have  
7 already gone back to the base or gone somewhere, but that they’re no longer there.

8 So, basically, what you have is a situation where Beth jumps in the car with Captain  
9 Brock, drives Captain Brock back to the gate, drops her off at the gate, and then comes right  
10 back home. Now, it’s around this time that a decision is made for Colonel Wilkerson – decides  
11 to go to bed. Now if you recall, as I’ve described the layout of the home, I described a room  
12 downstairs, 17 steps – two flights of stairs – and that’s where this event allegedly occurred – the  
13 basis for the allegations. Well, from the main level to get to the Wilkerson bedroom, you go up  
14 two flights of stairs – I’m not sure how many steps – but you go upstairs, so you’re a  
15 considerable distance from that downstairs daybed. So it’s clear that Exemption 6 has turned  
16 down offers to take her back to the base, and so she’s taken down – Beth takes her downstairs to  
17 this dayroom – daybed where she can go to bed, and then Colonel Wilkerson goes upstairs and  
18 goes to bed. And then Beth joins Colonel Wilkerson in bed.

19 Now, from this point until the next morning, Beth Wilkerson will tell you that her  
20 husband, Jay Wilkerson, did not leave that bed. She will tell you that she came to bed; her  
21 husband was asleep. They have a little dog – that she’ll tell you where everybody was placed at  
22 that point. Her son is in his bedroom. The Pone boys are downstairs on the main level, in the

1 bedroom down the hall from the kitchen, and Exemption 6 should have been downstairs in the bed  
2 where she was going to sleep.

3 CIV DC: Now you have some other facts about the layout her that are going to become  
4 relevant in this proceeding. And one of the facts you need to track on is the lighting in this room  
5 where there is the daybed. There was a – there’s an overhead – Beth will testify that there is an  
6 overhead light in that room. Exemption 6, I anticipate is going to tell you that there was a lamp on  
7 a lampstand or floor lamp next to the bed – Beth Wilkerson is going to tell – and that’s the one  
8 she turned off when she went to go to sleep. Beth Wilkerson is going to tell you “No, there was  
9 no lamp there.” Exemption 6 is going to tell that she awoke from this dream and that there was a  
10 bright light. Beth Wilkerson is going to tell you that there was an overhead light in that room.  
11 Now Exemption 6 is not going to say that there was an overhead light. I think she’s going to tell you  
12 she doesn’t remember if there was an overhead light or not. She’s just going to say there was a  
13 bright light.

14 But Beth is going to tell you that this light, if you turn on, is not very bright when you  
15 first turn it on, and it takes a while before it turns bright at all.

16 Exemption 6 is going to tell you that this room that she was in was just a couple of steps  
17 down from the kitchen. In fact, I anticipate she’s going to tell you that when she left this room at  
18 around 0300 in the morning, she went directly to some French doors and went out those French  
19 doors. Beth Wilkerson is going to tell you that the French doors are in the kitchen, two flights of  
20 stairs up from the room that Exemption 6 was sleeping in. And so it is going to be important for  
21 you to see the contradictions in the testimony between the various witnesses, and then ultimately  
22 factor that in to credibility.

1 CIV DC: Now Beth Wilkerson, who has gone to bed, is going to tell you that she heard  
2 some commotion downstairs. She's upstairs in the upstairs bedroom, sleeping with her husband,  
3 and she hears this commotion, and she goes down to see what it is. And she finds Exemption in  
4 the kitchen, on her cell phone, talking to Suzanne Berrong. Susan Berrong is a – I think she's a  
5 PA – she's another person who works at the Med Group. They're friends. They knew each  
6 other, and so they're engaged in a somewhat loud conversation. This is a problem for Beth, she  
7 will tell you, because down the hall from the kitchen is where the Pone boys are sleeping, and  
8 Beth's concern is waking those boys up or disturbing them with something because of just the  
9 fact that they might be easily disturbed by anything at this point, given what happened with their  
10 father.

11 So she basically is coming down to find out what's going on, and Suzanne Berrong is  
12 going to testify and it's going to be – her testimony is basically going to say “Yes, Exe called  
13 me, and we talked for about 15 minutes. And I'm trying to find out where she is and if she wants  
14 a ride home.” Now at the end of this phone call, that's when Beth comes into the kitchen to see  
15 what's going on. And Suzanne will tell you that she was willing to come pick up Exe right at  
16 that point. So we're about 0030 in the morning – 0023 is when the call starts, and it ends at  
17 about 0038. And Exe is talking about the wife in this phone call. She doesn't call her Beth, she  
18 just keeps talking about the wife. “The wife is right here.” And Suzanne is at the other end of  
19 the phone saying, “Well put her on so I can find out where you are and come get you.” And  
20 Exem is telling her something to the effect of “Oh, it's too far.” Well, what you're going to find  
21 out is that Exe basically never gave the phone to Beth to talk to Suzanne to find out where  
22 Suzanne was so that they could hook up and come pick her up. And, at the same time, when the

1 phone call ends, and Beth asks Exe<sub>mti</sub>, “Where does your friend live?” And Exe<sub>mti</sub> says,  
2 “Pordenone.” And Beth is like, “Well, that’s only ten minutes away.” It would be very easy to  
3 have picked Exe<sub>mti</sub> up. And so you have a situation here that just at a half hour past midnight  
4 where a friend of Exem<sub>ntion</sub>s is willing to come pick her up and take care of her for the rest of the  
5 night, and you have Beth, who is willing to have her picked up and taken away because she’s up  
6 in the middle night, disturbing the household, and you have Exe<sub>mti</sub> in the middle of all this, and the  
7 testimony is pretty much going to be that Exe<sub>mti</sub> didn’t let the two of them talk to each other or  
8 connect with each other about how Exe<sub>mti</sub> could be picked up.

9 CIV DC: So what happens now? What happened? Beth, being a hospitable person,  
10 makes some tea and coffee. She sits down and she visits with Exem<sub>ntion</sub>. And they visit for 30-45  
11 minutes. You know it takes a while to brew the tea; it takes a while to make some coffee. And  
12 they sit down at the kitchen table and they talk for a considerable length of time.

13 Now, I assume that Exemption<sub>e</sub> is going to tell you that Colonel Wilkerson was not  
14 drinking tea and coffee with them, and he wasn’t up wondering the halls. I assume that she’s  
15 pretty much going to say that she did not see him at this time period when she’s visiting with  
16 Beth, drinking tea and coffee.

17 Furthermore, Beth is going to tell you that she left her husband in their bed upstairs while  
18 she went down to deal with whatever was going on down there.

19 So, obviously, it’s time to go back to bed. They finish their conversation. Beth goes back  
20 upstairs and joins her husband in bed. Exe<sub>mti</sub> goes, not down a couple of steps like she’s going to  
21 tell you, but she goes down two flights of steps to get into the bed that’s been provided for her,

1 even though attempts have been made to offer her rides home, which she has basically turned  
2 down inexplicably.

3 CIV DC: The evidence will also show that at about this time when they finished drinking  
4 the tea and coffee, that at about 0143 in the morning, Exemption sends a text message to  
5 Sergeant Dunnivant. So, why did I say you're to keep track of the alcohol, keep track of the  
6 locations and the timing of events? At this point the evidence will show that Exemption was not  
7 under any significant influence of alcohol. And as the government told you, they ran these drug  
8 tests shortly afterwards, and the evidence will show that she's not under the influence of any  
9 drugs. The evidence is going to show that she, at 0143 in the morning – well, first of all, at 0023  
10 she's calling and engaging in a lucid conversation with Suzanne Berrong, and then at the end of  
11 drinking coffee and tea with Beth Wilkerson, she's sending a text message to Sergeant  
12 Dunnivant, the one who ultimately comes and picks her up. And so as you follow the timeline  
13 for the course of that evening, Exemption is not apparently in the bedroom, in the daybed, going  
14 to sleep.

15 Alcohol, presumably, is not why the government is alleging in this case that she was  
16 substantially incapable of appraising the nature of sexual contact. It appears that the evidence  
17 that's going to be used to establish that is that simply she was sleeping. She's not drugged and  
18 she's not under the influence of alcohol, when around at 0245 in the morning, give or take some  
19 time, what happens? And this is where the testimony of witnesses, and I talked about  
20 contradiction earlier, diverges considerably. It's about 0245 in the morning, plus or minus, that  
21 Exemption now says Beth Wilkerson came down and found her husband in the bed with Exe  
22 Exem . Beth Wilkerson, on the other hand, is going to tell you that at about that time she was

1 asleep in her bed and that she heard some more noise. She had heard the noise earlier of Exe  
2 Exem talking on the phone, and now, at about 2:45 she hears noise again. They have wooden  
3 floors on the main level of the house. They have wooden stairs. But in any event, she hears  
4 some creaking on the wooden floors, and so she leaves her husband, Jay Wilkerson, in bed and  
5 she goes downstairs to the main level to see what is going on, only to discover that Exemption is  
6 now over by the bedroom where the Pone boys are sleeping. And of course this you know gets  
7 her a little bit upset. Beth will tell you she's upset partly because she had just been up with Exe  
8 Exem on the phone call and drinking tea and coffee with her, and now this person who was a  
9 stranger who had shown up in their home that night by this set of circumstances which has been  
10 described, is now up again in the middle of the night, making noise, and she's afraid that Exe is  
11 either going to startle or disturb the boys. So now she comes downstairs, she confronts Exe and  
12 now it's at a point like "Okay, we have a problem here. You either need to go to bed or leave,  
13 but you're not going to be up here, walking through our house all night and disturbing our  
14 home."

15 CIV DC: And so it's at this point that she offers to take her to the base, and Exe elects  
16 just to leave and walk out of the house. And so you'll learn that there's a driveway in the back of  
17 the house by the kitchen. There's a door that goes out that way. There's a driveway. That's  
18 where her car is. And then you push a button to open the gate. At the top of the gate there's a  
19 flashing yellow light, and then there's a road out there that pretty well lit at night. And so as Ms.  
20 Exem leaves and Beth is prepared to take her – to drive her to the base, Exem's just heads out  
21 into the street. And so at this point Beth realizes "Hey, this is not a good thing. It's 3 o'clock in

1 the morning. We know about what time this happened because you'll see that there are some  
2 attempts by Exemption to call Suzanne Berrong. The phone records will show that.

3 CIV DC: But apparently, Exemption – and it's not going – she's going to say she went over a  
4 wall. There will also be a suggestion that maybe this gate was opening and she went through the  
5 gate. In any event, she goes down to the end of the street. She turns right and she goes to a main  
6 street at the center of this little community where the Wilkersons live, and there Exemption runs into  
7 apparently some Americans – I don't know how many – five is what I think she is going to tell  
8 you – there were five guys there. They had some beer. And so she engages and starts talking to  
9 these guys, and then she's going to tell you she drank a beer with them. Now I understand what  
10 the government's alleged, that she was just sexually assaulted, she's just kicked out of the house  
11 by Beth Wilkerson, but she meets five guys and decides to drink a beer with them at 3:30 in the  
12 morning. She doesn't reach Berrong, but she does reach Sergeant Dunnivant, and so as things  
13 work out, Dunnivant is able to come and meet her there and pick her up, and so that's basically  
14 how that plays out. But, eventually, Exemption was picked up and got back to the base.

15 But back at the Wilkerson home, Beth is concerned about Exemption and her well being, so,  
16 needless to say, she wasn't dressed to go out at that point in the night. We know from Exemption  
17 Exemption that she was still dressed in her clothes; she never took her clothes off that night. And so  
18 Beth has to get something to put something on, so that she can get in the car, and she gets in the  
19 car and she drives around looking for Exemption and can't find her. And so she gives up looking for  
20 her and comes back home and goes back to bed.

21 When you look at the flyer, you see two charges and you see five specifications. And  
22 what you see is that all of the – while there are a lot of specifications here, all of these



1 specifications relate to what, if anything, happened on that daybed downstairs in the Wilkerson  
2 home on the night of the 24<sup>th</sup> of March 2012.

3 CIV DC: You're going to hear some different versions of what happened, as I've  
4 described it. Understand it's not what us attorneys are saying. The facts are the facts; they're  
5 going to be whatever the witness say when they testify in this proceeding over the next couple of  
6 days. You may or may not hear from some toxicologists about the effects of alcohol. You may  
7 or may not hear from other witnesses whose names have already been read to you. We don't  
8 know how many of those ultimately are going to be called to testify. But there are going to be  
9 three key witnesses whose testimony or version of the events you're going to hear. And those  
10 three people are Exemption 6, Beth Wilkerson, and Lieutenant Colonel Jay Wilkerson.

11 I will stand before you again at the end of this proceeding, and then you're not going to  
12 hear my description of these events; you're going to hear my argument as to why Beth Exemption 6 –  
13 Exemption 6 is not credible and why the government will have failed to carry their burden of  
14 proof beyond a reasonable doubt in this case to establish that Jay Wilkerson did any of those  
15 things alleged on that charge sheet. And I will be asking you, at that time, to return a verdict of  
16 not guilty of all charges and specifications.

17 Thank you.

18 [The trial counsel and the expert consultant conferred.]

19 ATC: Your Honor, at this...

20 MJ: Government, what's your proposed way forward at this time?

21 ATC: Your Honor, I believe our proposed way forward would be to call Ms. Exemption 6  
22 Exemption 6 to the stand and take up her direct examination, and then break at that point.

1 MJ: All right, you may proceed. You may call your witness.

2 ATC: Thank you.

3 The government calls Ms. Exemption 6 .

4 [The bailiff left the courtroom and returned with the witness.]

5 MS. Exemption 6

6 was called as a witness for the prosecution, was sworn, and testified as follows:

7 **DIRECT EXAMINATION**

8 **Questions by the assistant trial counsel (Captain Beliles):**

9 Q. Would you please state your name for the record?

10 A. Exemption 6

11 Q. And where do you currently reside?

12 A. Ah, Sacile.

13 Q. And how long have you resided in Sacile?

14 A. About a year and three months.

15 Q. Is that when, in fact, you came here to work at Aviano Air Base?

16 A. Yes.

17 Q. When, exactly, did you come – start here?

18 A. August 28<sup>th</sup>.

19 Q. Of 2011, Ma'am?

20 A. Oh, sorry; 2011.

21 Q. And where do you currently work?

22 A. I work in the Deployment Health Assessment Clinic.

1 Q. Here on...

2 A. Here on base.

3 Q. Is that where you've worked since you arrived here?

4 A. Yes.

5 Q. Prior to coming here in August of 2011, where did you reside?

6 A. I lived in Trinidad, California.

7 Q. And are you, in fact, from California?

8 A. I'm sorry?

9 Q. Are you from California originally?

10 A. Yes.

11 Q. Thank you. And are you certified on any particular field in medicine?

12 A. Exemption 6 [REDACTED].

13 Q. Exemption 6 [REDACTED] ?

14 A. A little over 13 years.

15 Q. Thank you. Ma'am, are you married?

16 A. No.

17 Q. Are you, in fact, divorced?

18 A. Yes.

19 Q. And when were you divorced?

20 A. In 1992.

21 Q. At the time when this happened, back on 23 March 2012, were you seeing anyone?

22 A. No.

1 Q. And do you have any children?

2 A. Exemption 6

3 Q. Exemption 6

4 A. Exemption 6

5 Q. Exemption 6

6 A. Exemption 6

7 Q. Let me turn your attention to the 23<sup>rd</sup> of March 2012. Do you remember that day?

8 A. Yes.

9 Q. Where were you during the day?

10 A. Exemption 6

11 Q. At some point on the 23<sup>rd</sup> of March, did you formulate some plans for that evening?

12 A. Ah, yes. A few of us had talked about going to a USO concert on base – a Seether  
13 concert that evening. And most people had – we had been talking about getting rooms at the  
14 TLF, and I received an email that there was one room left, so I called over and grabbed it – I  
15 called when I was at work and grabbed it for that evening.

16 Q. And who were you talking with about making these plans to attend the Seether  
17 concert?

18 A. It was mainly Danielle Dunnivant, Bob Pearson, and Tanya Manning.

19 Q. And what was the purpose of making reservations at the TLF?

20 A. In case we drank alcohol, we didn't want to drive.

21 Q. What time did you get off work that afternoon?

22 A. Four-four-thirty.

1 Q. After you got off work, where did you go?

2 A. I went over to the BX, and I bought a bottle of mulled red wine from Rotha's store  
3 there – like hot wine, and then brought it – went directly over to the TLF to check in.

4 Q. And the bottle of red wine was just a typical size wine bottle?

5 A. Yeah, it was a typical wine bottle.

6 Q. Thank you. After you checked in, what did you do?

7 A. Ah, we met Danielle and Bob, and Danielle had a friend with her, Michelle – I don't  
8 remember her last name.

9 Q. Did she also work in the Medical Group?

10 A. Yes.

11 Q. And just for situational awareness, did Mr. Pearson – Bob Pearson, does he work at  
12 the Medical Group at that time?

13 A. Yeah, at the time he was working there as well.

14 Q. Did you meet up with them as soon as you checked into billeting or was it a little bit  
15 after?

16 A. Oh, it was probably about a half hour later – right around in there. I'd seen Danielle  
17 in the parking lot when I first got there, and I think she was going to check into her place and  
18 then meet everybody, and we were going to still meet over at the lobby.

19 Q. Thank you. Were you drinking at all while you were there at the TLF?

20 A. Yeah, while we were in the lobby, yes.

21 Q. What were you drinking?

1           A. I had my – I had the wine, so I was using a mug from the room that I was staying in,  
2 and it was on the first floor, so I'd just you know go over and go inside the room and pour a little  
3 wine and then come back out to the lobby.

4           Q. So y'all were drinking just right in the lobby of the main – the main lobby of  
5 billeting?

6           A. Yes.

7           Q. Do you remember how long, approximately, you were there in the lobby?

8           A. Well, it had to have been getting fairly close to the time that Seether was going to  
9 start because we were waiting for Tanya Manning and Dawn Brock to show, and they were a  
10 little behind schedule, so probably – I'm not sure, but maybe half an hour, 40 minutes. I didn't  
11 wear a watch, so I don't really know.

12          Q. Thank you. Before you left billeting, how much wine did you have to drink?

13          A. I had a half a bottle.

14          Q. And how do you know that?

15          A. Because the next day when I came back to the TLF, I wondered how much I had  
16 drunk, and there was half a bottle left.

17          Q. Did you have any sips of anything else at the concert?

18          A. Yes. Michelle had a Gatorade and vodka mix, and Tanya had a fresh-squeezed grape  
19 juice and vodka mix, and I had a taste of each of them.

20          Q. Not a significant amount?

21          A. No, no. I just tasted it to taste it, but neither one of them were very good.

22          Q. Neither one of them were very...

1 A. They weren't very good.

2 Q. They weren't very good. At some point, you started over to the Seether concert,  
3 correct?

4 A. Yes.

5 Q. Approximately how far was it from billeting to the Seether concert? Was it a long  
6 walk or was it pretty short walk?

7 A. Oh, no. It was like – I think it was probably a five-minute walk.

8 Q. Did you run into Tanya Manning and Dawn Brock at some point?

9 A. Yes. Yes. That was out towards the parking lot we meet up with them – the parking  
10 lot of the TLF. We meet up with them and then we walked over together.

11 Q. What was the concert like? Who is "Seether," by the way?

12 A. [Laughter.] I hadn't heard of them before, but a couple of them had. It was – they're  
13 a kind of alternative rock, I guess. Not heavy metal, but more grungy. I don't know how you  
14 would – they were okay, they were...

15 Q. So you weren't going because you were a fan of Seether *per se*?

16 A. No.

17 Q. You were just going to be with your friends?

18 A. Uh-huh.

19 Q. Do you remember how long the concert lasted, approximately?

20 A. I believe it was scheduled for an hour and a half. It was over around 8:30. And then  
21 there was a line that formed to have pictures taken with the band or autographs or something. So  
22 everyone kind of mulled around for a while.

1 Q. At some point, did you eventually head somewhere else?

2 A. Yeah. Yeah, we all met up and decided to go to the Bella Vista, which is the club –  
3 the bar on base, in walking distance. I believe Danielle and Michelle went back to the TLF at  
4 that point.

5 Q. So did you, in fact, walk over to the Club?

6 A. I walked, yes. I walked over with Dawn and Bob and Tanya.

7 Q. When you arrived at the Club, what was the scene like?

8 A. It was pretty crowded – a lot of people there. I've only been there maybe once or  
9 twice before, and it was for more organized functions, so it was really me mi first going in when  
10 it was a bar-bar. It was pretty crowded.

11 Q. So you were in the bar area of the Club, correct?

12 A. Uh-huh.

13 Q. Do you remember how the bar's laid out in the Club?

14 A. Yeah. It's kind of like a – well, it depends on where you're sitting, but it's like an *L*.

15 [Used right hand to indicate an *L*.]

16 Q. An L-shaped bar?

17 A. Yeah.

18 Q. At the bar, did you have anything to drink?

19 A. Yes. I had a beer and a half.

20 Q. And did you purchase your own beer?

21 A. Yes.

22 Q. Did you, in fact, purchase a beer for someone else?



1           A. Yes. I bought one for myself, and I saw Bob over on the other side of the bar, so I  
2 was waiving to him to tell him that I would get him a beer, too, but I don't think he understood  
3 what I was saying.

4           Q. Did you see anyone that you knew at the bar, other than the people you came with?

5           A. Yeah. Standing next Bob was Gerremy Goldsberry. And I was waiving to Bob and  
6 Gerremy waived back, and I realized he thought I was waiving to him, so we were doing the  
7 whole hand signal thing. I was trying to tell him, "No, no, I was talking to Bob," but, ah...

8           Q. Who was Gerremy Goldsberry to you at that point?

9           A. She – I mean he is the husband of a woman that I work with in Public Health in the  
10 Deployment Health Clinic.

11          Q. And what's his wife's name?

12          A. Jennifer Goldsberry.

13          Q. Would you say you work closely with her?

14          A. Yeah. She's the tech for the Clinic, and she shares a contract with another woman.  
15 So I work directly with her two or three days a week.

16          Q. So you mentioned you went over and started talking to Gerremy Goldsberry, correct?

17          A. Yeah. Well, I went around to give Bob the beer, and he had left. So I just sat there  
18 and talked with Jennifer – I mean with Gerremy. Jennifer was out of town that weekend, and we  
19 were just chatting.

20          Q. Do you remember where in proximity to you at this point Captain Manning and  
21 Captain Brock were?

1           A. Yeah. They were off to my right, so I was facing the bar, talking to Gerremy, and  
2 they were kind of mulling around, talking to other people there. There were quite a few people  
3 at the bar. I was a few feet away from the bar – several feet away.

4           Q. Ah, did you, at some point, were you at some point introduced to the individuals that  
5 Dawn and Tanya were speaking to?

6           A. Ah, not really. I think Gerremy introduced me to Lowe. I don't know his rank or his  
7 first name. But I think he introduced me to him there or it was later when we got into the car.  
8 But they were standing by each other.

9           Q. How would you describe Lowe?

10          A. He looks young; dark hair.

11          Q. Was he significantly shorter than Major Goldsberry?

12          A. Yeah, he was – well, yeah. A lot of people are; Major Goldsberry is very tall.

13          Q. So you're introduced to the Major Lowe, and were there some other individuals with  
14 him?

15          A. Ah, you know at the time I didn't know that they were all together as a group. Some  
16 people were talking; some people weren't talking together. But I wasn't formally introduced to  
17 anybody else there.

18          Q. At some point in the evening at the Club, did Tanya offer you any drinks?

19          A. Yes.

20          Q. What did she offer?

21          A. Back when I was waiting for the second beer to be poured – it was taking a while – I  
22 turned around and Tanya was there with a few women, and she had a few drinks and she offered

1 me a drink. I asked her what it was, and she said it was cranberry juice and vodka. And I said,  
2 “No.”

3 Q. So you didn't have any of that cranberry and vodka?

4 A. No.

5 Q. Ah, you never bought any drinks for anyone else, correct?

6 A. Just Bob and myself.

7 Q. Except you drank half of the beer you bought for Bob, right?

8 A. Right. Right.

9 Q. Thank you. At some point, did you become aware that Colonel Ostovich was mixing  
10 with your group of friends?

11 A. Yes. When I had gone back around the corner and Bob had left, then I was kind of  
12 chatting with people. Tanya came up, and we were talking, and Colonel Ostovich walked by and  
13 she said – he said, “Excuse me.” I don't know where he was going, and she said, “Do you know  
14 who that is?” And I said, “No.” And she said, “That's Dean Ostovich.”

15 Q. So before that evening, you weren't very familiar with who Colonel Ostovich was?

16 A. No.

17 Q. At this point you had only been here on base for about six months, correct?

18 A. Right.

19 Q. And just to be clear, prior to your starting to work for Aviano Air Base, had you ever  
20 worked for or with US military?

21 A. No.

22 Q. You never went into the military yourself, obviously?

1 A. No.

2 Q. Tell me it's the opposite – you had never worked for the US military?

3 A. No, never.

4 Q. Now, at some point, was there some discussion about heading somewhere else?

5 A. Yes. Ah, we were standing around talking. Tanya said – oh, I heard some people  
6 talking about the pub, and she said, “Oh, hey, we’re going to go. We’re going to take off and go.  
7 Come with me.”

8 Q. What did you believe the “pub” to be?

9 A. There is a pub in Aviano that’s – and it’s the only one that I’m aware of – that’s an  
10 English pub. And I had a friend over there that was at a – I think it was a going away party –  
11 that she was at, and so I thought “Well, that’s good you know we’ll go over there and then I can  
12 hang out with her.”

13 Q. Now Suzanne Berrong, who is she to you?

14 A. She’s the one who was at the pub.

15 Q. She was a friend of yours and Tanya?

16 A. Yes.

17 Q. How did, to your recollection, did the group eventually move out of the Club?

18 A. Ah, we just – I mean I was just following Tanya. We just walked out, and walked –  
19 everyone was kind of chatting. You know it was very friendly, and we just walked out to the car  
20 and got in.

21 Q. Do you remember what the car was like – that you got in?

22 A. Yeah, it was a big – a four-door, black Mercedes.

1 Q. Whose car was it?

2 A. Ah, Col Ostovich's.

3 Q. Prior to getting into the car, were you under the impression that you were going to  
4 anyone's home?

5 A. No.

6 Q. You don't remember that being mentioned at all?

7 A. No.

8 Q. Back in the Club, do you remember ever asking anyone their rank when you were in  
9 the bar?

10 A. No.

11 Q. Do you remember Tanya or Dawn ever asking people what their rank was?

12 A. No. Tanya told me who Colonel Ostovich was, and what his position was, but that's  
13 the only thing I heard in regards to any of that.

14 Q. Did you hear her asking Colonel Wilkerson and Colonel Ostovich their ranks?

15 A. No.

16 Q. Thank you. How were people situated in the car?

17 A. Okay, I was in the back seat – okay, I was in the back seat, and then Gerremy  
18 Goldsberry was next to me, and then – is it Major Lowe? I don't know his rank – his friend, was  
19 next to him. And then I guess Tanya was next to me. So there were four of us in the back. And  
20 then there was Colonel Ostovich was driving, and Colonel Wilkerson was in the passenger seat,  
21 and I guess Dawn was in the front seat.

1 Q. And just to be clear; you're referring to Colonel Wilkerson; did you know him prior  
2 to that night?

3 A. Oh, no.

4 Q. Even that evening, did you know his name?

5 A. I don't – I think at some point we introduced ourselves to each other through the  
6 evening, but I didn't remember his name.

7 Q. You didn't remember his name the next day?

8 A. No.

9 Q. And you didn't actually know his rank either?

10 A. No.

11 Q. And at the bar itself, you were never formally introduced to Colonel Wilkerson, were  
12 you?

13 A. No.

14 Q. You're in the car; where did the car take you? Where did Colonel Ostovich take you?

15 A. To Colonel Wilkerson's house.

16 Q. When you pulled up to the house, did you know where you were?

17 A. No. I had no idea. We were kind of chatting. It wasn't – none of us were paying  
18 attention to where they were going. And they pull in the driveway and I said, "Where are we?"  
19 And it was either Gerremy or his friend who said, "I think we're at his house." And I said,  
20 "Well, I thought we were going to the pub." So everyone got out of the car and they were all  
21 getting out of the car. So we all got out and walked up the drive.

22 Q. Is it safe to say you were a little confused as to why you were at a residence?

1 A. Yeah. It was a little confusing. I was a little ticked off, actually.

2 Q. In the car itself, was everyone wearing seatbelts?

3 A. No.

4 Q. You weren't wearing a seat belt?

5 A. I was not.

6 Q. And, presumably, Dawn wasn't wearing a seat belt in the front?

7 A. No. I don't think so.

8 Q. When you went into the house, were you invited into the house?

9 A. Yes.

10 Q. Did anyone try to stop you from going into the house?

11 A. No.

12 Q. Did Colonel Wilkerson try to stop you from going into the house?

13 A. No.

14 Q. What was the general tenor of the arrival at the house and you went into the house?

15 A. Ah, we just – we just – I mean we just walked in and everything seemed fine. We

16 walked into the house. Everyone was still chatting and no one seemed upset that we were there.

17 Q. Did you feel welcome in the house?

18 A. Yeah. I didn't get a feeling that we weren't supposed to be there.

19 Q. Did you meet Mrs. Wilkerson?

20 A. I did meet her.

21 Q. Do you remember where you met her?

1           A. Yeah. She was – I think she was either coming down the hallway or coming down  
2 the stairs, and he introduced us, and we shook her hand.

3           Q. Once everyone got into the house, do you remember how everyone was situated in the  
4 house?

5           A. Yeah, we – well, we spent most of the time I think chatting around. It was the  
6 kitchen, and then there is this room, and I think it was just before the kitchen, and it was kind of  
7 a – like it didn't have really any significant furniture outside of like cupboards and cabinets, and  
8 I think that there was a small refrigerator in there and glassware – stuff like that. So we stood  
9 around in there and then the kitchen was – I think the kitchen was right off there.

10          Q. And did Colonel Wilkerson offer you any drinks?

11          A. Yes.

12          Q. What did he offer you?

13          A. He offered wine. He brought – I think he said, you know, “What does everyone want  
14 to drink?” But he had a bottle of white wine that he poured into a couple of this crystal –  
15 Bacharach crystal glasses. They're the small, white wine ones that hold – they're pretty small –  
16 about four ounces.

17          Q. You mention “Bacharach,” is that correct?

18          A. Yeah. It's an old pattern. It's an old, heavy, unusual pattern, and my parents had the  
19 same, so I commented on that. And he gave one to me, and I think he gave one to Tanya.

20          Q. Do you remember if other people were drinking other things?

21          A. I don't remember. I wasn't really paying attention.

22          Q. You weren't concerned with whether people were drinking?



1 A. No.

2 Q. At some point, were you visiting with Mrs. Wilkerson?

3 A. Yeah. Ah, I was not very comfortable. I didn't – pretty much everyone that I had  
4 known well was gone, and I didn't know anyone very well. I thought we were going to go  
5 someplace else. I liked Beth right off the bat, the minute I met her. And so I kind of hung out  
6 with her. And, ah...

7 Q. Where did you hang out with her?

8 A. We just sort of – you know we did the wander and the chitchat, but she introduced me  
9 to her son, and there were a couple of kids staying there that were children of some friends of  
10 theirs. And you know met them. And one was downstairs. So we go upstairs and we talked  
11 with a couple. And then we went downstairs and we just kind of – it was just your typical  
12 getting to know you chat.

13 Q. And were the other people kind of milling around the house, doing their own thing?

14 A. Yeah, they were. Yeah.

15 Q. Do you remember what you did with your shoes? Do you remember taking off your  
16 shoes?

17 A. I typically take my shoes off when I enter a house, so – and they're clogs – so you  
18 know I usually slip them off before I go walking through someone's house.

19 Q. When you're at home, do you take off your shoes when you're in your house?

20 A. Yeah, right then.

21 Q. What about at work? Do you sometimes do that at work?

22 A. I take them off. I do.

1 Q. When you're in your office?

2 A. Uh-huh.

3 Q. At some point was there some discussion about people leaving for the evening?

4 A. Yes. There was – I saw both Tanya and Dawn. Dawn, I remember distinctly because  
5 we're – she was coming down and I was going up on the staircase, and we met at the landing.  
6 And I asked her if you know if she was ready to go, and she said, "Yes." And I said, "Yeah, me,  
7 too." And we talked briefly about let's see who we can let know that we'd like to go home. And  
8 then I didn't see her. I said, "Okay, well..." and then I took off, and I don't remember where I  
9 went after that. There are a lot of small rooms and there are a lot of different staircases, and we  
10 were just kind of wondering around.

11 Q. At some point, were you informed that Dawn had, in fact, gone home?

12 A. Yeah. It was at the end of the evening. Beth Wilkerson came up and said, "I'm really  
13 sorry, **Exe**, everyone's left." And I said, "What do you mean?" And she said, "Well, they've all  
14 – they've all gone." And...

15 Q. Did she say anything else to you?

16 A. She had taken Dawn home earlier.

17 Q. Were you present when they left?

18 A. I didn't know that Dawn had left. I didn't know that she had been taken home until  
19 after.

20 Q. Did Beth, when she informed you that Dawn was already gone, did Beth offer you a  
21 ride back to the base?

1           A. She offered me to stay there, and I said, “I don’t want to say. I really need to go back.  
2 I’ve got a room at the TLF.” So she offered to take me back to the TLF, but she said if she took  
3 me – “If we take you back, we have to drop you off outside the gate.”

4           Q. Did you understand why she wasn’t going to drive onto the base?

5           A. I didn’t understand why, but you know I talked to people later. It’s ah – you know  
6 they – if you go through and you have alcohol on your breath and you’re going through the gate,  
7 it’s a big deal. I didn’t know – I didn’t really want to be dropped off. I didn’t know how far I’d  
8 have to walk in to the TLF. And I you know I had been drinking, so I was concerned about  
9 getting in trouble.

10          Q. So you weren’t very open to this idea of being dropped off outside the gate?

11          A. I was not comfortable with being dropped off.

12          Q. So what was the resolution of that conversation with Beth?

13          A. She said, “No, really, it’s okay. Stay here. Stay here.” So she went to go make up  
14 the bed, and eventually we got hold of Suzanne Berrong to see if – to talk to her about possibly  
15 picking me up.

16          Q. Were you actually texting Suzanne back and forth during that evening?

17          A. Yeah. Yeah, I was texting her on and off through the evening.

18          Q. And so at some point late in the evening, you had a phone conversation with her?

19          A. Right.

20          Q. Who was still awake at this point when you were still in the house?

21          A. It was just Beth, Colonel Wilkerson, myself.

22          Q. Now, to go back, you, obviously, arrived with Colonel Ostovich, correct?

1 A. [Nodded in the affirmative.]

2 Q. Did Colonel Ostovich ever offer you a ride home?

3 A. No.

4 Q. Did Major Goldsberry or Major Lowe ever offer you a ride home?

5 A. No. I don't know how they got home.

6 Q. You weren't aware when they left?

7 A. Uh-uh.

8 Q. So you mentioned that Colonel Wilkerson and Beth Wilkerson were awake when you  
9 had this conversation with Suzanne Berrong, correct?

10 A. Yes.

11 Q. What was the general nature of that conversation with Ms. Berrong?

12 A. Ah, I was pretty upset, and she – I told her you know that everyone left me and she  
13 offered – she said, “Where are you?” And I said, “I don't know.” And she said, “Well, I can  
14 come pick you up.” And I said, “You know it's probably too far.” And at this point I was  
15 embarrassed. I was you know I was crying and the Wilkersons were hearing, and I didn't know  
16 them. It was late, late, late, and I just – so I said, “Just forget it. I will stay here if it's okay. I'm  
17 just going to say here tonight.” And Beth promised that they would get me back to the TLF  
18 before I had to check out.

19 Q. Was Beth present for that phone call?

20 A. Yes.

21 Q. After you got off the phone with Suzanne, what did you do?

22 A. Ah, well they – we sat around and talked for a while.

1 Q. When you say “we,” who?

2 A. Ah, Beth, Colonel Wilkerson, and myself. And then they took me into the room and  
3 she showed me the room.

4 Q. At any point did Colonel Wilkerson ever offer you any drinks at that time?

5 A. Yeah. Well, when she first went to go make up the bed, before we called Suzanne, he  
6 asked me if I wanted a drink. And, initially, I said, “Oh, God, nonalcoholic, please.” And but he  
7 opened up the refrigerator. There was *prosecco* in there and I know we talked about *prosecco*. I  
8 don’t remember if I had a glass or not.

9 Q. Did you have anything else to drink at that point in the evening?

10 A. After that, after we called Suzanne, so there – I don’t know if I had *prosecco* or not.  
11 And then Beth came back in, and we called – we talked to Suzanne, and then we sat down, and I  
12 think I had either juice or tea.

13 Q. Did Beth do that for you?

14 A. I don’t – I think maybe. I can’t recall who gave it to me.

15 Q. Now you mentioned that eventually you went to bed. Where did Beth make a bed for  
16 you?

17 A. Ah, there was this room that had like an Italian style twin bed in this little room a few  
18 steps down.

19 Q. Was it a daybed?

20 A. Well, it was you know it was just like a regular – like a regular mattress bed. So it  
21 didn’t have a headboard or – no. And then it had a table right behind it, and so, you step down to

1 go into the room, and there – the lamp was on, and that was the only light that was on in the  
2 room.

3 Q. And did Beth inform you that's where you could spend the night?

4 A. Yeah. She said, "I made the bed up for you."

5 Q. And at this point, had Beth been anything but hospitable and gracious to you?

6 A. Oh, absolutely wonderful. No. She was wonderful.

7 Q. Do you really know when you exactly fell asleep?

8 A. No. I think I fell right asleep though. I mean I was pretty close to right asleep. You  
9 know I crawled in under the covers. I still had all of my clothes on, and crawled in under the  
10 covers and turned the light off and...

11 Q. Fell asleep?

12 A. ...fell asleep.

13 Q. What is the next memory you have of that evening?

14 A. Ah, I was lying on my back, and I felt like I was floating, you know like in a dream,  
15 was floating on my back. It was very, very quiet. And I was being touched very lightly over my  
16 breasts and my stomach. It was not unpleasant. It was you know like a floating dream. It's  
17 about the only way that I can describe it.

18 Q. Do you believe that you were having a dream?

19 A. I felt like I was dreaming.

20 Q. And what caused you to realize that this was more than a dream?

21 A. Ah, I felt – I felt a pulling inside of the left part of my left inner labia, like the skin  
22 was being pulled, and then a finger – I felt a finger curve and go into my vagina.

1 Q. So the finger curved and went into your – what do you mean by “curved”?

2 A. Well, it was like – it was, you know it wasn’t like a straight shot, you know. It was  
3 like curved. (Bent finger on her left hand to illustrate.) It was – I don’t know how to describe it.  
4 It was like – it was not totally comfortable, you know like someone was curving.

5 Q. Was it painful?

6 A. It was painful when the skin was pulled, but when I felt the finger going, it was  
7 uncomfortable, but it wasn’t painful.

8 Q. And what was the next memory that you have?

9 A. Ah, a light came on, and I closed my eyes – I mean my eyes were closed. I squinted  
10 my eyes, and I rolled over to my left side to you know to block my eyes, and I felt the hand come  
11 out of my pants.

12 Q. Did you see anyone?

13 A. Ah, before I opened up my eyes, I heard, really loud, “What the hell is going on?”  
14 And I had my head on the pillow, and I opened my eyes, and he was there, six inches from my  
15 face. His eyes were squinting shut.

16 Q. Was anyone else in the room?

17 A. Yeah. Beth said, “Get the hell out of my house.” And I looked up, and I saw Beth  
18 standing there. And she said, “I want you to get out now.”

19 Q. What did Colonel Wilkerson do?

20 A. He rolled off the bed and went to the left. I didn’t – I didn’t look at him. I sat up on  
21 the bed, and I thought [teary-eyed] “Oh, what happened? What did I do?” And I put my legs  
22 over the side of the bed and I felt my belt buckle and my pants were still buttoned. So I thought

1 “Thank God.” And she said you know, “I want you to get out.” So I stood up and I walked past  
2 her and walked down the hallway, and there was a door open leading to the outside.

3 Q. What was going through your mind at this point?

4 A. Oh, God, I was mortified. I was absolutely – I can’t explain to you because you don’t  
5 know what happened; you don’t know. I was – I was – I don’t know how to explain it. I was in  
6 total shock.

7 Q. You said there was this door that was open?

8 A. Yeah. So I walked out the door, and I realized that I didn’t have my purse with me.  
9 And I thought “What am I going to do?” And I turned around and I started to walk back in, and  
10 on the counter was my purse and my glasses, and my phone was inside my purse. So I walked in  
11 and I picked it up off the counter, and as I was doing that, Beth came back down the hallway,  
12 and she said, “I really liked you.”

13 Q. And what did you say?

14 A. I said, “I really liked you, too.” And she said, “But I want you to leave now.” And I  
15 said, “Absolutely.” I said, “I don’t understand what happened.” And I took my things and I left.

16 Q. Were you wearing shoes at this point?

17 A. No. My shoes and my sweater were not there.

18 Q. So you left without both of those items?

19 A. Right.

20 Q. Did you see Colonel Wilkerson any more after you rolled off the bed?

21 A. No.

22 Q. So you walked out the door. What did you do once you got outside the house?



1           A. Ah, there was, ah, like a white wall that was on the border, and I could pretty easily  
2 you know hop up on it and swing my legs over and drop down to the other side.

3           Q. Did you have to cross any amount of space to get to the wall?

4           A. Ah, yeah, I remember there was some grass and bushes, but I don't really remember  
5 details of how far.

6           Q. So you sat down on this wall and swung your legs over the wall. Is that correct?

7           A. Yeah.

8           Q. And you dropped down to the other side?

9           A. Uh-huh.

10          Q. What did you do at this point?

11          A. Ah...

12          Q. What were you thinking at this point?

13          A. I didn't know where I was. I didn't know where town was. So I just – I just started  
14 walking.

15          Q. Were you emotional at this point?

16          A. Yeah. Yeah, I would say I was.

17          Q. Did you eventually run into anyone?

18          A. Ah, well I tried to – I got hold of Danielle Dunnivant, and...

19          Q. Did you remember what time it was, approximately?

20          A. It was probably around 3:00-3:30; right in there.

21                 And I told her I wasn't sure where I was, and there were these guys that were walking  
22 down the street on the opposite side, coming towards me – four or five young men – and they

1 were Americans. So I said, “Hang on, there are some Americans here,” and I walked across the  
2 street and...

3 Q. You said, “Hang on” to Master Sergeant Dunnivant?

4 A. Yeah. Yeah.

5 So I walked across the street and I asked them if they could tell her where we were so she  
6 could come pick me up. And so she – they talked to her and then she came and picked me up  
7 from there.

8 Q. Do you remember whether or not you had any beverages with those American guys?

9 A. Yeah. I had a beer while I was with them.

10 Q. Were they carrying beer with them?

11 A. Pardon me?

12 Q. Were they carrying beer with them?

13 A. Yeah, they had beer with them. I had – if they had Gatorade, I would have drunk it,  
14 too. I had – my mouth was so dry.

15 Q. But why did you drink a beer?

16 A. I was just – my mouth was so dry I could – it was hard to talk when I was – like right  
17 now – but I think it was like an anti-cold allergic response; you know when you – anyway, I was  
18 very – I was really, really thirsty.

19 Q. You mentioned that type of response; what did you mean?

20 A. It was like a fight or flight response; you get dry mouth and heart races.

21 Q. Were you emotional at that point when you were there?

22 A. Yes.

1 Q. And how did you express that at that point?

2 A. I was crying. I was upset.

3 Q. Did Master Sergeant Dunnivant eventually pick you up there?

4 A. Yes.

5 Q. And what did you talk about with her?

6 A. Ah, I gave her just kind of a basic you know "I really don't know what happened, and  
7 I felt like I was – I felt like I was dreaming and then I, you know this guy's hand was in my  
8 pants, and his wife came in, and turned on the light, and caught him, and they kicked me out of  
9 the house."

10 Q. Sergeant Dunnivant, where did she take you?

11 A. I'm sorry?

12 Q. Where did Sergeant Dunnivant take you?

13 A. She took me back to the TLF.

14 Q. And did you tell her anything before she dropped you off about whether or not you  
15 wanted people to know about this?

16 A. Oh, I'm sure I did. I didn't know what I was going to do then. I had no idea. I'm  
17 sure I told her not to say anything to anybody.

18 Q. Once you got back to the TLF, what did you do?

19 A. Ah, well, first I went right to sleep initially. And then – and then I woke up at about I  
20 think 7:00-7:30. And I was concerned about how I was feeling because I didn't feel like really,  
21 really drunk. And there was a part of me that was concerned that I might have been drugged. So  
22 I wasn't sure if it met the definitions or not. So I looked up what the date rape drugs were, and

1 what the symptoms were. And they were pretty – they were pretty vague; covered a lot of  
2 things.

3 Q. Pretty broad?

4 A. Pretty broad. But it just seemed like such a... [Long pause.] It was such a traumatic  
5 thing that I just – I couldn't – I couldn't justify, I couldn't reason what happened. So Suzanne  
6 called me and apologized because her phone was in another room and she didn't get my calls  
7 when I had called her earlier, ah, when I had left their house. And I told her what my concerns  
8 was, and she agreed it would be a good idea to get tested.

9 Q. Tested for?

10 A. Tested for drugs; just tested for drugs, like a tox-screen, and then the basic.

11 Q. Did she help you get tested that morning?

12 A. Yes. She met me back, a couple of hours later, at my house. And we went to the  
13 Saturday clinic here on base. It opens at 9:00 or so. So we got there around nineish, and then I  
14 talked with Major O'Keefe.

15 Q. Did you get seen pretty quickly once you got there?

16 A. It was fairly quickly. We had to look up what the – what one of the tests were  
17 because we weren't sure what it was under, so it took a while. And he was busy with patients,  
18 but he got them put in through the lab, and I had a brief discussion with him.

19 Q. Did you explain to him sort of the basis for your being there?

20 A. I gave him the basics, and told him I didn't know what I wanted to do yet.

21 Q. Did you ask him to keep it on...

22 A. Yes.

1 Q. ...the DL?

2 A. Yes.

3 Q. And did he explain to you your options as far as reporting this happened?

4 A. Ah, I'm sure he did.

5 Q. That morning, did anyone explain to you your options?

6 A. Ah, well, about reporting an assault; you mean like where I would go or...

7 Q. Yes.

8 A. ...who I would talk to? Ah, I think we spoke briefly about it, but it was more of a "I  
9 will let him know if I, you know, if I change my mind." And that was going to meet with him a  
10 little later in the week.

11 Q. Ah, at some point, were you informed about the results of those tests?

12 A. Yeah. The basic tox-screen came back fairly quickly – five to seven days – right  
13 around in there. And then the other two, which was Rohypnol and GHE – GBH – took a little  
14 longer.

15 Q. And they did, in fact, come back negative, correct?

16 A. They all came back negative.

17 Q. You were informed of that by Major O'Keefe?

18 A. Yes.

19 Q. Thank you. Now, sometime the next week, did you eventually visit the SARC  
20 Office?

21 A. Yes. I saw Major O'Keefe for a follow-up. And he suggested that I talk with – or he  
22 asked if I would like to speak with someone, and I said, "Yeah, I think I would." So I went, and

1 I talked with Tom Moran, and then Tom Moran suggested I go to SARC. And so I actually saw,  
2 I think, it was all three of them on the same day.

3 Q. And you went to SARC later; it was the following week after you...

4 A. Yeah. I think it was the Thursday after.

5 Q. Did they explain your options as far as you know a restricted or unrestricted report?

6 A. Well they explained, generally, what a restricted and an unrestricted report was. And  
7 for now, I don't think any of the tests were back at that point, so I made it restricted – so no one  
8 knows about it – right? That's what I did.

9 Q. At some point after that, were you informed by the SARC office that you could not  
10 make a restricted report?

11 A. Yes. The following week I was called into their office on the following Thursday.  
12 And they told me that because it was a civilian and not, I guess, a spouse of an active duty  
13 member, I didn't qualify for a restricted report; it had to be either unrestricted or I drop it all  
14 together.

15 Q. How did that make you feel?

16 A. Ah, it was – it was a really hard situation.

17 Q. Did it upset you?

18 A. Yeah. Yeah, it upset me.

19 Q. Why?

20 A. Well because I didn't know what I wanted to do, and I knew that if I – if I decided to  
21 move forward that it would be very, very hard. And then I asked her for unrestricted what the,

1 you know, what the steps were. And she said that it gets initially sent to the Vice Wing  
2 Commander, who...

3 Q. Colonel Ostovich?

4 A. Yeah.

5 ...who not only happened to be there that night, but was a friend of the accused, and,  
6 coincidentally, I had found out later had started dating my friend, Suzanne. It was incredibly  
7 awkward.

8 Q. Did you ask for some time to make a decision?

9 A. I did. I was going away the next – we had that Friday off, and I was going away for a  
10 long weekend, and I asked if I could think it over, and talk to them when I came back. And since  
11 it was the end of the day, it was okay.

12 Q. And where did you go that weekend?

13 A. I went to Croatia for the weekend, and talked with a friend of mine about what to do  
14 and the whole ordeal.

15 Q. Why did you eventually decide that the right thing to do was to make it an  
16 unrestricted report?

17 A. Well there are a few things – a few reasons.

18 Q. What are those reasons?

19 A. Ah, I wasn't sure that I would – I was afraid that it would affect me if I didn't do  
20 something about it. Certainly, as a medical provider, it would be really hypocritical of me to  
21 encourage people to report things and then not report it myself. But you know what was really  
22 important to me is I don't want him to ever do this again to anybody else.

1 Q. So what did you do when you came back from Croatia that weekend?

2 A. Ah, I don't know if it was Monday or maybe it was Tuesday that I talked to them.

3 And I told them that I would file an unrestricted report.

4 Q. Did you then go make a statement to OSI?

5 A. Yeah. I went and I filed an unrestricted report. And then OSI contacted me, and

6 then I went over there.

7 Q. And that began the process that brings us here today, correct?

8 A. Yes.

9 Q. The individual whose hands were in your pants when you woke up that morning, is he  
10 here in the courtroom today?

11 A. Yes. He's right there.

12 Q. Where is he sitting?

13 A. He's right there. [Pointing to the accused.]

14 Q. Right there between his two counsel?

15 A. Uh-huh.

16 Q. Is there any doubt in your mind that he is, in fact, the individual who you woke up to?

17 A. No doubt at all.

18 ATC: Thank you.

19 No further questions.

20 MJ: As it's 12 o'clock, we will go ahead and take – would an hour lunch recess be  
21 sufficient for counsel?

22 ATC: Yes, Your Honor.



1

CIV DC: Yes, Sir.

2

MJ: We'll be in recess until 1300.

3

(The court-martial recessed at 1157 hours, 29 October 2012.)

4

**END OF PAGE**

1 (The court-martial was called to order at 1305 hours, 29 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Defense, you may proceed.

6 CIV DC: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **Questions by the civilian defense counsel:**

9 Q. Ms. **Exemption 6** I'd like to begin by just clarifying some things with respect to the timeline  
10 and your alcohol consumption. First of all, about what time was it that you drank the wine at the  
11 beginning of the evening – the mulled wine?

12 A. Ah, it would have been anywhere from 5:30 to 6:00 right in the 5:30 to 6:30, while  
13 we were waiting.

14 Q. And at the point that you finished consuming that, you finished that before you went  
15 to the concert?

16 A. That's right.

17 Q. You didn't take it with you to the concert?

18 A. No.

19 Q. So how were you feeling at the point that you left for the concert, from the effects of  
20 the wine?

21 A. Ah...

1 Q. Were you feeling drunk, intoxicated? Were you feeling just a slight buzz? Were you  
2 feeling no difference?

3 A. I would say I had a very – I had a slight buzz by the time I got to the concert.

4 Q. You're an experienced drinker, right?

5 A. Can you define that?

6 Q. This was not the first time you drank alcohol?

7 A. No.

8 Q. This was not the first time you had wine?

9 A. Right. That's right.

10 Q. If you had *prosecco*, this was not the first time you'd had *prosecco*. Correct?

11 A. That's correct.

12 Q. And, in fact, you like *prosecco*, right?

13 A. Yes.

14 Q. Okay. And so you would know what *prosecco* is, don't you?

15 A. Oh, yes.

16 Q. You knew what mulled wine was because you bought it and you selected it.  
17 Presumably, you'd had it before?

18 A. Yes.

19 Q. Okay, and you had beer at the club, and you've had beer before?

20 A. Yes.

21 Q. And so you, presumably, on special occasions like New Year's or other celebrations,  
22 you've consumed alcohol of some amount, correct?

1 A. Sure, I've consumed alcohol on special occasions.

2 Q. Right, so you're an experienced drinker; you would agree with that?

3 A. Sure, within the confines of that definition, absolutely. It just can be taken different  
4 ways.

5 Q. Right. I'm just saying you're an experienced drinker. This was not the first night that  
6 you consumed alcohol or even this amount, correct?

7 A. That's right.

8 Q. And, oh, by the way, your height; you're approximately five feet, six inches tall?

9 A. That's right.

10 Q. And on this occasion, on this particular evening, how much would you say you  
11 weighed?

12 A. Ah, probably 140.

13 Q. So, then you had – so then you went to the concert. It was about an hour and a half  
14 long, right?

15 A. Yeah.

16 Q. And then you went to the Club, and so between drinking the wine until you arrived at  
17 the Club, you had no other alcohol, and now about an hour and a half to two hours have elapsed?

18 A. Yeah. I would say it was a good two hours because we hung out afterwards, and they  
19 were getting in line. It was taking a long time to get the autographs from the band. So yeah, it  
20 was a good two hours, and then we walked over.

21 Q. Then at the Club, I understand your testimony was that you drank about a cup and a  
22 half of beer.

1 A. Uh-huh.

2 Q. Do you know if this was like a 12 ounce cup and it was full or only partially full?

3 A. Yeah. I think we – excuse me, I think we were – I don't have them here, but we were  
4 talking about it at our interview that they were the clear plastic. Someone on your team said they  
5 were probably the 12 ounce.

6 A. So I had...

7 Q. Right, but it doesn't matter what my team said. I'm asking what you believe.

8 A. Oh, okay. So it was probably that size – was about right, so it was about a 12 ounce  
9 and then a half of one.

10 Q. Okay, and about how long would you say you were at the Club?

11 A. Ah, it was probably an hour. I'm not sure.

12 Q. Right.

13 A. It may have been longer. I don't...

14 Q. Then how were you feeling at the point that you got in the car?

15 A. I was buzzed.

16 Q. But you were able to walk?

17 A. Yes.

18 Q. You were able to talk, correct?

19 A. Yes.

20 Q. You didn't have slurred – well, would you know if you had slurred speech or not or...

21 A. I don't believe I had slurred speech.

22 Q. You didn't need help getting in or out of the car?

1 A. No.

2 Q. And then, when you get to the Wilkersons', understanding that you didn't know it  
3 was the Wilkersons' at the point that you arrived there, but in any event, were you – you were  
4 offered, I guess, a glass of wine, you say...

5 A. Yeah.

6 Q. ...at the time that you got there?

7 A. That's right.

8 Q. And did you consume the entire drink that you were offered at that point?

9 A. I would suppose so. I'm sure I did.

10 Q. Now, is it possible that you were offered *prosecco* at that time; you just don't  
11 remember for sure whether it was *prosecco* or not?

12 A. No. I remember it was white wine.

13 Q. So you're saying it was definitely not *prosecco*?

14 A. That's correct.

15 Q. So if another witness says you were offered *prosecco* at that time, your memory  
16 would be inconsistent with that?

17 A. I remember it to be white wine.

18 Q. Okay. If you had to estimate the approximate time that you were offered that, would  
19 you say that it was around 2200 or so – military time – 10 PM?

20 A. No, I understand military time.

21 Q. Okay.

22 A. Ah...

1 Q. Would that be reasonable or would you have any great dispute with having that wine  
2 at about 10 PM?

3 A. Ah, probably not a great dispute. I'm sure that's in the ballpark.

4 Q. Okay. And then I understand your testimony to be that you do not recall, for sure, if  
5 you drank any more wine or *prosecco* that night?

6 A. I did not drink – the only time when I have any question on whether or not I had a  
7 drink, was at the end of the evening.

8 Q. Right.

9 A. But I did not drink in between that time.

10 Q. Right, but at the end of the evening, what time do you say is the end of the evening?

11 A. That was when everyone had already gone home, and Colonel Wilkerson asked me if  
12 I wanted a drink.

13 Q. Right. What time do you think that – if you had to put a time on that, what time  
14 would you say that was?

15 A. I'm not sure; 12:30-1:00.

16 Q. Ah, 0031? Knowing military – you said you knew military time, so you said 1230.

17 A. Oh, do you want me to say zero zero?

18 Q. No. You can say whatever you want. I'm just confirming what you said.

19 A. Oh, okay. So either between 12:30 in the morning – 1:00 in the morning. Right  
20 around there.

21 Q. Okay.

22 A. But I, again, I didn't have my watch with me.

1 Q. Now, you've had access to your phone records from that night, correct?

2 A. Yes.

3 Q. And so if the phone call that you had with Suzanne Berrong lasted from about 0023 to  
4 0038, approximately 15 minutes...

5 A. Okay.

6 Q. ...you're saying that it was within that time that he offered you that drink?

7 A. Sure. Yeah, it was right around that time.

8 Q. Now, so – and let's get something clear right now when we talk about that phone call.  
9 The next morning you had no recollection of the 15-minute phone call that you had with Suzanne  
10 Berrong, correct?

11 A. I did when she reminded me. Then I remembered bits and pieces, but not the whole  
12 conversation.

13 Q. Right, but when you talked to her the next morning, and she started talking about the  
14 phone call, you didn't know what she was talking about, did you?

15 A. No, not initially.

16 Q. Right. So at the point that she had to remind you about the phone call, you were not  
17 independently recalling it at that point; she was describing it to you, correct?

18 A. Yeah.

19 Q. Now, in that phone call, when you were talking to her, you told her – you didn't – you  
20 referred to Beth but you didn't talk about Beth by name, did you?

21 A. I don't believe so.

22 Q. You called her "the wife." Do you recall that?



1 A. No.

2 Q. So do you – do you remember now that there was a phone call, you just don't recall  
3 what the content of the phone call was?

4 A. No, I remember the content of the phone call.

5 Q. Now you remember that now? You remember the context of the phone call?

6 A. But – what do you mean? You mean right now like this minute...

7 Q. Right.

8 A. ...and not prior to this?

9 Q. Right now, right this minute, do you remember the context of the phone call?

10 A. Ah, I'm sorry. Maybe I wasn't being clear before, but I did not recall calling her until  
11 she reminded me that I called here. And then I remembered bits and pieces of the phone call; not  
12 the entire phone call, but bits and pieces. I think I made a statement earlier.

13 Q. Do you recall using the "f" word – an obscene word starting with "f" in that phone  
14 call with her?

15 A. Well, that sounds like me. I tend to cuss sometimes.

16 Q. Okay, and do you recall referring to Beth Wilkerson as "the wife" during that phone  
17 call?

18 A. No, I don't recall calling her "the wife."

19 Q. And do you recall telling her that, "The wife is here" while you're standing there  
20 talking to her on the phone?

21 A. Ah, I probably did.

22 Q. Okay, do you recall saying that?

1 A. Ah, not specifically.

2 Q. Did you tell her, at this point, that “The husband is here”?

3 A. I probably told her that they were both here.

4 O. Okay, do you recall...

5 A. But I don't recall the verbatim. I'm sorry.

6 Q. Okay. So as you testify, under oath, before the members right now, are you saying  
7 that when you had the phone call with Suzanne Berrong, that both husband and wife were there  
8 with you?

9 A. That's what I recall.

10 Q. Now, do you also recall being offered coffee or tea at the end of the phone call with  
11 Suzanne Berrong?

12 A. I remember drinking something – juice or tea.

13 Q. And to be clear, is it your testimony under oath, right now, that it was, at that point,  
14 that Lieutenant Colonel Wilkerson offered you this *prosecco* that you've talked about?

15 A. No, he offered that beforehand.

16 Q. Okay, well you said just a minute ago that he offered you *prosecco* at about 1231, and  
17 you said you've seen the phone records, and the phone records show you were on the phone with  
18 Suzanne Berrong at 1231, so now what are you saying was the time that you were offered the  
19 *prosecco*?

20 A. I didn't know what time that phone call was made. I read them, but it was a while  
21 ago.

1 Q. Okay. Well, when did – I asked you, earlier, “When did he offer you the *prosecco*?”

2 Now I come back to that question. When did he offer you the *prosecco*?

3 A. Before I talked to Suzanne.

4 Q. Okay, what time was that?

5 A. Ah, well, if I called Suzanne – if Suzanne and I talked on the phone at 1230, then it  
6 would have been before 1230, but not too long before that. I can’t tell you what time. It was in  
7 that timeframe.

8 Q. Well, then let’s talk about that timeframe. Do you know what time it was when  
9 everyone had left by, except for you?

10 A. No.

11 Q. So you don’t know if it was 11:00 or 11:30 or midnight?

12 A. It was later. It was around that time. I think I guessed in my handwritten notes that it  
13 was around midnight, but I’m not positive. I didn’t look at a clock.

14 Q. When he supposedly offered you the *prosecco*, was anyone else present?

15 A. No.

16 Q. So what I’m hearing is that you’re really not sure what time that happened or even if  
17 you drank it?

18 A. I’m not sure exactly what time. It was before I called Suzanne, after I was told  
19 everyone went home, and Beth went to go – stepped out. I guess she was making up the bed.  
20 After he offered me something to drink, then I talked to Suzanne after that. I don’t know if I  
21 drank it or not. I don’t recall.

1 Q. Did you drink coffee or tea with Beth and sit with her a half hour to 45 minutes after  
2 the Suzanne Berrong phone call?

3 A. I recall drinking tea or juice, and I don't know how long it was.

4 Q. Do you recall who you drank tea or juice with? Was it with Beth Wilkerson or both  
5 Beth and her husband?

6 A. They were both there.

7 Q. They were both there drinking coffee and tea with you?

8 A. I don't know if they were drinking coffee and tea with me or not.

9 Q. Okay, when you were drinking the coffee or tea or juice – whatever you were  
10 drinking, this is after the Suzanne Berrong phone call...

11 A. Right.

12 Q. ...which, by the records, ended at approximately 0038. You agree with that?

13 A. Okay.

14 Q. You do agree with that, right?

15 A. Sure. Yes.

16 Q. Okay, so you're saying that Colonel Wilkerson and his wife both sat with you in the  
17 kitchen for the next half hour to 45 minutes?

18 A. That's what I recall.

19 [Long pause.]

20 Q. Do you recall when you first went to report this as a restricted sexual assault, did you  
21 fill out an intake sheet?

22 A. I think so. It was – I think it was their intake sheet.

1 Q. And this was – approximately what date was that: the 29<sup>th</sup> of March of 2012.

2 A. The Thursday after, so...

3 Q. Okay, but in any event, this intake sheet you filled out in your own handwriting,  
4 correct?

5 A. Yes.

6 Q. Do you recall writing in the details of the assault information, “I passed out in the bed  
7 with my clothes on at about 0045 to 0100”? Do you recall writing that?

8 A. Yeah, probably. I don’t recall the exact verbiage, but I’m sure...

9 Q. Would you like to see it to confirm that that’s what you wrote?

10 A. No, no. That’s fine.

11 Q. Okay. And you make no mention of drinking coffee or tea or juice or *prosecco* in this  
12 statement, do you?

13 A. No, I didn’t. I think they were the third group of people I’d talked to about the  
14 incident, that day. And I was doing what I needed to do, but I wanted it pretty much done.

15 Q. In any event, you wrote the words, “I passed out.” Correct?

16 A. Uh-huh.

17 Q. And the fact of the matter is you did not pass out, did you?

18 A. I went to sleep.

19 Q. Right. Now when you say “passed out,” does that mean went to sleep or...

20 A. I went to sleep.

21 Q. So “passed out” doesn’t mean from alcohol intake or something like that?

22 A. No, no. I didn’t pass out from alcohol.

1 Q. So now you're saying the words "passed out" meant that you just went to sleep?

2 A. I don't think that I ever said otherwise.

3 Q. And then you say, "About 0300 to 0330, lights came on in my room." That's the very  
4 next thing you write. Does that sound correct?

5 ATC: Objection. Hearsay, Your Honor.

6 MJ: Mr. Spinner?

7 CIV DC: I'm confronting her with a prior inconsistent statement, which is not hearsay,  
8 Your Honor.

9 ATC: Your Honor, I don't believe he's laid the foundation for that, nor is clear what he's  
10 confronting her on as far as the prior inconsistent.

11 MJ: Ask the questions and then let me hear the evidence – the response.

12 **Cross-examination continued.**

13 Q. You previously...

14 CIV DC: Well, first, let me back up, Your Honor, and I'll fill in some blanks here for the  
15 government.

16 Q. First of all, you sent a text message to Sergeant Dunnivant at about 0143. Do you  
17 recall that?

18 A. I recall texting her. I don't recall what time.

19 Q. Okay, do you recalling saying – texting her, "Please make any plans on your own for  
20 travel. Best of luck. Thanks"?

21 A. Yeah.

1 Q. So at 0143, there's no doubt in your mind that you texted her, Dunnivant, at that  
2 time?

3 A. If that's the time that it says on my phone, then I'm sure it's accurate.

4 Q. Okay. Do you need to see it to confirm that that's the time it says?

5 A. Oh no, no.

6 Q. Okay, so you were not passed out at 0143 when you texted Dunnigan, were you?

7 A. I was probably not asleep yet.

8 Q. Were you asleep when you did the text?

9 A. No. I said I was probably not asleep yet.

10 Q. Right, so we're talking now from the end of the phone call to Berrong, which was 00  
11 – ended at 0038; you agree with that?

12 A. [Nodded in the affirmative.]

13 Q. And you're agreeing now that you sent a text, in which you spelled words correct;  
14 you agree with that – to Dunnivant; right?

15 A. Uh-huh, Dunnivant. Uh-huh.

16 Q. And you're conveying a clear, coherent thought in this text, correct?

17 A. Right.

18 Q. And then – and so you were not asleep from the point that you finished the phone call  
19 with Berrong to the point that you say you woke up with this dream?

20 A. Right.

21 Q. So, in fact, you were awake; you were not passed out?

1           A. Yeah. That would actually fit in with talking and having tea with the Wilkersons  
2 afterwards, would it not?

3           Q. That's my point. On you – in what you wrote in sexual assault allegation, you say, "I  
4 passed out in the bed with my clothes, on or about 0045 to 0100," and then the very next  
5 sentence, "About 0300 to 0330, lights came on in my room. The wife was standing in the  
6 doorway." So the impression that's left in the statement that you gave to the SARC is that you  
7 were passed out from 0100 to 0300.

8           A. I didn't know what time it was when I went to sleep. And at that point, I hadn't filed  
9 an unrestricted report, so I hadn't really investigated the timeline significantly.

10          Q. Right, but the point is that is consistent with what your testimony is here today,  
11 correct?

12          A. It doesn't seem to be. How is it inconsistent?

13          Q. Well, it's inconsistent in the sense that you were awake and you were making phone  
14 calls or texting.

15          A. Well, I was awake before I went to sleep. I think the only issue is whether I had the  
16 timeline accurate or not, which I've said I don't know what time it was.

17          Q. Well, we'll leave for later the issue of whether it's inconsistent or not. Those are  
18 words that you wrote on the statement, correct?

19          A. Which words?

20          Q. The words I read to you.

21          A. About the timeline?

22          Q. About being passed out from 0100 to 0300. That's what you wrote, correct?



1 A. If I wrote it there, then sure.

2 Q. Now I want to go back – speaking of timeline – I want to go back and get some  
3 clarification because there were people that were leaving at different points of the evening, and  
4 there were acts that were being engaged in, and so is it your testimony that you went to bed  
5 before the Susan Berrong phone call at 0021 or 23 or is it that you first went to bed after that  
6 phone call?

7 A. I didn't go to bed until after I had talked to Suzanne Berrong.

8 Q. Okay, so it's your testimony, under oath to the members that Beth Wilkerson did not  
9 take you downstairs and leave you or take you to the bedroom, wherever it was that you say this  
10 act occurred, it's your testimony she did not take you there before the Suzanne Berrong phone  
11 call?

12 A. I don't remember going down there before. She went down to go make up the bed.  
13 He offered me a drink, and then we called Suzanne up.

14 Q. Is it your testimony – listen to my question – is it your testimony that Beth Wilkerson  
15 did not take you to the bedroom where you went to sleep before the Suzanne Berrong phone  
16 call?

17 A. I don't recall going down to that bedroom before I went to sleep.

18 Q. Now when you say you don't recall, does that mean it could have happened, and you  
19 just don't remember?

20 A. No. I'm telling you I don't remember ever going down to that bedroom until I went  
21 down to go to sleep.

1 Q. Okay, so let's get your timeline. Because we have the Berrong phone call that gives  
2 us – you don't question the times in the phone records for the Berrong call, right?

3 A. I'm sure phone records are...

4 Q. 0023. So, if everybody left at about between 2330 – 11:30 and midnight, would you  
5 have any reason to dispute that all the others had left by somewhere between 11:30 and  
6 midnight? Do you have any dispute with that?

7 A. I don't know what time they left. I can't dispute or not dispute it.

8 Q. In any event, at 0023 you have a phone call that lasts 15 minutes. The phone call  
9 ends, and then based on your memory of what happened, what happened – what happened next  
10 and how soon?

11 A. Ah, again, I can't give you a timeline, but I can tell you that we talked about it – you  
12 know and I'm staying over, and they promised to get me up in time to check out from the TLF.  
13 And I remember drinking juice or tea with them.

14 Q. Okay, you said "they." You're saying that Colonel Wilkerson was there?

15 A. Yes.

16 Q. Both of them were there during this conversation?

17 A. Yes.

18 Q. Okay.

19 A. And we sat around and talked, but I don't know for how long.

20 Q. Is it your testimony that you fell asleep between the – now that we've talked about the  
21 text message that you sent at 0143, is it your testimony that you slept at some point between the  
22 Berrong phone call and when you sent that text message at 0143?

1           A. Ah, I don't think so. I don't know if I sent that text before – before I went down into  
2 the bed or I don't really remember when I sent it. I can only assume that it was before I went  
3 down into the bedroom and went to sleep.

4           Q. But you have to assume because you have no memory of it, right?

5           A. I don't remember what time I sent it.

6           Q. Let's go back to the Berrong phone call for a minute. When you called Berrong, were  
7 you calling her to come pick you up or to come give you a ride?

8           A. Yeah.

9           Q. And did she tell you that she would come give you a ride or not?

10          A. Yeah. We were – she asked me where I was, and I said that I didn't know. And we  
11 were talking back and forth, and I was really upset. And she – I felt embarrassed. So she  
12 offered. She said, "Look, I can come pick you up." And I said, "Don't. Don't bother. It's too  
13 late; it's probably too far. And I'll just stay here." But she did offer.

14          Q. And did she – do you recall her telling you, because you were referring to Beth as  
15 "the wife," do you recall her telling you, "Put the wife on the phone so I can find out where you  
16 are"?

17          A. No, I don't remember her saying that.

18          Q. But you would agree that if she said that, and if you had done that, then maybe your  
19 departure could have been coordinated between her and Beth?

20          A. Those are a lot of ifs. I don't recall her asking me to give the phone to Beth.

21          Q. Well, do you recall telling Beth Wilkerson that Suzanne lived in – well, where does  
22 Suzanne live?

1 A. In Pordenone.

2 Q. Okay. Do you recall after hanging up with Suzanne, telling Beth that that's where she  
3 lived?

4 A. I probably did.

5 Q. And do you recall Beth telling you that was only ten minutes away?

6 A. Ah, I don't recall Beth telling me that. Suzanne told me the next day that she was  
7 only about ten minutes away.

8 Q. Right, so if you had simply put Beth on the phone and let the two of them talk to each  
9 other, then they could have coordinated your departure from the home that night?

10 A. They probably could have.

11 Q. But you were resisting because you thought it was too far away, even though you  
12 didn't let them talk to each other?

13 A. Well, I don't know if I didn't "let" them talk to each other.

14 Q. Oh, so did you give Beth the phone and say "Here, talk to Suzanne"?

15 A. No. I was talking to Suzanne on the phone.

16 Q. What was Beth wearing when she – after the phone call?

17 A. I don't remember.

18 Q. What was – you say Colonel Wilkerson was there, right?

19 A. Uh-huh.

20 Q. What was he wearing?

21 A. I didn't pay attention.

1 Q. Now you say that the man that you saw when your eyes opened up, that was six  
2 inches away, you say that was Colonel Wilkerson's face, correct?

3 A. Yes.

4 Q. Is it as it appears to you today – was it as it appears to you today?

5 A. Ah, I suppose.

6 Q. Okay, well, you've previously been asked whether he had facial hair, and you said  
7 you don't recall that he had any facial hair, correct?

8 A. I just saw his – what I saw was his face because his eyes – and he had his eyes shut –  
9 and his hair – the color.

10 Q. You were asked at the Article 32 hearing, where you testified – you remember that?

11 A. Yes.

12 Q. Whether you recalled any facial hair, and you said you did not recall any facial hair,  
13 correct?

14 A. I couldn't remember if he had facial hair or not. All the guys were wearing  
15 moustaches for March – March something, but I couldn't specifically say if he had a moustache  
16 or not.

17 Q. Right, you've since learned that they had moustaches because it was Moustache  
18 March?

19 A. No, I haven't since learned. They had them. They were joking about them at the  
20 bar.

21 Q. In any event, when you were asked at the Article 32 hearing whether he had any  
22 facial hair, you said you did not – when you were asked if the man that you saw, whose face was

1 six inches away, whether he had any facial hair, you said you did not recall seeing any facial  
2 hair.

3 A. I didn't recall if I saw any or not, right. I didn't want to superimpose, but I knew that  
4 they were talking about it the night before – but I couldn't definitely identify facial hair.

5 Q. I understand your testimony. Now with respect to what you were wearing, you stayed  
6 in the same clothes all night, correct?

7 A. Yes.

8 Q. And so you were wearing jeans?

9 A. Yes.

10 Q. You were wearing panties, I presume?

11 A. Yes.

12 Q. You had a belt on?

13 A. Yes.

14 Q. And could you describe the belt?

15 A. It's a wide, black, braided belt.

16 Q. You did not undo the belt or take it off at any point, correct?

17 A. No.

18 Q. You did not undo your jeans or take them off at any point, correct?

19 A. No.

20 Q. Did you tell Sergeant Dunnivant that your belt was undone or that your pants were  
21 undone?

22 A. No. She must have misunderstood me.

1 Q. I want to shift and talk a little bit about who was there that night. There were the two  
2 women that traveled with you, Manning and Brock, correct?

3 A. I'm sorry, Manning and?

4 Q. The two women that traveled with you to the Wilkerson residence, Manning and  
5 Brock. Those were the only two women in the car, right?

6 A. Yes.

7 Q. And then you arrived at the Wilkerson residence and you go in, and you have said –  
8 well, let me ask you, first of all, was there another woman there at that time?

9 A. Do you mean besides Beth?

10 Q. Yes.

11 A. I thought I met another woman at the party.

12 Q. And you testified to that previously, that you thought another woman was present?

13 A. Yeah.

14 Q. And she didn't come with you, right?

15 A. No.

16 Q. So she must have been there when you arrived?

17 A. If I met her. I mean I thought I had been introduced to another woman there, but...

18 Q. Right. You've testified under oath previously that you thought another woman was  
19 there, correct?

20 A. Yeah. Yeah, I thought another woman was there.

21 Q. And what color was her hair?

22 A. Dark.

1 Q. Do you remember what she was wearing?

2 A. No.

3 Q. Now with respect to who else was there, how many children did you meet there that  
4 night?

5 A. I think there were three kids there; one downstairs, two upstairs. One was the  
6 Wilkersons' and the other two belonged to the family friends.

7 Q. Were all of them awake?

8 A. Ah, I don't remember much about one of the boys, what the circumstances of meeting  
9 him was. But their son was in bed.

10 Q. So how – you went and...

11 A. I went up with Beth.

12 Q. Okay, and you saw their son in bed?

13 A. Right.

14 Q. Was he awake or asleep?

15 A. Well, he was awake when we were talking to him. I don't know if we woke him up or  
16 not, but we were talking to him.

17 Q. And where were the other two boys?

18 A. The older kid was downstairs in kind of family room type area. And I cannot  
19 remember where I met the third. It may have been in one of the bedrooms.

20 Q. Now you have a son named (b)(6), correct?

21 A. Yes.

22 Q. Do you recall the names of any of the boys that you met that night?



1 A. No.

2 Q. If I told you that one of them was named (b)(6), and he was introduced to you, and  
3 that you commented on the fact that you had a son named (b)(6) does that ring any bells in  
4 your memory at all?

5 A. Ah, no. I mean I meet a bunch of kids, and I usually say that if they're named (b)(6)  
6 But I probably did say it to him.

7 Q. But you have no recollection of that conversation?

8 A. No.

9 Q. Do you recall that one of the boys had had an injury and that you provided some  
10 assistance with something that was wrapped around his foot?

11 A. Oh, God. Ah, I know the Wilkerson's boy had some kind of a rash – was sick, and  
12 they showed me, upstairs in his room. But you know if I helped them do something, then I  
13 probably did, but I don't really remember the details with the kids.

14 Q. In any event, with respect to the boys that were not the Wilkerson's, do you recall  
15 saying that you understood that their father had committed suicide?

16 A. That's what Beth told me.

17 Q. Right, Beth told you the father had committed suicide?

18 A. Yeah.

19 Q. When you left that night, you had no memory or recollection of Beth's name?

20 A. You know that's hard to say. I mean I may have known her name that night; by the  
21 morning I may have forgotten it. So I mean by the time I got home...

22 Q. Well, when you talked to Suzzane Berrong, you didn't have a name for her, did you?

1 A. Okay, well then I didn't.

2 Q. And you didn't have a name for Colonel Wilkerson, did you?

3 A. No.

4 Q. And, in fact, you told people you thought it was a Master Sergeant that lived there,  
5 correct?

6 A. That's right.

7 Q. Do you know where your shoes are today, that you wore that night?

8 A. Ah, I assume they were tossed out.

9 Q. Do you know where the shoes are? I didn't ask what you assumed. Do you know  
10 where the shoes are?

11 A. Ah, at their house.

12 Q. Do you know where in the house they were left by you?

13 A. The front doorish [sic] area; I would have taken them off, I guess.

14 Q. In the front doorish [sic] area, like in Hawaii where you see – I know in Hawaii, a lot,  
15 the custom is to take your shoes off when you enter a house. So is it your testimony you most  
16 likely took them off there?

17 A. Most likely, yeah.

18 Q. Do you remember that people were trying to look for your shoes that night, to help  
19 you find your shoes?

20 A. Ah, I think – did I ask Beth where my shoes were? I may have asked her that night.

21 Q. Do you have any recollection that people were actually looking all round for your  
22 shoes that night?

1 A. No.

2 Q. Now do you recall going out and seeing, then Captain Manning – she’s a Major now,  
3 right?

4 A. Uh-huh.

5 Q. Do you recall going out and telling her that you were leaving, that you had a way  
6 back to the base?

7 A. That I was leaving and I had a way?

8 Q. Correct.

9 A. No.

10 Q. And is it your testimony that when Beth took Dawn Brock back to the base, you were  
11 or were not offered a ride to go at that time?

12 A. I was not offered.

13 Q. No one offered you a ride at that point?

14 A. No.

15 Q. Or brought up that Dawn was going back to the base?

16 A. No.

17 Q. Was it your testimony that when you were talking to Berrong on the phone call, that  
18 you were crying during that phone call?

19 A. Yes.

20 Q. Furthermore, your testimony, if I understand it, is that the bed that you slept in was in  
21 a room only a couple of steps down from the kitchen?

1           A. Well, that's a ballpark. This house is pretty windie [sic]. It's your typical Italian  
2 house with a lot of different rooms and different stairways. So it was down a hallway off from  
3 the kitchen, and it was a few steps down.

4           Q. A few steps?

5           A. Uh-huh.

6           Q. I would interpret that as two or three steps.

7           A. I'm not sure how many steps exactly.

8           Q. In any event, that's the term that you used, was "a few steps," correct?

9           A. Right.

10          Q. Furthermore, when you said you left the room where you allege this incident  
11 occurred, you went directly down the hall and out some doors, correct?

12          A. Yeah. It seemed like it was down a hallway, and then there was open doors.

13          Q. Right. Furthermore, in the room you said there was a lamp that you turned off to go  
14 to sleep, correct?

15          A. That's right.

16          Q. And it was right next to the bed?

17          A. It was right at the head of the bed.

18          Q. And was it a table lamp or a full, standing lamp?

19          A. Ah, it was a table lamp.

20          Q. And that you had no recollection of any other light in the room?

21          A. No. The light was on.

22          Q. You did not turn any other light on or off?

1 A. No.

2 Q. I stand corrected. Do you recall, in the Article 32 testimony, that you said, “She  
3 made up a small single bed in a small room. There were two or three steps into the room. I  
4 thought the room may have been off the kitchen.” Do you recall saying that in your Article 32  
5 testimony?

6 A. Yes.

7 Q. Now do you also recall that in your Article 32 testimony you make no mention of  
8 being offered tea or coffee or juice?

9 A. [No response.]

10 Q. Do you recall, in your Article 32 testimony...

11 A. No, I don't.

12 Q. ...you make no mention, in describing everything that happened that night, you made  
13 no mention of coffee or tea or juice?

14 A. I don't remember not saying anything. I know I've said it in other...

15 CIV DC: Your Honor, may I approach the witness with an appellate exhibit?

16 MJ: You may.

17 Q. I'm handing you what has been marked as Appellate Exhibit X. First of all, just take  
18 a minute and look through there and tell me whether or not you recognize it.

19 A. Which page are you looking at?

20 Q. Well, no; right now I just want you to examine the document and tell me whether or  
21 not you recognize it.

22 A. Oh, okay. Yes, I recognize it.

1 Q. And did you sign the very last page of this – this is a five-page exhibit?

2 A. Yes, I did.

3 Q. Now, what I'd like you to do is read through this statement and see if it makes any  
4 mention of having coffee, tea, or juice.

5 [The witness complied.]

6 A. I don't see any mention in here. This is the summary that was taken at the Article 32,  
7 correct?

8 Q. Correct.

9 A. Yeah, I don't see it in here.

10 Q. Right, so you were asked all about everything that happened that night, correct?

11 A. Uh-huh.

12 Q. And you didn't make no mention of having coffee, tea, or juice in your Article 32  
13 testimony, do you.

14 A. Well, correction; this is a summary of the testimony that I gave to the questions that I  
15 was asked during the Article 32. I don't know if I was asked about tea or juice or coffee during  
16 the Article 32, so it wouldn't have been in the summary.

17 Q. I assume you later became aware, though, that Beth Wilkerson testified that she gave  
18 you coffee or tea?

19 A. I didn't know that...

20 Q. Did you become aware of that testimony?

21 A. No. No.

22 Q. So no one ever told you that she mentioned that?

1 A. No.

2 CIV DC: May I recover the exhibit, Your Honor?

3 MJ: You may.

4 CIV DC: I'm returning Appellate Exhibit X to the court reporter.

5 Q. Now, with respect to – well, one moment, please. As between Beth and her husband,  
6 Jay Wilkerson, did they shout or yell at you at the point that you said that they made these  
7 statements to you when you awoke from the dream?

8 A. He spoke very loudly. I wouldn't say it was he yelled, but he said, very loudly,  
9 "What the hell's going on?" And she did not yell. She said, "Get the hell out of my house," but  
10 she didn't yell.

11 Q. Did you tell Sergeant Dunnivant that she yelled at you?

12 A. I don't know. I don't remember.

13 Q. Do you recall telling Sergeant Dunnivant whether she yelled at you or not?

14 A. No.

15 Q. Now with respect to the sexual assault reporting – restricted and unrestricted, is it  
16 your testimony, under oath, before the members today that the reason it was unrestricted is not  
17 because Ms. White told you that it had to be unrestricted?

18 A. No. I had a choice.

19 Q. So Ms. White came back and explained to you that there's restricted reports, there's  
20 unrestricted reports, correct?

21 A. Right.

22 Q. Initially, you made this a restricted report, correct?

1 A. Correct.

2 Q. And it was subsequently learned that because you're a contractor, you cannot make a  
3 restricted report, correct?

4 A. Correct.

5 Q. And so she came back and told you, "We can turn the clock back to the beginning,  
6 and either not go forward with this or make it an unrestricted report." That's what she told you?

7 A. I don't recall her saying "...turning the clock back to the beginning," but she said,  
8 "These are your choices. You can't file a restricted report because of your status, but you can do  
9 one of these two things." And so we discussed...

10 Q. Okay, she didn't tell – you're saying that she didn't tell you that "We now have to  
11 treat this as an unrestricted report, and then do all the things that go with an unrestricted report"?

12 A. You mean did she tell me that it was officially without – because I would have to  
13 resign the paperwork in order to make it unofficial – an unrestricted report?

14 Q. Right.

15 A. No, she never told me it's unrestricted.

16 Q. Right. You're telling – you're saying now that she never told you that, "It now has to  
17 be treated as an unrestricted report; we can't just drop it"?

18 A. No.

19 [Long pause.]

20 Q. Now I want to just go back and clear up, just to make sure I have the facts correct.  
21 First of all, because you said that you wanted to have a tox screen that night...

22 A. That night?



1 Q. Or the next day; I'm sorry. Ah, first of all, you did not take any – you had not taken  
2 any medications the day before...

3 A. No.

4 Q. ...this event?

5 A. No.

6 Q. Do you recall when you had taken your last medication before this event – how long  
7 it had – how much time had elapsed?

8 A. Ah, like Ibuprofen, you mean?

9 Q. Right; prescription or over-the-counter; either one?

10 A. Well, I don't think I'd taken Ibuprofen for quite some time, but I probably took a half  
11 – my half of a Unisom several nights before.

12 Q. Several nights being two nights, three nights, four nights?

13 A. Probably at least three or four nights before.

14 Q. Okay. So, certainly with 24 hours of the night of the 23<sup>rd</sup> of March, you had taken no  
15 prescription drugs, no nonprescription drugs – over-the-counter drugs?

16 A. Correct.

17 Q. Or medications?

18 A. Right.

19 Q. With respect to – do you understand what a blackout is?

20 A. Yes.

1 Q. Okay, blackout being that where someone might drink alcohol, and then the next day  
2 they're told that they did something that night, and they have no memory of it because the  
3 alcohol affected their memory. Would you agree that's a layman's definition of a blackout?

4 A. I suppose.

5 Q. You have no history of blackouts, correct?

6 A. No.

7 Q. And so to the extent that you forgot things that happened or may have forgotten  
8 things that happened that night, you do not attribute them to having blacked out?

9 A. No. I don't feel I blacked out.

10 Q. And to the extent that you have no memory of certain things that happened that night,  
11 before, you're not saying that you were passed out?

12 A. No.

13 Q. As in semiconscious or unconscious?

14 A. Right.

15 Q. You were not experiencing any kind of seizure?

16 A. No.

17 Q. Have you ever had injury or any other thing that's occurred to you that could explain  
18 a loss of memory?

19 A. No.

20 Q. And what I'm asking is if we assume that you have a memory loss of some of the  
21 events that occurred that night...

22 A. Right.

1 Q. ...you have no physical explanation for alcohol or drug-related explanation for that  
2 memory loss, correct?

3 A. That I was taking; correct.

4 Q. You didn't consider yourself drunk that night, correct?

5 A. No. I mean that's a subjective term. I was buzzed. I was pretty buzzed, but I wasn't  
6 drunk.

7 Q. Right. At the most, you were buzzed. Is that a fair statement?

8 A. Yes.

9 Q. How much sleep, from the point you fell asleep to the point that you were awoken by  
10 this dream, how much sleep would you say you had? Have you gone back and tried to look at  
11 that evening, hour by hour, just to figure out how much sleep you think you had?

12 A. I can't quantify it. I have no idea.

13 Q. Do you think you had two hours, more or less?

14 A. I don't know.

15 ATC: Objection. Asked and answered, Your Honor.

16 MJ: Are you going further with this question?

17 CIV DC: No, I just...

18 MJ: I think you asked the question a second time; got a response. You may ask it one  
19 more time if you'd like, and then move on.

20 CIV DC: Right.

21 **Cross-examination continued.**

1 Q. What's the most, the maximum amount of sleep you think you got that night at the  
2 Wilkerson residence?

3 A. Probably at the very most three hours.

4 Q. Okay. Now, and if I understand your testimony, you're saying there was a point  
5 where you went down, you went to sleep?

6 A. Uh-huh.

7 Q. And then you woke up with the dream, correct?

8 A. I woke up with a dream?

9 Q. With a dream. You described – you thought you were experiencing a dream.

10 A. Right.

11 Q. Now, I want to be perfectly clear on this point. Your testimony is not that you went to  
12 the room, went to sleep, got up and made a phone call to Suzanne Berrong, had some coffee or  
13 tea, and then went down and went to sleep again. Your testimony is that there was only one  
14 point at which you went to sleep?

15 A. That's right.

16 Q. Do you recall Major Goldsberry or Major Lowe that they'd figure out how to get you  
17 home?

18 A. They said, "Yeah, we'll figure out a way." I don't know if they were specifically  
19 directing it towards me, but I think, in general, they were saying "We'll figure out a way."

20 Q. Do you recall at your Article 32 testimony, when you were asked about things that  
21 you don't remember, you said you don't remember whether Major Goldsberry or Major Lowe  
22 said they'd figure out how to get you home?

1 A. Did I specifically say that?

2 Q. Correct, you don't.

3 A. Could you show me that, please?

4 CIV DC: Yes, I will.

5 May I approach the witness, Your Honor?

6 MJ: You may.

7 Q. I'm handing the witness what's been marked as Appellate Exhibit X.

8 A. Which page was this on?

9 Q. Page – I think it's the last page or the second to last page.

10 A. No, I said, "Either Major Goldsberry or his friend said they'd figure out a way."

11 Q. Okay, it starts, "Things I don't remember." Do you see where I am on page 4?

12 A. How far down?

13 Q. If you'll look up at me, I can show you. There's a line that says, "Things I don't  
14 remember."

15 A. No, I'm on that page. Just how far down the list?

16 Q. Oh, it's the third item on the list, whether Major Goldsberry...

17 A. That's right, I don't know whether it was Major Goldsberry or Major Lowe who told  
18 me they find a way to get me home.

19 Q. All right, you don't remember whether you went through a gate when you first got to  
20 the house?

21 A. No.

1 Q. You don't remember whether there was a path or stairs to the house?

2 A. Well, I know that we weren't walking on grass, so we were on something that was  
3 paved, but I don't know if – I wasn't really paying attention; I was just kind of following  
4 the crowd.

5 Q. Okay, in your statement that you signed, under oath, you said, "The things I don't  
6 remember," and it says, "Whether there was a path or stairs to the house"?

7 A. That's correct.

8 Q. "How the yard at the house was landscaped"?

9 A. That's correct.

10 Q. You don't remember that people went outside the house that night?

11 A. Ah, no, I remember people going outside.

12 Q. Okay. Look at your Article 32 testimony, same place, under the heading "Things I  
13 Don't Remember."

14 A. I may not have remembered it. I was surprised she asked me that. Ah, that people  
15 went outside the house that night.

16 Q. That's one of the things that you said then, at the Article 32, you don't remember,  
17 correct?

18 A. Okay.

19 Q. Do you agree that's what your testimony says?

20 A. No, I absolutely agree. It may be that I'm thinking of it now because it was told to  
21 me, to be honest.

22 Q. You don't remember how long you talked to Beth or how many times you talked?

1 A. No.

2 Q. Did you attempt to reach Suzanne Berrong multiple times when you left he Wilkerson  
3 residence at approximately 0300 that morning?

4 A. Yes.

5 Q. Now did you remember attempting those calls independently, or did you only  
6 remember them after talking to her and...

7 A. No. She reminded me.

8 Q. You don't remember whether you were touched over or under your clothes?

9 A. Initially, that's true.

10 Q. Right. One of the things you...

11 A. That was in reference to the beginning, yes.

12 Q. Okay. You said in your Article 32 testimony, "Things I don't remember: Whether I  
13 was touched over or under my clothes," correct?

14 A. Right.

15 Q. That was your testimony then?

16 A. Right. I thought it was over, but I couldn't be sure, and so she said, "So you don't  
17 know either way?" And I said, "That's correct."

18 Q. You didn't remember whether the man in the bed had facial hair, I don't recall,  
19 correct?

20 A. That's right.

21 Q. Do you remember texting anyone that it was your fault?

22 A. I don't, but I wouldn't be surprised if I didn't.

1 Q. The light that you say went on; was that the lamp light at the time of the dream that  
2 awakened you, in part, from the dream. Was that an overhead light or was that the table lamp – a  
3 table lamp light?

4 A. It think it was an overhead light.

5 Q. I'm sorry?

6 A. I think it was an overhead light, but I didn't – like I didn't look at the light fixture, but  
7 it was overhead.

8 Q. In any event, you said it was a very bright light, correct?

9 A. It seemed bright.

10 Q. You said, previously, "It was a very bright light," correct?

11 A. Yes.

12 Q. And regarding the light, was it light that woke you up or was it something else that  
13 woke you up, and then you saw the light?

14 A. I don't know if I was completely awake before, but I was definitely woken up when I  
15 felt the pulling of the skin of my inner labia.

16 Q. You say that Beth told you to, "Get the hell out of my house," is that correct?

17 A. Yes.

18 Q. Did that occur at the door where you left the house or did that occur by the bed?

19 A. I was – she was standing by the door. I was in the bed. And then she said it again,  
20 and I left the room. And then when I came back in the house to get my wallet, she said, "I liked  
21 you, but I really want you to leave."



1 Q. Okay, let's get this correct now. You leave the room. How far do you walk when  
2 you leave the room?

3 A. I'm not sure. It was – it seemed like it wasn't that far. And I walked down a hallway  
4 and then...

5 Q. Ten feet; 20 feet?

6 A. I don't know.

7 Q. Thirty feet?

8 A. I don't know.

9 Q. But, basically, you just walked down a hallway?

10 A. Uh-huh.

11 Q. And then you went out some doors out of the house?

12 A. Yeah. There was a door that was already open.

13 Q. Right. So you leave the room where the bed is. You go down a hallway. Some  
14 doors are open right there at the end of the hallway, and you walk out those doors?

15 A. Yeah. I don't know if it was – I mean it wasn't like right at the end of the hallway. It  
16 looks like it was on the other side of a room because there was a counter there. When I came  
17 back in through the door, there was like this little room. There was a countertop there and my  
18 wallet and stuff were on the counter. So I don't know. Like the hallway ended in a room, and  
19 then there was a door. It was something like that.

20 Q. Right, and then when you – did you grab your purse at that point? Did you take it out  
21 with you or did you go – did I understand you to say you went out and then came back in to get  
22 them?

1           A. Yes. I started to walk out, and I realized I didn't have any of my stuff. And I turned  
2 around and I saw my wallet on the counter, and my glasses. So I got my wallet and my glasses,  
3 and my phone was inside my purse.

4           Q. And it's your testimony that at that point Beth did not offer to take you anywhere?

5           A. No.

6           Q. She did not confront you because she was afraid you would wake up the Pone boys?

7           A. No. She told me...

8           Q. She did not...

9           A. ...sorry, go ahead.

10          Q. You go ahead and answer.

11          A. No, she said, "I want you to leave."

12          Q. Did she tell you that she was concerned about you waking up the Pone boys, who  
13 were asleep?

14          A. She didn't tell me that she was concerned about me waking up her boys.

15          Q. And did she hit a button at the kitchen door that opened up the gate where her car was  
16 parked?

17          A. I don't remember that at all?

18          Q. Did you see a yellow, flashing light?

19          A. No. I climbed over a wall.

20          Q. Did you hurt yourself climbing over that wall?

21          A. No.

22          Q. How far was the drop on the other side of that wall? Do you know?

1 A. It wasn't much of a drop. I swung both of my legs over, and just dropped down.

2 Q. Two feet, three feet, one foot?

3 A. I believe a couple.

4 Q. A couple of feet?

5 A. A foot or two, yeah.

6 Q. Okay, one or two feet?

7 A. It wasn't a very long drop.

8 [Long pause.]

9 CIV DC: One moment, please, Your Honor.

10 [The civilian defense counsel conferred with the defense expert consultant.]

11 Q. With respect to your consumption of alcohol that night, and this where I want to go  
12 back and make clear, you sent a text to Dunnivant at 0143. Do you agree with that? And I've  
13 read that to you, correct?

14 A. Uh-huh.

15 Q. Okay, so you were not asleep before that text?

16 A. I suppose not.

17 Q. And so in terms of any effect of alcohol at the point that you – after you sent that text,  
18 you basically were not feeling any effects of alcohol as of 0144 that morning?

19 A. I don't know.

20 Q. You had no memorable effects of alcohol or feeling buzzed at that point? You felt  
21 tired?

22 A. Oh, I'm sure I was still a little buzzed.

1 Q. Okay, but you say, "I'm sure." You're just guess or speculating or you have a distinct  
2 memory?

3 A. Yeah. I'm sure I was buzzed at the same time as being tired.

4 Q. Well, in relation to that text, how much time would you say had elapsed from your  
5 last alcoholic beverage?

6 A. I don't know...

7 Q. So it could have been...

8 A. ...because I don't know if I had that *prosecco*.

9 Q. Right. It could have been hours, correct – multiple hours?

10 A. Whenever we first got there. I'm not sure what time we arrived there.

11 Q. Right. If you got there before 11:30 and were now – well before 11:30, and we're  
12 now at 0143, at least a few hours?

13 A. What are you saying? Like two hours?

14 Q. Well, at least two hours.

15 A. Well 11:30 and then 0143 is...

16 Q. Twelve thirty and 1:30.

17 A. ...so that would be two hours, right?

18 Q. Right. So you would agree with that?

19 A. Ah, if that's in the timeframe, if that's the actual timeframe, then two hours between  
20 alcohol would make sense.

21 Q. At least, correct?

22 A. At least what?

1 Q. Two hours, if that's correct?

2 A. I can't stipulate to it because I don't know the timeline.

3 CIV DC: I understand.

4 No further questions, Your Honor.

5 ATC: Your Honor, could we ask for a brief comfort break before...

6 MJ: We'll be in recess for five or ten minutes.

7 (The court-martial recessed at 1413 hours, 29 October 2012.)

8 **END OF PAGE**

9

1 (The court-martial was called to order at 1426 hours, 29 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Trial counsel?

6 ATC: Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 **Questions by the assistant trial counsel (Captain Beliles):**

9 Q. Now, Ms. (b) (6) just to clarify, you did not have a watch on the night of 23 March  
10 2012, correct?

11 A. That's correct.

12 Q. Were you in anyway trying to keep track of the exact times of events when they were  
13 occurring prior to being here today?

14 A. No.

15 Q. Did you have any reason to believe that you might have to remember the exact times  
16 of everything to testify in a court-martial, before you went to bed?

17 A. No.

18 Q. If I asked you about the exact times something happened last weekend, would you be  
19 able to tell me every time?

20 A. Probably not.

21 Q. Thank you. In fact, you didn't even remember my last name until yesterday, correct?

22 A. That's correct.

1 Q. There's some things you just don't remember because you're going to have to  
2 remember them until later, correct?

3 A. [Nodded in the affirmative.]

4 Q. Now defense counsel talked to you about your Article 32 testimony. It's right in front  
5 of you, correct?

6 A. Yes.

7 Q. And defense counsel said you couldn't remember whether or not Major Goldsberry or  
8 Major Lowe told you that they could find a way home for you, right?

9 A. Right.

10 Q. But I'll ask you to turn to page 1 of your Article 32 testimony, about two-thirds of the  
11 way down.

12 A. Yes.

13 Q. Did you, in fact, testify about remembering either one of them telling you that?

14 A. Yes.

15 Q. And would you read for us what you actually testified about?

16 A. Yes. "As we were walking to the house, I asked how I was going to get home. Either  
17 Major Goldsberry or his friend said they'd figure out a way."

18 Q. So what you couldn't remember is which one of them said it, right?

19 A. That's correct.

20 Q. You remember the conversation though?

21 A. Yes.

22 Q. And when you arrived at the house, it was dark, right?

1 A. Oh, yeah.

2 Q. It was March, correct?

3 A. Yes.

4 Q. You had no reason to inspect the landscaping of the house as you entered the home,  
5 correct?

6 A. No.

7 Q. And you testified on cross-examination that you swung your legs over the fence.

8 A. The wall, yeah.

9 Q. The wall, and then you dropped down about one or two feet, is that right?

10 A. That's correct.

11 Q. When you say you dropped down one or two feet, you're saying that you dropped,  
12 from your sitting position, you dropped a foot or two to the ground?

13 A. That's right.

14 Q. You're not saying the wall was one or two feet high?

15 A. That's correct. It was not. No.

16 Q. And you didn't trip when you dropped to the ground, correct?

17 A. No.

18 Q. Defense counsel made a lot to do about the Article 32 testimony and the fact that you  
19 never mentioned whether or not you had coffee or tea or juice, right?

20 A. That's right.

21 Q. You don't remember actually being asked about that at the Article 32, do you?

22 A. No.



1 Q. And you were answering questions, right, at the Article 32 investigation?

2 A. That's right.

3 Q. You weren't just testifying about whatever you wanted to; you were being questioned  
4 by counsel and defense counsel, right?

5 A. That's correct.

6 Q. And as you've already stated, to your knowledge that's a summarized transcript, not a  
7 verbatim transcript of what you testified to?

8 A. Yes.

9 Q. Thank you. Now, prior to the Article 32 investigation, you made a statement to OSI,  
10 right?

11 A. Yes.

12 Q. You filled out a handwritten document on an Air Force Form 1168?

13 A. Yep, that's right.

14 Q. And that was much closer to the incident than your testimony at the Article 32  
15 investigation, right?

16 A. Yes.

17 Q. Do you remember writing in that statement about asking the Wilkersons for a  
18 nonalcoholic beverage after everyone else had left?

19 A. Oh, yes.

20 Q. Okay, so you had already brought it up prior to the Article 32 investigation?

21 A. Right.

1 Q. Let's talk about your conversation with Ms. White at the SARC office when you  
2 discussed with her whether or not you were going to make this an unrestricted report. Do you  
3 remember that conversation?

4 A. Oh yes.

5 Q. You were under the impression that you had a choice of either withdrawing the report  
6 or making it unrestricted, right?

7 A. That's right.

8 Q. At that point, had you even given the SARC office the name of the accused in this  
9 case?

10 A. No. No. No, of no one involved.

11 Q. And you do not remember Ms. White telling you that you had no choice but to go  
12 forward, right?

13 A. Oh, she never told me that. She would never tell me that.

14 Q. You had a choice?

15 A. I had an absolute choice. That was very clear.

16 Q. There was no – did you feel like she could have forced you to give them the name of  
17 the person who assaulted you?

18 A. To give who the name?

19 Q. To give the SARC office – you didn't feel like you were under any sort of coercion to  
20 give them his name?

21 A. Oh, no, no. They were so apologetic, and they understood. I told them I don't – you  
22 know I need to think about this, and they were as accommodating as they could possibly be.

1 Q. Thank you. And when you originally went in on 29 March 2012 to make your initial  
2 restricted report, you filled out an intake sheet, right?

3 A. I think so. I think that's what it is.

4 Q. Okay, and defense counsel referenced that. He was asking you questions off that  
5 intake sheet, right?

6 A. That's right. Uh-huh.

7 Q. And you filled out a very brief summary of the details of that incident; remember?

8 A. Yeah.

9 Q. In fact, that was only about eight lines long, right?

10 A. Oh yeah.

11 Q. And you mentioned you'd already given it in much more detail previously that day,  
12 right?

13 A. Well, I just met with – I met with Major O'Keefe, and we had a talk about it. And  
14 then I went to Tom Moran's and had a really – it was an emotional session, and then he  
15 encouraged me to call SARC, and then they were able to see me at the end of the day. And I was  
16 just – I was beat.

17 ATC: If I could have one moment, Your Honor?

18 MJ: You may.

19 [The trial counsel conferred.]

20 Q. Just to be clear, who is Tom Moran?

21 A. Tom Moran was the psychologist, the counselor that I saw.

22 Q. Okay, and you've met with him after this incident, correct?

1 A. Right.

2 Q. As a result of the sexual assault?

3 A. Oh, yes. I hadn't seen him before.

4 Q. Okay. Thank you. So, when you filled these details on this intake sheet, this was, by  
5 no means, an exhaustive account of what had happened, right?

6 A. No. I was sick of writing stuff down and talking about it, and I figured – when I  
7 wrote that down, I think I may have made a note that they could contact Tom Moran on there.  
8 Did I?

9 Q. You wrote that Tom Moran has a more detailed note, correct?

10 A. Yes, because I was just tired of it.

11 Q. You were tired of writing it another...

12 A. I was tired of talking about it; tired of writing – yeah.

13 Q. And in that note, defense counsel, in this statement defense counsel made a lot to do  
14 about the fact that you said you went to bed at about between 0045 and 1 o'clock in the morning,  
15 right?

16 A. Yeah. I was ballparking.

17 Q. That was a ballpark. When you wrote this note, had you had the opportunity to  
18 review your phone records?

19 A. No.

20 Q. That wasn't until much later, was it?

21 A. Right. That was after OSI – like the second time or third time I saw them and they  
22 asked if I could get them for them. So I did.

1 ATC: Thank you.

2 Your Honor, if I could have one moment?

3 MJ: [No response.]

4 [The trial counsel conferred.]

5 ATC: Your Honor, I have no further questions.

6 MJ: Defense, based on that?

7 CIV DC: No questions, Your Honor.

8 MJ: Members, do you have any questions of this witness?

9 And apparently not.

10 Government, presumably subject to recall?

11 ATC: Yes, Your Honor.

12 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
13 knowledge of this case or your testimony with anyone other than counsel, the accused, or this  
14 court. You may step down.

15 WIT: Thank you.

16 [The witness left the courtroom.]

17 Government?

18 ATC1: The government calls Master Sergeant Dunnivant.

19 [The bailiff left the courtroom and returned with the witness.]

20 **MASTER SERGEANT DANIELLE DUNNIVANT**

21 was called as a witness for the prosecution, was sworn, and testified as follows:

22 **DIRECT EXAMINATION**

1           **Questions by the assistant trial counsel (Captain Nguyen):**

2           Q. Would you please state your name and rank for the record, please?

3           A. Master Sergeant Danielle Dunnivant.

4           Q. Ma'am, how long have you been stationed at Aviano?

5           A. One year and nine months.

6           Q. And where do you work?

7           A. I work at the 31<sup>st</sup> Medical Group, in Medical Readiness.

8           Q. And what is your duty title?

9           A. Ah, Medical Readiness Flight Chief.

10          Q. And how long have you been in the Air Force?

11          A. Twenty years.

12          Q. Do you know (b) (6) ?

13          A. Yes.

14          Q. And how do you know her?

15          A. She's an acquaintance/friend of mine.

16          Q. Have you ever gone on any trips with her?

17          A. Yes, actually I went to Oktoberfest, not this Oktoberfest, but the last Oktoberfest,  
18 with her and a group of friends. And then we also went to – we had like a get together after that,  
19 and then just seeing her at work. She works at the hospital as well.

20          Q. What about, do you guys go out to eat at all?

21          A. Ah, no, not really, no.

22          Q. What about work interactions? Do you have any work interactions?

1           A. I pass her in the hallway. I see her in the hallway because we work – I work in the  
2 back of the hospital, so I don't really – I'm not out in patient care or anything, so whenever I  
3 have to go upstairs in the command section or anywhere, I can see her every now and then. I  
4 pass her in the hallway. We say hi and talk.

5           Q. Did you attend a Seether concert with (b) (6) ?

6           A. Yes.

7           Q. Okay, well, let's talk about that Seether concert. What was the plan for that day and  
8 night?

9           A. Ah, well we – several of us got hotel rooms – billeting rooms on base because the  
10 concert was on base, and we knew we were going to go to the club afterwards. So we met up in  
11 the lobby around 6 o'clock, I guess – me and Bob Pearson and Michelle Sherwood and (b) (6) .

12          ATC1: Can you speak up a little bit?

13          WIT: Yes.

14          ATC1: Thank you.

15          WIT: Does this work? [Referring to the microphone on the witness stand.]

16          MJ: It does not amplify; it just records, so you're going to need to elevate your voice  
17 enough so that we can hear you on the opposite side of the room.

18          WIT: Okay, I'll try.

19          **Direct examination continued.**

20          A. So we met there and I had a drink. Bob had a drink. And (b) (6) had like I think a beer  
21 she was drinking – one beer or something like that. And then we were waiting on a couple of  
22 more – two more people, Captain Brock and Captain Manning to show up, but they were running

1 late, so we decided to walk to the PAHA, which is where the concert was at. And we meet them  
2 in the parking lot, along with a group of other Med Group people that were walking to the  
3 concert. And we all proceeded to walk to the concert.

4 Q. Approximately what time was that?

5 A. Ah, it was around 7:00. Yeah, because the concert started at 7:00.

6 Q. So you guys all walked to the Seether concert. What happens at the Seether concert?

7 A. Ah, we enjoyed it. Ah, I was trying to get – you know I'm very short – so I was  
8 trying to get as close to the stage as I possibly could. And I was kind of – Michelle Sherwood  
9 was next to me or behind me, and then a couple of other people, (b) and Tanya – I saw Tanya  
10 drag (b) over to the left, like five or six feet to the left of me. I guess they were kind of in the  
11 middle of the stage so they could see better. And then that was the last that I saw of them during  
12 the concert.

13 Q. After the concert, what did you do?

14 A. We waited around because some people wanted to get autographs. So we were  
15 waiting around and then we decided to walk over to the Club after that.

16 Q. Who all walks over to the club with you?

17 A. Me, Bob, Michelle, (b) and a couple of other people from the Med Group. It was a  
18 big group of people. Everybody was walking at once, so we were all just kind of walking.

19 Q. Sergeant Dunnivant, when you're at the Club, what goes on there?

20 A. Okay, so we go into the back of the Club, and it's packed. So we're waiting in line to  
21 get a drink, and we – Captain Manning got a round of drinks for us – Red Bull and vodkas, and  
22 they were talking to – well, they were some of the Wing officers – leadership – Colonel Ostovich



1 was there, and then – I didn't know it at the time, but the defendant, Colonel Wilkerson, was  
2 there. And I didn't know who he was at the time.

3 And then they were talking you know, and I didn't feel comfortable because I was  
4 enlisted; I didn't feel comfortable being around them. So I walked over to find my friend,  
5 Michelle, and Bob. And that was the last time that I saw them.

(  
b  
7  
)  
Q. When you're at the Club, do you remember how many drinks that you saw [REDACTED]  
[REDACTED] had?

8 A. I just saw her with one.

9 Q. Did you actually see her drinking the drink?

10 A. No. She had it in her hand, but I didn't actually witness her drinking it.

11 Q. So you decided not to go over to the group because there were officers there?

12 A. Uh-huh.

13 Q. What do you do next?

14 A. I go over to where my friend, Michelle and Bob are. We sit there for a little while.  
15 We're talking, and then Michelle gets a text or a phone call from another friend of ours, Phillip  
16 Sherwood, that they – they had gotten a billeting room as well – a group of them – and they were  
17 over at their billeting room having a party, and they asked if we wanted to come over. And so  
18 we decided to leave the club and walk over there. It was not the main billeting – main billeting  
19 building; it's the one where you actually have to have a key to actually get into you know the  
20 entryway. So we were waiting. She's calling – Michelle is calling to try to get him to come  
21 down and let us in, but he's not answering the phone. And so we wait for probably 15 minutes  
22 or so, and then she finally gets a hold of him and he says, "Oh, we're going to go back to the

1 Club now.” So I was like, well my billeting building was right across the walkway from that, so  
2 I had decided that I was going to go back to my room because I was tired. And so I went back,  
3 and I left them.

4 Q. So you don’t know where (b) (6) went after that?

5 A. No, I don’t – not until later.

6 Q. What time did you go to billeting and go to bed that night?

7 A. It was around 11:00.

8 Q. Eleven?

9 A. Hu-huh.

10 Q. At that point, how many drinks do you think you had that entire night?

11 A. Ah, probably three or four.

12 Q. Three or four; what kind of drinks?

13 A. Oh, Red Bull and vodka.

14 Q. Red Bull and vodka?

15 A. Uh-huh, because I had a couple before, while we were in the billeting waiting area,  
16 waiting, and then I had two more at the Club.

17 Q. What’s the next thing you remember after going to bed?

18 A. Being woken up by a phone call from (b) (6).

19 Q. And approximately what time was that?

20 A. Ah three – 3:02.

21 Q. And during that phone call, what did (b) (6) say?

1           A. She was disoriented. She didn't know where she was. She said she was walking and  
2 she didn't know where she was, and asked me if I could come pick her up. And I said, "Okay."  
3 I said, "But I need to know where you are." And she said she didn't know. So I said, "Well,  
4 walk to you know a street sign, you know maybe I can figure out what town you're in." And  
5 she's walking and she's telling me some streets signs, but it's not registering. I don't know  
6 where she – you know I don't know Italy that well.

7           And so I hear some guys in the background, and I asked her who that was. And she said  
8 it was some guys walking. And I said, "Stop them and ask them where you are." And so she  
9 did, and I find out that she was at Roverado in Piano. And I asked her to put one of the guys on  
10 the phone, and I said, "Where are you guys at? You know can you wait with her while I come  
11 pick her up?" And we're trying to find a centralized location that I knew because I'm not very  
12 familiar with Roverado, and they said the clock tower, that they would wait with her at the clock  
13 tower for me to come and pick her up. And so I left to go pick her up.

14           Q. And approximately what time did you leave?

15           A. Ah, it was probably about 15 after – a quarter after 3:00 because I was on the phone  
16 with her for around ten minutes or so. So as soon as I packed up my stuff, because I was going  
17 to go straight home after that. So...

18           Q. What was the weather like?

19           A. It was chilly.

20           Q. What were you wearing to go pick up (b) (6) ?

21           A. I was wearing a black – no, I'm sorry – black pants and a black – I mean green – dark  
22 green shirt and a black jacket.

1 Q. And when you got there, what happened?

2 A. I pull up, and I get out. And she didn't recognize my car. She had thought I had – I  
3 used to have a BMW, but I totaled that. And so she was looking – she was expecting a BMW  
4 and told the guys to look for a BMW. And ah, but I got out, and she was like “Oh.” And she  
5 said, “What happened to the BMW?” And I told her what happened, and I said, “This is what I  
6 have now.” And so I said, “Are you ready to go?” And she said, “Yeah.” And so we got in the  
7 car and started driving back to billeting. And then...

8 Q. When you first got there and you met her, what was her demeanor like?

9 A. She seemed upset, disoriented. She was kind of – I don't know. She – I could tell  
10 she'd been drinking just a little, but she was coherent. You know she was making complete  
11 sentences. I didn't think you know she was drunk or anything.

12 Q. Was she crying?

13 A. Yeah, a little bit. Yes. Yes. She started crying more when we were in the car, on the  
14 drive back.

15 Q. Did you ask her what happened?

16 A. Yes. I did. I was like, “What are you doing?” I said, “What happened? You know  
17 how did you end up here,” because she didn't have her shoes. She didn't have any shoes. I  
18 remember her telling me that on the phone, “I don't have any shoes on. I'm walking you know  
19 and it's cold.” And so I asked her what happened. And she told me that they had went to a  
20 party, her, Captain Brock and Captain Manning had went to a party at someone's house, and they  
21 were having a good time, I suppose, and Captain Manning had left with someone, and then  
22 Captain Brock got mad because Captain Manning left her there, and so Captain Brock left. That

1 left (b) alone. (b) didn't know that she was by herself. She was talking to the defendant's  
2 wife. They were getting along really well and talking. And when she – when she asked what  
3 happened to them, and the wife said that they left, and she was like “Well, okay, let me call  
4 someone to come get me.” And the wife was like “No, you can stay here. We have a spare  
5 room, and it's no inconvenience.” And so she stayed there and went to sleep in the spare  
6 bedroom.

7 Q. And then when she went to sleep, what happened?

8 A. Okay, so she, according to what she told me, she was having an erotic – she told me  
9 that she was having an erotic dream, and that you know she said it felt good, and then, all of a  
10 sudden a light comes on, and the defendant's wife is standing at the doorway, screaming at her,  
11 telling her to get out of her house, that she trusted her, that you know she had let her into house,  
12 and told her to get out. And then she looked over and you know the defendant is in the bed with  
13 her.

14 Q. Did she say what the defendant did to her while in bed?

15 A. She told me that she – she woke up and that her clothes were still on, but her pants  
16 were unbuttoned. So...

17 Q. And that she had been sexually assaulted?

18 A. Later, yes. Later, when we got into the billeting parking lot.

19 Q. And just to clarify, she told you later that she was sexually assaulted?

20 A. Uh-huh. Yes, when we were in the billeting parking lot, we have – because I'm not  
21 very good at talking and driving – when we go there in the billeting parking lot, we sat there for  
22 a good 20 minutes, and she told me you know what happened. She said that she was afraid that –

1 she was afraid that she was going to get fired because she was afraid that no one would believe  
2 her because she had been drinking, and that you know she was like you know “I don’t know how  
3 this happened.” She said, “I don’t know what to do.” She was like you know it was you know  
4 like “I thought it was a dream, but then it wasn’t. You know I woke up and he was there in the  
5 bed you know with me and you know my pants were unbuttoned.” And I told her to me you  
6 know that sounds like a sexual assault. And I told her that you know if that’s what happened,  
7 that you need to report it; you need to report it. And she was afraid. She said that she didn’t  
8 want to. She was afraid she’d lose her job. And I told her that she needs to think about it. And  
9 she said that she would.

10 And she was upset. She was crying. You know she said that nothing like this had ever  
11 happened to her before, and you know she didn’t know what to do, basically.

12 Q. What about telling you to report it? Did she say anything about that?

13 A. She asked me to – well, she made me promise not to say anything about it, and I  
14 didn’t until I found out from OSI. So...

15 ATC1: No further questions, Your Honor.

16 MJ: Defense?

17 DC: One moment, Your Honor.

18 Good afternoon, Sergeant Dunnivant.

19 WIT: Good afternoon.

20 DC: And you’re retiring soon, right?

21 WIT: I am, in two months.

22 DC: Congratulations.

1 WIT: Thank you.

2 **CROSS-EXAMINATION**

3 **Questions by the defense counsel:**

4 Q. I want to take up from when you get to the Club. Okay? So after the concert?

5 A. Okay.

6 Q. Once you're at the concert, Captain Brock and then Captain Manning had arrived  
7 before you and your group, correct?

8 A. Ah, it was – I don't remember exactly. I think it was around the same time.

9 Q. Around the same time. Okay. And while you were at the Club, Captain Manning had  
10 bought some drinks?

11 A. Uh-huh. She bought a round for us.

12 Q. A round. Do you remember how many drinks were in that round?

13 A. I remember we bought – she bought two each because you know it was very packed,  
14 and who knows when we would have got to be able to get another drink, so she bought two.

15 Q. Okay. And those were Red Bull and vodka?

16 A. Yes.

17 Q. And you saw her hand one to (b) (6), but you don't know if she drank it or not?

18 A. No.

19 Q. And then at some point you realized this scene wasn't for you anymore and you went  
20 back to your billeting room?

21 A. Well, no, not at that time. I wasn't comfortable with the people that they were talking  
22 to, and so I walked over to where my friend, Michelle, and Bob were. And so we sat there for a

1 little while, and that's when her friend, Phillip Sherwood, texted her and told her that they were  
2 having a party in his billeting room. And so we decided to walk across. It's just across the  
3 street.

4 Q. And you're uncomfortable because they were officers; you were enlisted.

5 A. Well, they were high ranking officers.

6 Q. Higher ranking?

7 A. Yeah, so I didn't really feel comfortable with that.

8 Q. All right. And then you received a call from (b) (6) at about 3:02 in the morning?

9 A. Uh-huh. Correct.

10 Q. And while she's on the phone with you, she's rambling?

11 A. Yes. She's – she's disoriented. She doesn't know where she is. She's just going on  
12 about how you know she got – she was at a party, she got kicked out you know.

13 Q. And she said she didn't know what happened? At this point on the phone she said she  
14 didn't know what happened, didn't know what was going on?

15 A. Well, no, she said she didn't know how this had happened. She's like "I don't know  
16 where – why you know this is happening."

17 Q. Okay, she didn't know why this was happening, how it happened?

18 A. Right.

19 Q. Okay. And that's where you started to say, "Where are you?"

20 A. Uh-huh.

21 Q. Because she also said she didn't know where she was?

22 A. Right.



1 Q. And her response was, “I don’t know”?

2 A. Uh-huh. And she – well, I told her to walk to a sign to see where she was because she  
3 said she didn’t remember. She was a passenger on the way to the house, so she wasn’t paying  
4 attention to where she was.

5 Q. All right, but you tell her to go look for signs?

6 A. Uh-huh. I do.

7 Q. And that was to try to help you figure out where she was?

8 A. Uh-huh. Correct.

9 Q. And while she’s looking for signs, she’s asking you also to pick her up?

10 A. Uh-huh. Well, she had already asked me that, and I was just trying to figure out  
11 where she was.

12 Q. Okay. And you, while you were on the phone with her, you heard some men’s  
13 voices?

14 A. Uh-huh. I did.

15 Q. Okay. And you had asked (b) (6), “Hey, who are these men’s voices that I hear  
16 on the phone?”

17 A. Yes.

18 Q. And she just said they were some guys walking around?

19 A. Uh-huh.

20 Q. I’m sorry, for the record, we need more than like a uh-huh, to make sure that they –  
21 the court reporter gets an answer on the record.

22 A. Okay. Correct.

1 Q. Okay. And you were the one who told her to stop and talk to them?

2 A. Uh-huh. Yes, Sir. Correct.

3 Q. And she listened?

4 A. Uh-huh. Yes.

5 Q. And you heard them say they were in Roverado?

6 A. Yes.

7 Q. And you had to tell her at that point to ask where in Roverado?

8 A. Yes. I actually told her to put one of them on the phone, and I talked to one of them,  
9 and I asked him you know, "Where in Roverado are you, because I'm not familiar with it." And  
10 he told me that they would meet us – that he would wait by the clock tower. And I asked him if  
11 he would wait with her while – until I got there, and he said, "Yes."

12 Q. So you had to tell her to put one of these guys on the phone?

13 A. Well, she was trying to communicate with them via me, but it was easier for me just to  
14 talk to them on the phone.

15 Q. Rather than having a person in the middle?

16 A. Rather than having a three-sided conversation. Right.

17 Q. And during this time, you're packing up your stuff so you can leave your room to go  
18 get her?

19 A. Yes.

20 Q. About how far did it take you once you left – once you got in your car to get to  
21 Roverado?

22 A. Well, it's only probably seven minutes maybe.

1 Q. Seven minutes?

2 A. Five to seven.

3 Q. Okay. And as you pulled up, you had previously had a BMW?

4 A. Uh-huh. Yes.

5 Q. About what time do you think you got rid of that BMW?

6 A. Ah, well, not by choice, but I got into a four-car pileup on the *autostrada* in  
7 September of 2011.

8 Q. And when did you get – the car you had at that point was a Mazda Miata?

9 A. Yes.

10 Q. And when did you get that one?

11 A. I got that in October.

12 Q. So about a month later?

13 A. A month and a half; towards the end of October.

14 Q. And when you pulled up, you had to say something to the effect of, “Hey, (b) it’s  
(c) me,” because you said she was looking for a BMW?

16 A. Uh-huh. I got out and I said, “Hey.” And she looked surprised to see me because she  
17 was like, “Well, I was expecting a BMW. I told them to look for a BMW.” And I’m like “No.  
18 You know I totaled that. So now I have this.” And she was like “Okay.”

19 Q. And when you picked her up, she wasn’t slurring her words?

20 A. No.

21 Q. She was making sense, but sometimes rambling?

22 A. Yes.

1 Q. And while you could tell – I think you testified on direct – that she had been drinking,  
2 you didn't think she was drunk?

3 A. No, I did not.

4 Q. But she seemed confused about what had happened?

5 A. Disoriented.

6 Q. Disoriented?

7 A. Yes.

8 Q. All right, so then you leave Roverado and go back towards the base?

9 A. Yes.

10 Q. And you asked (b) (6) how she ended up there?

11 A. [Nodded in the affirmative.]

12 Q. And I'm sorry, again, we just need the verbal responses.

13 A. Yes. Yes. I'm sorry.

14 Q. And she told you that they went to a Master Sergeant's house?

15 A. That's what she had thought at the time, yes. She said that they left with a group of  
16 people from the Club, and they went back to this man's house that she thought was a Master  
17 Sergeant, and it was her, Captain Brock, and Captain Manning, like I said.

18 Q. And that Captain Manning has left with somebody, and that got Captain Brock mad?

19 A. Yes.

20 Q. And that Captain Brock had left, too, but she didn't know how Captain Brock got  
21 home?

22 A. Yes.

1 Q. The next thing she knows everybody is gone but her and the Wilkersons?

2 A. Yes.

3 Q. And that she was going to call somebody to pick her up, but that the wife had insisted  
4 that she not and that she stayed?

5 A. Yes.

6 Q. And when she was talking about the wife, she said they had actually hit it off that  
7 night?

8 A. Uh-huh. Yes.

9 Q. They had gotten along?

10 A. Yes, Sir. They were talking about their children, because she has a child – a 20-year-  
11 old son, and they were talking about children, and that's why she didn't realize that Captain  
12 Manning and Captain Brock were gone because she was talking to her.

13 Q. She felt like they had a connection?

14 A. Yes.

15 Q. And at some point, when she's talking through all of this, she said that she was afraid  
16 she might lose her job because of this?

17 A. Yes. This was when we were – actually got back to the billeting room – the billeting  
18 parking lot.

19 Q. The parking lot.

20 A. So I drove up to the circle and I asked her if she wanted me to come up with her, and  
21 she said, "No," that she was okay. And so we talked about it a little more, and I – she kept going  
22 on that she was afraid that she was going to lose her job.

1 Q. Uh-huh.

2 A. That she was a civilian contractor, that she thought that no one would believe her if  
3 she reported it. And I told her that, "You need to report this," you know that it sounded like a  
4 sexual assault to me. So...

5 Q. But she asked you not to tell anybody?

6 A. Yes. She made me promise not to tell anyone.

7 Q. And had said something like this had never happened to her before?

8 A. Right.

9 Q. And while you were talking with her, she was a little upset with Captain Manning and  
10 Captain Brock, right?

11 A. Yes.

12 Q. For having left her there?

13 A. For having left her.

14 Q. Those were the people she knew that she had gone with?

15 A. Yes, Sir.

16 Q. But she was a little more angry at Captain Manning because that's who she knew  
17 better?

18 A. Yes. She didn't know Captain Brock very well.

19 Q. And then she started telling you what had happened?

20 A. Yes.

21 Q. That she was having an erotic dream?

22 A. Yes.

1 Q. And that it felt good, but all of a sudden a light came on?

2 A. Yes.

3 Q. And then she looked and there was a guy in bed next to her?

4 A. Yes.

5 Q. And she said that her pants were unbuttoned at this time?

6 A. Yes.

7 Q. But she never specified what part of her body she was being touched on?

8 A. No.

9 Q. She said the –when she looked at the doorway, the guy’s wife was screaming at her to  
10 get out?

11 A. Yes.

12 Q. And that that made her upset that the wife was upset?

13 A. Yes.

14 Q. Because they had this connection?

15 A. Yes, and that’s how – she was very upset about that on the ride back to billeting as  
16 well, that she was upset that the wife was so upset with her because she didn’t feel like she had  
17 done anything wrong, and she didn’t understand why she was so upset.

18 DC: Could I have one moment please, Your Honor?

19 MJ: You may.

20 DC: Thank you.

21 [The defense counsel conferred.]

22 DC: Thank you, Your Honor. Nothing further.

1 MJ: Government, anything further?

2 ATC1: No, Your Honor.

3 MJ: Members, do you have any questions for this witness.

4 [Colonel Stentz raised his hand.]

5 MJ: We have one question from the president.

6 Bailiff, if – have you written down that question yet?

7 MBR (Colonel Stentz): No, but I can write it.

8 MJ: Go ahead, please, and just write that down. If you look, there should be a  
9 questionnaire. That way you can put your name on it. We're going to mark that question which  
10 makes it a lot easier for us to track.

11 Just take yourtime, and once you've finished writing it out, just indicate and the bailiff  
12 will retrieve it from you and provide it first to trial counsel.

13 [Colonel Stentz wrote out his question.]

14 MJ: The question will be marked as Appellate Exhibit XIV.

15 [Trial and defense counsel reviewed the question.]

16 MJ: Please provide that exhibit to the court.

17 [The bailiff handed the exhibit to the military judge.]

18 **EXAMINATION BY THE COURT**

19 **Question by Colonel Stentz (asked by the military judge):**

20 Q. Could you please explain what is in the drinks purchased – “red” and “something”?  
21 What goes into those drinks?

22 A. Red Bull and vodka.



1 MJ: Does that help or do you need more information about what Red Bull is.

2 MBR (Colonel Stentz): That's fine. Thank you, Sir.

3 WIT: An energy drink.

4 MJ: Do the members have any additional questions for this witness?

5 That's a negative response from the members.

6 Subject to recall?

7 ATC1: Yes, Your Honor.

8 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
9 knowledge of this case or your testimony with anyone other than counsel, the accused, or this  
10 court. You may step down.

11 WIT: Thank you.

12 [The witness left the courtroom.]

13 MJ: Government?

14 TC: Is the court ready to proceed or do you want a recess?

15 MJ: Let's keep on going. I'm fine, and so it sounds to me like everyone is ready.

16 TC: The government calls Captain Dawn Brock.

17 MJ: Thank you.

18 [The bailiff left the court room and returned with the witness.]

19 TC: I'll need you to speak up.

20 WIT: Yes, Sir.

21 **CAPTAIN DAWN MARIE BROCK**

22 was called as a witness for the prosecution, was sworn, and testified as follows:

1 **DIRECT EXAMINATION**

2 **Questions by the trial counsel:**

3 Q. Could you please state your full name?

4 A. Dawn Marie Brock

5 Q. And you're a Captain in the United States Air Force?

6 A. Yes, Sir.

7 Q. And where are you currently assigned?

8 A. I'm currently assigned to the Mental Health Clinic on Aviano Air Base.

9 Q. And how long have you been here at Aviano?

10 A. Since the end of September 2011.

11 Q. And how long have you been in the Air Force?

12 A. Six years and eight months.

13 Q. And what do you do in the Air Force?

14 A. I'm a Clinical Psychologist.

15 Q. And when did you get your degree in psychology?

16 A. I got my degree in November of 2008.

17 Q. And so you've practiced clinical psychology here at Aviano?

18 A. Yes, Sir.

19 Q. Now I want to turn your attention to the day of 23 March of 2012, the Seether  
20 concert. Do you remember that day?

21 A. Yes, Sir.

1 Q. Earlier in that – had there been plans for you to go to the Seether concert that day?

2 A. Yes.

3 Q. And who were you going to go with?

4 A. Ah, I had plans to go to the concert with then Captain Manning – now Major  
5 Manning.

6 Q. And had you done anything with Captain Manning to facilitate going to the concert?

7 A. Just via text.

8 Q. Right. Now, earlier in that day, before the concert, did you get any news?

9 A. Yes.

10 Q. And I know this is personal, but I have to ask, what was that news?

11 A. I had received a (b)(6)

12 (b)(6) .

13 Q. Is it safe to say that was weighing on your mind that day?

14 A. Absolutely.

15 Q. But you decided to go through and meet up with Captain Manning?

16 A. Yes, Sir.

17 Q. Thank you. About what time did you meet Captain Manning?

18 A. Ah, I'm not sure exactly what time I met her. I got to billeting around 5:30, I believe.

19 Q. What did you do once you arrived at billeting?

20 A. Ah, I prepared for the concert. I changed clothes – out of uniform because I had a  
21 late afternoon/early evening appointment for the imaging; came to radiology; they reviewed it  
22 after hours for me; and then I went to get ready from there.

1 Q. So you eventually did meet up with Captain Manning?

2 A. Correct.

3 Q. Okay. And what was your relationship with her at this time?

4 A. Ah, more or less acquaintances. I knew her back in 2007 at Andrews Air Force Base.

5 We had co-facilitated a HAWK smoking cessation class together because at that time Mental

6 Health was a participant in facilitating that class. And then after getting here, I don't know if she

7 was already here or had arrived shortly thereafter – I can't recall – but I realized that she was

8 here. We worked together on IDS, and went together to the Med Group Christmas party.

9 Q. So, acquaintances, but not best friends or anything like that?

10 A. Correct.

11 Q. After you met up with her, did you, in fact, head over to the concert?

12 A. Correct.

13 Q. And do you remember where the concert was?

14 A. I'm sorry?

15 Q. Do you remember where the concert was?

16 A. It was in a hanger behind the main billeting building.

17 Q. Was it a short walk then from billeting?

18 A. Fairly so.

19 Q. Thank you. A five or ten-minute walk?

20 A. Yeah.

21 Q. Did you run into anybody on the way over?

22 A. Yes, Sir.

1 Q. Who did you run into?

2 A. There were other Med Group personnel who were – who had already exited the main  
3 building and were traveling down towards the sidewalk to go towards the hanger.

4 Q. And do you remember who they were?

5 A. The only people that I really remember seeing are (b) (6) one of the Med Group  
6 secretaries – I can never remember his name – he was the MDSS secretary – and Sergeant  
7 Dunnivant.

8 Q. Okay, and I believe you said (b) (6) ?

9 A. Correct.

10 Q. And who's (b) (6) ?

11 A. (b) (6) works over in Public Health.

12 Q. And how well did you – is that (b) (6) ?

13 A. Yes.

14 Q. And how well did you know her at that time?

15 A. I didn't really. I had a conversation with her via email about deployment health  
16 assessments not too long after I arrived. I don't know if she was new to the position; I think she  
17 was. And then she sat across from me – she had an individual with her – at the Christmas party.  
18 And when I chose a table to sit down at via an empty seat, she was across with whomever she  
19 was with.

20 Q. So prior to 23 March, very limited interaction?

21 A. Absolutely. I didn't know anything about her.

22 Q. Okay, and since the 23 or March, still basically that kind of contact?

1 A. I haven't had any kind of contact with her at all.

2 Q. Right, so you're not like best friends or anything like that?

3 A. No.

4 Q. So what happened once you – you said you ran into (b) and a couple of other people  
5 from the Med Group – Sergeant Dunnivant – what happened after you ran into them?

6 A. Everybody just kind of said hello and proceeded. We never really even stopped that I  
7 recall. We just proceeded straight to the concert.

8 Q. And what happened once you got to the concert?

9 A. Everybody just kind of funneled in towards the stage. There were a number of people  
10 who were already there; nobody that I was familiar with. It was just a group of people. And  
11 shortly thereafter the concert began.

12 Q. And then during the concert, did you see anybody you knew or anybody you  
13 recognized?

14 A. No.

15 Q. So, how long did the concert last?

16 A. Ah, goodness. I don't even know; maybe an hour and a half. I'm not even sure.

17 Q. And then what did you do after the concert?

18 A. After the concert, so lights came on because the lights were off throughout the  
19 concert. And some of the people who we had walked from billeting, you know we kind of  
20 collected in that area near the sidewalk. Some of those people went – there was a line forming I  
21 guess to get signatures from band members. So some people went to that line. Captain Manning  
22 – Major Manning – and I went left and went to the Club.

1 Q. Went to the...

2 A. ...the Club.

3 Q. Okay, and that was here on Aviano?

4 A. Correct.

5 Q. The joint Club? Is that correct?

6 A. Correct, Sir.

7 Q. What happened after you arrived at the Club?

8 A. After we arrived at the club, we were really surprised that everybody in there was  
9 very, very young – all enlisted members – and we weren't quite sure where the rest of the group  
10 was, so we hung out for a second. And then Sergeant Dunnivant, the secretary, and (b) – I  
11 think those were the only three people that I recall seeing with them – came into the club. And  
12 Captain Manning was going to call a friend that she knew because we didn't know anybody else  
13 there. And, actually, let me back up a second. During the concert, the group kind of split in two.  
14 So I'm watching the stage and whatnot, and most of everybody else I think was behind me  
15 because I didn't have any interaction with the rest of my group, and Major Manning had split off.  
16 She apparently knew a couple of other people. The last of couple of songs she invited me over  
17 there, but I didn't know who they were, except for Colonel Ostovich. And I waived at them, and  
18 turned around to watch the rest of the show. There wasn't any interaction. The reason why I  
19 bring that up is because at the Club, we also saw those individuals that she was standing with.

20 Q. Okay, so to make it clear, while you were at the concert, Captain Manning – then  
21 Captain Manning sees some individuals; gets your attention; you see those individuals; and it  
22 was Colonel Ostovich?

1 A. Correct. That was the only person that I knew through IDS.

2 Q. And a couple of other people?

3 A. Correct.

4 Q. Okay, and so you said that you knew who Colonel Ostovich was?

5 A. Correct.

6 Q. Okay, who is Colonel Ostovich?

7 A. Colonel Ostovich was the Vice Wing Commander. He sat on the IDS in the CAB.

8 Q. Okay, and just what are the IDS and CAB?

9 A. The IDS is the Integrated Delivery System, and CAB is a Community Action Board.

10 Basically, those two groups come together as helping agencies to facilitate enhance wellbeing  
11 and resources to the base populace.

12 Q. Okay, so through your profession duties on those two boards, you knew who Colonel  
13 Ostovich was?

14 A. Correct.

15 Q. Okay. And there were a couple of other people who you didn't know?

16 A. Correct.

17 Q. What happens after you're in the Club and you see those individuals?

18 A. I asked Captain Manning if those were the individuals that she was at the concert  
19 with, and she said, "Yes." And so I proceeded over to those individuals. I didn't introduce  
20 myself at the concert, so I introduced myself there. It may seem odd, but the only other officers  
21 besides us in the place were them. So if we were going to stay there, we were going to need  
22 somebody to talk to, in a sense.



1           And three of them – Colonel Ostovich, from my recollection right now, wasn't there at  
2 the time. The three other individuals were there. I introduced myself; said hello. I remember  
3 turning around and Captain Manning was there, so we all began talking. I don't think it was very  
4 long. I don't really know the timeframe. And then Colonel Ostovich came over, and said hello.

5           Q. Okay, so I want to be clear, so at the concert you saw a couple of these people with  
6 Colonel Ostovich, correct?

7           A. Correct.

8           Q. And then at the Club, you recognized these same people, but at that time Colonel  
9 Ostovich wasn't standing there?

10          A. From my recollection, yes.

11          Q. And so you walked over and introduced yourself?

12          A. Correct.

13          Q. And it's because they're probably fellow officers?

14          A. Correct.

15          Q. So do you remember who you met at that point; names or anything?

16          A. I don't. I didn't – I know that they introduced themselves as well. Unfortunately, I'm  
17 horrible with names. If I don't repeat the name, I don't recall the name. And it was one of those  
18 situations that the whole night I really didn't feel like being there, so I was trying to engage, but I  
19 wasn't very engaged, so it really didn't matter to me who the individuals were. It was really just  
20 people to talk to at that moment; nobody that I was looking to make long term friendships with  
21 or anything like that.

22          Q. Sure. It's fair to say your mind was on other things at that point?

1 A. Absolutely.

2 Q. So, eventually Colonel Ostovich comes over though?

3 A. Correct.

4 Q. Okay, and somewhere around that same time Captain Manning was there?

5 A. Correct.

6 Q. Did you notice (b) (6) there at that time?

7 A. I don't know when (b) (6) came over, to tell you the truth. I know that when we all left,  
8 we were a group, but I'm not sure at what point she engaged with us because when Captain  
9 Manning and I walked with her – well, when I walked over to them and then turned around and  
10 saw that Captain Manning you know had also followed and was there, (b) (6) wasn't there. And so  
11 I'm assuming she was still with Sergeant Dunnivant.

12 Q. Okay, so when you were first engaging with these individuals, it was just you and  
13 Captain Manning?

14 A. Correct.

15 Q. Okay, and I know this is going to sound silly, but you just said you “walked over,”  
16 correct?

17 A. Correct. Wait; walked over?

18 Q. Walked over to Colonel Ostovich – well, to this group, you walked...

19 A. Correct. It was just across the bar.

20 Q. Is it fair to say that you did not “run” over to this group?

21 A. [Laughing.] No, I did not run, Sir.

1 Q. All right. Now, once you got there and you were engaged in conversation, did either  
2 you or Captain Manning continually ask any of the people there their ranks?

3 A. No, Sir.

4 Q. Did either one of you, that you heard, continually ask them what their position on  
5 base was?

6 A. No, Sir. I had no idea what their positions were, other than they were flyers in  
7 general.

8 Q. And did you really care at that point?

9 A. No, Sir.

10 Q. So you indicated that at some point you were leaving the Club?

11 A. Correct.

12 Q. Okay, do you remember how the conversation came up that you should leave the  
13 club?

14 A. I don't remember who exactly brought up the conversation amongst the flyers. I  
15 think it was Colonel Ostovich, but I don't know for sure. And I don't know any conversations  
16 they may have had prior. The only thing I recall being mentioned was there was interest in going  
17 to another bar and we were asked if we wanted to go. So I thought we were going to a bar in  
18 Aviano.

19 Q. All right, so there was interest expressed about going to another bar and someone  
20 asked you and Captain Manning and (b) (6) to go?

21 A. Yeah. It was more or less like an open amongst everybody; "Hey do you want to go  
22 to such and such bar?" There weren't kind of one-on-one, kind of go down the line, do you want

1 to go? It was just a group “Hey, do you want to go to this bar?” I didn’t know the name of the  
2 bar. I didn’t know it then. I was not very familiar with the bars in Aviano. All I ever really hear  
3 is where patients get in trouble at. So, we weren’t interested in staying in the club, obviously,  
4 with all the young, enlisted folk and whatnot, not feeling very comfortable there. So...

5 Q. So it’s clear to you that you were invited to go along with these people?

6 A. Absolutely.

7 Q. Were you in any way forcing your way into the group of four men?

8 A. It wasn’t forced on either end; they weren’t forcing us; we weren’t forcing them. It  
9 was somewhere to go.

10 Q. So what happens as you’re leaving the bar? You go out to the parking lot?

11 A. Correct. We go out to the parking lot. Colonel Ostovich was driving. I chuckled  
12 because I do realize the size of the car now, and...

13 Q. Okay, what kind of car was it?

14 A. A smaller Mercedes.

15 Q. And there were how many people in your group?

16 A. There were four flyers and the three of us, so seven.

17 Q. And was this like a SUV or was this just a typical five-passenger car?

18 A. I don’t even know if it was that. I think it was a really small, compact...

19 Q. Clearly not designed – I’m sorry to interrupt.

20 A. ...sporty car.

21 Q. Clearly not designed for seven people?

22 A. No.

1 Q. Okay, so where were you sitting?

2 A. I was sitting more or less on the center console.

3 Q. And who were you sitting between?

4 A. Colonel Ostovich was driving, and the individual that identified himself as “Rosco”  
5 or “Bosco” to me – his call sign, was sitting in the passenger seat.

6 Q. Okay, so whoever Rosco or Bosco was was next to you, on the right?

7 A. Correct.

8 Q. Colonel Ostovich was driving and the other four are in the backseat?

9 A. Presumably so, yes.

10 Q. Is it safe to say that there was not a seat belt available for you?

11 A. Absolutely not.

12 Q. And you were not wearing a seat belt?

13 A. No.

14 Q. All right. So the Vice Wing Commander is sitting next to you, and Bosco or Rosco is  
15 sitting on the other side. Did either one of them say “Hey, you don’t have a seat belt on”?

16 A. No, Sir.

17 Q. Was there any concern whatsoever expressed by this lack of seatbelt wear?

18 DC: Objection. Relevance?

19 MJ: The relevance, please?

20 TC: It will be. We can recall her later on.

1 MJ: How much further are you going down this line?

2 TC: That's the last question.

3 MJ: I'll overrule the objection. I will trust that you will tie it together to something  
4 relevant to this case.

5 **Direct examination continued.**

6 Q. And did either one of them express that you weren't wearing a seatbelt?

7 A. No, Sir.

8 Q. Okay. So what happened after you all go into the car?

9 A. Ah, we proceeded out of the gates and down the road – it was a short distance – and  
10 stopped in front of the house.

11 Q. So it was off the base?

12 A. Yes.

13 Q. Okay, so it was one of the towns outside of the base?

14 A. I'm assuming it's right here in Aviano.

15 Q. Okay, but you didn't know – you'd never been to this place before?

16 A. No.

17 Q. Okay. Now this was at night, correct?

18 A. Correct.

19 Q. Dark roads?

20 A. Correct.

21 Q. Okay, so you get to his house. What happens when you get there?

22 A. Everybody got out. We proceeded into the home.

1 Q. Do you remember if someone led you in or did you just all kind of follow along?

2 A. That part I don't recall. I'm assuming Roscoe/Bosco led us into the home because it  
3 was his home. So, ah, I know we went into the home and did a short tour. I say "short"  
4 because...

5 Q. All right, but before we get to this that, you said this "Bosco/Roscoe" led you into the  
6 home, you assumed?

7 A. I believe so because I know that he was at the front of us when we were inside, so I  
8 don't think anybody went in first.

9 Q. Did at any time he put a hand up or in any way indicate that you were not welcome in  
10 his home?

11 A. Oh, no, Sir.

12 Q. All right, so what happened once you entered the home?

13 A. Ah, I entered the home; saw that there was a woman to the right, which ended up  
14 being his wife, watching a television. She said, "Hello." I don't recall her getting up because we  
15 had kind of turned the corner towards the kitchen, and there was a bathroom, so I excused  
16 myself, and went to the bathroom.

17 After I came out, I was told I missed part of the tour, and missed the wine cellar, and so  
18 he took me – Bosco/Roscoe – I keep – I'm sorry that I have to keep saying it that way; I'm just  
19 not sure what it was.

20 Q. That's fine.

21 A. He took me on the tour to see the wine collection.

22 Q. All right, so who told you you missed the tour?

1           A. He did. When I came out, everybody was kind of standing near the bathroom, and the  
2 stairwell and the kitchen were kind of all in one location, so – and I’m assuming the tour had just  
3 ended maybe; I don’t know. Everybody was right there.

4           Q. So you come out of the restroom; Roscoe/Bosco says, “Hey, you missed a part of the  
5 tour?”

6           A. Correct.

7           Q. And then he takes you on a tour of the house?

8           A. Ah, of that...

9           Q. Or part of the house?

10          A. Yeah.

11          Q. And what did he show you?

12          A. He showed me a wine cellar area that he had and a bicycle collection.

13          Q. And what happened after he showed you that?

14          A. We went back upstairs. People were starting to pour drinks right there because we go  
15 up the stairs and there’s kind of a doorway to the kitchen, from what I recall. And so folks were  
16 there. They were starting to pour drinks. He opened up a bottle of wine, and I took a glass of  
17 wine.

18          Q. Okay, so when you say, “He opened up a bottle of wine,” who opened up the wine?

19          A. Roscoe/Bosco.

20          Q. All right, as he was opening this wine, did he in any way indicate that he wanted you  
21 to leave the house?

22          A. No.



1 Q. Was it your impression that you were welcome to be in the house?

2 A. Yes.

3 Q. Was there anymore conversation, after the wine was opened, between you and  
4 Roscoe?

5 A. No.

6 Q. Was there any point where he asked you if you wanted *prosecco*?

7 A. Ah, yes. I was sitting in the stairway on the stairs that went downstairs, and talking  
8 with (b) (6), and we were just talking about the base, life events; nothing significant. And he had  
9 come by with two glasses of *prosecco*. I don't drink *prosecco*, and I had mentioned that and she  
10 said, "Oh, you know well what kind of wine do you like?" And I had mentioned that I liked  
11 shiraz and malbec. And he said, "Oh, well, I have a malbec," and went down and came up with  
12 the malbec, opened that bottle, and I took a glass of malbec.

13 Q. Okay, so you engaged with a conversation with Roscoe about different types of wine.  
14 You mentioned a couple of brands; he said, "I have one of those." I shouldn't say "brands," I'm  
15 not a wine drinker, but kinds of wine. Is that accurate?

16 A. Well, my conversation wasn't with him; it was with (b) (6).

17 Q. (b) (6); but he was standing there?

18 A. Correct.

19 Q. Okay, and so when he hears that you like a malbec...

20 A. Correct.

21 Q. ...then he says, "I have that"?

22 A. Correct.

1 Q. And he goes and gets you some of this; goes down to the wine cellar?

2 A. Correct.

3 Q. Brings it back up; opens it up; pours it for you?

4 A. Yes.

5 Q. Okay. As he was pouring this wine for you, did he in any way indicate that he  
6 wanted you to leave the house right then?

7 A. No.

8 Q. Again, had he, up to this point, given you any indication that you were not a welcome  
9 guest in the house?

10 A. No, Sir.

11 Q. What happened after you drank that wine?

12 A. Ah, shortly thereafter – actually, while I had the wine, I didn't feel comfortable in the  
13 home. I just didn't feel comfortable, in general, really being out that night. So I was starting to  
14 try to figure out how do I get back to billeting. And so I had engaged with his wife to find out if  
15 there was a taxi system. I've heard my patients say that they could get taxis from Aviano bars,  
16 before, so I was under the assumption that I could. And she just kind of chuckled and made a  
17 reference of you know "Good luck with that. I really don't know of any taxicabs." And so I  
18 kind of disengaged from that conversation for a second to figure out "Well, what was I going to  
19 do?" And I don't know if I finished that wine in the process or not. I just kind of floated  
20 through to see what other people were doing, and tried to talk with other people, and then  
21 reengaged with his wife to find out if there was a way that I could get back to base or if she  
22 would be interested in taking me back to base.

1 Q. And what did she say?

2 A. She said to ask the other individuals – that she could – but ask the other individuals if  
3 they also wanted to go back to base.

4 Q. Okay, and what did you do when she said that?

5 A. Ah, I'm pretty sure I had mentioned it to (b) I can't recall for sure now. I know  
6 that I went out to Manning, and told her that I was leaving, and find out if she wanted to go, and  
7 she was fine. I just – I don't remember the conversation exactly with (b) like I do walking  
8 outside to Manning.

9 Q. So you're not a hundred percent sure if you did with (b) or not, but you are sure with  
10 Manning?

11 A. I don't, because I don't know what the conversation was before I engaged with his  
12 wife the second time. It's like I said, I did float through everybody. I just – I don't remember  
13 what the individual conversations were.

14 Q. So what did you do after you talked to Captain Manning?

15 A. I left.

16 Q. Okay, and how did you leave?

17 A. I got in his wife's car; we pulled out of the driveway.

18 Q. Before you get to that, now, throughout this course that you were at the house, do you  
19 know how long you were there?

20 A. I don't. It may have been an hour, an hour and a half. I don't think it was very long  
21 because we were probably – if I were to give timeframes – maybe at the club a half hour, if that.

1 I don't know when the concert ended; maybe somewhere between 9:00 and 9:30, and then I  
2 know I was back on base by about 11:30 or so because I was there for guard change.

3 Q. Is it fair to say that while you were going through this night that you weren't keeping  
4 track of time events?

5 A. Of course.

6 Q. Now you stated that Roscoe's wife – the homeowner's wife – gave you a ride back to  
7 the base?

8 A. Correct.

9 Q. But did she tell you what she would have to do when she got to the base?

10 A. Once I was in the car and we were driving down the road, we got to the rotary or the  
11 roundabout or whatever people call them here, and she had told me that she was only going to be  
12 able to take me to the last kind of stone blockade on that side of Area F's entrance because she  
13 had had a couple of drinks.

14 Q. Okay, so because she had drinks, she wouldn't take you to the gate?

15 A. Correct. She didn't want to go through the gate. And I didn't know that she had been  
16 drinking. She wasn't engaged with us that evening; like she would filter through and ask how  
17 people were doing, but I never saw her with alcohol, and you know she didn't interact with us  
18 that way, so I didn't even know that.

19 Q. Now prior to your leaving the house, did anybody seem to be out of control?

20 A. No.

21 Q. It was just a normal get together with officers?

1           A. Yeah. I mean there was one of the young guys – seemed like he may have been  
2 intoxicated or just kind of rambunctious. I’m not quite sure – meaning that he wasn’t hyper or  
3 anything, he was just kind of – I don’t know – loud. I don’t know how to describe him because  
4 he wasn’t belligerent, so I don’t want to paint that picture, but...

5           Q. Is it safe to say no one was sloppy drunk or falling down?

6           A. Exactly. No one was falling over; no one was slurring their words. It was pretty low  
7 key, and everybody was fairly old. [Laughter.] So...

8           Q. And at any point prior to your leaving, did Roscoe ever make it clear to you that he  
9 wanted you to leave?

10          A. No, Sir.

11          Q. Now, when you were driving back towards the base, you said you had a conversation  
12 with Beth. Did she say anything unusual to you?

13          A. Ah, when we were backing out of the driveway, she had asked if everything was  
14 okay, and everything was okay. And she said, “Well, did my husband do anything wrong?”  
15 And I thought that that was just a really strange comment. And I said, “No, everything’s fine.”  
16 She said, “Are you sure everything is okay?” And I said, “Yeah, everything’s fine. I just want  
17 to get back to billeting. It’s getting late, and I want to make sure that I get there.” So and that  
18 was the end of that conversation.

19          Q. And that struck you as odd?

20          A. Yeah. I just never had anybody ask me if their significant other had done anything.

21          TC: No further questions.

22          MJ: Defense?

1 DC: Thank you, Sir.

2 **CROSS-EXAMINATION**

3 **Questions by the defense counsel:**

4 Q. Captain Brock, then Captain Manning, now Major Manning, had contacted you about  
5 getting a room, right?

6 A. I'm sorry?

7 Q. Then Captain Manning, now Major Manning, had contacted you about getting a room  
8 that night?

9 A. Correct.

10 Q. And you two shared a room together?

11 A. Correct.

12 Q. And the purpose of the room was to make sure nobody would be drinking or driving?

13 A. Correct.

14 Q. Now when you go to the concert, you walk with this other group of med folks?

15 A. [Nodded in the affirmative.]

16 DC: I'm sorry; instead of just a head nod, I just need a verbal response so the court  
17 reporter can get it.

18 A. Yes.

19 Q. Did anybody seem intoxicated or anything like that at that point?

20 A. Ah, no, Sir.

21 Q. And while you were at the concert, there's no concessions or anything like that where  
22 that you can buy alcohol?

1 A. Not that I was aware of, no.

2 Q. Okay. Once you get back to the Club, you and Captain Manning went there together?

3 A. Correct.

4 Q. And you described it as “seeing a lot of young enlisted”? They looked almost like  
5 kids to you, right?

6 A. Yeah.

7 Q. It kind of weirded you out a little bit, being an officer?

8 A. Yes.

9 Q. And, eventually, you and Captain Manning – or was it you or Captain Manning who  
10 saw these flyers then?

11 A. I did.

12 Q. Okay, and you recognized Colonel Ostovich in the group?

13 A. I don’t remember if he was there first, I just remembered the individuals were the  
14 ones that she was standing with. I don’t remember if all four of them were there or three of them  
15 were there, and I say it that way because I don’t remember if he was there, and then had walked  
16 away and came back to the group, or wasn’t there and then came to the group because I know  
17 there was a point in time towards the end that he came back to the group.

18 Q. Okay. And out of this group of four flyers, when Colonel Ostovich was there, he was  
19 the only one you had recognized?

20 A. Correct.

21 Q. And out of this four, there was Colonel Ostovich, this Roscoe/Bosco, and these other  
22 two “younger guys,” as you called them?

1 A. Correct.

2 Q. And when you leave the Club, the group of seven, did anybody seem intoxicated –  
3 falling down, slurring words – anything like that?

4 A. No.

5 Q. As you pull up to the house, everybody then walks up to the house?

6 A. Correct.

7 Q. And Roscoe is leading the way?

8 A. I'm not sure. I would assume so, being that it was his house, and he started the  
9 "tour," if you want to call it, you know when we got in there. So I'm assuming so. I can't  
10 imagine somebody else walking up to the door, but I can't say for certain.

11 Q. And after you walk in, one of the first things you do is use the bathroom?

12 A. Correct.

13 Q. How did you get pointed to the bathroom?

14 A. Ah, I believe during our walk in, either it was mentioned or I asked. I'm not sure.  
15 But I know he kind of led me to that direction. I don't think he walked me. I don't know if  
16 he pointed at it or what, exactly. It was a short distance from the entryway.

17 Q. Okay. And "he" being this Roscoe?

18 A. Correct.

19 Q. Okay. Was that bathroom on the same level that you walked in on?

20 A. Yes.

21 Q. And after you leave in the bathroom, Roscoe then tells you, "Hey, you missed the  
22 tour"?



1 A. Exactly.

2 Q. And he proceeds to then take you on a tour, just the two of you?

3 A. Correct.

4 Q. And he takes you downstairs?

5 A. Yes.

6 Q. And down there, where he has like a wine cellar or a bunch of wines, right?

7 A. Yes.

8 Q. And also downstairs, he takes you into like a garage?

9 A. Yeah – I don't know. I think it was an internal room, but I can't recall. It was across  
10 from the cellar area. There was another small room with a bunch of bicycles in it, and he said  
11 you know it was his bicycle collection.

12 Q. And he started talking to you about his bicycles and bike riding?

13 A. Correct. I think it was a short discussion, but he clearly – you know he was being a  
14 host; it was his house and things that he was proud of. That was clear.

15 Q. And he brings you back upstairs, and at that point a bottle of wine is opened?

16 A. Correct.

17 Q. And at this point then everybody kind of starts splitting off?

18 A. Correct.

19 Q. And because of the way the house was positioned, depending on where you were at,  
20 you couldn't necessarily see where other groups of individuals might be?

21 A. Correct. The evening – the group didn't stay together as a whole and sit down or  
22 anything and kind of chat together; everybody kind of maintained two, three-person groups

1 around what seemed like a square of a kitchen, and then they had the patio; there was a door off  
2 the kitchen for the patio area, so between the stairs and the outside patio was kind of the flow of  
3 traffic.

4 DC: And just for the record, the witness was holding her left hand and placing – moving  
5 her right hand around it.

6 Q. And mostly it was Captain Manning and Colonel Ostovich talking between those two  
7 individuals?

8 A. Mostly?

9 Q. And I should say Captain Manning seemed to be talking to Colonel Ostovich more  
10 than anybody else once the group separated?

11 A. Ah, not initially. Initially, when everybody started pouring drinks and whatnot,  
12 everybody was kind of talking in the kitchen area for a second. And then Captain Manning and I  
13 were talking for a second. And then I think she may have talked to the younger individuals for a  
14 while, so however long I was there, early on or at least that first half portion, I think she probably  
15 filtered through just about everybody, like I did, and then started talking with Colonel Ostovich  
16 more.

17 Q. Okay, so then later is when she talked to Colonel Ostovich more?

18 A. Correct.

19 Q. And at some point, you sat on the stairwell and talked with (b) (6) ?

20 A. Correct.

1 Q. And, again, you didn't have a watch, but maybe about 20-30 minutes is how long you  
2 guys talked for?

3 A. Probably.

4 Q. And ballparking how long you were at the house – 60 to 90 minutes sound about  
5 right?

6 A. I would assume so; an hour, an hour and a half.

7 Q. And while you were talking with (b) (6) on the stairwell, is that where this conversation  
8 about *prosecco* happened?

9 A. Correct.

10 Q. And you were – let me back up for a second. You were talking with (b) (6) on  
11 the stairs, and that's when Roscoe came up with two glasses in his hand?

12 A. Correct.

13 Q. And did he say what kind of wine he had in his hand at that point?

14 A. *Prosecco*.

15 Q. Do you remember if (b) (6) took a glass at that point?

16 A. I remember her taking a glass. I don't know if she drank it because that's when the  
17 conversation started and I said, "Oh, no, I don't want any. I don't drink *prosecco*."

18 Q. And that's when you switched to a conversation about the type of wine that you  
19 liked?

20 A. Correct.

21 Q. And at that point he went downstairs to get a bottle?

22 A. Correct.

1 Q. Did he open that wine for you?

2 A. Yes.

3 Q. All right, and did you have a glass of that?

4 A. Yes.

5 Q. And at this time that you're talking with (b) (6), and she's handed a glass of  
6 *prosecco*, any indication to you that she's intoxicated such as slurring her speech or anything like  
7 that?

8 A. No.

9 Q. Now did you finish that glass of wine that you had?

10 A. I believe so, but I'm not sure.

11 Q. Okay. But whether you did or not, shortly thereafter is when you really started  
12 looking for a way to get home?

13 A. Correct.

14 Q. And you asked about a taxi?

15 A. Correct.

16 Q. And once the taxi seemed to fall through, you asked if Mrs. Wilkerson, the wife,  
17 could take you back to base?

18 A. Correct; if there was another way or if she would be able to take me back to base.

19 Q. And she said, "Hey, just see if anybody else wants to go if I'm going to be taking  
20 you"?

21 A. Correct.

1 Q. You're positive you talked to Captain Manning to see if she wanted a ride back?

2 A. Correct.

3 Q. And you think you might have talked to (b) (6) to see whether she wanted a ride  
4 back?

5 A. Correct.

6 Q. And when you got in the car to go back, you remember people waving goodbye?

7 A. Correct.

8 Q. When you left the house, any indication that (b) (6) was intoxicated?

9 A. No.

10 Q. And to the best of your recollection, how many bottles of wine were opened that  
11 night?

12 A. I wouldn't even be able to guess. I don't know.

13 Q. Does three sound about right?

14 A. I don't – for my particular situation, I would say yes. In terms of what anybody else  
15 drank or if they drank other alcohol other than wine, I would have no idea.

16 DC: Okay.

17 Thank you, Sir, nothing further.

18 MJ: Based on that?

19 TC: Just a few questions.

20 **REDIRECT EXAMINATION**

21 **Questions by the trial counsel:**

1 Q. Defense counsel just asked you about what you remembered about the wine [sic].

2 Could you describe the landscaping of the house?

3 A. The landscaping?

4 Q. I'm not asking you to; I'm just asking if it's even possible? Do you know what the  
5 landscaping was like at the house?

6 A. The "landscaping" meaning outside the house?

7 Q. Yeah.

8 A. The only thing that I can recall was the driveway, and there seemed to be a lot of  
9 concrete. The driveway was very steep, because that was where his wife was parked.

10 Q. And that's when you left?

11 A. Correct.

12 Q. Do you know if there were – did you meet any children at the house?

13 A. I didn't meet any children. I saw a child.

14 Q. A child?

15 A. Correct.

16 Q. And do you know the name of the child?

17 A. No. There was no interaction with the child at all.

18 Q. All right. And if you had to draw a diagram of the house, could you?

19 A. Not very well. [Laughter.]

20 TC: All right. Thank you.

21 No further questions.

22 MJ: Based on that?

1 DC: Yes, Your Honor, just briefly.

2 **RECROSS-EXAMINATION**

3 **Questions by the defense counsel:**

4 Q. Captain Brock, going back to the house, when you went down to look at the wine, do  
5 you remember walking down stairs?

6 A. Correct.

7 Q. And it wasn't just like just two or three stairs?

8 A. Ah, no. I think that there were two sets; the initial set off the main floor, and then I  
9 believe there was a platform and it turned and it went down another set.

10 DC: Thank you.

11 Your Honor, nothing further.

12 MJ: Members, do you have any questions of this witness?

13 Apparently not.

14 Subject to recall?

15 TC: Yes, Your Honor.

16 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
17 knowledge of this case or your testimony with anyone other than counsel, the accused or this  
18 court. You may step down.

19 WIT: Yes, Sir.

20 [The witness left the courtroom.]

21 MJ: Government?

22 ATC: I would propose a brief recess, Your Honor, before the next witness.

1 MJ: Ten minutes will work?

2 ATC: Yes, Sir.

3 MJ: We'll be in recess for ten minutes.

4 (The court-martial recessed at 1545 hours, 29 October 2011.)

5 **END OF PAGE**



1 (The court-martial was called to order at 1600 hours, 29 October 2011.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government?

6 ATC: Your Honor, at this time the government calls Major Tanya Manning to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 **MAJOR TANYA MANNING**

9 was called as a witness by the prosecution, was sworn, and testified as follows:

10 **DIRECT EXAMINATION**

11 **Questions by the assistant trial counsel (Captain Beliles):**

12 Q. Would you please state your name and rank for the record?

13 A. Tanya Manning, Major.

14 Q. And where are you currently assigned?

15 A. Currently assigned at Aviano Air Force Base.

16 Q. And what is your duty title here on Aviano Air Base?

17 A. I'm the Health Promotion Manager at the Aviano Health and Wellness Center.

18 Q. And how long have you been stationed here at Aviano?

19 A. Approximately one and a half years.

20 Q. And how long have you been on active duty in the United States Air Force?

21 A. Twenty-two years.

22 Q. Thank you. Do you know the accused in this case, Lieutenant Colonel Wilkerson?

1 A. Yes.

2 Q. Do you see him here in the courtroom today?

3 A. Yes.

4 Q. Is he sitting between his two counsel over there? [Referring to the defense counsel's  
5 table.]

6 ATC: Let the record reflect a correct identification of the accused.

7 Q. Do you also know a (b) (6) ?

8 A. Yes.

9 Q. Where did you meet her, originally?

10 A. At work.

11 Q. Let me draw your attention to the evening of 23 March 2012. Do you remember that  
12 day?

13 A. Yes.

14 Q. What were your plans for that evening?

15 A. My plans for that evening were to go – to attend a concert on base, and to – and I had  
16 arrangements to stay on base that night.

17 Q. So you didn't have to drive after drinking?

18 A. Correct.

19 Q. And was the concert the Seether concert?

20 A. Yes.

21 Q. Did you have anyone you were planning to attend the concert with?

22 A. Yes. Ah, Captain Dawn Brock.

1 Q. And who was she at that point?

2 A. A friend of mine.

3 Q. And were there any plans to meet up with anyone else that night?

4 A. There was talk of meeting people that were going to the concert, there at the concert.

5 Q. Okay. Do you remember when you got off work, Ma'am?

6 A. Approximately – normal duty – 4:30.

7 Q. And did you head over to billeting at that point?

8 A. No.

9 Q. What did you do?

10 A. I had to take my son to a birthday party, and then go home and change.

11 Q. Okay, and what did you do then?

12 A. After I left my home, I went to the TLF to check into lodging prior to the concert.

13 Q. When did you meet up with Captain Brock?

14 A. Approximately 5:30 that evening.

15 Q. At some point, did you begin to head over to the PAHA?

16 A. Yes.

17 Q. When was that, approximately?

18 A. Probably about 6:30.

19 Q. And did you and Captain Brock meet up with anyone or bump into anyone on the

20 way over?

1 A. As we were walking, we ran into Master Sergeant Dunnivant and (b) (6) and  
2 Bob Pearson as they were walking in the parking lot – and Michelle – Airman Michelle  
3 Sherwood.

4 Q. And, Ma'am, were you drinking any alcohol?

5 A. Yes.

6 Q. What were you drinking?

7 A. I was drinking a water bottle that had grape juice and a little bit of vodka.

8 Q. And during the course of that evening, did Ms. (b) (6) ever have some of that?

9 A. Yes.

10 Q. Thank you. Do you remember how long the concert lasted?

11 A. Approximately about an hour.

12 Q. Seether; were you a fan of Seether or were you just kind of attending the concert for  
13 something to do?

14 A. Ah, attending the concert; know of the band; not a fan.

15 Q. Not a fan. [Laughter.] The concert, was it pretty loud?

16 A. Yes.

17 Q. Was it difficult to communicate with people during the concert?

18 A. Yes.

19 Q. Did you do anything during the concert other than just watch the band perform?

20 A. Danced, talked.

21 Q. Did you see anyone else you knew at the concert?

22 A. Yes.

1 Q. Did you see Colonel Ostovich at the concert?

2 A. Yes.

3 Q. Was anyone with him at the concert?

4 A. Ah, the only person that I recognized at the time was Gerremy Goldsberry.

5 Q. Okay, and he is a Major and he's a pilot, correct?

6 A. Yes.

7 Q. After the concert, where did you go?

8 A. After the concert, we walked over to the Club on base.

9 Q. When you say "we," who are you walking with?

10 A. Ah, Captain Dawn Brock.

11 Q. At this point you were not with (b) (6) or anyone with her, correct?

12 A. We had walked out and as I remember, it was (b) (6) and I believe Sergeant  
13 Dunnivant, but they had stopped to go to the restroom, and so Dawn Brock and I decided to  
14 continue on walking, and we said that we'd meet them over there, later.

15 Q. Did you eventually see them at the club, later on?

16 A. Yes.

17 Q. You and Captain Brock, did you begin interacting with anyone at the Club?

18 A. Yes.

19 Q. Can you tell me how that came about?

20 A. Ah, Dawn and I had arrived at the Club, and we went and proceeded to the bar to buy  
21 some drinks. At that point, we knew that (b) (6) and Sergeant Dunnivant were behind us, shortly,

1 so I went ahead and bought four drinks at the bar, with the intent to give two to Sergeant  
2 Dunnivant and (b) (6)

3 Q. What kind of drinks did you buy?

4 A. Vodka and cranberry juice.

5 Q. Okay.

6 A. And we were on the far end of the bar when we had arrived, and after buying the  
7 drinks, we walked back towards the entrance, and that's when (b) (6) and Sergeant Dunnivant had  
8 arrived, and I handed them the drinks.

9 Q. At some point, did you begin to interact with a group of other officers – fellow  
10 officers?

11 A. Yes. There was different conversations throughout the time that we were there. Ah,  
12 it was when I went back to the bar area – it was probably about a half hour later – and purchased  
13 two more drinks, and I was standing behind, at the time, (b) (6). She was standing in front  
14 of me at the bar. And as we were standing there, she made reference to across the bar she  
15 noticed Major Gerremy Goldsberry over there, and said, “That’s my tech’s husband.” And I  
16 responded – we were standing next to each other – and I said, “I know Gerremy as well. Our  
17 kids play on the same softball team.” And at that time she had her drink. I had my drink. Then  
18 we walked over there and she proceeded to talk to Gerremy Goldsberry. And I followed her over  
19 there.

20 Q. Were there some other officers around Major Goldsberry?

21 A. Yes. When we went over there, I started to talk to – I know Captain Brock was there,  
22 and I don't know who, at that point, who I was speaking to, but that's when a couple of different

1 conversations took place where I started to talk to Gerremy, just asking where Jen, his wife, was.  
2 He was telling me she was in Paris. And at that time (b) was, I believe, speaking with Colonel  
3 Wilkerson and Major Lowe at the time.

4 Q. Colonel Ostovich wasn't there yet?

5 A. Ah, he was in and out. I don't think – I didn't have a conversation with him at that  
6 point. At one point he was speaking with Captain Brock. That may have been while I was  
7 speaking to Gerremy.

8 Q. Is it safe to say you weren't asking any of these other officers what their rank was,  
9 correct?

10 A. No.

11 Q. And you weren't saying – you didn't hear anyone else asking them their rank,  
12 correct?

13 A. No.

14 Q. You didn't hear anyone else asking them their positions on base, correct?

15 A. No.

16 Q. At some point, was there some discussion about going – taking the party somewhere  
17 else?

18 A. Yes.

19 Q. What do you remember about that discussion?

20 A. Ah, Dawn and I had briefly discussed it when we arrived at the Club. Neither one of  
21 us really felt comfortable being there. Her being a mental health provider, it's kind of awkward  
22 to be socializing with people that may be your patients. Ah, it was – where we were standing

1 when we entered the bar, the way the Club is set up, there is a smoking area that is outside, and it  
2 just had a tarp-type door, and there was a lot of smoke billowing in, and as the Tobacco  
3 Cessation Manager for the Wing, I didn't really like hanging out in the smoking areas, and the  
4 smoke was bothering me. So we had discuss it would be nice to go somewhere else. It was just  
5 not a good experience being with a bunch of enlisted people.

6 Q. It felt awkward?

7 A. At that point there wasn't any officers. It was prior to Gerremy and Colonel Ostovich  
8 and Colonel Wilkerson – it was prior to them there – being there. So we had briefly discussed it  
9 at that point, but didn't make any plans.

10 Q. When you eventually left with Colonel Ostovich and the other two pilots, where were  
11 you under the impression that you were going?

12 A. At the time, I was not sure where we were going.

13 Q. Were you following anyone's lead? Were you following Captain Brock's lead or...

14 A. Captain Brock had made reference that we were leaving, and I was okay with it. I,  
15 kind of in my head, had made a decision that I was ready to go, and it was my friend that made  
16 the recommendation that we were going to go, and I trusted that.

17 Q. You didn't feel like you were forcing yourselves onto the male officers, correct?

18 A. No.

19 Q. You weren't insisting on going with them or anything like that?

20 A. No.



1 Q. Thank you. Now, you eventually make it out to the car and all seven of y'all piled  
2 into a four-door sedan, correct?

3 A. Yes.

4 Q. Do you remember if you were wearing a seatbelt or not?

5 A. I was not wearing a seatbelt.

6 Q. Eventually, you pulled up to a residence, correct?

7 A. Yes.

8 Q. Did you know where you were when you pulled up to that residence?

9 A. Ah, we were discussing where we were going in the car, so when I got there, yes.

10 Q. When you got to the house, did you get out of the car?

11 A. Yes.

12 Q. Did everyone pile out of the car?

13 A. Yes.

14 Q. What did you do once you got out of the car?

15 A. We went inside the house.

16 Q. Okay. Were you escorted in; invited in, essentially?

17 A. I kind of just followed. We were all going in the house.

18 Q. Did anyone try to stop you from going into the house?

19 A. No.

20 Q. And once you got into the house, what did you do?

1           A. Once I got in the house, I was offered a drink, I believe by Colonel Wilkerson. Ah,  
2 and (b) had mentioned that she was drinking *prosecco* and said I should have a glass of  
3 *prosecco*, so I had a glass of *prosecco*.

4           Q. Do you remember ever taking a tour of the house at any point?

5           A. Yes. It was after when I had the *prosecco*. I went to the kitchen area, and I was  
6 having a conversation with Colonel Wilkerson. We were talking a little bit about work, and then  
7 I was mentioning about how nice his house was, and he had offered a tour.

8           Q. And do you remember what you saw when you toured the house?

9           A. Ah, we went around, up the stairs. I remember going into the basement, and he  
10 showed bikes, a wine cellar – just throughout the house.

11          Q. Did you ever see any children at the house?

12          A. I don't remember any children there.

13          Q. And at some point did you make your way out onto the patio?

14          A. Yes.

15          Q. When did that happen?

16          A. Right at the end of the tour of the house, then I ended up at the door to the patio, and  
17 the door was open, so I walked out.

18          Q. And who was out on the patio at that time?

19          A. At that point, Colonel Ostovich was on the patio, kind of around the corner, on the  
20 phone.

21          Q. Do you know who he was on the phone with?

22          A. No, I do not.

1 Q. And did he get off the phone?

2 A. Yes.

3 Q. And did you two stay out there, talking, for quite some time?

4 A. Yes.

5 Q. And do you remember how long you were out there, approximately?

6 A. I would say about an hour, but that's a guess – a guesstimation – an hour, an hour  
7 and a half.

8 Q. And during that time, you never went back into the house, correct?

9 A. No, not until like when I left.

10 Q. Not until when?

11 A. Not until I left.

12 Q. Not until you left. Okay. At any point during that hour to an hour and a half, did you  
13 ever see either Captain Brock or (b) (6) ?

14 A. Yes. At some point during that – I would say probably an hour into it, each of them  
15 came out. I can't remember which one came out first, but at about the same time to let me know  
16 they were leaving.

17 Q. So they both came out at separate times, but close in time to each other?

18 A. Yes.

19 Q. So what was your impression of the time you left?

20 A. At the time I left, I had – I had assumed that they both left together. They both had  
21 rooms on base, and they both had indicated they had a ride. So I had an assumption that they  
22 were going together, but they did not say they were going together. That was my assumption.

1 Q. Do you have any idea when, exactly, you left, time wise?

2 A. I estimated it was about 12:30.

3 Q. And who did you leave with?

4 A. I left with Colonel Ostovich.

5 Q. Okay, and, obviously, (b) did not go with you, correct?

6 A. No.

7 Q. So when you left out the door with Colonel Ostovich, you did not see (b) (6)

8 anywhere?

9 A. No.

10 Q. At any point in the evening, did you ever hear Colonel Wilkerson ask you to leave?

11 A. No.

12 Q. And was it your impression, throughout the evening, that Colonel Wilkerson was  
13 being a very hospitable host?

14 A. Yes.

15 ATC: Your Honor, if I could have one moment?

16 MJ: You may.

17 [The trial counsel conferred.]

18 ATC: No further question, Your Honor.

19 MJ: Defense?

20 DC: Thank you, Sir.

21 **CROSS-EXAMINATION**

22 **Questions by the defense counsel:**

1 Q. Ma'am, taking you back to this water bottle you had made up; grape juice and vodka,  
2 you said?

3 A. Yes.

4 Q. You offered that to (b) (6) and she took a sip?

5 A. Yes.

6 Q. I'm sorry, can you just speak up?

7 A. Yes.

8 Q. Okay. And after she had her sip, she handed it back to you?

9 A. Ah, she was – I would actually say that she shared that with me throughout walking to  
10 the Club – I'm sorry – walking to the concert and a little bit inside the concert.

11 Q. Okay. But that bottle of grape juice and vodka, that wasn't finished, right? It was  
12 thrown out with some still remaining in it?

13 A. No, it was gone.

14 Q. It was totally gone?

15 A. It was completed.

16 Q. Okay. And when you bought these vodka-cranberry drinks at the Club, you handed  
17 one to (b) (6) ?

18 A. I don't know who – if I handed it to her directly or Sergeant Dunnivant, but I intended  
19 to – I don't know who I gave it directly to.

20 [Long pause.]

21 Q. Now while you're at the Club, you didn't talk to Colonel Wilkerson?

22 A. I may have briefly said hello, but I wasn't in a conversation with him at the club, no.

1 Q. And you had recognized him from – through professional dealings with him?

2 A. Yes.

3 Q. And that involved EET, IG; those kinds of things?

4 A. Yes.

5 Q. Now when you left the Club, did (b) (6) seem intoxicated?

6 A. No, I wouldn't say – it's hard for me to say that.

7 Q. She wasn't slurring her words?

8 A. No.

9 Q. She wasn't stumbling down?

10 A. No.

11 Q. And when you got to the Wilkerson house, she was the one who approached you  
12 about *prosecco*?

13 A. Yes.

14 Q. And she even said to you, specifically, "You have to try this"?

15 A. Yes.

16 Q. Going now to the point where (b) (6) and Captain Brock came outside to tell you  
17 they were leaving, when (b) (6) came out, she came by herself, and to you, again, she wasn't  
18 slurring her words or falling down or anything like that?

19 A. No.

20 CIV DC: Could I have one moment, please, Your Honor?

21 MJ: You may.

22 [The defense counsel conferred.]

1 DC: Thank you, Sir, nothing further.

2 MJ: Government, anything?

3 ATC: No, Your Honor.

4 MJ: Members any question for this witness?

5 And we do have one question from Colonel Calta.

6 If you'd please retrieve that question.

7 [The bailiff complied.]

8 MJ: Colonel Calta's question will be marked as Appellate Exhibit XV.

9 [The question was reviewed by counsel and handed to the military judge.]

10 MJ: I'm retrieving the question by the court.

11 **EXAMINATION BY THE COURT**

12 **Questions by Colonel Calta (asked by the military judge):**

13 Q. Major Manning, did you have any interaction with Mrs. Wilkerson at the house?

14 A. No. I remember seeing her there, but we never had any conversation. I may have  
15 seen her when I arrived and then when I left. But other than maybe just a "hello" and a  
16 "goodbye," there was no interaction/conversations that evening.

17 MJ: The next portion of the question I think you just answered:

18 Q. Please describe the interaction. Have you adequately described that interaction that  
19 you had?

20 A. Yes.

21 MJ: Thank you.

22 Members, do you have any additional questions?

1 MJ: Negative response from the members.

2 Based on that question, trial counsel, do you have any follow-ups?

3 ATC: No, Your Honor.

4 MJ: Defense?

5 DC: No, Sir.

6 MJ: Subject to recall, government?

7 ATC: No, Your Honor.

8 DC: No.

9 MJ: Thank you for your...

10 DC: Your Honor, the defense would like her subject to recall.

11 MJ: Thank you.

12 Thank you for your testimony. You're just going to be temporarily excused, which  
13 means there may be a need for us to call you at some later point. Just ensure we can contact you  
14 as needed. However, while this case is ongoing, do not discuss your knowledge of this case or  
15 your testimony with anyone other than counsel, the accused or this court. You may step down.

16 WIT: Yes, Sir.

17 [The witness left the courtroom.]

18 MJ: Government?

19 ATC1: Your Honor, the government calls Major O'Keefe.

20 [The bailiff left the courtroom and returned with the witness.]

21 **MAJOR MICHAEL O'KEEFE, JR.**

22 was called as a witness for the prosecution, was sworn, and testified as follows:



1 **DIRECT EXAMINATION**

2 **Questions by the assistant trial counsel (Captain Nguyen):**

3 Q. Sir, could you please state your name and rank?

4 A. I am Major Michael O'Keefe, Jr.

5 Q. And where are you stationed?

6 A. I am currently stationed at Aviano.

7 Q. And how long have you been stationed at Aviano, Sir?

8 A. I've been here since September of 2011:

9 Q. And where do you work?

10 A. I work in the Family Health Clinic at the 31<sup>st</sup> Med Group.

11 Q. And what is your title?

12 A. I'm a Family Nurse Practitioner, and I'm then I'm also the Family Health Element  
13 Chief.

14 Q. And how long have you been serving in the United States Air Force?

15 A. I've been on active duty for 15 years.

16 Q. Sir, do you know (b) (6) ?

17 A. Yes, I do.

18 Q. How do you know her?

19 A. She's a colleague of mine at the Clinic.

20 Q. And approximately how long have you known her?

21 A. Ah, since she arrived in about October of 2011:

1 Q. Sir, I want to draw your attention to March 23<sup>rd</sup> of 2012. Did you go to the Seether  
2 concert?

3 A. No, I did not.

4 Q. Okay. Were you working that weekend though?

5 A. I was working in the Clinic on Saturday morning, yes.

6 Q. So the 24<sup>th</sup>?

7 A. Yes.

8 Q. Okay, and did you see (b) (6) on the 24<sup>th</sup>?

9 A. Yes, I did.

10 Q. Would you please tell the court why you saw her that morning?

11 A. (b) (6) came into my office seeking care. She felt that she was assaulted the night  
12 before. She was concerned that she had been drugged. She felt that she was disconnected, and  
13 wanted to be tested for a variety of drugs to see if she had been drugged or not.

14 Q. Approximately what time did she come and see you that morning?

15 A. It was about right when we opened up the Acute Care Clinic at 9 AM.

16 Q. Was she by herself?

17 A. No. She was accompanied by Ms. Suzanne Berrong, who also works for the 31<sup>st</sup> Med  
18 Group.

19 Q. And during that examination, did she tell you any details about what happened the  
20 night prior?

21 A. She told me that she had been out with friends; they had gone to the Seether concert;  
22 that she had gone to the Consolidated Club on base; and then she and her friends were – decided

1 they were going to go to a bar off base; but they never went to a bar; they went to someone else's  
2 house. And then (b) (6) continued to tell me that at that house there was a variety of people  
3 there; that she had had some wine; that she started to feel kind of disconnected; she wasn't quite  
4 aware of how fast time was passing; she felt that it was time to head home at one point, but her  
5 friends had already left for the night.

6 Q. Okay.

7 A. So she asked the woman of the house, who she had been hanging out in the kitchen  
8 with, if she could get a ride home, but the woman of the house had already been drinking as well,  
9 so they decided that (b) (6) would just stay overnight in the guestroom.

10 Q. And did she tell you what happened after that?

11 A. (b) (6) said that she fell asleep, fully clothed, as soon as her head hit the pillow, which  
12 was unusual for her; that she was – she shared with me that she had some kind of a sensual  
13 dream and then was woken up by a bright light and loud, woman's voice basically saying, "What  
14 are you doing?" kind of a think. And then she said she had a man laying kind of on her, with his  
15 hand down her pants.

16 (b) (6) – the woman of the house told (b) (6) to get out, so (b) (6) got up, and left the house.  
17 She didn't know where she was. She'd said that she'd proceeded to walk around; encountered  
18 further down the street another group of Americans who were just hanging out outside. They  
19 told her where she was, so was able to call a friend to get a ride.

20 And then (b) (6) got a ride. I'm not sure if she went back to lodging on base or if she went  
21 home, but when I saw her at 9:00 in the morning, she looked she had changed clothes.

22 Q. And what was her demeanor when you first saw her?

1 A. She was really shaken up. Her eyes were very puffy, like she had been crying. She  
2 wasn't her normal, bubbly self. (b) is usually a very energetic, very engaging woman. And  
3 that morning, she appeared that she had had something traumatic happen to her the evening  
4 prior, and she looked she had had a tough time.

5 Q. And you mentioned earlier that you ran some tests?

6 A. Yes. (b) – we talked about the standard protocol; did she want things reported; did  
7 she want an exam. You mentioned, earlier, an examination. Really this was just three of us  
8 talking in my office about what had happened the night before; how (b) didn't – she declined a  
9 physical exam. She just wanted blood testing to see if she had, in fact, been drugged.

10 Q. Do you remember what you tested for?

11 A. Well, I ran a standard drug screen, which tests for a variety of narcotics, illegal  
12 substances, cocaine, heroin, prescription medicines like Benzodiazepines, Demurral, morphine.  
13 And then I also went ahead and order a GHB screen, and a Rohyponol screen.

14 Q. And what were the results of those tests?

15 A. All drug testing came back negative.

16 Q. Did (b) (6) ever tell you about reporting? Did she tell you to up-channel it  
17 through the chain of command?

18 A. No, she did not want anything reported. She did not want anything documented.  
19 There was some concern on her part – she was worried about what would happen to her because  
20 she was new to the military, as being a contractor working on a military base. I reassured her  
21 that I would keep things confidential and that I did not think there would be any negative  
22 repercussions, ever, from being a victim of an assault.

1 ATC1: One second, Your Honor?

2 MJ: [No response.]

3 [The trial counsel conferred.]

4 ATC1: No further questions.

5 CIV DC: One moment, please, Your Honor?

6 MJ: You may.

7 [The civilian defense counsel and the defense expert consultant conferred.]

8 **CROSS-EXAMINATION**

9 **Questions by the civilian defense counsel:**

10 Q. Major O'Keefe, did she tell you that she'd only had – you described her demeanor  
11 and puffy eyes, but did she tell you that she had only had one or two hours of sleep that whole  
12 night?

13 A. That was my assumption, that she had less sleep than normal. I couldn't tell you the –  
14 if it was one to two hours. We didn't talk about a specific time.

15 Q. So she didn't tell you that she had only had one or two hours of sleep that night?

16 A. Well, figuring, actually – okay, no, she did not specifically say one to two hours of  
17 sleep.

18 Q. Right. And did she tell you she drank a beer after meeting five guys in town after she  
19 left the house?

20 A. No. She did mention that she had consumed alcohol, but she didn't say anything  
21 about meeting other gentlemen.

22 Q. And drinking a beer?

1 A. Ah, what she had told me was that she had wine.

2 Q. Okay, she didn't tell you that she drank beer that night, after she left the house?

3 A. Not that I recall.

4 CIV DC: No further questions, Your Honor.

5 MJ: Based on that, government?

6 ATC1: No further questions, Your Honor.

7 MJ: Members, do you have any questions?

8 And we have a question from Colonel Calta.

9 Once you've finished writing it out, just indicate. The bailiff will then provide it to the  
10 trial counsel.

11 [The member complied. The bailiff complied.]

12 [The question was reviewed by counsel and provided to the military judge.]

13 MJ: This will be Appellate Exhibit XVI.

14 **EXAMINATION BY THE COURT**

15 **Question by Colonel Calta (asked by the military judge):**

16 Q. Did the blood work reveal her BAC at the time?

17 A. There was no BAC done.

18 MJ: Do the members have any additional questions of this witness?

19 Negative response from the members.

20 Based on that, are there any follow up questions, government?

21 ATC1: No follow up questions, Your Honor.

22 MJ: Okay.

1 CIV DC: No, Sir.

2 MJ: Subject to recall?

3 ATC1: Yes, Your Honor.

4 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
5 testimony or your knowledge of this case with anyone than counsel, the accused or this court.  
6 You may step down.

7 WIT: Thank you, Sir.

8 [The witness left the courtroom.]

9 MJ: Government, are we at a reasonable breaking point or is there more you would like  
10 to have accomplished today?

11 TC: I'm certain there is more I would like to have accomplished today, but this would be  
12 an appropriate time to break.

13 MJ: All right.

14 Members, my intention is to recess for today, and you'll be in place, ready to go the  
15 record at 8:30 tomorrow morning.

16 As I indicated to you yesterday [sic], after *voir dire*, this is not deliberations; this is not  
17 the time for you to begin discussing the case. You are not to attempt to go find scenes that were  
18 either described or areas that were described in the testimony. You're not authorized to go out  
19 and do your own investigation or search the Internet or anything along those lines. If, for some  
20 reason, you accidentally come upon something, then you must stop, at that point, whatever you  
21 are doing, and bring it to my attention first thing tomorrow.

22 Members, do you have any questions before I release you for the day?

1 MJ: All right, that is a negative response.

2 We are in recess.

3 (The court-martial recessed at 1638 hours, 29 October 2011.)

4 **END OF PAGE**



1 (The court-martial was called to order at 0837 hours, 30 October 2011.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government, you may continue.

6 ATC: Your Honor, at this time the government calls Special Agent (b) (7) (c) to  
7 the stand.

8 [The witness left the courtroom and returned with the witness.]

9 **SPECIAL AGENT (b) (7) (c)**

10 was called as a witness for the prosecution, was sworn, and testified as follows:

11 **DIRECT EXAMINATION**

12 **Questions by the assistant trial counsel (Captain Beliles):**

13 Q. Would you please state your name and duty title for the record?

14 A. My name is (b) (7) (c). I'm a Special Agent with the Air Force Office of  
15 Special Investigations.

16 Q. And how do you spell (b) (7) (c) for us?

17 A. (b) (7) (c).

18 Q. How long have you been here at Aviano Air Base?

19 A. I've been here since last September – September of 2011:

20 Q. And how long have you been on active duty in the Air Force?

21 A. Since 2001.

22 Q. Do you know the accused in this case, Lieutenant Colonel James Wilkerson?

1 A. I do.

2 Q. Do you see him here in the courtroom today?

3 A. I do.

4 Q. Where is he sitting?

5 A. He is sitting right here. [Pointing to the accused.]

6 ATC: Let the record reflect correct identification of the accused.

7 Q. Let me draw – take your attention to 19 April 2012. Do you remember conducting a  
8 subject interview of the accused on that date?

9 A. Yes, I do.

10 Q. Do you remember how you brought him in?

11 A. We called over and had him brought over to our office, like we usually do.

12 Q. By whom?

13 A. By Lieutenant Colonel – it escapes my mind right now.

14 Q. Okay. Thank you. Did you read him his rights?

15 A. I did. Yes, I did.

16 Q. And the entire interview was actually recorded on a video?

17 A. Yes, it was.

18 Q. And did he elect to make a statement?

19 A. Yes, he did.

20 Q. He waived his rights?

21 A. Yes, he did.

22 Q. In that interview – it lasted for a couple of hours, correct?

1 A. Correct.

2 Q. And there are two other agents at different times in that interview, correct?

3 A. Correct.

4 Q. Who are those people?

5 A. One is Special Agent (b) (7) (c) , and the other is Special Agent (b) (7)

6 Q. Special Agent (b) (7) where is he situated when you're looking – when you're  
7 watching the video, where is he situated?

8 A. To my left. He would be at the bottom right of the actual camera feed – video feed.

9 Q. Is he kind of the head in the bottom right corner?

10 A. Correct.

11 Q. The individual taking notes?

12 A. Correct. He's taking notes.

13 Q. And the Special Agent (b) (7) is he the individual in the ABUs that comes in at the  
14 end?

15 A. Yes, that's correct.

16 Q. Now, are you allowed to deceive or lie to subjects in subject interviews?

17 A. Yes, we are, as law enforcement officers.

18 Q. And might you do that?

19 A. The reason that we are allowed to use deceit is to make it easier for an accused to give  
20 a confession during our interview.

21 Q. So that's something you do from time to time, correct?

22 A. Yes, it is.

1 Q. In this interview with Lieutenant Wilkerson, did you make a number of negative  
2 comments about the alleged victim in this case?

3 A. Yes, we did.

4 Q. Did you make a lot of comments about “Maybe she’s done things like this before” or  
5 “She’s targeting you.” Do you remember making comments like that?

6 A. That’s correct. Yes.

7 Q. Do you have any reason to believe that any of that was true when you made those  
8 comments?

9 A. No, not at all.

10 Q. Have you ever had any reason to believe that that was true?

11 A. No. No, we haven’t.

12 Q. There are also points in the interview when either you or Special Agent (b)   
13 accused that you believed him. Do you remember those parts?

14 A. Yes, Sir.

15 Q. And you told him that you knew that he hadn’t sexually assaulted (b) (6) ; do you  
16 remember that part?

17 A. Yes, Sir.

18 Q. When you said those things, were they truthful?

19 A. No, they weren’t.

20 ATC: Thank you.

21 Your Honor, may I approach the witness?

22 MJ: You may.

1 ATC: I'm handing the witness what I've previously marked as Prosecution Exhibit 1 for  
2 Identification.

3 Q. Please take a look at that.

4 A. [The witness complied.]

5 Q. Do you recognize that document?

6 A. Yes, I do.

7 Q. What is that document?

8 A. This is an 1168 – a statement by the accused.

9 Q. And when did he write that statement?

10 A. On 19 April.

11 Q. Does he actually write it in the later part of the interview?

12 A. He does. He does.

13 Q. Is that your name on the front of it, swearing him in?

14 A. Yes, that's my name.

15 Q. And right here on the front page, what does it mean when you write your name there?

16 A. That's the person who actually advised the accused of his rights.

17 Q. And is this the entirety of his statement?

18 DC: And, Your Honor, at this time can I see a working copy of this?

19 ATC: Would you like a working copy as well?

20 MJ: Please

21 ATC: And a working copy has been provided to the defense as well as the court.

22 Thank you.

1 A. Yes, that's the entirety of the statement.

2 Q. And when he made that statement, it was sworn statement, Agent (b) (7) ?

3 A. Yes, it was.

4 ATC: I'm retrieving the exhibit from the witness.

5 Your Honor, at this time the government would like to move to admit Prosecution

6 Exhibit 1 for Identification into evidence.

7 DC: No objection.

8 MJ: Admitted.

9 ATC: I'm handing the original to the court reporter.

10 Q. And, Agent (b) (7) , you also mentioned the recording – the video recording. Do you  
11 generally always record subject interviews?

12 A. Yes, we do.

13 Q. Right. Correct.

14 ATC: Your Honor, may I approach the witness?

15 MJ: You may.

16 ATC: I'm handing the witness what I've marked as Prosecution Exhibit 2 for  
17 Identification.

18 Q. Do you recognize that DVD?

19 A. Yes, Sir, I do.

20 Q. How do you recognize it?

21 A. By my initials on the DVD of the interview that we conducted on 19 April.

22 Q. And have you reviewed that DVD and ensured that's what's on it?

1 A. I have, and it is.

2 ATC: Thank you. I'm retrieving the exhibit from the witness.

3 Your Honor, at this time I would move to admit this into evidence as Prosecution Exhibit

4 2.

5 DC: No objection.

6 MJ: It's admitted.

7 ATC: I'm handing it to the court reporter.

8 Your Honor, the government has no further questions at this time.

9 MJ: Defense?

10 DC: Thank you, Your Honor.

11 One moment, please?

12 MJ: [No response.]

13 [The defense counsel conferred.]

14 **CROSS-EXAMINATION**

15 **Questions by the defense counsel:**

16 Q. Agent (b) (7), when Colonel Wilkerson came to OSI, whoever came to get him or  
17 however he got there, he wasn't instructed on to tell him that he was the subject of an  
18 investigation or anything like that?

19 A. No. No, they weren't.

20 Q. So he wouldn't have known what he was coming for?

21 A. No.

22 Q. When he arrives at OSI, you take his phone from him?

1 A. Yes.

2 Q. What's the reason for that?

3 A. Usually, you try to – we will search people to make sure they have no weapons, but  
4 we'll also take cell phones so no distractions – they won't go off in the middle of our interview.

5 Q. During the interview, in the middle of the interview, you actually got from him his  
6 wife's phone number?

7 A. Yes, Sir.

8 Q. Okay, and so during the middle of the interview you called his wife to set up a  
9 meeting with her at the same time you were interviewing Colonel Wilkerson?

10 A. Our office did, yes, Sir.

11 Q. I apologize. So it was other agents who went – they went to Mrs. Wilkerson's  
12 residence?

13 A. Yes, Sir.

14 Q. Or the Wilkerson residence?

15 A. Yes, Sir.

16 Q. And that was at the same time that you were interviewing and Agent (b) and Agent  
17 (b) (7) were interviewing Lieutenant Colonel Wilkerson?

18 A. Yes, Sir.

19 Q. You were lead agent on the case as well, right?

20 A. Yes, Sir.

21 Q. Were there any photos taken of the inside by OSI of the Wilkerson residence?

22 A. No, there were not.



1 Q. And was there any evidence seized from the Wilkerson residence?

2 A. No, there was not.

3 Q. And going back to these deceptions, like you said, they're to try to get a confession  
4 from the person – the subject of the interview?

5 A. Correct.

6 DC: One moment, please, your honor?

7 MJ: [No response.]

8 [The defense counsel conferred.]

9 DC: Thank you, Your Honor. Nothing further.

10 MJ: Based on that?

11 ATC: The government has nothing further, Your Honor.

12 MJ: Members, do you have any questions of this witness?

13 Negative response from the members.

14 Subject to recall?

15 ATC: Yes, Your Honor.

16 MJ: Thank you very much for your testimony. While this case is ongoing, do not discuss  
17 your testimony or your knowledge of this case with anyone other than counsel, the accused, or  
18 this court. You may step down.

19 WIT: Thank you, Sir.

20 [The witness left the courtroom.]

21 ATC: And, Your Honor, the government would request a brief five-minute recess to set  
22 up the technology to play the statement.

1 MJ: Would you prefer for to be an in-place recess or a full recess?

2 [The trial counsel conferred.]

3 ATC: I'm being told that we prefer a full recess.

4 MJ: That's fine.

5 We'll be in recess.

6 (The court-martial recessed at 0847 hours, 30 October 2011.)

7 **END OF PAGE**

1 (The court-martial was called to order at 0857 hours, 30 October 2011.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government?

6 ATC: Your Honor, at this time we're going to play Prosecution Exhibit 2 for the  
7 members.

8 MJ: And before we proceed, just for situational awareness, how long do you expect this  
9 video to last?

10 ATC: I believe it's almost two hours long, Sir.

11 MJ: Have you worked out a good breaking point about halfway through the video?

12 ATC: Ah, I don't have a particular point, but we can stop at about an hour. There are  
13 some breaking points, Sir.

14 MJ: What we'll do is let's go ahead and press, and if for any reason either the trial or  
15 defense counsel or the members would like a break, recognizing that it looks to be a two-hour,  
16 just indicate to me. Otherwise, we'll continue to press through or I will *sua sponte* take a recess.

17 So we can go ahead and press then.

18 ATC: Sir, I forgot to mention, there are actually two separate files on Prosecution  
19 Exhibit 2, for the first and second half of the interview, so maybe that would be a good time, if  
20 not before then.

21 MJ: We'll play it by ear, depending on how people feel.

1 CIV DC: One other thing, Your Honor, just so the members know, would you instruct  
2 them that this will go back into the deliberation room so they, in terms of taking notes or  
3 whatever, they will also have the exhibit.

4 MJ: Thank you.

5 This has been admitted into evidence, and so you will have the ability to actually replay  
6 all or a portion of it as well. It shouldn't discourage you in taking notes or maybe even  
7 indicating certain times that you might want to revisit, but you will have this document back with  
8 you – or this video back with you.

9 Thank you, Mr. Spinner.

10 Government?

11 [Playing of Prosecution Exhibit 2 began.]

12 ACC: It's not every day that OSI calls you over.

13 SA (b) (7) (c) : I hear you, Sir.

14 ACC: It's not every day that they tell you that something is going on.

15 SA (b) (7) (c) : Yeah, and, ah, we want to talk to you about the reason why you're here,  
16 but before we get into that, hey, I'm just going jumping right in. At OSI, we have a unique  
17 ability to talk to a variety of people, you know. Sometimes they're good occasions; sometimes  
18 they're bad occasion, but how I look at it is I get to talk to people. And like today, I get to speak  
19 to a lieutenant colonel. So...

20 ACC: And the colonel is scared shitless (inaudible).

21 SA (b) (7) (c) : Well, like I said, we'll get into that, but can you tell me just a little bit  
22 about yourself, your career that you've had?

1 ACC: Yeah. I started out in a supply squadron. I wanted to be a pilot my whole life, and  
2 I made it. I went to pilot training. Got a B-52. Winded up being a B-52 pilot. I always wanted  
3 to be a fighter pilot, so I was able to transfer over. And then I was a pilot from that day on. So  
4 supply for four years; and B-52 for four years; and F-16s.

5 SA (b) (7) (c) : Awesome. That's quite the career.

6 Did you have command positions throughout the time?

7 ACC: Yeah. I was a squadron commander, so I consider myself extremely blessed and  
8 lucky and what I was able to do was ah, no one has probably ever been able to do in the air force  
9 before, to go from being a supply logistics guy to...

10 SA (b) (7) (c) : Yeah.

11 ACC: I know you're putting me at ease. Going to ah, do that and do B52's ah, that was  
12 lucky, you know, just to be able to finish pilot training and get that B52 training.

13 (b) (7) (c) Uh-huh.

14 ACC: And now here I am, an F-16 pilot as a result of working my ass off my entire  
15 career. I've never been inside a room with four walls and...

16 SA (b) (7) (c) : Well, I'll tell you, to get where you're at, you know, it really says a lot  
17 about a person, obviously. A lot of officers come in and out of here, but don't make it to...  
18 because you've done 20 years, right, from February...

19 ACC: Yeah.

20 SA (b) (7) (c) : I believe so, and you've got a great career going, and not many people  
21 can say the same thing. I think yea, It takes a lot of luck, but it also takes a lot of skill and hard  
22 work you know for your career track and you know my career track, and I've only been at it for

1 11 years, so I'm kind of have half the time of you, but you know a lot of hard work definitely  
2 pays off with the right time getting where you need to be. You know that's great. And coming  
3 out here to Aviano, for us at OSI, it's not the easiest thing to do. As we go to every single base ,  
4 so the competition is really tight to get to this location, so...

5 ACC: ...I'd be fine.?

6 SA (b) (7) (c) : So yeah. Yeah, and my wife, she loves it we have a young boy, too, so  
7 we like to travel now, keeping the misses happy.

8 ACC: You know everything about me. Yeah, I do. I have a young child.

9 SA (b) (7) (c) : Okay. Yeah. And so I mean that's why – I know, growing up, right, a  
10 lot of people want to be a pilot like yourself, unfortunately it didn't work for me, but you know,  
11 like I said, just you achieving your dreams and then having your son who can look up after you,  
12 who achieved his dreams, man it's special. I hope I can get that. I spent ten years and I hope I  
13 can get that with my son too. Definitely.

14 I know you know you're a man who wants to understand why you're here, to kind of get  
15 to the business and I do, too.

16 So, what I'm going to tell you, though, is before I can get into the specific details of why  
17 you're here, we have to do what we do with everyone, and that is to advise you of your rights.  
18 But before I do that, I like to tell everyone because people may end up being startled once they  
19 hear those rights advisements.

20 Ah, a little bit about OSI, I'm sure you're familiar with us but, what we do is talk to  
21 people. We you know incorporate what they say into a report where your commands get to take  
22 a look at it. I don't know if you've come across a couple in your days, but you know it's all we

1 do is find the facts and put it together for command to take a look at. So when someone comes  
2 across and presents an allegation to us against somebody, we try to take that time to talk to that  
3 person and hear their side of the story because we want to hear what you have to say, and we  
4 want the command to hear what you have to say. Sometimes you know they get startled or  
5 whatever and they don't quite want to talk to us, so when I advise you of your rights, I have to  
6 read off of this card, okay? And at the end I'm going to ask you three questions that are  
7 basically going to be your yes or no questions. The last question I'll ask is if you want an  
8 attorney, but I want to make that clear now, this isn't the only opportunity you have for an  
9 attorney, okay. You can...

10 ACC: No, I'm going to answer your questions.

11 SA (b) (7) (c) : Okay.

12 At any time throughout the interview you can have an attorney present, so I'll get right to  
13 it. I am Special Agent (b) (7) (c) , a member of the Air Force Office of Special  
14 Investigations. I'm investigating the alleged offense of Article 120, aggravated sexual assault of  
15 which you are suspected. I advise you that under the provisions of Article 31, UCMJ, you have  
16 the right to remain silent, that is to say nothing at all. Any statement you make, oral or written,  
17 can be used as evidence against you in a trial by court-martial or another judicial or  
18 administrative proceedings. You have the right to consult a lawyer and to have a lawyer present  
19 during this interview. You have the right to military legal counsel free of charge. In addition to  
20 military counsel, you are entitled to civilian counsel of your own choosing, at your own expense.  
21 You may request a lawyer at any time during this interview. If you decide to answer questions,  
22 you may stop the questioning at any time.

1 SA (b) (7) (c) : Do you understand your rights?

2 ACC: I do.

3 SA (b) (7) (c) : Yes or no?

4 ACC: Yes.

5 SA (b) (7) (c) : Okay. Do you want a lawyer?

6 ACC: Not, at this – no.

7 SA (b) (7) (c) : And are you willing to answer questions?

8 ACC: Yes.

9 SA (b) (7) (c) : Okay. Again you know, when we pull the card out, obviously it's  
10 startling language and...

11 ACC: Sexual assault?

12 SA (b) (7) (c) : Exactly. Where this happened – where this came from was the event on  
13 March 23<sup>rd</sup>. There was a Seether concert.

14 ACC: Uh-huh.

15 SA (b) (7) (c) : What we'd like to do, obviously, when there's an allegation, we don't  
16 want to tell you what happened. We want you to tell us kind of the events of that night, so can  
17 you tell us if you remember seeing the concert?

18 ACC: Absolutely.

19 SA (b) (7) (c) : Can you take us through the Seether concert, all the way through to the  
20 next day? Tell us what happened, who you were with, all of the details, and I just want to make  
21 this clear: We're not in any hurry, we're not in any rush. We want to make sure we get all the



1 information correct. So we'll be here as long as it takes to make sure that the information comes  
2 out.

3 ACC: It was not an original plan to go to the Seether concert. The Vice Wing  
4 Commander wanted to go. My wife – I believe we were watching some children that evening –  
5 the Pone children. They were coming over anyway. Why do I know this? Because I remember  
6 them being there, when I got back with the group, and I'll get there.

7 SA (b) (7) (c) : Okay.

8 ACC: Nothing that comes out of the concert, at all. I stayed with the two guys – last  
9 name Major Lowe – Al Lowe, and Major Goldsberry went too.

10 We were waiting on Colonel Ostovich to get a ride home because we had rode with him  
11 there. And I had not had anything to drink. Went to the Club to wait on him. He was with the  
12 event there. Obviously, when I went to the Club and had a drink – one drink, perhaps a half of  
13 another one. Why “perhaps”? Because Major Goldsberry had bought one. Had some drinks  
14 there, just no more, I'm positive no more than two because I told my wife that I was coming  
15 home.

16 SA (b) (7) (c) : Uh-huh.

17 ACC: And she wanted help with the children, and I recall that.

18 During that Colonel Ostovich showed up. There were some other females there that  
19 were friends of Major Goldsberry, and also they seemed to know Colonel Ostovich, when he  
20 showed up. They wanted to go wherever we were going.

21 SA (b) (7) (c) : Okay.

1 ACC: I knew for a fact my wife didn't want them at home, and I knew I was going home,  
2 so I asked for a ride home.

3 SA (b) (7) (c) : Uh-huh

4 ACC: I didn't have a car there; I'm a mile and a half south of the base. Well, they get out  
5 and they all pile into our house. My wife is not pleased that they're there. And there are kids  
6 there, and so I popped some bottles of wine and that sort of thing, and gave my wife some and  
7 gave them some – the females and of course, Colonel Ostovich, Major Lowe and Major  
8 Goldsberry had a few glasses there.

9 People start splitting throughout the house, not getting too out of hand by any means.  
10 And my wife makes it clear that she wants everyone gone, so I ask Major Goldsberry and Major  
11 Lowe to help me get them out of there...

12 SA (b) (7) (c) : Uh-huh.

13 ACC: ...repeatedly, and they did.

14 And so my wife ends up giving one of the ladies a ride to the base gate. I don't know  
15 who that was, what her name is or anything like that. And another lady stayed behind. I don't  
16 know where she – I wasn't talking to her or anything like that.

17 SA (b) (7) (c) : Okay.

18 ACC: I know They were quite inebriated, but no big deal. Colonel Ostovich was still  
19 there and with another... med group person too. My friends, I was talking to them. And the  
20 night progresses to it's time for the kids to go to bed. I go in and read the two Pone children a  
21 little bit of a story and talk to them. Another one of the Med Group ladies joins. Nothing weird

1 at all. I talk to them. She talks to them and I leave – we leave. Had some wine. And then I go  
2 to bed. My wife asked me to go to bed and I go to bed.

3 ACC: However, Colonel Ostovich – I’m sorry, let me back up – Major Goldsberry and  
4 Major Lowe left as some point. I still recall the events of this evening. I was not too inebriated  
5 by any means, but I’m at home, so I had some drinks at home.

6 SA (b) (7) (c) : Right. Right.

7 ACC: I don’t drink to excess or any craziness, and I’m allowed to do crazy stuff at  
8 times.

9 SA (b) (7) (c) : We all do.

10 ACC: And I’m at home. I’m not gonna do anything at my home.

11 SA (b) (7) (c) : So, right.

12 ACC: Then Goldsberry and Lowe leave. Colonel Ostovich is still there with one of the  
13 ladies. And at some point, I believe they leave and my wife tells me – this is before I go to bed –  
14 that one of the ladies is too drunk and she’s walking around the house and is going to stay.  
15 Okay, so they stay or she stays. We’ve got sort of an antique downstairs. We’ve got a separate  
16 cantina downstairs.

17 I went to bed. I woke up the next morning, took my son to baseball, and called Major  
18 Goldsberry, of course. He’s a baseball pitcher, so I wanted to practice baseball. I asked my wife  
19 what happened to the girl that was sleeping downstairs. She said the girl had been up and down  
20 up and down throughout the night...

21 SA (b) (7) (c) : Uh-huh.

1 ACC: ...and she asked her to leave. Unfortunately – I know this for a fact – she did not  
2 have her shoes. My wife felt bad about that, and told me that she went driving around for her,  
3 that she had previously driven the other girl to the base gate. She did not find the girl; no idea  
4 where she ended up. I imagine that's what this is about. We felt awful about it. She came – I  
5 don't know, I was in bed; I swear to God right now.

6 SA (b) (7) (c) : Uh-huh.

7 ACC: She came back and the events that she's recapping, and I went to play baseball the  
8 next morning. Then that morning, I played baseball until about – and I felt like crap – I can  
9 guarantee that. I don't know why, but I felt horrible from, I guess, drinking. I didn't feel good at  
10 all.

11 I started to feel better. Unfortunately, that night, also, another squadron commander  
12 around base was having a problem, and I went to see him. I imagine this will impact him a little  
13 bit. He was in the hotel, and he was drunk, and his wife had put him there based on some other  
14 things. I wanted to console him...

15 SA (b) (7) (c) : Uh-huh.

16 ACC: ...discuss, talk. There was some concern about them. That relating the story to  
17 me as the IG– my wife was worried about that – wanted to make sure we were covered, if you  
18 will, that I didn't have any reporting responsibility, but she wasn't there, that I wasn't there, and  
19 I was helping him as a friend.

20 SA (b) (7) (c) : Okay.

21 ACC: Colonel Ostovich came over to the house during that, but, again, just a social call.  
22 We're friends.

1 SA (b) (7) (c) : Uh-huh.

2 ACC: That's it. There was a lot of boozing going on in my house.

3 SA (b) (7) (c) : Right.

4 ACC: The girls that were with us, I've got to assume it's one of them if not the one that  
5 stayed, and I imagine if I got booted out, I'd be pretty pissed off too.

6 SA (b) (7) (c) : Uh-huh.

7 ACC: But I didn't think this would happen, but, ah, the one that stayed – I don't know  
8 what time..

9 SA (b) (7) (c) : What time she left?

10 ACC: None; no idea.

11 SA (b) (7) (c) : Okay. Did you say your wife...

12 ACC: I know for a fact, I was asleep.

13 SA (b) (7) (c) : Your wife took her. How did that go again?

14 ACC: This is, and I'll bring my wife in, and my wife said that she was up and down up  
15 and down, talking on the phone in the second floor of the home, which is where the other  
16 children are staying.

17 SA (b) (7) (c) : Okay.

18 ACC: And she was very worried about that – the other two kids being there. Apparently,  
19 the girl was talking loudly, and that was that.

20 SA (b) (7) (c) : Okay.

21 ACC: To my knowledge, she got - I don't know that she got feisty with her and hit her or  
22 anything like that, but she said, "It's time for you to go."

1 SA (b) (7) (c) : Right.

2 ACC: I know for a fact she offered her a ride. Let me back up here.

3 SA (b) (7) (c) : Yeah.

4 ACC: I know that she offered – she told me that she offered the girl a ride to the base.

5 And I believe that because she drove the previous girl to the base...

6 SA (b) (7) (c) : Uh-huh.

7 ACC: ...who was staying on the base.

8 SA (b) (7) (c) : Okay. Do you recall the names of everyone from the Med Group, people  
9 other than your friends?

10 ACC: I know One's name was Dawn.

11 SA (b) (7) (c) : Okay.

12 ACC: I believe that was the psychologist. The one that was with Colonel Ostovich, I do  
13 not know her name. And I believe the other one's name was (b) (7) (c) . I do not know their last  
14 names.

15 SA (b) (7) (c) : Okay. Which is fine. You just met them, right?

16 ACC: Let me make this very, very clear.

17 SA (b) (7) (c) : Yes?

18 ACC: I know I did not want these women to come to my house. I know that I did not  
19 want these women to come to my house. I know my wife did not. And I know I tried to get  
20 them away.

21 SA (b) (7) (c) : Right

22 Now, how did everyone get to your house?

1 ACC: All in Colonel Ostovich's car.

2 I did not know these girls before.

3 SA (b) (7) (c) : Okay. How did the Majors leave the party? You said Major Goldsberry  
4 and Major Lowe?

5 ACC: Yeah, that's a great question. They had parked – okay, thank you. They showed  
6 up at my house before the Seether concert. Colonel Ostovich came over as well, so their car was  
7 there.

8 SA (b) (7) (c) : Uh-huh.

9 ACC: One of them was – had not consumed enough alcohol to drive. I don't remember  
10 which one of them. I believe it was Major Lowe. And he drove home. He and Major  
11 Goldsberry, they left, I'm positive. I was still awake, astute, aware at that time. I can't tell you  
12 what time they left. I don't know.

13 SA (b) (7) (c) : Okay.

14 ACC: I can't tell you what time Colonel Ostovich left. I know I went to bed shortly after  
15 he left...

16 SA (b) (7) (c) : Uh-huh.

17 ACC: ...if not as he was leaving.

18 (b) (7) (c) : Okay.

19 ACC: Obviously, I'm not going to tell you I wasn't drinking, so I'm pretty sure I recall  
20 the events pretty well. But I'm going to tell you right now that I could be incorrect, but I'm  
21 telling you, there was no sexual assault in - on my mind towards any...

22 SA (b) (7) (c) : Okay.

1 ACC: ...with these girls.

2 SA (b) (7) (c) : Well, you know, first off, it's tough when we bring somebody in and ask  
3 them about what happened a month ago. So it's natural that we don't go through our lives  
4 expecting a month from now I'm going to be asked what exactly happened. So before we go any  
5 further you know if there is something you recall or something that was left out, it's not a big  
6 issue because we understand it's hard – it's a gap, and there's probably a million things going  
7 through your head right now, so we always are in the atmosphere that we want to slowly slow  
8 things down so you can catch your breath and help – we can help you by asking questions to  
9 piece together what...

10 ACC: Ask me.

11 SA (b) (7) (c) : Yeah. Before I get into that though, ah, one of the piece – what we're  
12 going to do here in OSI because we take these allegations seriously, you know if this allegation  
13 was made on an Airman Basic or if it's an allegation made on a four-star General, we treat these  
14 things the same because they do deserve due diligence, so you know we will talk to everyone  
15 involved and figure out what's going on.

16 ACC: I'll bring my wife right now.

17 SA (b) (7) (c) : Uh-huh. Uh-huh.

18 ACC: I mean, apparently, you figured out who I am and what I am, I'll bring in whoever  
19 the hell you want me to bring.

20 SA (b) (7) (c) : Okay, and if that's what it takes, you know, cooperation on your part  
21 really shows a lot about what's going on.

22 ACC: All right. Whatever you need.



1 SA (b) (7) (c) : Okay.

2 ACC: This is an unknown for me, so...

3 SA (b) (7) (c) : That's alright. The biggest thing I think we have right now is a disparity  
4 of events, of what happened. So if I were to tell you that the allegation was that you, at some  
5 point in the night, wound up in the bed with the remaining female. Would that – is that  
6 surprising to you?

7 ACC: Yeah.

8 SA (b) (7) (c) : Why would someone – why do you think someone would say that?

9 ACC: I don't have a clue.

10 SA (b) (7) (c) : Yeah. Did you ever – you never met these people before, right?

11 ACC: Yeah.

12 SA (b) (7) (c) : The med group people?

13 ACC: So it wouldn't be logical for her to make something up about me.

14 SA (b) (7) (c) : Uh-huh.

15 ACC: I agree.

16 SA (b) (7) (c) : Okay. I guess – has anyone talked to you after that night – after that  
17 night?

18 ACC: Yeah, Colonel Ostovich.

19 SA (b) (7) (c) : What happened?

20 ACC: We chatted about that night, and I said you know Beth was pretty upset that the  
21 girl had stayed behind.

22 SA (b) (7) (c) : Uh-huh.

1 ACC: And I know that the girl left without her shoes. I feel pretty bad about that. She  
2 told me that she went to look for her in the car...

3 SA (b) (7) (c) : Uh-huh.

4 ACC: ...and did not find her. That's what I know.

5 SA (b) (7) (c) : Okay. What was Ostovich – what was he saying? You guys had this  
6 conversation, did he say anything that sticks out in your mind right now?

7 ACC: No.

8 SA (b) (7) (c) : It was like “Ah, that's a shame or I don't know”?

9 ACC: Yeah. I mean he was more on the concern of Beth you know. You know she took  
10 the one to the base, and I know that she probably tried to take the other one to the base. What  
11 happened there?

12 SA (b) (7) (c) : Yeah. In the morning, when your wife, Beth, told the person who stayed  
13 behind to leave the house, did she say anything about why one would just leave abruptly, leaving  
14 a couple of things behind in the house?

15 ACC: Yes, she, my wife, informed me that the woman had been up and down a few  
16 times – (b) (c) – that's her name – up and down a few times and that she had caught her walking  
17 around, and she felt uncomfortable and told her to leave. Now, I know that she told me that she  
18 went to look for her shoes. I know that for a fact.

19 SA B(b) (7) (c): All right.

20 ACC: I remember the shoes coming up that evening – you know “Where are her shoes?”  
21 Let me back up; there was an attempt for that girl to either get a ride home with Colonel  
22 Ostovich or what. There was an attempt for her to get a ride home with somebody, and I don't

1 know why she decided to stay. For the life of me, I don't know why they were hell-bent on  
2 wanting to come to my house.

3 SA (b) (7) (c) : Uh-huh.

4 ACC: You know I think they had a – no, I don't think they had a conspiracy agreement  
5 at all. I'm not saying that; I'm not alleging that at all. What I am saying is that they were  
6 definitely interested in – Colonel Ostovich is single, and they were very interested in him. They  
7 were very interested in going wherever we were going. I'm positive of that. Because I kept  
8 saying, "we'll meet you wherever you guys are going." I had no intention of going out. I had no  
9 intention of doing anything that evening...

10 SA (b) (7) (c) : Uh-huh.

11 ACC: ...except for helping my wife out.

12 SA (b) (7) (c) : Yeah. Your intention was trying to get home?

13 ACC: Yeah.

14 SA (b) (7) (c) : And then everyone kind of piles out of the car once you get there.

15 You know we bring you in here, obviously, you know a man of your status and stature.  
16 We don't –normally, and I speak for myself, I'm sure (b) feels the same way. You know we're  
17 not here talking to you like you are this evil, you know, multi-serial rapist, okay? I want to at  
18 least calm you down about that, all right? We know and we understand you got to where you are  
19 now by making a lot of correct, right decisions a man of law and integrity, okay? So we know  
20 that if something did happen, by no means was it a planned event. If anything, this is just  
21 something that might have just occurred, okay? The problem we're having is that the allegation

1 that's come out, okay, hasn't isolated itself to just you and her. Okay, she said that there's a  
2 third party that witnessed this event, which kind of changes things a little bit.

3 ACC: Who was the third party?

4 SA (b) (7) (c) : Okay?

5 ACC: I – okay.

6 SA (b) (7) (c) : So the tale of events...

7 ACC: If there's a third party; if there's something here that I don't know about, then...

8 SA (b) (7) (c) : Maybe you can help me out. Can you explain a little bit about the guest  
9 bedroom or wherever she was staying?

10 ACC: Yes, the cantina. It's a whole separate – alone...

11 SA B(b) (7) (c): Okay. Separate cantina; a separate area of the house?

12 ACC: I'll take you there and show you. It's basically the basement of our house.

13 SA (b) (7) (c) : Okay. So, is just like one open floor space?

14 ACC: Yeah. Well, no, it's – there's one area that's an open area. There's a laundry  
15 room and what we had as a playroom with two beds.

16 SA (b) (7) (c) : Okay. Is it like a – actually the bed area, is the bed in like a mini-room?

17 ACC: Yeah.

18 SA (b) (7) (c) : It's isolated off? Okay, because you know, and again, the allegation is  
19 that your wife walked into the room threw the lights on, and saw you two in the bed together, not  
20 having sex, okay?

21 ACC: I was asleep. To number one, a hundred percent, I acknowledge SA, memory,  
22 recollection...

1 SA (b) (7) (c) : Uh-huh.

2 ACC: ...one hundred percent. I know for a fact I went to bed, alone, in my bed upstairs.

3 SA (b) (7) (c) : Okay.

4 ACC: You can bring my wife here right now; take her into a separate room. I don't care.

5 SA (b) (7) (c) : Uh-huh. Well, right now, we'll just – talk to you right now, and then if  
6 we need, we'll talk to your wife, we'll accomplish that, but obviously, this is a big opportunity  
7 for us to talk to you because, again, I keep saying this, a man of your status draws a lot of  
8 attention with this type of allegation.

9 ACC: You think?

10 SA (b) (7) (c) Yeah; no, we know. So this is where we have the opportunity to talk to  
11 you on a one-to-one basis in this little room. But, again, I'd like to share some experiences with  
12 a lot of people that we talk to, is they so – people get confined when we're talking to them in this  
13 room, that the focus is just on the interaction between me and you and me and you, and they  
14 forget the big picture of what's going to happen and who's going to look at this.

15 ACC: I'm already thinking about it.

16 SA B(b) (7) (c) Uh-huh. So...

17 ACC: Are you sure?

18 SA (b) (7) (c) Yeah.

19 ACC: I guess I'm fired.

20 SA (b) (7) (c) : Not necessarily. It depends on what happens, right?

21 ACC: To live through an allegation like this, even if you're one hundred percent free,  
22 which I believe in my heart and head I am.

1 SA (b) (7) (c) : Uh-huh. See, the problem that we have is we have the person who made  
2 the allegation – made her statement, obviously. All right, and we talked to some other people  
3 who corroborate, to a certain extent, of what’s going on. Okay? And, you know we’re going to  
4 talk to your wife, and the issue we have is you know the wife is going to say the thing that the  
5 victim says, then we’re going to have a problem. You know what I mean? So the situation...

6 ACC: The victim being (b) (7) (c) ?

7 SA (b) (7) (c) : Correct.

8 ACC: Not me?

9 SA (b) (7) (c) : Correct.

10 ACC: Look. I am not hiding anything. If you want to go to my wife right now, I’ll give  
11 you where she is. I’ll tell you right now, she’s at a thing called “Thirsty Thursday.” It’s  
12 something all the girls do, so if you need to get her, she’s having *prosecco*. I need to pick up my  
13 son, but I will avail my wife to you in whatever forum, and I assume you’re going to tell me that  
14 I...

15 SA (b) (7) (c) : Well, at the start of this...

16 ACC: Look, I’m not going to go tell my wife that I assume you’re going to... I don’t  
17 know how this rolls, guys...

18 SA (b) (7) (c) : Uh-huh.

19 ACC: ...alright. “Hey, thanks for answering the questions. You go home and hug your  
20 wife tonight and tell her that you’re in a shit ton of trouble.” And, “Oh, by the way, go lie for  
21 you.” If she’s not going to lie for me if – I think she’s going to tell you what had happened that

1 night. I don't think there's any leftover blanks. I know I poured my wife maybe two glasses of  
2 wine over the entire night. I know she was sober enough to drive people to the gate.

3 SA (b) (7) (c) : Uh-huh. Well, I'll tell you what I'd like to do. Do you know your wife's  
4 cell number?

5 ACC: Yeah.

6 SA (b) (7) (c) Can you write it down for us or...

7 ACC: It's in my phone.

8 SA (b) (7) (c) : It's in your phone?

9 ACC: Yeah.

10 SA (b) (7) (c) : Okay.

11 ACC: 2895 is the last couple of digits.

12 SA (b) (7) (c) : Okay. Obviously, what we'd like to do is, of course, talk to her, but, of  
13 course, if we..

14 ACC: You got it. I...

15 SA (b) (7) (c) : ...can set it up and send someone out because it obviously makes sense,  
16 and look at it from our position, right? If we have this accusation and we're trying to figure out  
17 what's going on, and there's two people...

18 [Unknown person walked into the interview room.]

19 SA (b) (7) (c) : Oh, you got a call. You got a call.

20 SA (b) (7) (c) : Okay.

21 SA (b) (7) (c) All right.

22 SA (b) (7) (c) : Ah, it just makes sense that...

1 ACC: I assumed y'all tried to contact my wife already about this.

2 SA (b) (7) : Well, I mean we don't want to expose this to people that are unnecessary.

3 You know there's a lot you confessed that happened. You know the less people, the more  
4 contained we can keep this, the more contained we can keep this, the better. You know we're  
5 not in the business of just calling people at will to see if I can figure out what's going on.

6 SA (b) (7) (c) : Let me step out and figure what's going on..

7 ACC: Take her back – I mean call her. But, who knows about this?

8 SA (b) (7) : Well, I mean, obviously, one day into the investigation, there are people  
9 that we need to brief on both sides, so I'm sure you can get those out in your mind right now.

10 We'll step out real quick. Take your time.

11 (b) (7) (c) : Do you need a bottle of water or something?

12 ACC: Well, I'm – yeah.

13 SA (b) (7) (c) : I'll get you a bottle of water.

14 SA (b) (7) : We'll get you a bottle of water.

15 Just sit tight.

16 Sorry about that interruption.

17 Here you go.

18 ACC: Thanks.

19 ACC: I'm obviously sitting here, thinking about – I don't know what my wife would say  
20 - was corroborating and would tell me one thing, and supposedly be a witness...

21 SA (b) (7) (c) Uh-huh.

22 ACC: ...and do something totally different.



1 SA (b) (7) (c) : Well. Let's go to this way. When I was talking about earlier, you know  
2 your house, and your status, your stature, you know people know you on base, obviously. Okay,  
3 in our investigations you know something like this isn't the first time we've seen something like  
4 this cross the command. Every now and again you know situations flare up like this where  
5 people in a high status, in a high position, you know are targeted. Okay. They're set up and  
6 they're targeted in this position. So, with that said, again, assume this first time we've seen this  
7 type of scenario play out, okay? And, look, you know like I said, we have the experience; we've  
8 seen this before. We don't just write up a report, right? We have case – conversations. We talk  
9 to the command. We brief what's going on, okay.

10 ACC: I'm sure you've already – I'm a Colonel select.

11 SA (b) (7) (c) Uh-huh.

12 ACC: I'm working my ass off and...

13 SA (b) (7) (c) : Yeah. But if you...

14 You've put in the work, and we understand that, okay? Trust me, you know we want to  
15 help you out. We do.

16 ACC: I've never seen y'all.

17 SA (b) (7) (c) : Uh-huh.

18 ACC: Maybe you've seen me, but I try to do things the right way.

19 SA (b) (7) (c) : Right.

20 ACC: Well, that's what – you're a man; that's your job, right? You're the leader. You  
21 lead by example, and that's the job that you've been asked to do, and you've been doing that for  
22 the last 20 years. Okay, nothing has changed. Nothing has changed. But let me tell you – and

1 why I think this scenario has played out before – similar to this one. Okay, and I understand why  
2 there can be some reservations here. Commonly, what we see is people taking advantage of  
3 other people, it's human nature. Okay, we are, by human nature, just instinctively drawn to other  
4 people, and especially if they try to present themselves in that manner. Okay? That's the  
5 number one issue in marriages and that's number one issue to why we have, in America, one of  
6 the largest divorce rates alive, is because of the sexual traps that get put out there. Okay? It's  
7 instinctive. Me, as a man, I feel it all the time, right? I see a lady; she's attractive. You throw  
8 alcohol in the mix- things happen.

9 ACC: For the record, I did not view any of these, on record, as attractive. If anything,  
10 I...

11 SA (b) (7) (c) Uh-huh. Okay, attractiveness aside, when you throw alcohol in the mix,  
12 and these people have – they have a mission, right? They come with a mission. Their job is  
13 “I'm going to try and sleep with this guy or put him in a position where he's going to be  
14 compromised, and I can use that against him later on.” Okay, so they come in. They come in  
15 fully armed with a plan, alright? And your plan is just to have a good time in your house.  
16 Right? Who doesn't want to have a good time in their home? We bust...

17 ACC: I don't take the good time to that point.

18 SA (b) (7) (c) : Well, not to that – not to that extent – not what I mean.

19 SA (b) (7) : But that's not as you planned it.

20 SA (b) (7) (c) : Right. That's not the event that you planned. When I work – when we  
21 work our asses off – pardon my French – you know I like to go home you know and have a  
22 drink, relax with you know, friends or whatever, just decompress because you got to in this job.

1 And I can imagine with the pressure and the load that's on your shoulders, that's what you want  
2 to do, too. Right? You want to go to your home. You want to have a few drinks and just  
3 unwind, but it's your comfort zone, right? It's your house. It's your domain. Okay, and this is  
4 what these people do, all right? They target people in command structure and the events that  
5 transpired and what she told us and the things that happened afterwards, just the logical  
6 conclusion is that her plan was effective, and put you in a very tough spot, a very tough spot. In  
7 fact, this is the hardest thing we do. Like I told you, we don't think this was your intention. I  
8 don't think you ever planned it. You didn't want to be a part of it. I think something happened.

9 ACC: A hundred million thousand fucking percent...

10 SA (b) (7) (c) : Yeah.

11 ACC: ... did not want to be – I wanted to say – and my wife, I know for a fact that night,  
12 because she was pissed off at me the next day...

13 SA (b) (7) (c) : Uh-huh.

14 ACC: ...for bringing them home – pissed off at me, and that's why I got my son. Well  
15 we have a good relationship. I'm not trying to... But I never will – I did not I wanted to go  
16 home to her. She needed my help with the –you don't know these children but their father was a  
17 fighter pilot and decapitated a year ago.

18 SA (b) (7) (c) Yeah, down south or just south of here. I remember. I had heard that as  
19 well.

20 ACC: You know, I took them with us. Sorry, I imagine y'all see this a lot.

21 SA (b) (7) (c) : Yes. We see a lot of stuff. We see a lot of things happen, okay? But we  
22 also see that people are afraid to come to forward and say something – because they're just, quite

1 frankly, they're afraid. They don't know. We've seen a lot of things, okay, and when, at the end  
2 of the day, you know the light will be revealed of – what actually happened, okay, what we're  
3 concerned about – what I'm also concerned about when I talk to somebody, is that they leave  
4 things on the table and they don't leave anything out. Okay, so, let me put it this way: I'm a  
5 visual guy, that's just me. I'm the type of guy that I am. If I draw something – if I draw and  
6 then if I just use dots, okay? I know this is a very basic illustration. Okay, if I draw dots like  
7 that, you can interpret that to be a square.

8 ACC: Connect the dots.

9 SA (b) (7) (c) : Right, you can connect the dots and it's a square. Right? What about  
10 these dots by themselves, right, and they're just you know whatever. We've got these various  
11 dots, you know just one here, and that's nothing, right?

12 ACC: It's just a bunch of dots.

13 SA (b) (7) (c) : It doesn't even make sense. Right? But when you have the dots and they  
14 look like a box, you can see the picture. The picture comes into place here. Now, if this event  
15 occurred, and this happened where this person, right? (b) (7) (c) ? If she sets you up and tries to you  
16 know just tries to sleep – she tries to sleep with you, right, and no one is involved, no one else;  
17 it's just you and her, you know no one really ever sees in dots. Okay, but when we start to bring  
18 other people into play and other scenarios into play, like this skedaddling out of the house,  
19 leaving items behind, talking to friends throughout the night. They're all corroborating what  
20 she's saying, so it's not a single dot anymore. Now we're getting a box, okay? And when we  
21 present the box, what we want to make sure is everybody is on the same page, right, especially

1 because they're going to look at you as your commander, the lieutenant colonel/colonel select,  
2 does this man, right, have the integrity to say what happened.

3 SA (b) (7) (c) : Now I'm not say – now before you say – I know you're going to refute  
4 that. Before I say that, just remember, okay, I don't think this was the plan, right? No one said  
5 sex occurred, right? Like I say...

6 ACC: I wasn't ...

7 SA (b) (7) (c) : Go ahead.

8 ACC: Wait a minute; I wasn't...

9 SA (b) (7) (c) : Uh-huh.

10 ACC: ...in my bed. To my knowledge, to my recollection, my feeling, my belief, my  
11 heart, I wasn't there. I understand that if you want to bring whomever in and complete the box,  
12 I want to hear it.

13 SA (b) (7) (c) : Uh-huh.

14 ACC: I'm sure her friends were there. I'm not going to say they weren't. My wife was  
15 there. I'm not going to say she wasn't. That would be the piece.

16 SA (b) (7) (c) : Uh-huh. I just, you know from our perspective, just looking at that and  
17 knowing what we know, you know it's hard because have "pieces," if you will, of the puzzle that  
18 you don't have, and that's the previous experience...

19 ACC: I understand.

20 SA (b) (7) (c) : ...of other cases where we've seen this type of thing – this type of thing  
21 play out, okay, where you take a person of high rank, high status, and we have this person here  
22 whose only goal is to put you through a lot of, for whatever reason, maybe you've never seen her

1 before, but maybe somehow, in passing, something occurred that she misconstrued to you or  
2 maybe she just gets off on seeing people with authority go down.

3 ACC: Have you talked to Lowe and Goldsberry at all, yet?

4 SA (b) (7) (c) : We talked to certain individuals, okay, and there are reasons why we  
5 can't tell you everyone we spoken to .

6 ACC: ...everyone in a flight suit. and he talked?

7 SA (b) (7) (c) : Who do you think we should talk to? Out of everyone that was there?

8 ACC: Well, I know my wife was there. As you said, if she said, "Yeah, that's exactly  
9 what happened," then I'm looking for an attorney, I guess. But her – I'd like to talk to the (b)  
10 person – girl – I'm sorry. I imagine the only other people you've talked to are people that were  
11 there.

12 SA (b) (7) (c) : Uh-huh. Uh-huh. Exactly what we do; talked to the people. Obviously  
13 the evening didn't just end, right? After the next morning, right? It continues on, to what's  
14 going...

15 ACC: Well, how did this take a month?

16 SA (b) (7) (c) : Uh-huh. Well, that's the thing, the nature of these types of cases where  
17 she doesn't know. You know the victim can wait on things, can sit on things. Maybe in this  
18 case because she's been planning this, she's waiting for the right time to bring this up you know,  
19 and use this for her advantage. But you know sometimes people do immediately, so you just  
20 never know.

1 SA (b) (7) (c) : Well, we've had ones that six months, eight months down the road have  
2 started. So you can imagine trying to walk people back through those details from six or eight  
3 months ago.

4 ACC: The only reason I remember that night so well, is it was the Seether concert, and  
5 this was an uncharacteristic event. It's not – I don't show up at my doorstep with four unknown  
6 people.

7 SA (b) (7) (c) : Uh-huh.

8 ACC: But that's not me.

9 SA (b) (7) (c) : That's kind of what we've been saying, right? All I was saying is that it  
10 doesn't add up to...

11 ACC: It doesn't add up to that.

12 SA (b) (7) (c) : ...to what you are, right?

13 ACC: It doesn't add up to that. Nothing in my – I'm sure you've already – knew my  
14 career. I'm sure you verified, to my knowledge, I haven't had a complaint against me.

15 SA (b) (7) (c) : Uh-huh.

16 SA (b) (7) (c) : Yeah, well, you don't get to this position...

17 SA (b) (7) (c) : Right.

18 SA (b) (7) (c) : ... by those types of things.

19 SA (b) (7) (c) : Which is – , well, and whenever we get something like this, obviously,  
20 we have to take a step back because we don't have – this doesn't happen every day, where we  
21 usually deal with an Airman in the dorms, so...

1 ACC: Yeah. I will get Goldsberry's number. I don't know what they would tell you –  
2 whether I gave them to you. I have not spoken to them other than, "That was a crazy night.  
3 Let's play baseball."

4 SA (b) (7) (c) : Uh-huh.

5 ACC: I probably told him that she left her shoes. We were – my wife and I did talk  
6 about that, and I'll tell you what we talked about. We were worried about the connotation of a  
7 woman being thrown out of the IG's house, leaving her shoes behind.

8 SA (b) (7) (c) : Uh-huh.

9 ACC: I don't care who you are, that just doesn't sound great.

10 SA (b) (7) (c) : Uh-huh.

11 ACC: We were worried about that, and I said that, but there's nothing here. I don't  
12 know what the worry is.

13 SA (b) (7) (c) : Uh-huh.

14 ACC: But we made efforts to get everyone home. I'm a million percent positive –  
15 everyone. I had no intention of doing anything that night other than going home to my family.  
16 And that's, to my knowledge, what I did, obviously with a crap ton of people in tow, and I was  
17 the first one through the door to try to talk to her.

18 SA (b) (7) (c) : Uh-huh.

19 ACC: You know, it was Friday night. We had plans to – for me to go to that concert and  
20 then come back and...

21 SA (b) (7) (c) : Uh-huh.



1 ACC: ...well, first, she was going to sit on the couch. She – that was – and our  
2 anniversary was after that, so it was before – you said it was what night?

3 SA (b) (7) (c) : The 23<sup>rd</sup> was the Seether concert.

4 ACC: Our anniversary is the 30<sup>th</sup>, so I know we had talked about trying to figure out  
5 what we wanted to do on our anniversary, so we were going to have wine and talk about that.

6 SA (b) (7) (c) : Uh-huh.

7 ACC: In case it matters, we went and had an anniversary meal all by ourselves at a place  
8 on the mountain.

9 SA (b) (7) (c) : Okay. All right. Ah, if you could, walk me through a little bit, again,  
10 the events. So...

11 ACC: I'd be happy to.

12 SA (b) (7) (c) : If you can try and remember times, and I don't mean to the second or the  
13 minute, just roughly approximations if you can. Can you remember any – what time you guys  
14 got back to your house?

15 ACC: At 10:00.

16 SA (b) (7) (c) : Ten.

17 ACC: Nine-thirty-ten. The concert – and here's why I know.

18 SA (b) (7) (c) : Okay.

19 ACC: I think the concert was supposed to start at 7:00 or 8:00, and it started later.

20 SA (b) (7) (c) : Okay.

21 ACC: I remember looking at my watch. I did not want to be there. I went. It was a  
22 good time, but I wanted – I swear, I'm a hundred percent sure I wanted – I kept looking at my

1 watch. I think the concert took an hour and a half. So it started at 8:00 and it ended at 9:20. It's  
2 almost an hour and a half. I remember looking at my watch – this watch. So it couldn't have  
3 been 9:00. It must have started at 8:00. I believe it started a touch late, as I recall.

4 SA (b) (7) (c) : Uh-huh.

5 ACC: You guys can tell me later if I'm right or wrong.

6 SA (b) (7) (c) : Yeah, it's roughly that.

7 ACC: I'm positive of that. I hadn't had – I take that back. I had a sip of Jeremiah Wheat  
8 at the office. An hour and a half, hour twenty goes by. The concert ends. We – he wants to take  
9 the Chief's Exec to meet the band, and we sit out there and wait for at least 20 minutes. We  
10 finally gave up, and we walked to the Club. We make the Club by about 10:00.

11 SA (b) (7) (c) : Uh-huh.

12 ACC: This is 8:00-9:20, that's right; make the Club by about 10:00. The officers' side  
13 isn't open; we go to the enlisted side, and feel uncomfortable, and have half a drink that  
14 Goldsberry gives me, and then one other. And in that process is when the group showed up and  
15 they, I'm positive, either knew Ostovich or were very much into him.

16 SA (b) (7) (c) : Okay.

17 ACC: Very much so. I'm not trying to put a light here and say "Oh, they were seeking  
18 this." I don't know what the hell. They wanted to go wherever we were going that night.

19 SA (b) (7) (c) : Uh-huh.

20 ACC: The psychologist girl, Dawn, seemed to really like him, and – Holy Jesus, I can't  
21 believe I'm here. Ah...

1 SA (b) (7) (c) : What was – can you describe what their demeanors were like at the Club  
2 – the females?

3 ACC: Very much into us.

4 SA (b) (7) (c) : What do you mean by that – “into us”?

5 ACC: Wanted to – made it very clear that where were we going, what were we doing.  
6 And I said and Ostovich said, “Well, we’re...” you know he said, “...going out.” And I knew  
7 full well we were going home.

8 SA (b) (7) (c) : Uh-huh.

9 ACC: At least I was, which was exactly what the hell I did.

10 SA (b) (7) (c) : Right.

11 ACC: I had no plans, nor would I have changed too any clothes to go out.

12 SA (b) (7) (c) : Okay.

13 ACC: It’s not what I do – bring any of the people that I associate with . I don’t do it.

14 SA (b) (7) (c) : Okay.

15 ACC: And part of the reason I tell this is I don’t want to cast any negative disparity on  
16 me, and here I am, yet again, you know fallen into a bucket of crap. Right when I got here, I fell  
17 into a bucket of crap. I got written up for, One of the fighter squadrons wanted to burn a couch,  
18 and I’m in the blotter the next day, standing in front of the Wing Commander, going, “Boss, I  
19 didn’t do anything. Sorry, but here I am.” Here I am again. This is probably a little bit worse.

20 SA (b) (7) (c) : It’s, ah, you know a tough situation. You know there’s no way to butter  
21 it up. Like I said, this isn’t an isolated incident where you’re - the first time that we’ve seen  
22 something like this to a man of your position, okay? Can you kind of describe to me...

1 ACC: Do you want any more timeline?

2 SA (b) (7) (c) : No – yes, I did, but more so, still at the bar at the Club. Do the girls – I  
3 mean were they giggly, did they seem very intoxicated? What were they doing?

4 ACC: Not anything that would have made me say “I want to take that girl home and take  
5 advantage of her.”

6 SA (b) (7) (c) : Right.

7 ACC: Ah, they were very giggly, very much into – they ended up getting Colonel  
8 Ostovich into trouble, but very much into him.

9 SA (b) (7) (c) Okay.

10 ACC: And they wanted that, but they did keep asking me what my rank...

11 SA (b) (7) (c) : The age old question.

12 ACC: They did, and what I do and who I was, and what my rank was. They did. I recall  
13 that now, and I’m sorry, I’m not trying to play into the hand of being targeted. But what I am  
14 saying is they did – I recall that specifically a few times there, while we were standing, which  
15 was right next to where they serve the food, right on the enlisted side, next to the popcorn  
16 machine, right there. I’m positive , and I bet you Bear – Goldsberry – would recall that.

17 SA (b) (7) (c) : Who asked you? Do you remember?

18 ACC: No. Either – I can’t be sure.

19 SA (b) (7) (c) : Okay, and we’ll understand. This isn’t exact.

20 ACC: It wasn’t the girl that he was talking to – Colonel Ostovich. It was either Dawn or

21 (b)  
(c)

22 SA (b) (7) (c) : Okay.

1 ACC: I'm positive, without a doubt. I don't remember if it was Dawn or (b) – the other  
2 girl. I don't know.

3 SA (b) (7) (c) : And what did you say to that question?

4 ACC: I didn't tell her.

5 SA (b) (7) (c) : Did you shake it off?

6 ACC: I did.

7 SA (b) (7) (c) : How about them - just walking around; were they stumbling or...?

8 ACC: No. I mean they ran straight to us from the other side of the bar.

9 SA (b) (7) (c) : Okay. Did you see them drink a lot?

10 ACC: Yeah.

11 SA (b) (7) (c) : What were they drinking?

12 ACC: I think Red Bull and vodka. I think they bought a second drink that I had.

13 SA (b) (7) (c) : Okay.

14 ACC: I'll tell you this right now, I did say to you, I felt horrible the next day. I felt – the  
15 way I felt the next day, was not , like I would normally feel for what I had had to drink, so...

16 SA (b) (7) (c) Uh-huh.

17 ACC: I did say to my wife that I'm not so sure that I - that there wasn't something in my  
18 - I don't think I was drugged, but I did not feel right the next day. I will say that for sure.

19 SA (b) (7) (c) Okay.

20 ACC: I guarantee you Bear Goldsberry will recall that because we were playing  
21 baseball...

22 SA (b) (7) (c) : Right.

1 ACC: ...with his kid and my kid. And I was I the outfield, sitting down, and it was a  
2 hangover type feeling. But, ah...

3 SA (b) (7) (c) : Did these drinks come from the Club or did someone bring alcohol into  
4 the Club?

5 ACC: It came from the Club.

6 SA (b) (7) (c) : Okay, so it came from the bar?

7 ACC: Yeah, from the bar girl...

8 SA (b) (7) (c) Okay.

9 ACC: ...or something like that.

10 SA (b) (7) (c) : Okay, so how long do you think you were at the bar?

11 ACC: Ah, just perhaps a total of 30 minutes. It was 9:40 when we walked to the Club.  
12 It was probably nine-fortyish or that timeline I guess.

13 SA (b) (7) (c) : Okay.

14 ACC: And we stayed until 10:00 something; probably go to my house about 10:30.

15 SA (b) (7) (c) : Okay.

16 ACC: It would have been Bear and Dirty; that's Goldsberry and Lowe, stayed for at least  
17 an hour, an hour and a half. I know Colonel Ostovich was there, and after them, he left shortly  
18 afterwards, I think, and that was as I was going to bed, I recall them leaving around midnight –  
19 him around midnight 15 to 30, and me staying in bed.

20 SA (b) (7) (c) : Okay. Did you go straight from the Club? You say you got to the Club  
21 at 9:40. You stayed for about 30 minutes...

22 ACC: Ten; ten-twenty.

1 SA (b) (7) (c) : Ten-twenty?

2 ACC: About 10:30.

3 SA (b) (7) (c) : You came back home by 10:30. Okay, kind of saying you're getting  
4 home at 10:30. You're the first one in.

5 ACC: She was not happy.

6 SA (b) (7) (c) She was not happy?

7 ACC: She's not happy because I've got six people in tow.

8 SA (b) (7) (c) Uh-huh.

9 ACC: She would be happy, but you know we all fit into Colonel Ostovich's car, so  
10 people were everywhere.

11 SA (b) (7) (c) : Uh-huh.

12 ACC: And I say, "I'm going to try to get them out of here as quick as you can – and I  
13 can." And so I poured them some wine – a quick way to get them out there, but it's the right  
14 thing to do.

15 SA (b) (7) (c) : Right; hospitality.

16 ACC: Well, and Colonel Ostovich was wanting me to pour him some wine...

17 SA (b) (7) (c) : Let's...

18 ACC: ...so I did.

19 SA (b) (7) (c) : What's the group's dynamic like? .

20 ACC: People were just split all over the place. People were talking on the stairs; people  
21 were talking outside; and people were talking with my wife and the two Pone children. As I  
22 said, I put them to bed. We'll I didn't put them to bed, I helped get them to bed and I knew (b)  
(c)

1 went back there, and this doesn't make any sense – went back there when I went back there.

2 She talked to them and I talked to them in a way. We both went, separate. Nothing...

3 SA (b) (7) (c) : Okay.

4 ACC: ...even close. I was sitting on the bed and I think she was sitting on the section of  
5 the bed. But that's on the second floor of the house, which is you know, where the family room  
6 with all that other stuff. It's just odd – just us and those children.

7 SA (b) (7) (c) : Uh-huh.

8 ACC: Nothing was absolutely said done, spoken or innuendoed that I know of..

9 SA (b) (7) (c) : Okay, okay. So you guys – so then...

10 ACC: That's...

11 SA (b) (7) (c) : ...you go your separate ways. And then what's the next thing you  
12 remember?

13 ACC: Ostovich – well, you know this psychiatrist girl, Dawn - psychologist, psychiatrist,  
14 whatever she is. I don't mean that in a bad way.

15 SA (b) (7) (c) : [Laughter.]

16 ACC: Ah, she had the hots for him. I think he had his eyes on another person, and she  
17 got pissed off and kind of the look in her eyes when my wife took her to the base. So – not  
18 driving her through the gate. That's what she told me because she came right back – dropped her  
19 off at the gate; turned around, came straight home. About a mile and a half south of the base. I  
20 contemplated even walking from the PAHA. But now I wish I had.



1 ACC: He – when she came back, he was still there. Dirty and Bear decided to leave  
2 shortly thereafter, so they would not have seen anything. I guess the only reason you would be  
3 talking to them would be character.

4 SA (b) (7) (c) : Shortly after she, your wife got back or shortly after she left?

5 ACC: ...working on the timeline.

6 SA (b) (7) (c) : No problem.

7 ACC: She probably got back maybe 11:30-1145. She was wearing a coat over her  
8 pajamas, so she was being a trooper. She's a fighter pilot's wife; she's been there, done that in  
9 terms of helping people out.

10 SA (b) (7) (c) Uh-huh.

11 ACC: We call her the lost dog; she always finds the lost dog, the lost child. We've  
12 always got people at our house. I don't do this.

13 SA (b) (7) (c) Uh-huh.

14 ACC: And then, ah, so she drives and she gets back, and then, ah, Bear and Dirty leave,  
15 and then Colonel Ostovich leaves. I guess you know within about 15 minutes – 12:00-12:15.

16 SA (b) (7) (c) : Uh-huh.

17 ACC: And then I leave to go to bed at about 12:30, I think. Based on me, rough,  
18 ordering this timeline together, I'm positive I went upstairs to bed. My wife said, "You need to  
19 go to bed." And I said, "You got it."

20 SA (b) (7) (c) What about the other female? There were two females now. The other...

21 ACC: The other...?

22 SA (b) (7) (c) : ...the other Captain.

1 ACC: Yea, I don't even know her name.

2 SA (b) (7) (c) You have Dawn and then the other one. When did she...

3 ACC: One, she had dropped off.

4 SA (b) (7) (c) Yeah, Dawn got dropped off.

5 ACC: She left with Colonel Ostovich.

6 SA (b) (7) (c) : Okay, and then that just leaves yourself, your wife, and (b) (c)

7 ACC: (b) (c) is not there when my wife says, "Time for you to go to bed." I think I walk  
8 in and let the other girl outside, whatever – the Captain, she is – I don't know her name. I go  
9 back in and she said, "You need to go to bed." I don't know where (b) (c) is at that time.

10 SA (b) (7) (c) Uh-huh.

11 ACC: I go to bed, and here I am.

12 SA (b) (7) (c) : Okay. All right.

13 ACC: Hold on. The next morning...

14 SA (b) (7) (c) : Okay.

15 ACC: ...I ask – I expect there to be people in our house, and I say, "What happened?"

16 And she said, she found her by the Pone boys' room, and she told her to depart, in rapid terms.

17 SA (b)(7)(C) Uh-huh.

18 ACC: And then she said she went looking for her, and I believe that, too. I'll tell you  
19 what I believe to be true. I don't know if she drove my car to drive the Dawn girl home, but  
20 when I got to my car the next day, it was parked differently than where I had left it, and the seat  
21 was forward, so...

22 SA (b)(7)(C) : She got in at a certain point?

1 ACC: She had to.

2 SA (b) (7) (c) : Uh-huh.

3 ACC: And I don't believe she might have taken Dawn in my car, I don't know, but I  
4 know, for a fact, it had moved, so I didn't think anything of it.

5 SA (b) (7) (c) : Okay. What did you guys do with (b) (6) shoes and some other articles?

6 ACC: I don't know what else she left.

7 SA (b) (7) (c) : Okay.

8 ACC: I don't.

9 SA (b) (7) (c) : What about her shoes? Do you know where they are?

10 ACC: Nope, I don't.

11 SA (b) (7) (c) : Okay. Ah...

12 ACC: I imagine my wife may. I don't know.

13 SA (b) (7) (c) : Uh-huh.

14 ACC: Ah, I don't even know if my wife may. I didn't take them.

15 SA (b) (7) (c) : Right.

16 ACC: I didn't lose them. I don't know why the hell – how you can lose your shoes.

17 SA (b) (7) (c) : Yeah, that's kind of a big sticking point of the...

18 ACC: Why would you run out...

19 SA (b) (7) (c) : ...why to run out like that? Yeah.

20 ACC: I didn't take them.

21 SA (b) (7) (c) : That's the...

22 ACC: I damn sure wouldn't. – I don't know.

1 SA (b) (7) (c) : Uh-huh.

2 ACC: I don't know what to tell you. I believe I answered everything as best I can.

3 SA (b) (7) (c) Uh-huh. You've definitely given us answers that I mean there is no  
4 doubt about it. You're talking to us; you've tried to help us figure out what's going on.

5 SA (b) (7) (c) : We appreciate that.

6 SA (b) (7) (c) The sticking point where we keep getting stuck on is the events, you  
7 know.

8 ACC: I don't know what else to tell you. That's what I know.

9 SA (b) (7) (c) Uh-huh.

10 SA (b) (7) (c) Let me ask you this – do you think there's a possibility that something like  
11 this did happen and you don't remember, and for whatever reason possible, your wife maybe is  
12 not saying something...

13 ACC: No.

14 SA (b) (7) (c) ...to you? Do you think she would tell you?

15 ACC: Hell yeah.

16 SA (b) (7) (c) : Has she acted any different towards you since that night?

17 ACC: No. As a matter of fact I had a great anniversary. Our spring break was already  
18 planned. I just returned from a spring break in Crete. We have a good, loving relationship. Ah,  
19 no. My wife looks out for me, but she would not do that. My wife tells me, "Hey, you've had  
20 enough to drink. It's time to go to bed." That...

21 SA (b) (7) (c) : Uh-huh.

22 ACC: I'm pretty sure she would hang me up by at the gallows.

1 SA (b) (7) : Have you ever been drunk to the point where you don't recall details,  
2 before? I mean we all have...

3 ACC: Who hasn't. I mean yea.

4 SA (b) (7) : ...we

5 ACC: Yeah, but not recently. I will say, as I said, I felt like crap the next day, and would  
6 not have. I don't know why I felt, based on what I'd had to drink, I would have been – I ride  
7 bikes – pedal bikes. I would have been able to go for a hundred miles normally, but that day, if I  
8 even looked at my bike, I would have either thrown up or fallen over.

9 SA (b) (7) : Did, ah...

10 ACC: I didn't even feel right driving on the base. So I did wait.

11 SA (b) (7) (c) Did you pour all of your drinks, specifically? When you got home, you  
12 had one, so, right?

13 ACC: I think I did. I can't say for any – a hundred percent truth.

14 SA (b) (7) (c) : Uh-huh.

15 SA (b) (7) (c) Were you under any medication that might have...

16 ACC: I take Nexium. That's not going to do anything.

17 SA (b) (7) : We're just trying to figure out you know...

18 ACC: I don't think I had...

19 SA (b) (7) (c) Uh-huh.

20 ACC: I don't believe in meds. I don't believe in drugs, dudes. I'm your – was, up until  
21 this allegation or whatever the dots are.

1 SA (b) (7) : I mean – and that’s what it is. I mean that’s what it always is until  
2 somebody else decides what happened, you know? All we have is an allegation at this point.  
3 We’ve talked to everybody that’s involved. Like you said, we talked to other people for  
4 character, for background, things like that. We can fill in some of those blanks. But when it  
5 comes down to it, there’s only two to three people that can tell us specifically what moment  
6 we’re talking about, you know? And until we covered that third party, right now we have two  
7 different sides.

8 ACC: Yeah.

9 SA (b) (7) : So what we’re trying to figure out is, yeah, is it possible for you to have  
10 been to the point where you don’t recall some things and this could have happened. And, you  
11 know, having that kind of more than a hangover feeling, you know is it possible that the previous  
12 night’s incidents were just blank; you know just something that you can’t account for?

13 ACC: Well, I’m not...

14 SA (b) (7) : That’s what we’re trying to do; we’re trying to come up with plausible...

15 ACC: Anything is plausible/possible when you consider alcohol, but I don’t know is my  
16 answer, but what I will tell you is I felt unbelievably F’d up the next day. I do not know. I’m  
17 not alleging here. I mean I don’t know.

18 SA (b) (7) : Yeah.

19 ACC: I don’t, but I know I mentioned to my wife that, “I feel horrible, horrible.”

20 SA (b) (7) : Outside of – from something. Something is...

21 ACC: Yeah.

1 SA (b) (7) (c) What about the same token that maybe perhaps somehow at the point you  
2 went to bed, but throughout the course of the night you end up in that bed?

3 ACC: I know what you're saying.

4 SA (b) (7) (c) : Uh-huh.

5 ACC: I would had to have gone down three flights of stairs. It would make a ton of  
6 noise. There were kids there, and, also based on how I felt the next day, I don't know how it  
7 could have been that.

8 SA (b) (7) (c) Uh-huh.

9 ACC: Three flights of stairs. Ah, I don't sleepwalk, I don't think.

10 SA (b) (7) (c) You've never had any...

11 ACC: ...who knows?

12 SA (b) (7) (c) : Uh-huh.

13 ACC: No.

14 SA (b) (7) (c) One possibility is, and what I was going at is you're in the bed...

15 ACC: No I just made that connection.

16 SA (b) (7) (c) : You know, turns the lights on now, and all of a sudden, I believe nothing  
17 happened, but, shoot, you know you look like you're in a bad situation. You know what I mean?  
18 So...and, ah...

19 ACC: Yeah.

20 SA (b) (7) (c) : We just had this one case, too, where it was a sexual assault, and what it  
21 looks like is there was a sexual assault. It was like an embarrassed type of act with a female.

22 And you know, to be honest, we believed the male didn't have a part in a sexual assault and that

1 it was made up, you know to save face for her. What he decided to do was to try and change  
2 facts in the story to try and make himself look good, like he would say, “She was on top on me  
3 during the whole sexual encounter.” His thought process is “Well, if she’s on top of me, there’s  
4 no way.” Do you understand?

5 ACC: I would like to think that if I had had sex with somebody, I would remember that.

6 SA (b) (7) (c) : Right.

7 ACC: And I’m telling you, no.

8 SA (b) (7) (c) : Uh-huh. But not to that extreme, like he changed the facts to make  
9 himself look good, so if I’m in your circumstance, right...

10 ACC: Change the facts?

11 ACC: Yeah, and I did, I somehow made it down three flights of stairs and I’m in her bed,  
12 and my wife catches me in the bed, even though maybe I didn’t do anything, I have to wonder  
13 how I got there. But now I’m in this room, I might say, “Nope, I went to bed. I was in the room  
14 all night by myself.” You know what I mean, because you don’t want that embarrassment to  
15 come to light.

16 ACC: Yeah.

17 SA B(b) (7) (c) But that, hiding that fact, it doesn’t help you.

18 ACC: I got it.

19 SA (b) (7) (c) Does that make sense?

20 ACC: Yeah.

21 SA (b) (7) (c) : And a lot of times we say “sexual assault,” so people automatically assume  
22 that there’s some kind of sexual act, you know, we’re all men here. So I’ll use you know regular



1 words, you know penis and vagina – you know sexual assault – people think sex happened, but  
2 by UCMJ terms, it's penetration by anything. It doesn't have to be a penis; it could be a finger.  
3 Do you know what I'm saying? So with the nature of the allegation, it doesn't necessarily mean  
4 that you guys were naked, having sex. It means that...

5 ACC: I don't know how that would have happened. I don't. I've answered everything  
6 and tried to put this story back together as best I can.

7 SA (b) (7) (c) : Uh-huh. You know what, the biggest thing is, like I said, you're here to  
8 answer our questions and you're trying to help us out. But keep in mind that we're also  
9 affording you the opportunity to tell us this is what's going on, so, at the end of the day, you  
10 know when the General looks at this, he sees, these are your words, this is what you're saying to  
11 us.

12 ACC: Believe me, I'm thinking about what the General is going to do to me.

13 SA (b) (7) (c) : Uh-huh.

14 ACC: I've been on the listening end of plenty of these, and...

15 SA (b) (7) (c) : What are some of the things you hear? I mean what's most important in  
16 talking to people is...

17 ACC: I'm trying to be as open and as forthright – and I think I am. But I know what I  
18 hear.

19 SA (b) (7) (c) : Well, what's going through your head right now? I mean, imagining it's  
20 going to be the worst case scenario, what are you thinking?

21 ACC: Here's my worst case scenario: I have – I've got an allegation against me and I'm  
22 the IG; I'm an O6 select. Kiss your shit goodbye. These things, even allegations, can take jobs

1 away from people. Ah, even rumors can take jobs away from people. Even, you know, anything  
2 can take things away from people, so all of that is running through my mind right now. Every bit  
3 of it.

4 SA (b) (7) (c) : Well, what do you think if the General is taking a look at this, okay, and  
5 if the events transpired like (b) (7) (c) said they did, and some how you end up in that bed down there,  
6 and you came forward and said you did that, but nothing happened, “I don’t know how I got  
7 there.” And I’m just saying – just what-ifs – what if, on the other hand, you’re saying what  
8 you’re saying now, is that it didn’t happen, it didn’t happen.

9 ACC: That’s exactly what I’m saying.

10 SA (b) (7) (c) : Uh-huh.

11 ACC: That’s the only other thing. Is my wife here? Let’s...

12 SA (b) (7) (c) : She’s not.

13 ACC: Get her in here.

14 SA (b) (7) (c) : She’s not here, no.

15 ACC: Have you talked – you can’t answer that, I guess.

16 SA (b) (7) (c) : No, we’ll try – who do you want to know? – I mean...

17 ACC: You can ask her.

18 SA (b) (7) (c) : I mean, obviously, like Matt said – everything lines up to a certain extent.

19 That’s what we find with every investigation. But when it comes time for the particulars for this  
20 investigation, as with many other investigations, there are two sides. And some accounts line up;  
21 some accounts don’t. So what we have to do is nail it down to the nth degree of as to what  
22 particular accounts.

1 ACC: Your talking about lives; people's lives.

2 SA (b) (7) : That's what we deal with all the time.

3 ACC: I don't know why somebody would lose, leave, dump, whatever, their shoes.

4 SA (b) (7) : I mean the way it looks, based on the allegations is she left her shoes  
5 because your wife came down to the bedroom, flipped the light on, saw you two in bed, and  
6 she's like "Oh, shit. I've got to get the hell out of here."

7 ACC: So she runs or whatever.

8 SA (b) (7) : I mean that's the way it looks...

9 ACC: Her shoes were missing. I recall this perfectly. We looked for her shoes when  
10 everyone was there. I remember, at some point in the night, going "Where are her shoes? Why  
11 doesn't she have shoes on anyway in a house, at a party?"

12 SA (b) (7) (c) Yeah, not her house.

13 ACC: Yeah. I don't know who takes shoes off – I'm telling you...

14 SA (b) (7) : Well, the shoes come off at some point, which isn't a big deal, but the way  
15 it looks from the allegation, and from anybody that reads this, is it kind of makes sense to what  
16 she says. I'm not saying that I don't believe you or whatever. You know what I'm saying? I  
17 mean just...

18 ACC: Well, I agree. I will also say that my wife said that she – the woman was – (b)  
19 was up and down, around the house to the point where I know Beth said that she was concerned.

20 SA (b) (7) : Uh-huh.

1 ACC: And I believe she did get snippy with her and said, “You need...” or she told me –  
2 I was not privy to this; I’m going on what she told me, “You need to depart.” And I know that  
3 she said...

4 TC: Your Honor, I think this might be a good time to stop.

5 [Playing of Prosecution Exhibit 2 for the court paused.]

6 MJ: All right, we’ll go ahead and have a short comfort recess. Thank you.

7 (The court-martial recessed at 1011 hours, 30 October 2011.)

8 **END OF PAGE**

1 (The court-martial was called to order at 1031 hours, 30 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government, you may continue.

6 ATC: Thank you, Your Honor. We're going to continue playing the video beginning at  
7 timestamp 15:50:54.

8 MJ: Thank you.

9 [Playing of Prosecution Exhibit 2 resumed.]

10 ACC: She went to look for her or offered her a ride. I don't know how this went down.  
11 I was not there. But I do know that my car had been moved. I'm positive.

12 SA (b) (7) (c) Here's my main concern, okay? What I like to do when I talk to people  
13 is... It happens a lot. Everyone comes in here knowing -- everyone is telling the truth every  
14 time they come in here. And some people are, some people aren't, you know what I mean.  
15 There are all spectrums. What I do is talk to people and they can talk to me. And look me in  
16 the eyes, and tell me, you know, they're telling the truth. You know that's one thing, but look,  
17 you know, like I said, I'm a father, right, of a two and a half-year-old child. I have another child  
18 on the way. Okay, at the end of the day, the military is great; it's not family, but my real family  
19 is at home. So whatever happens, I don't care, as long as I have my family and health, I'm  
20 happy, and I love that. Okay, so when I go through life, no matter what happens to me in my  
21 military career, as long as I stand up to my son and show him how to live the good life, the

1 straight life, the true life. I know a lot of cheaters steal. That's the life for him, and I'm going  
2 to show it through my examples. Okay?

3 SA (b) (7) (c) : Now, I get that feeling you're the same type of man who'd do that to  
4 your son.

5 ACC: I'm trying to do that right here and now, if you think I'm not...

6 SA (b) (7) (c) : What were you wearing that night? What do you remember going to bed  
7 in or anything like that?

8 ACC: Ah, jeans and a t-shirt.

9 SA (b) (7) (c) : Blue jeans? Is that what you woke up...?

10 ACC: I woke up in my boxer shorts, and my jeans were on this little stair thing at the  
11 foot of the bed.

12 SA (b) (7) (c) : Do you remember falling asleep with your jeans and t-shirt on?

13 ACC: No I don't.

14 SA (b) (7) (c) : Okay.

15 ACC: You tell me. You guys have seen – I don't know – I don't know. I went from  
16 being in a meeting to this.

17 SA (b) (7) (c) : Tell me something, Sir, so you're talking to me and you're talking to  
18 (b) (7) (c) . But if your, so if your son was in this room, would he be proud of his dad right now and  
19 what he is saying?

20 ACC: I think so.

21 SA (b) (7) (c) : Okay.

22 ACC: Well, let's – you know what, where do we go? I mean where do we go from here?

1 SA (b) (7) (c) : Well, you know in these types of - what we're going to do, we talk to  
2 everybody; everybody and anybody that we can, obviously. And, like we said, we don't treat  
3 anyone different, right - whether you're a Colonel select or you're an Airman Basic, we bring  
4 people in, and we tell them what they need to know. We don't air people's laundry out that they  
5 don't need to know. Okay?

6 ACC: Do they get to go home?

7 SA (b) (7) (c) : Yeah. This is not - you know you're not under arrest you know. You  
8 can report back to duty.

9 SA (b) (7) (c) : You've got the whole innocent - I mean we don't know what the outcome  
10 is going to be, Sir. All we do...

11 ACC: I've never even seen...

12 SA (b) (7) (c) : ...All we do is we gather all the facts and publish a report, and let the  
13 commander make the decision.

14 SA (b) (7) (c) : Right.

15 SA (b) (7) (c) : And until that, you get to go on doing what you do, I mean unless you  
16 carry a weapon on a daily basis.

17 ACC: No.

18 SA (b) (7) (c) : I mean you'll be allowed to go home and you'll be allowed to go back to  
19 work. You know, you will be allowed to continue on.

20 ACC: Do I tell anybody what's going on?

1 SA (b) (7) (c) : You know, as we'll get to in the end, obviously because it's an ongoing  
2 investigation, we don't want people going around talking to anybody just because that can  
3 contaminate or taint any possible interview that we have in the future.

4 SA (b) (7) (c) : For you, it will because you know nobody wants people who don't need to  
5 know this, and you can't always control who people tell these things to.

6 ACC: No, I can't, so.

7 SA (b) (7) (c) : So it's best that nobody talks unless we talk to them. So we'll step out. I  
8 know we're trying to track down your wife. We may get an opportunity to get the phone and  
9 give her a call or whatever.

10 ACC: I'll give you her number.

11 SA (b) (7) (c) : Do whatever it takes.

12 ACC: Okay.

13 SA (b) (7) (c) : Let's step out. Do you need to take a break or anything, use the  
14 restroom?

15 ACC: No.

16 SA (b) (7) (c) : We'll step out and see what process is made on that end.

17 ACC: Did they find a number or what?

18 SA (b) (7) (c) : I think they were going to go about trying to get it somehow. My  
19 commander is working on that.

20 SA (b) (7) (c) : We're going to check on that sir.

21 ACC: Okay.

22 [The investigators left the room.]



1 [Special Agent (b) (7) returned to the interview room.]

2 SA (b) (7) (c) : If you don't mind, what I'd like to have you do now is write down a  
3 statement just capturing everything you told us, and ideally what we'd like is from the Seether  
4 concert at the beginning, all the way through the next day when you didn't feel well – everything  
5 included, as much as you can. Just as detailed as you can. Obviously, this is your words, right?  
6 And this is what we ultimately like to present because we can do our write-ups. You  
7 understand?

8 ACC: I do. I understand. Believe me, this is just so not good. I mean to even have an  
9 allegation is horrible. I don't know anybody that's had an allegation that's been able to survive  
10 it. Maybe there are some out there. Maybe there are some because I don't know about it. But  
11 I'm telling you I have not encountered this event. I did not participate in this event. I don't  
12 know – I'll write the statement – I just don't know how this could possibly end up.

13 SA (b) (7) (c) : And that's a natural feeling. Everyone comes in here and all of a sudden  
14 they're speed tracking to "what's going to happen to me in the future," and then, obviously, to  
15 your career. So, obviously, that's going to be the concern. But there are things that we can't  
16 control, right? And right now, ultimately in the future, you're not going to control what's going  
17 to happen. You'll be in control right now, is the here, the now, the present, right?

18 ACC: I'm doing the best...

19 SA (b) (7) (c) : That's all we can ask for. So, what we'll do is we'll give you time.  
20 We're not going to hover over you and watch you write a statement. We gave you some paper  
21 here because we don't like to use this small square that they usually have. What we will do is –  
22 you can actually pull your chair up so you write on this table. We'll worry about the top two

1 lines or the last two lines. We'll deal with that later. The same thing; we want to go left to right,  
2 top to bottom, just one running paragraph with no indentations. If you make a mistake, you just  
3 make on line through and initial over it. Do you have any questions about that?

4 ACC: No.

5 SA (b) (7) (c) : Okay. I'll leave you this pen. Like I said, it's your words, so you can  
6 write it out however you feel you want to write it. And, again, the worst thing that we see people  
7 do is speed through these things, so I'd just ask, please, you know just try to take your time and  
8 be as close as you can.

9 ACC: Okay. I still have to pick up my little one tonight.

10 SA (b) (7) (c) What's that?

11 ACC: Well, he's at AYP for the first time, so it was a big day for him. I cannot believe  
12 this.

13 SA (b) (7) (c) : Well, like (b) (7) (c) said, let's concentrate on the now; make sure we don't  
14 speed through this. Try to capture as many details as you can. And a lot of times what we find is  
15 as you start writing down things, other details come up. So if details come up that we didn't  
16 discuss, feel free to put them in there, and then we can cover that at the end. All right? So we'll  
17 try to get you, you know, on the statement so we don't take any more of your time so we can get  
18 you out of here as quickly as we can.

19 ACC: What's after this?

20 SA (b) (7) (c) : After this statement or do you mean after this scenario is done?

21 ACC: All of the above.

1 SA (b) (7) (c) : Well, there are some administrative things we got to do, you know just  
2 based on our regulations. We'll photograph you; fingerprint you because we read you your  
3 rights. Ah, then we'll continue out with the investigation, which means talking to the rest of the  
4 people we haven't talked to. After that's finalized, we'll publish a report; give it to your  
5 leadership, and they determine what's going to happen – with the advice of legal counsel.

6 So these things – this one in particular will happen fairly quickly. Obviously, we don't  
7 need to have this linger around you. We'll try to get this cleared up as quick as we can. So  
8 that's why we're moving pretty quickly on this one.

9 ACC: When did the allegation occur?

10 SA (b) (7) (c) : You mean when we got word?

11 ACC: Yeah.

12 SA (b) (7) (c) : This thing just started this week. So you know we can only work off of  
13 the information we were given, and like (b) (7) (c) said, you know again, because of your status you  
14 know this is a priority because this doesn't need to be lingering...–

15 ACC: Why didn't this...

16 SA (b) (7) (c) : You know that's between (b) (7) (c) and the people she was talking to, and it's  
17 my question – correct, she was talking to like a counselor or something like that, trying to figure  
18 out what to do. So she's been talking for whatever reason. But, anyway, that's neither here nor  
19 there. We can field that – these types of questions, but you know for your son you know you're  
20 in a hurry to get him. So why don't you write and we'll get out of your hair.

21 ACC: I'm sorry. I guess I...

22 SA (b) (7) (c) : That's all right.

1 SA (b) (7) : Sounds good, Sir.

2 ACC: This is not good at all. It's just...

3 SA (b) (7) : I mean this is what we do. We deal with this. Take your time. Write the  
4 statement, and try to collect your thoughts, and then we'll be back in a little bit.

5 SA (b) (7) (c) : Do you need anything else?

6 ACC: No.

7 [The special agents left the interview room.]

8 [Special Agents (b) (7) and (b) (7) entered the interview room.]

9 SA (b) (7) (c) : Are you all set?

10 ACC: Yes.

11 SA (b) (7) (c) : Okay. What we're going to do is go ahead and take a look at it to see if  
12 we need to do some questions. And then we will close it out.

13 ACC: I haven't read it over, but take a look. I'll be happy to read it.

14 SA (b) (7) (c) : ...We should be able to read it just fine. We see all kinds of...

15 ACC: Any other developments?

16 SA (b) (7) : No I think a couple of our agents managed to track down your wife, so  
17 they're talking to her now.

18 ACC: Good.

19 SA (b) (7) : I don't know what's going on there.

20 ACC: Is she okay?

21 SA (b) (7) : To be honest with you, I don't know. They just said, "Hey, we tracked her  
22 down. We're going to start talking to her." I haven't heard anything from them since, so...

1 ACC: My handwriting is not good...

2 SA (b) (7) (c) : Actually, you know we see some absolute chicken scratch, but no, I can  
3 read this.

4 ACC: It doesn't help that I'm shaking.

5 SA (b) (7) : Sir, what's your – I'm just going to grab some other information from you.  
6 What is your cell phone number?

7 ACC: (b) (6) , I think.

8 SA (b) (7) : (b) – and duty extension?

9 ACC: 4825.

10 SA (b) (7) : DEROS?

11 ACC: July `13.

12 ACC: I'm just running this through my mind. I can't believe my wife is in this position.

13 SA (b) (7) : What position is that? Just for the whole...

14 ACC: Agents showing up at her house, talking to her about her husband that she loves,  
15 respects, supports. What a great place to be. I mean – but, I know I didn't do anything wrong. I  
16 know that. But I'm telling you, every time something – you hear something, a rumor, an  
17 innuendo or a happenstance, it's so easy to believe it's true, and now you're on the other side.

18 SA (b) (7) : And you know that's the unfortunate part about this whole deal, and, really  
19 – and what we've been involved with is the perception that follows.

20 ACC: And I'm screwed.

21 SA (b) (7) : Sometimes it's worse than the actual truth, you know?

22 ACC: You can't have an IG with this on him.

1 SA (b) (7) : Yeah, and I don't know exactly what's going to happen once all of this  
2 boils down. You know it's one thing you can't change; you can't change perception. You know  
3 you can present all the facts, and that's what we go with.

4 ACC: You can tell them I'm answering everything.

5 SA (b) (7) (c) : Uh-huh.

6 SA (b) (7) : Permanent address in the States, Sir, or home of record – city, state?

7 ACC: Yeah, (b) (6) – (b) (6) – (b) (6) , (b) (6)  
8 – (b) (6) , (b) (6) (b) (6) .

9 I know you guys hear “I'm innocent, I'm guilty I'm this, I'm that,” a lot of time, I'm just  
10 telling you that I'm more worried about perception than anything. I did not do this. I don't  
11 know where we're going here.

12 SA (b) (7) : I mean, in the guilty/innocent thing we do hear all the time, but what we  
13 put out there is the facts of what is told to us. You know we don't judge anybody based on the  
14 allegation.

15 ACC: She had to feel strongly about something to bring a story... I mean, she got kicked  
16 out of our house.

17 SA (b) (7) : Yeah.

18 ACC: I'd be mad, too.

19 SA (b) (7) : Yeah. I mean I'm just trying to figure out why she would have went the  
20 length that she did. You know?

21 ACC: I don't – you mean by making that plan?

1 SA (b) (7) : Exactly. You know with everything else, it's kind of like you try to figure  
2 out motive, you know how...

3 ACC: I don't know either.

4 SA (b) (7) : Like...

5 ACC: To get back at me for kicking her out. I didn't kick her out.

6 SA (b) (7) : But...

7 SA (b) (7) (c) Yeah.

8 SA (b) (7) : ...maybe it didn't have anything to do with you, but it has to do with a  
9 previous person in charge or something that she's harboring something towards and you just  
10 happen to be, you know...

11 ACC: Why did she stay at my house? I don't know. This makes no sense.

12 I repeatedly asked them to go, and repeatedly asked for Lowe and Goldsberry to help get  
13 them out of the house.

14 SA (b) (7) (c) : That's good. It's the exactly what we're looking for, chronological time  
15 of events, like a third person could read that and understand what you told us.

16 ACC: I think I got everything. Did I get everything?

17 SA (b) (7) (c) : I think you've accomplished pretty much everything. If not it'll be a few  
18 little things. I haven't seen anything. You mentioned the names.

19 ACC: I didn't mention me making breakfast, but I always – it's standard for me to make  
20 breakfast with spend the night guests. I'm sure you do this, well your son is small, but, when I  
21 have spend the night guest, I make breakfast. It's what I do.

22 SA (b) (7) (c) : Uh-huh.

1 ACC: I remember – I'll tell you what I remember that first set me off was that morning,  
2 the pancake mix was under the lower cabinet, and I almost fell over – forward as I went to go get  
3 it out of the cabinet. I was having trouble focusing.

4 SA (b) (7) (c) : Okay. And you said that 9 o'clock, roughly, when you made breakfast?

5 ACC: Uh-huh.

6 SA (b) (7) (c) : Okay. Like you said, all you can do is come forward and tell us your  
7 version of the events as you know, and that's all you can control. I know it's not easy coming in  
8 here...

9 ACC: I don't know why she would. I don't.

10 SA (b) (7) (c) : Uh-huh. And that's the big, ah that's the big question mark. What would  
11 be the intent, and that's why we struggle, you know trying to figure out was the intent, what's the  
12 purpose, what's the reason that this was made up. Why would she do this? All I know is in the  
13 end it's something to figure out. So, again, it's not our determination to make. We talk to  
14 people. We'll be out gathering information and the statements and, ah...

15 ACC: In my home. I don't know. I don't know what more I could do to keep things like  
16 this from happening to me or people. I don't put myself out there.

17 SA (b) (7) (c) : Uh-huh. Yeah, well, there's a group of unknowns, really.

18 ACC: I certainly – I don't know. So, we're going to move quickly with this, so I assume  
19 you need to talk with my wife. I don't have any reason to believe that her version is going to be  
20 any different than mine; what if it is the same and what if it is different?

21 SA (b) (7) (c) : Uh-huh.



1 ACC: You said, earlier, if it's different, we're in trouble, and I can get that. But what if  
2 it is the same? Then where do I go? What happens?

3 SA (b) (7) (c) : Well, it's the same. It doesn't change our process. I'm not just standing  
4 here saying because all it is is if she tells the same, then you know it's corroborating what you're  
5 saying.

6 ACC: I don't know what she's – I assume – that is what happened. I assume that is  
7 exactly what you're going to hear.

8 SA (b) (7) (c) : Okay. Can you think of any reason why it would be different?

9 ACC: No. I love my wife. What I'm getting at is that I don't see her covering for  
10 something that may, as you guys suggest, to her that I wouldn't have known.

11 SA (b) (7) (c) : Uh-huh. Okay. Well, ultimately, like (b) (7) (c) said before, what happens is  
12 we'll have a report that we'll put together and that just details everything we've done, everyone  
13 we've talked to, all the conversations we've had, and...

14 ACC: Have You talked to a lot of people over there?

15 SA (b) (7) (c) : We will. We will talk to everybody. Like I said, this happened so  
16 quickly, and we're just – haven't talked to every single person, but if we haven't, we'll talk to a  
17 couple of people, obviously.

18 ACC: I was just wondering...

19 SA (b) (7) (c) : Uh-huh.

20 ACC: ...what else?

21 SA (b) (7) (c) : And there's really, I mean, we're not hiding anything from you. I mean  
22 what...

1 ACC: I'm not hiding anything.

2 SA (b) (7) (c) : ...yea well, what we know is what we're telling you, so, ah, yeah. We  
3 still have a few more interviews to do.

4 ACC: I didn't write that the next day I went into the hotel to...

5 SA (b) (7) (c) : Yeah.

6 ACC: ...see that squadron commander, because that was... I'd rather not..

7 SA (b) (7) (c) : Yes, that's separate. Yeah, I don't even see how that would be involved.

8 ACC: He's having a rough time. I prefer we keep that...

9 SA (b) (7) (c) : Yeah, that's not - It's not relevant to this investigation. It's not a need to  
10 know for us, so we understand.

11 ACC: So what – nothing makes sense...

12 SA (b) (7) (c) : Well, you know, what's going to happen is...

13 ACC: I was at the hotel, helping a guy out, and I'm this "person."

14 SA (b) (7) (c) : What's that?

15 ACC: I go to a hotel to help out a guy that's having a problem with drinking, and...

16 SA (b) (7) (c) : Uh-huh.

17 ACC: ...and yet I'm sitting here. I'm having a rough time in my life right now.

18 SA (b) (7) (c) : Well, you know, it's good that you know you have a good family –  
19 family values, and that's what gets anyone through anything is having that family rock, you  
20 know.

21 ACC: What is Article 120?

1 SA (b) (7) (c) : Under the UCMJ, it's what I say aggravated – it can be – it's an  
2 aggravated sexual assault. It can be a multitude of things – under Article 120 it's all sexual  
3 assault offenses, so from – all the way up to the most extreme. There's sub articles, right – 120  
4 sexual assault is always up from rape to indecent liberties with a child.

5 ACC: Oh, my God.

6 SA (b) (7) (c) : It's, ah – yeah, but this could be – her accusation would fall under being  
7 an aggravated sexual assault. Not that it's sexual.

8 ACC: I'm telling you, this did not occur. Right? And I can only imagine what the boss  
9 is thinking. Is he in on the loop?

10 SA (b) (7) (c) : Yeah. I mean the boss – who do you refer to as the “boss”?

11 ACC: General Zobrist.

12 SA (b) (7) (c) : Yeah. He's, obviously, going to be one of the guys that, obviously, in  
13 this case we're going to have to brief to make sure he's in the loop but he knows what's going  
14 on. A man, one, doesn't get to that stature either without having a cool head and is waiting until  
15 he has all the facts to make a decision, so...

16 ACC: When did he find out?

17 SA (b) (7) (c) : He's going to find out soon; when we find out. That's just one of the  
18 things that we have to do as a courtesy – you know, full disclosure.

19 Okay. So what we'll do is I don't have anything to add, but unless you have something  
20 else to add, we're going to close this up. So what we're going to do is if you'll just print last  
21 name, and then you got the dates. If you can initial at the beginning, and at your last word here?

22 SA (b) (7) (c) : Just line through all those blank lines.

1 SA (b) (7) (c) : Yeah, that's what we'll have to do. And these lines, just so no one can  
2 add something in later. If you can just initial before and after.

3 ACC: My God. I know, I know people are going to recall the events prior to this.  
4 Obviously, it's our word, their word, my word, her word, however you call it.

5 SA (b) (7) (c) : You mean the events prior? ...

6 ACC: Yeah; the missing shoes. Me saying "go."

7 SA (b) (7) (c) : Yeah. I mean yeah, and all that is fine. At the end of the day, we may be  
8 left with your account and her account, and I mean that's when the commander is going to have  
9 to make a decision....

10 ACC: That still sucks.

11 SA (b) (7) (c) : Uh-huh.

12 SA (b) (7) (c) : There's no way to get around it. So you know what we have to try and  
13 figure out is why; why would somebody say something like this?

14 ACC: You tell me ...

15 SA (b) (7) (c) : That's what we have to try to figure out.

16 SA (b) (7) (c) : I need you to cross out because this - actually page 3 and 4. Just initial  
17 there, and your signature of yourself here.

18 ACC: And I'll do this one line as well.

19 SA (b) (7) (c) : This will be the end of your statement.

20 SA (b) (7) (c) : The only thing we're left with, if we don't know - I mean why she would  
21 make up something like this; she has no ill will towards you or your family or anybody else  
22 involved. If you're a victim of circumstance, you know? Unfortunately, the only thing that we

1 would have to look at is you know there is some partial truth to this, and we have to figure out  
2 you know what is partially true and what is partially false, and what the particular...

3 ACC: The truth is that she was in the house, and that she left, and, my God, I don't...

4 SA (b) (7) (c) : Do you see – do you know what I'm saying? We just – and that's what  
5 who reviews this report is going to be left with. They're going to have to make that decision if  
6 the facts don't play out to corroborate each story.

7 SA (b) (7) (c) : You need to initial here as well and then before – after your last word and  
8 before the line starts. And at the corner here.

9 ACC: Will my wife end up making one of these as well?

10 SA (b) (7) (c) Normally, that's the standard procedure for anybody we talk to that provides  
11 a statement.

12 SA (b) (7) (c) : And that's so that we want people's words to represent themselves; not  
13 our notes; not our write ups...

14 Ah, let's see here. We'll do this page – just getting started. Again, this is where we  
15 usually do it, but we'll move down – so it says “see attached.” So initial here and here, and at  
16 the corners here, here, here – two, four – there. And we'll hold off on signing this front page.  
17 You can look over this information, and just make sure it's accurate.

18 ACC: Unbelievable...

19 SA (b) (7) (c) : Is everything good?

20 ACC: Yeah.

21 SA (b) (7) (c) : Okay, so what we do now is go over this part. This is what I advised you  
22 of at the beginning – your rights, okay? I read you of the offense, Article 120 of the UCMJ,

1 aggravated sexual assault – myself, (b) (7) (c), identified myself as a Special Agent. What  
2 I just need you to do is to read these to yourself. If you understand them; don't have any  
3 questions, just initial the side and then stop at the "military only," please.

4 ACC: A guy that has nothing to hide does not ask for a lawyer. A guy that...

5 SA (b) (7) (c) And that's what people take into consideration, too.

6 SA (b) (7) (c) : Uh-huh.

7 ACC: This is – mind boggling – if you were in my shoes... mind boggling...

8 SA (b) (7) (c) : And then the "military only" one applies to you.

9 ACC: Okay.

10 SA (b) (7) (c) And then this part is the three options; you know you said you were  
11 willing to talk to us; you didn't want a lawyer at this time; and you wanted to make a statement.

12 ACC: I do not want a lawyer.

13 SA (b) (7) (c) : That'd be...

14 ACC: That'd be the first one I know all my rights; to answer questions; to make a  
15 statement.

16 SA (b) (7) (c) : Okay, and ah...

17 ACC: Let me finish down there.

18 SA (b) (7) (c) : And then sign here, just acknowledging the rights above. And then the  
19 final portion is where we swear you to the statement, which makes it official. Before I do that, if  
20 you'll just read this to yourself? If you have any question understanding it, just initial on both  
21 sides Don't sign it yet. And just raise your right hand. Do you swear that everything you told  
22 me and have written in the statement is true?

1 ACC: I do.

2 SA (b) (7) (c) : Okay, go ahead and sign right here.

3 ACC: I've been on the other end of that, I know 50 percent of them are not, 50 percent  
4 of them, there's another side.

5 SA (b) (7) (c) : You know, it's not a fun part of our job either you know.

6 Did you sign it?

7 ACC: Oh. I've just signed it.

8 SA (b) (7) (c) : What we're going to do is just run this out real quick to make sure there  
9 are no more questions, and we'll be right back for...

10 SA (b) (7) (c) : Prep for the photograph... .

11 SA (b) (7) (c) : ...the administrative procedures. Okay?

12 ACC: Anything else, other than that?

13 SA (b) (7) (c) : Ah, no. Not at this time.

14 [Special Agents (b) (7) (c) and (b) (7) (c) left the interview room.]

15 [Special Agent (b) (7) (c) entered the interview room.]

16 SA (b) (7) (c) : How's it going? Long day for you? Are you all right?

17 ACC: Yeah.

18 SA (b) (7) (c) : Hang in there, okay?

19 ACC: I'm holding up.

20 SA (b) (7) (c) : The guys – I kind of – I read through your stuff, also just kind of listened in a  
21 little bit and the normal kind of stuff, and you're not – but a little bit – I've been around for a  
22 long time, okay. I've been around a long time on this. And I've seen good people go down

1 because they didn't do the right thing. It's so – how should I say it -- it's so minor in the big  
2 scheme of things. Right now, you've got a lot on your mind, and I don't think you're looking at  
3 it from, really, the right perspective. You're accused of an aggravated sexual assault. And this is  
4 what I know – this is what I know: You didn't do that, okay. I know that. You laid with another  
5 woman in bed. You laid – I'm going to tell you what I believe that we know, because there's  
6 other folks that obviously know about this.

7 [Ringing sound.]

8 SA (b) (7) : Okay, there's you and at least – and we know there's at least two others. I'm  
9 really thinking about the conversation, and this is what I'm going to tell you, when we put this  
10 thing all together, and I want to...

11 [Ringing sound.]

12 SA (b) (7) : ...understand straight up, honestly.

13 ACC: I swear to God.

14 SA (b) (7) : I'm going to tell you, her stories match to the T, who she called, when she  
15 left, what happened, who picked up, what – every little thing. And this is when I see all of this.  
16 Here's a guy – and it is uncomfortable to be in that position. I get it. But you just laid in bed.  
17 You didn't rape this girl or sexually assaulted her. You laid next to here, got caught, and it's...

18 ACC: I know what you're doing.

19 SA (b) (7) : Okay, then tell me that's not – tell me you did not lay in that bed.

20 ACC: I did not get with this woman.

21 SA (b) (7) : No. I know you didn't.



1 ACC: I did not lay in that bed. I'm telling you I did not have any interaction with that  
2 woman to the one hundred percent best of my knowledge.

3 SA (b) (7) : That's what you're going to take to after everybody is going to see the rest of  
4 the story, really. And I'm going to tell you there's two other people besides you that know about  
5 this. You are significant, and there's two other people.

6 ACC: Well, why...

7 SA (b) (7) : And I'm going to visit this, and you know I won't spill that to you. You  
8 know that. You know how it goes at this point in time. But I want to be able to go to General  
9 Zobrist and say "Colonel Wilkerson was straight forward; talked to us about it; and here's what  
10 happened."

11 I think you got into a bad situation there, okay. I'm not sure if she looked at you,  
12 targeted you or whatever she saw or there was some drinks and stuff going on. We know  
13 women like that, too, and I think she's a little bit on that side, and we're going to find out more  
14 about her character and all of the stuff, too, and we're in the mix of that. So she's not some  
15 innocent 15-year-old girl, okay? We know that about her. That's already been established in  
16 doing her check – background check. Okay, but we also know what we believe – I'll say again,  
17 that she – how she was in bed with you; you guys got surprised.

18 You guys got surprised, okay, and you just listen to me on this – you guys got surprised,  
19 and you didn't – nothing happened. That's the thing. You laid next to another woman. There's  
20 nothing un-consensual; there was nothing to that effect, okay? She – you know your wife did the  
21 right thing, absolutely. And we're talking with her. She did the right thing by screaming, "Get  
22 the hell out." As a matter of fact, you were surprised, too, and that's – and here's the thing – and

1 you said some interesting stuff – you weren't feeling well; you were either drugged or drunk or  
2 you know. That – that – and we'll get to that – into that part. That made you a reas...

3 ACC: To one hundred percent of the best of my knowledge, one hundred percent, I did  
4 not do this.

5 SA (b) (7) : I know. Then we can't work together on this kind of stuff.

6 ACC: No. I'm already guilty?

7 SA (b) (7) Well, you're not guilty.

8 ACC: Here's what...

9 SA (b) (7) : Well, you're lying.

10 ACC: I'm not lying.

11 SA (b) (7) : As a United States Air Force officer, you know and I know – you've  
12 probably sat on both sides of this – the least that we can survive – we can survive a lot of things,  
13 but what we cannot survive is the integrity issue. And here's what I'm talking about: You got  
14 into bed. Now how you got there, that's what I want to try and found out.

15 ACC: I did not get in the bed...

16 SA (b) (7) : Did you feel like you were drugged or something?

17 ACC: I did not get in the bed.

18 SA (b) (7) That's not true, and you know that it is not true. Now, that's not – that's why  
19 I don't – you see, when I saw you come in and we talked about it, I thought you were a different  
20 person.

21 ACC: I'm telling you, I...

1 SA (b) (7) : I don't – it's a very strong accusation. I wouldn't want to be there, but  
2 you're accused of aggravated sexual assault, and that's not what's happened. This is what I want  
3 you to see. That did not happen. Something much, much, much lesser happened, okay? And  
4 you know you're concerned about the perception. The perception is already out there. The  
5 perception, where we're at, is already there. Okay? Now don't hurt yourself by not being  
6 honest. I just want you to be honest about what happened, and why, and your wife did the right  
7 thing – she got her out of there, she left, and from everything then on, everything checks out with  
8 this person. It doesn't make any other sense. Right now, what you – I know you've seen the big  
9 picture; you're worried about that.

10 ACC: I'm...

11 SA (b) (7) : That will be another day.

12 ACC: I'm telling you...

13 SA (b) (7) : Right now, I just need to focus on how you got down into the bed, okay, and  
14 maybe there's a reason...

15 ACC: I did not...

16 SA (b) (7) : ...not too much to drink.

17 ACC: I did not go to that bed. I keep telling you. My wife...

18 SA (b) (7) : Where did you go? Where did you go?

19 ACC: I went to my bed.

20 SA (b) (7) : Okay. Is there a chance – I mean because what we know is a bed, together.  
21 That we know.

22 ACC: I...

1 SA (b) (7) : That's what we know.

2 ACC: I need to make sure my son is being picked up.

3 SA (b) (7) : Okay. No problem, Sir. Yes, absolutely. At what time do you have to pick  
4 him up?

5 ACC: At 6:00.

6 SA (b) (7) : Okay.

7 ACC: I was led to believe earlier – I know what is happening. I was forthright and now,  
8 here...

9 SA (b) (7) : Well, quite frankly, you were simply not. And I don't do it because – and I –  
10 because, again, everything on the other side checks out. And we're talking to one person and I  
11 mentioned the second person – right now. Who knows? I know you had a conversation about  
12 the event that night and with somebody else a couple of days later. I'm not going to mention any  
13 names. So...

14 ACC: Somebody...

15 SA (b) (7) : We'll just leave it like that for right now. But I want to be able to...

16 ACC: I'm telling you...

17 SA (b) (7) : ...that when we go on high and put this forth to General Zobrist, that I can  
18 say "Hey, the events match up, and there really..." and as you stand right now, I don't think  
19 that's going to match up for you. I'm not going to lie.

20 ACC: I'm doing...

21 SA (b) (7) : Okay.

1 ACC: ...to answer every question to the best of my ability. I did not walk downstairs,  
2 three flight of stairs, drunk, after my wife sent me to bed, and I went to bed. I have absolutely  
3 one hundred percent true faith, and that is what I did and what happened.

4 SA (b) (7) : Is it – did you mention not feeling well the next day?

5 ACC: I did.

6 SA (b) (7) : That came up, - that came up in another conversation before, so is there any  
7 reason because of that, maybe, that you not – did you black out or anything -- I mean not sleep  
8 walking, how come – how did – you guys ended up together in bed. Either she walked up or you  
9 walked down. One of the two things happened.

10 ACC: I did not jump into this person's bed.

11 SA (b) (7) Okay.

12 ACC: I don't believe she jumped into mine. She didn't crawl...

13 SA (b) (7) : Could it be that when – while she went before you, so is there any way that  
14 she could have ended up in your bed for some odd reason?

15 ACC: No.

16 SA (b) (7) : All right, she knew where her bedroom was and all that stuff during that  
17 night?

18 ACC: Right.

19 SA (b) (7) : Okay, so no way you guys laid in bed together?

20 ACC: I'm...

21 SA (b) (7) So when your wife says – when your wife says “This is what happened,”  
22 you're going to say, right now, in front of us here, that that did not happen, even though...

1 ACC: I was...

2 SA (b) (7) : ...we're talking to your wife, right now, she said, okay, and then there's  
3 another party that knows about this, and I just want to let you know. I want us to...

4 ACC: I will stand up and swear that I did not do this.

5 SA (b) (7) : Fair enough. Fair enough.

6 ACC: I know that you're calling me a liar. I know...

7 SA (b) (7) : Do you know why? Because her story is just – I mean all of those things  
8 match, and, again, my experience...

9 ACC: What doesn't match?...

10 SA (b) (7) : Well, I'm going to tell you, well, for one, how does a woman leave in the  
11 middle of the night barefoot, okay? Those kinds of bits. And here's the...

12 You put yourself – you've been a commander. You put yourself in the situation. I'll get  
13 this, there's this woman, she left, she's barefoot, got called; picked up; went into get drug tested,  
14 the whole nine yards; has these allegations forwarded. Spilled her guts to several other people,  
15 and all those things just kind of time-line it. All the other events, too, all line up, okay? And then  
16 you've got somebody here, who, in my opinion – my opinion because I'm going to tell you if  
17 everybody kind of stands and has got your back and all that, it may be okay. The commanders  
18 will make their own determinations. But assume that somebody does not agree with your  
19 timeline, you know that's a big deal.

20 ACC: I'm telling you I didn't do this.

21 SA (b) (7) : Okay, and that's fair enough because, like I said, at that point it doesn't  
22 become what you did or what you didn't do, it becomes an integrity issue, and I've just seen a lot

1 of officers go down, and I just don't want to – to be honest with you, because quite frankly, you  
2 just laid in bed with somebody.

3 ACC: That's not...

4 SA (b) (7) : Well, according to what's going on. Okay, from what we know, you just laid  
5 in bed. That's what I know. Okay, that's what I believe and that's what we believe or that's  
6 what we've been told. You said, "No." So what I have here is somebody, a grown man laying –  
7 consensually you know with somebody else in the bed. That is it. That's all I have in this  
8 situation. But, you're willing, and this is what I want you to understand when you leave here,  
9 this is your opportunity to go say "Hey, no, that's not what happened," because that is no big  
10 deal.

11 ACC: This is the best recollection of my events.

12 SA (b) (7) Okay.

13 ACC: I don't know what I left out.

14 SA (b) (7) : All right. Well, fair enough, (b) (7) [sic], anything that you can think of?

15 ACC: No, Sir.

16 SA (b) (7) : All right.

17 ACC: I just...

18 SA (b) (7) : All right. I know it's been a long day, all right. What we got to do is – we're  
19 going to have to release you to somebody to – in this case, I know your boss... I don't think your  
20 direct boss is here - I'm going to have to release you to Colonel Smith – Lieutenant Colonel  
21 Smith. All he has to – he knows you, and to make sure that you're okay, and then you know  
22 you're on your way. That's the standard protocol.

1 ACC: I can go home?

2 SA (b) (7) : Yeah. Absolutely, you can go home. Absolutely.

3 ACC: I won't – this will come out.

4 SA (b) (7) : I hope so, too. I hope that at the end of the day – that's all we are. Okay,  
5 you understand we are not here to prove you guilty or anything. I'm just a fact-finder. I want  
6 to...

7 ACC: I know for a fact I would not put myself in this situation, and I tried like hell...

8 SA (b) (7) Okay.

9 ACC: ...that night to get people to leave.

10 SA (b) (7) : And I believe you a hundred percent, absolutely. I think you were doing the  
11 right thing; you got to go, you got to go. And then you've got this – and, again, what I think of  
12 her, quite frankly I think she's a nut, you know? I don't know her personally or anything like  
13 that, but you know we talk about everything. We try to find out the picture of who this person  
14 is.

15 ACC: And I don't know her at all.

16 SA (b) (7) : And there's probably you know, potentially, some history with her. I'm not  
17 sure. We're going to find that out, too, and that's what I wanted to make sure because, as I said,  
18 you're an attractive target to a woman. Let's face it; that's just the way it is. My wife thinks I'm  
19 an attractive target, but I'm not.

20 That's correct, but you know, you stand out – the fighter pilot; you know you hang  
21 around with impressive friends, you know all that stuff. Believe me that women look for that



1 kind of stuff. I'm not sure if that was her MO initially to get into your house. We try and find  
2 all those things out. But what we believe...

3 ACC: Well...

4 SA (b) (7) : What we do believe, and this is – I just want to make sure that you  
5 understand that you know you guys ended up somehow in that bed, and nothing happened, not a  
6 lick, and it's unfortunate if that would come back to hurt you. If that comes back, if you look  
7 back – I'm giving two years from now, a year from now, you're going to say "Hey, this little  
8 thing, which was nothing, but it was an integrity issue, it was a big thing in my..." whomever is  
9 going to look at these reports...

10 ACC: I agree, and I'm doing the best I can to answer every piece.

11 SA (b) (7) : All right. And I'm going to be able to say that I want to be able to stand  
12 up...

13 ACC: I hope...

14 SA (b) (7) : Well, absolutely. This – what we do is never a personal thing. I'm a fact-  
15 finder. If you tell me I can go right, I'm going to go right. If you go left, I'm going to go left.  
16 But I will also put all the puzzles together.

17 ACC: The puzzle looks like shit, I know.

18 SA (b) (7) : And we want to make sure that we get it accurately and even if it seems,  
19 again, even with agents, we find that, because people mess up, it's just a fact, their discretion  
20 when there is alcohol involved, you've got all this other stuff. It had – but people cannot  
21 survive. People cannot survive and especially an Air Force officer cannot survive an integrity

1 issue. Everything else you can survive; I can survive. I can mess up, and I have, and I've been  
2 able to survive.

3 ACC: I have messed up, too, but I have not messed up here.

4 SA (b) (7) : Right. Okay. So you – I understand, okay.

5 ACC: I understand truthfulness.

6 SA (b) (7) All right, Sir. I'll believe you, okay?

7 ACC: All right.

8 SA (b) (7) : All right. So we're going to get the rest of the administrative stuff done.

9 We're going to do some fingerprints and some photos. I'll call Colonel Smith and release you  
10 and make sure you get to your son, okay, by 6 o'clock. Right? My son is there, too. Hey, but –  
11 and just listen, I don't judge you and I know you don't judge me. This is a hard job to do, and I  
12 know because we know this in weighing stuff like that. Okay, this is just an unfortunate event.  
13 You're going to get through this, okay? So don't – just hang in there. We're going to get  
14 through this. We're going to do our best job, initially, and find out the accurate facts about that  
15 night's event. I'm going to talk to a lot of people, okay. I just want to make sure that when you  
16 leave here today...

17 ACC: I'm not calling attorneys okay.

18 SA (b) (7) : No, no, and...

19 ACC: Do I need to go get one after this? I don't – I'm asking.

20 SA (b) (7) : Sir, you have the right to retain one at any time, at any time.

21 ACC: I know, but I'm also not trying to hide anything.

1 SA (b) (7) : No. No, but you – you know you can do what you want. We just wanted to  
2 talk to you. We wanted your side of the story because right now we have one side of the story.  
3 We want your side of the story.

4 ACC: Right.

5 SA (b) (7) : She came there. She stayed at your house. You went to bed – and to make  
6 sure that I have this right in a nutshell. I know all the peripherals, but you know as the night was  
7 trickling, people were leaving, she ended up just being with you and your wife, and that’s it –  
8 just you three. But she, she went to bed first. You went to your bed, right?

9 ACC: No. I...

10 SA (b) (7) : You went to bed first.

11 ACC: When I left them, I know this, I walked – back up – my wife said, as she normally  
12 does, seriously, my wife stays up after I do, and cleans the kitchen and puts things away – she’s a  
13 closet cleaner all the time.

14 SA (b) (7) : Yeah.

15 ACC: She said, “You go to bed.” And I said, “I’m going to bed.”

16 SA (b) (7) : Okay.

17 ACC: And I went to bed.

18 SA (b) (7) : Okay. And so you assume (b) (6) went to bed. I assume (b) (6) went to bed?

19 ACC: Yes.

20 SA (b) (7) : And then you wake up in the morning and your wife tells you in the morning  
21 what happened with her in the night, but you didn’t wake up in the night, right, I mean you wife  
22 didn’t tell you that night; she told you the next morning?

1 ACC: Yes.

2 SA (b) (7) : Okay.

3 ACC: And I specifically, when I – after I prepared breakfast – got the preparations for  
4 breakfast together...

5 SA (b) (7) Okay.

6 ACC: ...I went upstairs and said, “Do I need to cook for additional people? Are you  
7 hungry? And what’s going on?” And she said, “No, she left early in the morning.” And then  
8 she gave me the whole story, which I wrote down.

9 SA (b) (7) : And your conversation with Colonel Ostovich a day later or two days later  
10 was what?

11 ACC: I told him that I said that Beth drove the first girl that was interested in him – and  
12 has no effect on this – to the base gate.

13 SA (b) (7) : Uh-huh.

14 ACC: And then I told him that the other girl had been booted out a little aggressively by  
15 my wife, actually, and had left her shoes. I don’t know if he recalls we looked for the shoes  
16 earlier, that there was a shot hunt for her shoes...

17 SA (b) (7) : Okay.

18 ACC: When we were trying to get her to go out the door because she was going to go  
19 with other individuals.

20 SA (b) (7) : Okay.

21 ACC: And we tried to give her a pair shoes. I think I recall that as well.

22 SA (b) (7) : Did Colonel Ostovich talk to you about the medical stuff with her?

1 ACC: No. I don't know...

2 SA (b) (7) : Okay. I'm just asking you. Did anything else come about, talking with him,  
3 specifically, a couple of days later, maybe, at all about her – no – going to the Medical Group or  
4 anything like that – to that effect?

5 ACC: No.

6 SA (b) (7) : Okay. Fine. Fair enough.

7 ACC: Did she go to the Medical Group?

8 SA (b) (7) : I can't tell you. Okay, I can't tell you a lot of stuff. I just want to make  
9 sure...

10 ACC: He didn't tell me anything – that she had gone to the Medical Group.

11 SA (b) (7) : Or anything specifically about her, in general...

12 ACC: We didn't...

13 SA (b) (7) : ...to let you know...

14 ACC: We did not talk about...

15 SA (b) (7) : ...that he talked with a friend of hers?

16 ACC: We have not talked about this since right after, essentially.

17 SA (b) (7) : The day after?

18 ACC: Yes, the day after.

19 SA (b) (7) : The very next day?

20 ACC: Yeah.

21 SA (b) (7) : All right.

22 ACC: You said two days after...

1 SA (b) (7) : Well, I...

2 ACC: I think I talked to him the day after. He came to my house for a social visit.

3 SA (b) (7) : Okay.

4 ACC: There was another squadron commander on base that had a – was having a rough

5 time. He – Colonel Ostovich happened to show up and I said I know you know I had prepared

6 some dinner for everyone. They stayed. I left to go to billeting to talk to this individual, I can...

7 SA (b) (7) : No, I believe you....

8 ACC: I...

9 SA (b) (7) : We'll believe you, Sir. At the end of the day, the truth is all going to come

10 out.

11 ACC: This is the truth.

12 SA (b) (7) : No, I'm just – this is the whole thing: There are going to be two sides to no

13 matter how ...

14 ACC: I'm not lying.

15 SA (b) (7) : And we want to make sure that we've got it, and I think everyone is going to

16 look, just to make sure. I want to make sure that you understood where I was coming from.

17 You got my thought.

18 ACC: I talked to Colonel Ostovich, the next day...

19 SA (b) (7) : No worries.

20 ACC: ...I'm positive. Also talk to Major Goldsberry, that actually...

21 SA (b) (7) : Did you tell him the same thing about the woman...?

1 ACC: To be honest, yeah. I'm a hundred percent honest. I don't recall. I don't think I  
2 did.

3 SA (b) (7) : Okay.

4 ACC: I know I told him I felt like crap, because I did. I sat in the outfield a while.

5 SA (b) (7) : That's an interesting thing that, you know, because a couple of people felt  
6 like that. I wonder.

7 ACC: I'm telling you, I know I sat in the outfield. You know we were playing baseball.  
8 I felt so freaking...

9 SA (b) (7) : Yeah.

10 ACC: ...vertigoish I had to sit down.

11 SA (b) (7) : And it's not the – not the...

12 ACC: I know...

13 SA (b) (7) : ...it's not the...

14 ACC: It's not. I'm used to hangovers.

15 SA (b) (7) : Okay. Okay. Join the club.

16 Alright, listen, I do want you to understand, looks bad, right?

17 ACC: Right.

18 SA (b) (7) : But for everything, wait until this all plays out, okay. You were the IG; you  
19 take reports. Sometimes you know investigations go like this. [Snapped fingers.] And then the  
20 big balloon, so I think by you being here, being honest, that is how you can help yourself the  
21 best. Okay? I think, again, somebody will look at with the idea of he or she is going to believe it

1 or not, and I would hate for if we left anything out for –what one side of the story is - such a  
2 minor thing.

3 ACC: Such a minor...

4 SA (b) (7) : It is so minor because...

5 ACC: ...but I'm telling you...

6 SA (b) (7) : Yeah.

7 ACC: ...this smells like absolute horse crap.

8 SA (b) (7) : Yeah.

9 ACC: It does, I know.

10 SA (b) (7) : Why would she...

11 ACC: I don't know. I don't know what she's telling you.

12 SA (b) (7) : Did you turn her down, maybe, in the middle of the – I mean during the  
13 night. Did she maybe get an impression that you liked her, but you kind of turned her down and  
14 she got – I mean evil on you? I mean any idea? There was no indication that you thought that  
15 she might have liked you throughout the night?

16 ACC: I never picked up on that. I can't say. I can't say because I don't know. Could  
17 there have been? My wife says I'm oblivious to women that do that sort of things, and I think in  
18 a large part, I am. I'm just a friendly person, but I'm not going to be friendly with a female and  
19 try to touch one inappropriately.

20 SA (b) (7) : No. Fair enough.

21 ACC: I've never done that in my life, and I'm ready to stand up and put my hand on a  
22 Bible and say "I don't do this."



1 SA (b) (7) : All right, Sir. Fair enough. I just wanted to make sure that you understood  
2 all of that one last time. I know the guys talked to you, and I appreciate you coming in and being  
3 candid and forthcoming and all that stuff. But one of last thing I don't want to do is keep you  
4 away from your son. I know how it goes. What we're going to do, though, we're going to go  
5 finish the admin stuff, and I have to release you to somebody, okay? All right. Fair enough?  
6 All right. Thank a lot. I appreciate it.

7 ACC: Huh?

8 SA (b) (7) : Another water? It will be all right, okay?

9 ACC: Yeah.

10 SA (b) (7) : At the end the truth will come out.

11 ACC: I've never been in anything like this in my life.

12 SA (b) (7) : It's, ah, just the way it goes. But like I said, the investigation will find the  
13 facts. That's all we do. We're just fact-finders at this thing, and then we'll present the facts at  
14 the very end okay? All right.

15 So, just hang tight. Do you want to go to the bathroom at all or?

16 ACC: No, I'm fine.

17 SA (b) (7) : They're ready for him now.

18 SA (b) (7)(C) : Alright. Sir, they're ready for you.

19 [Playing of Prosecution Exhibit 2 completed.]

20 MJ: Government?

21 TC: Are we prepared at this point to go with our next witness or...

22 MJ: It's 11:30. What's the timing? How long do you expect the next witness to last?

1 TC: At least a half hour.

2 MJ: All right, let's go ahead and press with this witness then, if this witness is available.

3 It will take us to approximately 12 o'clock, and then we'll take lunch at that time.

4 TC: All right.

5 MJ: Would either the members or counsel like to take a short recess before we continue

6 with this next witness?

7 [Negative response by all.]

8 MJ: All right, government, when you're prepared, you may continue.

9 TC: The government calls Colonel Ostovich.

10 [The bailiff left the courtroom and returned with the witness.]

11 **COLONEL DEAN R. OSTOVICH**

12 was called as a witness for the prosecution, was sworn, and testified as follows:

13 **DIRECT EXAMINATION**

14 **Questions by the trial counsel:**

15 Q. Could you please state your full name?

16 A. Dean Rudolph Ostovich.

17 Q. And you're a Colonel in the United States Air Force?

18 A. Yes.

19 Q. And where are you currently assigned?

20 A. To the Pentagon.

21 Q. And were you ever assigned to Aviano?

22 A. Yes.

1 Q. And when were you assigned here?

2 A. Ah, the Summer of `11 until the end of June of `12.

3 Q. And in what capacity did you serve at Aviano?

4 A. I was the Vice Wing Commander.

5 Q. Now I'm going to ask you a couple of questions. My understanding is you're  
6 testifying under a grant of immunity. Is that correct?

7 A. Yes, Sir.

8 Q. And what does that grant of immunity mean to you?

9 A. It means that what I testify to cannot be used against me or my testimony cannot be  
10 used against me.

11 Q. All right, and it also required you to testify honestly?

12 A. Yes.

13 Q. And that grant of immunity was because you were suspected of an unprofessional  
14 relationship. Is that correct?

15 A. Yes.

16 Q. And, in fact, you committed an unprofessional relationship with a Captain who  
17 worked in the Wing, correct?

18 A. Yes.

19 Q. Now do you know Colonel Wilkerson?

20 A. I do.

21 Q. How do you know Colonel Wilkerson?

22 A. We first met when he showed up as the Deputy Ops Group Commander, shortly after

1 I did. And we had a lot of time to work, professionally, together, and it evolved into a  
2 friendship.

3 Q. So you consider him a friend?

4 A. I do.

5 Q. And you still consider him a friend today?

6 A. Yes.

7 Q. All right. Do you know what his call sign is?

8 A. Roscoe.

9 Q. And you're a pilot, obviously?

10 A. Yes.

11 Q. An F-16 pilot?

12 A. Yes.

13 Q. And he's an F-16 pilot?

14 A. Yes.

15 Q. Okay. You said you were a friend. I mean did you socialize with both him and his  
16 wife?

17 A. I did.

18 Q. And what kind of stuff did you do?

19 A. Ah, we did wine-tasting; had dinner; would meet downtown; some bike riding.

20 Q. And at that time you were divorced, correct?

21 A. Yes.

22 Q. And they kind of took you in and took care of you?

1 A. They did.

2 Q. Do you remember the night of 23 March of 2012?

3 A. I do.

4 Q. And what was going on that night?

5 A. We had a USO concert. The band, Seether, was in town.

6 Q. And were you looking forward to that event?

7 A. I was.

8 Q. You had heard of Seether?

9 A. I am a fan, yeah.

10 Q. Okay. So this was big deal for you?

11 A. It was a good deal, yes.

12 Q. Okay, so what did you do that night in preparation for the concert?

13 A. I swung by Roscoe's to pick him up and a couple of others; went by the Wing

14 Building.

15 Q. All right, well, let me back up.

16 A. Okay.

17 Q. Who else did you pick up at Roscoe's?

18 A. We had Major Goldsberry and Major Lowe.

19 Q. Okay, so that was at his house – at Colonel Wilkerson's house?

20 A. Correct.

21 Q. All right, so what did you do after that?

1           A. After that, we went by the Wing Building, and picked up Sergeant John Fernandez  
2 and his wife. And then eventually drove over to the concert venue, which is the PAHA.

3           Q. All right. Prior to going over to the PAHA, did you have anything to drink?

4           A. Yes.

5           Q. And what did you have?

6           A. At the Wing Building, we did a shot of Jeremiah Wheat.

7           Q. All right. You and Colonel Wilkerson and...

8           A. And the group.

9           Q. ...the group. So the group you just described?

10          A. Right.

11          Q. So you said you went over to the PAHA?

12          A. Yes.

13          Q. And what is the PAHA?

14          A. It's a facility that the Army runs – the 173<sup>rd</sup> Parachute Reception Area, where they  
15 stage and get on airplanes to go do airdrops.

16          Q. And that's where the concert was?

17          A. That – yes.

18          Q. So what happened once you arrived there?

19          A. Ah, I had split off, and, basically, met with the band, briefly, before they came on  
20 stage. And then we, basically, attended the concert. I think it lasted a little over an hour. And  
21 then following...

1 Q. I'm sorry, but I'll stop you again. When you visited with the band, did you have  
2 anything to drink at that time?

3 A. I had one drink with the band.

4 Q. All right. And then what happened after you visited with the band?

5 A. Ah, I went out and basically attended the concert, in the audience.

6 Q. Do you remember approximately what time the concert got over?

7 A. Ah, best guess would have been around eight-thirtyish.

8 Q. And after the concert was over, what did you do?

9 A. Ah, I basically stayed, ah, waited for the band to come out, ah, thank them for, ah,  
10 basically coming out to Aviano and performing, and then got them started on their meet and  
11 greet. And then I headed back towards the club.

12 Q. Did you get to go back with the band after the concert?

13 A. Ah, yes, briefly. It wasn't "back." It was back towards where the band was. They  
14 were in a, basically, the dressing room.

15 Q. All right. So you went back to the area where the dressing room was, back in that  
16 area?

17 A. Correct. I never went back in the dressing room. I met the lead singer as he came out  
18 of the dressing room and went to go to meet and greet.

19 Q. Did you have anything more to drink at that point?

20 A. No.

21 Q. So what did you do after you met with the band?

22 A. After the band, I basically headed over to the Club.

1 Q. And what happened when you got to the Club?

2 A. Initially, I went over to where the Officers' Bar is, and found it was closed, and then  
3 walked through the club, and ended up in the enlisted portion of the Club, where I found  
4 Lieutenant Colonel Wilkerson, Major Lowe, Major Goldsberry.

5 Q. And did you observe what they were doing when you saw them?

6 A. Ah, basically, there was a large crowd at the Club – post-concert crowd, I assume, but  
7 they were just basically socializing with the people who were there.

8 Q. Did you know any of the people that were socializing there?

9 A. Yes.

10 Q. And who was that?

11 A. Ah, there was a lot of people that I recognize by face – obviously worked around the  
12 Wing. I did see them. With them were also Captain Manning, Captain Brock. There were  
13 several others that I knew, but not, you know, off of recollection.

14 Q. And you knew Captain Manning and Captain Brock from your interactions with them  
15 in your official capacity?

16 A. Through Wing interactions, yes.

17 Q. As part of being the Vice Wing Commander, one of your jobs is you sit on a number  
18 of committees. Is that correct?

19 A. Yes.

20 Q. Okay, like what would you be sitting on?

21 A. One of the first things I did was Central Registry Board. There's several venues that  
22 you take part in.



1 Q. Sure. And you would deal with medical professionals as part of those duties, correct?

2 A. Ah, yes. Medical professionals do attend and participate in those boards.

3 Q. And do you have any duties required to interact with the SARC?

4 A. Yes.

5 Q. And what are those duties?

6 A. SARC is, primarily, if there is an incident that occurs, will basically come up through  
7 – will report to the Vice Wing Commander. It's part of his duties.

8 Q. So if the SARC has a report to make, they make it to you?

9 A. Yes.

10 Q. So you knew some of the people that Colonel Wilkerson, Major Lower, and Major  
11 Goldsberry were talking to?

12 A. Yes, Sir.

13 Q. All right. Did you join in on the conversation?

14 A. Ah, yes.

15 Q. And approximately – well, were you drinking at that point? Was anybody else  
16 drinking?

17 A. People had beers, as best I can recall. I remember having at least a beer; maybe as  
18 many as two.

19 Q. Okay, so you had a couple of drinks?

20 A. Correct.

21 Q. Potentially.

22 A. Right.

1 Q. Do you remember, generally, what the conversation was about?

2 A. No, not really.

3 Q. Do you remember hearing any of the women repeatedly asking Colonel Wilkerson  
4 what his rank was or what his position was?

5 A. No.

6 Q. At some point, was the decision made to leave?

7 A. Yes.

8 Q. Can you explain how that came about?

9 A. Nothing particular; just kind of had been there a while. It was probably time to just  
10 get on with the evening. I mean people were – it had been a long week.

11 Q. And do you remember who was in the group when the decision was made to leave?

12 A. I don't remember the particulars of how we decided to leave the Club. I do remember  
13 that, basically, myself, Colonel Wilkerson, Major Lowe, Major Goldsberry started departing.

14 Q. All right. And what about Captain Brock and Captain Manning?

15 A. As we were walking out, and I don't remember which one of the ladies said it, but  
16 they said, "Hey, we're coming with you guys."

17 Q. Was there another female there at that time?

18 A. Yes, there was. There was their friend, (b) .  
(c)

19 Q. Okay. Did you know her at the time?

20 A. Not at all.

21 Q. So they follow you out into the parking lot?

22 A. Yes.

1 Q. Okay, and what did you do; go to your car?

2 A. We all go to my car; jump in; and we drove over to Colonel Wilkerson's.

3 Q. Okay, as you're getting into the car, did Colonel Wilkerson, at any time, make it clear  
4 he didn't want the women to come with you?

5 A. Ah, I do not remember that.

6 Q. All right. So what happened once you got to the house?

7 A. Basically, unloaded from the car, and then went to the house.

8 Q. Okay, and what happened when you got – get in the house?

9 A. Beth was there, obviously. We entered the house and basically had a couple of social  
10 drinks there for the next hour and a half or so.

11 Q. Okay, and who offered the drinks?

12 A. I don't remember who necessarily offered the drinks. I don't know who served up the  
13 drinks or made the drinks. I mean I remember it was probably Roscoe and Beth, but I went there  
14 – you know I had been there more than one time. I just don't remember the details of who was  
15 physically making and serving up drinks at that point.

16 Q. Sure. Did it seem like a normal social gathering?

17 A. It was a normal social gathering.

18 Q. Nothing out of the ordinary?

19 A. Nothing.

20 Q. And I would image, in the pilot world, that this happens quite frequently – people get  
21 together?

22 A. I think in normal world, people get together.

1 Q. Yes, yes. Nothing unusual at all at this point?

2 A. Nothing at this point.

3 Q. All right. Approximately how long were you there?

4 A. Best guess, about an hour and a half; maybe two hours.

5 Q. And during that time did you see anybody drunk or out of control?

6 A. No one was exceptionally drunk. People were drinking, but I thought it was a  
7 positive atmosphere. People were having a good time.

8 Q. All right, so it was a generally positive, good time?

9 A. Correct.

10 Q. Right. Ah, do you remember approximately when you left?

11 A. I think it was around midnight.

12 Q. And did you leave with yourself or did you leave with someone else?

13 A. I left with Captain Manning.

14 Q. All right. Did you engage with Colonel Wilkerson again that evening after you left?

15 A. Ah, no.

16 Q. When is the next time you had any interaction with him?

17 A. The next time I saw him was basically around 11:00-12:00 the next day.

18 Q. And where was that?

19 A. I swung by his house.

20 Q. Okay. And can you tell me about that? What happened when you got there?

21 A. Ah, walked in, said hello, and sat down and talked in the kitchen.

22 Q. Okay. And how was he acting at that time?

1 A. He was acting normal; looked tired; looked a little under the weather.

2 Q. All right. Was there a plan to have a barbeque that night?

3 A. I believe so. Yes.

4 Q. And was the discussion made about whether or not – was there any discussion about  
5 whether the barbeque was going to still go on or was it going to be canceled?

6 A. I think at the end of the day, the barbeque was – it was a smaller group.

7 Q. All right. Now, ah, did Colonel Wilkerson, at all, talk about what happened after you  
8 left that evening?

9 A. Ah, yes, but I don't remember any – yes. I'm trying to remember exact details. I  
10 kind of remember more of talking to Beth.

11 Q. Sure. Sure, and I know this has been a long time. And so you talked to Beth, too,  
12 about what happened?

13 A. Yes.

14 Q. Okay, and what did Beth tell you?

15 A. Specifically, too?

16 Q. Yes, that you remember, what, to you? What did Beth say to you?

17 A. I remember she had said that they had issues with (b) ; that she appeared to be  
18 intoxicated; that they had tried to put her down in the guest bedroom; that at least once she had  
19 found (b) walking through the area where the kids were downstairs; and that at one point it  
20 ended up to where she said, "You know, you either you know lay down or you've got to go."  
21 Beyond that, I think the last part was she said she went back downstairs, and when she went to

1 go look for (b) (6), (b) (6) wasn't there, and she followed it up by looking around the yard and  
2 outside to see if (b) (6) was around.

3 Q. All right. So your understanding was at some point in the middle of the night, (b) (6)  
4 was told to leave the house?

5 A. I never physically heard the part of "you have to leave."

6 Q. But given an option – going...

7 A. Yes. Yes.

8 Q. But your understanding was that (b) (6), in fact, had left in the middle of the night?

9 A. I, I – yes.

10 Q. Now, as the Vice Wing Commander, I'm sure you would have been concerned about  
11 a civilian female member leaving the house in the middle of the night, not knowing where she is,  
12 correct?

13 A. Yes.

14 Q. So did you ever say anything to Beth like "There's nothing to worry about here.  
15 Whatever happens, happens"? Did you ever say words like that?

16 A. Ah, I don't recall saying anything like that.

17 Q. Nor would it be something that you would say, I imagine, as the Vice Wing  
18 Commander?

19 A. Ah, I would. It's kind of bizarre because there has been some – you see things that  
20 are what you would consider abnormal all the time. This seemed like someone had basically  
21 gotten up and left the residence. I don't know that I had concern about her walking around the  
22 streets of Roverado.

1 Q. Well, you've been in Italy for a while?

2 A. Yes.

3 Q. And you would agree with me that the streets are usually dark?

4 A. They're usually dark, but pretty safe. This is a relatively safe...

5 Q. I'm not talking about crime, but as far as traffic, correct?

6 A. Absolutely.

7 Q. Traffic is one of the big concerns that they have as far as safety here at the Wing,  
8 correct?

9 A. Ah, to a bit.

10 Q. And so, for example, there's not a sidewalk on the road that goes from Roverado to  
11 the base, is there?

12 A. Not the whole way. That's correct.

13 Q. So if (b) had been walking back to the base, she would have been walking on a road  
14 in the middle of the night, correct?

15 A. Correct. I was more of a mind that she would – she had called someone to get a pick-  
16 up.

17 Q. Now, did you have any more conversation beyond what we just talked about with  
18 Beth about (b) ?

19 A. Nothing beyond that level of detail, correct.

20 Q. Now, at some point you had a conversation with Ms. Suzanne Barrone, correct?

21 A. Yes.

22 Q. And she was a friend of yours?

1 A. Yes.

2 Q. And that was either Saturday or Sunday, correct?

3 A. It was shortly after; in the next couple of days. Yes, Sir.

4 Q. All right, and she, in fact, had informed you that (b) had made an allegation or felt  
5 that she had been sexually assaulted that night?

6 A. Ah, the way it was explained to me was something had made her uncomfortable while  
7 she was there.

8 Q. And then later on, in your duties, the SARC, in fact, informed you that the allegation  
9 was made?

10 A. Ah, it was Friday, April 13<sup>th</sup>, that the SARC informed me of an event, without  
11 mentioning names. I mean the SARC will give you the basic facts.

12 Q. Right.

13 A. But it seemed like that matched what had gone on.

14 Q. Right, based upon what you knew, it seemed like it was this same event?

15 A. Yes.

16 TC: All right. Just one second.

17 [The trial counsel conferred.]

18 TC: No further questions.

19 [The defense counsel conferred.]

20 CIV DC: No questions, Your Honor.

21 MJ: Members, do you have any questions of this witness?

22 I guess not.



1 MJ: Subject to recall?

2 TC: No.

3 CIV DC: Yes, Your Honor.

4 MJ: All right.

5 Thank you for your testimony. You've been temporarily excused, which means that  
6 there may be an occasion that your testimony is needed at a future point. So just insure the Legal  
7 Office can contact you as needed.

8 While this case is ongoing, do not discuss your testimony or your knowledge of this case  
9 with anyone other than counsel, the accused, or this court. You may step down.

10 WIT: All right.

11 [The witness left the courtroom.]

12 MJ: All right, counsel, this appears to be a good time to take a lunch recess for the day.  
13 Are there any other issues that I'm unaware of that would make that not a good idea at this  
14 point?

15 TC: I think it would be good a point to let the members go, and then I think we have  
16 some issues that we could deal with with you. It would just take a few minutes.

17 MJ: Sounds good.

18 CIV DC: Sir, if I may?

19 MJ: You may.

20 CIV DC: Can we talk to you in an 802 before – to determine how long to release the  
21 members? There may...

22 MJ: All right. That sounds fine.

1 MJ: Members, I'm just going to not release you for lunch, and I'm just going to put you  
2 back into the recess room. And then I will have the bailiff come in and let you know about how  
3 long that lunch session will be.

4 We are in recess.

5 (The court-martial recessed at 1144 hours, 30 October 2012.)

6 **END OF PAGE**

1 (The court-martial was called to order at 1348 hours, 30 October 3012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Government?

6 ATC: Sir, before the members come back in, we'd like to take up the issue of two  
7 stipulation of facts that we've both agreed to.

8 MJ: You may continue. Thank you. Are those written?

9 ATC: They are written, Your Honor, and the first one we'd like to address would be  
10 Prosecution Exhibit 3 for Identification. And it is a two-page document, Your Honor, dated 30  
11 October 2012. Would you like me to provide you a working copy?

12 MJ: So that is prosecution – and Prosecution Exhibit 2 was the CD of the interview?

13 ATC: Yes, Sir.

14 MJ: And so this is Prosecution Exhibit 3.

15 ATC: Yes, Sir.

16 [The military judge reviewed the exhibit.]

17 MJ: Government, you said you had another stipulation of fact as well?

18 ATC: We do, Your Honor. It's been marked as Prosecution Exhibit 4 for Identification.  
19 It's a two-page document, and it is also dated 30 October 2012. It's signed the accused and the  
20 defense counsel. I'm handing you the original. And to correct my earlier assertion, you also  
21 have the original of the other stipulation of fact.

22 MJ: Thank you.

1 [The military judge reviewed the exhibit.]

2 MJ: All right, defense, does Colonel Wilkerson have Prosecution Exhibit 3 and 4 for  
3 Identification in front of him?

4 DC: Yes, Sir.

5 MJ: Thank you.

6 Colonel Wilkerson, is that your signature on both page 2 of Prosecution Exhibit 3 for  
7 Identification and Prosecution Exhibit 4 for Identification?

8 [The accused stood.]

9 ACC: Yes, Sir, it is.

10 MJ: Thank you for standing. You may remain seated, and I'll let you know if you need  
11 to stand as we continue this dialogue.

12 [The accused sat.]

13 MJ: Do you understand – well, first of all, have you had an opportunity to read both of  
14 these stipulations?

15 ACC: Yes, Sir, I have.

16 MJ: Do you understand the contents of both of these stipulations?

17 ACC: Yes, Sir, I do.

18 MJ: Do you actually agree with the contents of both of these stipulations?

19 ACC: Yes, Sir, I do.

20 MJ: Before signing these stipulations, did your defense counsel explain the stipulation to  
21 you?

22 ACC: Yes, Sir, they did.

1 MJ: Do you understand that you have an absolute right to refuse to stipulate to the  
2 contents of these documents?

3 ACC: Yes, Sir, I do.

4 MJ: You should enter into the stipulation only if you believe it is in your best interests to  
5 do so. Do you understand that?

6 ACC: Yes, Sir.

7 MJ: I want to ensure that you understand how this stipulation is to be used. When  
8 counsel for both sides and you agree to the contents of a writing, and in this case it would be  
9 what is contained on the first page of Prosecution Exhibit 3 for Identification, which is just an  
10 explanation of telephone records, it appears, as well as the information on the front page of  
11 Prosecution Exhibit 4 for Identification, which involves the approximate temperature on 24  
12 March of 2012 at 3:00 in the morning.

13 So when you agree to those facts, the parties are bound by the stipulation and the  
14 stipulated matters are fact in evidence to be considered along with all the evidence in this case.  
15 Do you understand that?

16 ACC: Yes, Sir, I do.

17 MJ: Knowing now what I have told you, as well as what your defense counsel earlier  
18 told you about the stipulation, do you still desire to enter into the stipulation?

19 ACC: Yes, Sir, I do.

20 MJ: Do counsel concur on the contents of the stipulations? Trial counsel?

21 ATC: Yes, Your Honor.

22 MJ: Defense?

1 CIV DC: Yes, Sir.

2 MJ: Are there any additional objections from defense to the admission of Prosecution  
3 Exhibits 3 or 4?

4 CIV DC: No, Your Honor.

5 MJ: Prosecution Exhibits 3 and 4 are admitted into evidence.

6 Government, regarding providing this information to the members, what is your  
7 recommended way forward? Are you intending just to provide these documents to the members  
8 and then I can explain to them what it is? Do you want to read these documents? What's your  
9 way forward?

10 ATC: Sir, we'd just like to provide working copies of the documents to the members.

11 MJ: Thank you. Just notify the court when you want to do that, and we can go forward  
12 with that, and I will then, at that point, instruct them on what a stipulation of fact is.

13 ATC: Sir, we intend to do that as soon as the members come in.

14 MJ: Are there any other matters that we need to discuss before calling the members?

15 ATC: No, Your Honor.

16 MJ: Bailiff, call the members.

17 [The bailiff left the courtroom.]

18 (The Article 39(a) session terminated at 1355 hours, 30 October 2012.)

19 **END OF PAGE**

1 (The court-martial was called to order at 1356 hours, 30 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government, you may continue.

6 ATC: Your Honor, at this time the government requests permission to publish working  
7 copies of Prosecution Exhibit 1 to the members.

8 MJ: You may do so.

9 [The exhibit was so published.]

10 ATC: Sir, at this time we'd also like to publish working copies of Prosecution Exhibit 3  
11 and 4 to the members.

12 MJ: You may go ahead and do that, as you are distributing those, members, I will very  
13 briefly explain to you what you are receiving in Prosecution Exhibit 3 and Prosecution Exhibit 4.

14 [The exhibits were so published.]

15 MJ: Now the parties to this trial have stipulated or agreed to the facts as set forth on  
16 Prosecution Exhibit 3 as well as Prosecution Exhibit 4. When counsel for both sides, with the  
17 consent of the accused, stipulate and agree to a fact, the parties are bound by the stipulation and  
18 the stipulated matters are facts into evidence to be considered by you along with all the other  
19 evidence in the case.

20 Government?

1           ATC: Your Honor, at this time the government would move to admit into evidence  
2 Prosecution Exhibit 5 for Identification. It is a 122-page document, the telephone records related  
3 to the event.

4           MJ: How many pages is that?

5           ATC: One hundred and twenty-two pages, Your Honor.

6           MJ: Thank you.

7           Defense?

8           DC: No objection, Your Honor.

9           MJ: Prosecution Exhibit 5 is admitted into evidence.

10          ATC: Your Honor, would you like a working copy of that document?

11          MJ: No thank you. I can use the original as long as the court reporter has the original.

12          ATC: He does, Your Honor.

13          At this time I'd like to request permission to publish working copies of that exhibit to the  
14 members.

15          MJ: You may do so.

16          And counsel, even though I said I didn't want a working copy, actually, once you finish  
17 with that, if you can provide me a working copy, I would appreciate it.

18          ATC: Absolutely, Your Honor.

19          [The exhibit was so published.]

20          ATC: I'm handing the military judge a working copy.

21          MJ: Thank you.

22          ATC: And, Your Honor, with that, the United States rests.



1 MJ: Defense, would you like a recess?

2 DC: Your Honor, prior to a brief recess, we'd like to publish some documentary exhibits  
3 or offer some documentary exhibits and seek to publish.

4 MJ: You may continue. You may do so.

5 DC: Copies have been provided to trial counsel and the originals are with the court  
6 reporter. May I approach?

7 MJ: You may.

8 DC: I'm handing the military judge working copies of Defense Exhibits A through M for  
9 Identification.

10 MJ: You're offering those into evidence at this time?

11 DC: Yes, Sir.

12 MJ: Government, is there an objection?

13 ATC: Sir, if those are the OPRs and the affidavits, then I have no objection.

14 DC: And I'll show trial counsel.

15 MJ: Government, have you had an opportunity to review Defense Exhibits A through  
16 M?

17 ATC: We have, Your Honor.

18 MJ: And is there an objection?

19 ATC: There is none, Your Honor.

20 MJ: Defense Exhibits A through M are admitted into evidence.

21 DC: Your Honor, can we publish at this time?

22 MJ: You may do so.

1 DC: I'm handing the members what have been admitted as Defense Exhibits A through  
2 M.

3 MJ: These are working copies for them. Is that correct?

4 DC: Yes, Your Honor.

5 MJ: Defense?

6 CIV DC: Sir, at this time we would like to request a recess so the court members can  
7 review the documentary evidence that has been provided to them, at which point we will then be  
8 prepared to call witnesses.

9 MJ: Is there a specific time or are you asking for until the members had a full  
10 opportunity to review?

11 CIV DC: Sufficient time. I'm not sure how long they will need.

12 MJ: All right.

13 Members, what we'll do is you've gotten a fair amount of documents here. You're not  
14 going to be tested on it or anything, but I will give you the opportunity to go through and review  
15 all of that information prior to any additional witnesses testifying so that you can use that  
16 information, if you find it appropriate, to question witnesses or as you continue doing your duty  
17 as court members.

18 I will remind you, this, again, is not deliberation, this is not the time to begin discussing  
19 and of the evidence, but you may use this time to review the documents that have been provided  
20 to you.

21 Notify the bailiff when you are prepared to continue with the rest of the court.

22 We are in recess.

1

(The court-martial recessed at 1403 hours, 30 October 2012.)

2

**END OF PAGE**

1 (The court-martial was called to order at 1443 hours, 30 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order

4 The parties are present. The members are present.

5 Defense counsel, you may continue.

6 CIV DC: Yes, Your Honor, at this time the defense calls Dr. Dave Edrington to the  
7 stand.

8 [The bailiff left the courtroom and returned with the witness.]

9 **DR. DAVID EDRINGTON**

10 was called as a witness for the defense, was sworn, and testified as follows:

11 **Questions by the assistant trial counsel (Captain Beliles):**

12 Q. Would you please state your name for the record?

13 A. David Edrington.

14 Q. And where do you currently reside?

15 A. In North Carolina.

16 Q. And do you know the accused in this case?

17 A. Yes.

18 ATC: Your witness.

19 CIV DC: Thank you.

20 **DIRECT EXAMINATION**

21 **Questions by the civilian defense counsel:**

22 Q. Specifically, Dr. Edrington, where do you reside in North Carolina?

1 A. In (b) (6) t, North Carolina.

2 Q. Now, first of all, could you just provide a little thumbnail sketch of your professional  
3 history for the court members?

4 A. I'm a general dentist. I graduated in 1998, and took over from my father, and I don't  
5 specialize in anything, but I have a nice general practice – quite small, but it's good for me.

6 Q. And you said “general practice”; are you a sole practitioner or do you have...

7 A. A sole practitioner.

8 Q. And then just describe also, briefly, the size of your family – your family makeup.

9 A. Ah, I'm married 18 years. I have twin daughters, nine years old, and that's pretty  
10 much our life.

11 Q. And, first of all, you just said that you know my client, Lieutenant Colonel  
12 Wilkerson.

13 A. Yes.

14 Q. How is it that you know him?

15 A. My family – my parents have a vacation home which is right next door to where Jay  
16 Wilkerson and his family lived, and that has been 30 years ago this year. And I've known him  
17 since then.

18 Q. Could you describe for the court members just the kinds of contacts you've had with  
19 him over those 30 years?

20 A. Most of our contacts would have been, as anyone would have a good friend. You  
21 obviously meet someone and develop a relationship, which we have had since the two families  
22 moved close to each other. And it has developed over those 30 years. Obviously, with Jay being

1 in the military, he has been gone to many, many different places I have not. We have remained  
2 friends – good friends for that length of time. I don't get to see him or his family as much as  
3 we'd like, but that's part of the military, as you all know.

4 His mother still lives in that area and we see her quite often. So my family – extended  
5 family if you would, my parents and his mother – his dad passed away six years ago I believe –  
6 have always been quite tight.

7 Q. Was your father and his father, were they very close?

8 A. Very.

9 Q. And I – you described friends, and, obviously, you have friends within your  
10 community, but from a qualitative standpoint, how close would you say the friendship is between  
11 your families?

12 A. I don't know if there is a tighter bond between people than, other than my family –  
13 extended family – parents and the Wilkerson's families – all. I don't have any other friends or  
14 family members that I would consider any closer than their entire family.

15 Q. Also, with respect to your contacts, I mean have you actually spent weeks or  
16 weekends with him – things of that sort, or did you just live close to each other?

17 A. Yes, Sir. I spent plenty of time with him, in his residence.

18 Q. Does that include vacations together?

19 A. Yes.

20 Q. Now you're aware of what's going on here; that this is a court-martial?

21 A. Yes, Sir.

22 Q. You're aware that he's been charged under the UCMJ with sexual assault?

1 A. Yes.

2 Q. Do you feel that – have you formed an opinion as to, based on your knowledge of  
3 him, as to his character for truthfulness?

4 A. Yes.

5 Q. And what...

6 ATC: Objection, Your Honor. I would like a 39(a), Your Honor.

7 MJ: I think we need to have a 39(a).

8 So, members, we're going to have a short hearing outside of your presence. If you would  
9 please return to the deliberation room.

10 (The members left the courtroom at 1448 hours, 30 October 2012.)

11 **END OF PAGE**

1 (The court-martial was called to order at 1449 hours, 30 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent. The witness remains on the stand.

5 Government, presumably there's no reason for this witness to step down. Is that correct?

6 ATC: That's correct, Your Honor.

7 MJ: All right.

8 The basis for your objection?

9 ATC: Your Honor, we do not believe this is relevant or admissible testimony. Since the  
10 accused has not testified as of now, we do not believe he should be allowed to testify about the  
11 accused's truthfulness.

12 MJ: Response, defense?

13 CIV DC: Your Honor, it is our position that an accused does not have to testify in order  
14 to call a character for truthfulness witness. The government has put on evidence showing our  
15 client's statements to the OSI, and in that evidence the OSI called him a liar; challenged his  
16 integrity; and so we believe that the presentation of the evidence, as it stands, raises an issue of  
17 our client's credibility, and that this is legitimate testimony.

18 MJ: Thank you, counsel.

19 CIV DC: And I have an unpublished Navy-Marine Corps Court of Criminal Appeals  
20 opinion if you need that reference, Your Honor.

21 MJ: Do you happen to have a working copy? You can provide that reference as well, but  
22 I don't have it, if it's an unpublished opinion, I don't have ready access to that. What I can



1 certainly do if you don't have a working copy at this point, I will give counsel probably a short  
2 recess and give you an opportunity to make a copy. And do provide that to the government.

3 CIV DC: Yes, Your Honor. We just have one copy, and certainly, in a recess, could  
4 provide it to you and the government.

5 MJ: And what is that case, please?

6 It is *United States versus Coates* – C-O-A-T-E-S, 2003 Westlaw 21058262, Navy-Marine  
7 Court of Criminal Appeals, 12 May 2003.

8 MJ: I intend to review both that case as well as *US v. Goldwire*. I don't know, at this  
9 point, without reviewing *Goldwire* whether or not that would be relevant for this issue or not. I  
10 will certainly give the government the opportunity to review the unpublished decision as well as  
11 *Goldwire*. I don't anticipate this should take very long; however, I do want to give the  
12 government the opportunity to review those and to address those cases as need be.

13 Anything further before we have a short recess?

14 ATC: No, Your Honor.

15 CIV DC: No, Sir.

16 MJ: We're in recess.

17 (The Article 39(a) session terminated and the court-martial recessed at 1452 hours, 30  
18 October 2012.)

19 **END OF PAGE**

1 (The court-martial resumed at 1506 hours, 30 October 2012. The parties were present.  
2 The members were absent. The witness was on the stand.)

3 **ARTICLE 39(A) SESSION**

4 MJ: Government, would you like to respond to the defense's position?

5 ATC. Yes, Your Honor.

6 And I would – I've had an opportunity to read the case the defense counsel cited – the  
7 unpublished Navy court case. We'd point to the fact that even in this case, it found that the  
8 judge was correct to not allow the accused to put on character for truthfulness evidence where  
9 the government introduced his statement and then other evidence which may have contradicted  
10 that statement. And I cite to a few lines specifically from this case, and also from *United States*  
11 *versus Everage*, MJ 189, from the Court of Military Appeals from 1985, showing that when a  
12 witness takes the stand, the right to bolster does not immediately arise, and, more importantly,  
13 mere conflicts in the witness's testimony and other evidence does not constitute a sufficient  
14 attack which would allow bolstering.

15 The point being the mere contradiction by other testimony that's been introduced here by  
16 other witnesses who took the stand, of the statement that he made to OSI does not allow the  
17 accused to put on evidence of character for truthfulness. And that would be the government's  
18 position at this time.

19 MJ: All right. Could you address defense's assertion that the agent's statements during  
20 the questioning of the accused is what constituted an attack on the credibility of the accused?

21 ATC: Yes, Your Honor, and I presume the defense counsel was referencing the point  
22 where I believe it was Major (b) said "You're lying," or something along those lines. I believe

1 that might be the line. And, obviously, the defense counsel is citing the other portion of MRE  
2 608. Obviously, that's not character evidence; that's not evidence that contradicts, and the OSI  
3 Agent took the stand and explained that they can use tactics, including lying, including anything  
4 to attack – in order to obtain an admission. And, in the government's opinion, that was not either  
5 character evidence of attacking nor was it any evidence that he was, in fact, lying.

6 MJ: Defense counsel, do you have any additional argument/position before I rule?

7 CIV DC: Your Honor, I would just note, specifically, the language that appears in the  
8 tape at 17:18, where Major (b) (7) says, "You're lying. What we cannot survive is the integrity  
9 issue." And then at 17:22 in the record, he says, "I don't believe you because of her story." So I  
10 think these are direct attacks on my client's truthfulness – character for truthfulness, and that  
11 because of that we should be given the opportunity under the rule – the "or otherwise" portion of  
12 the rule to put on character for truthfulness evidence.

13 MJ: Thank you defense.

14 I'll sustain the government's objection. The interview information was not offered for  
15 the truth of the matter asserted by the government. As to the referenced area the defense is  
16 pointing to in the video, where the agent made a statement regarding whether or not he believes  
17 the accused, the court finds that that did not constitute an attack on the accused's credibility such  
18 that it would allow opinion for reputation evidence as to the accused's truthfulness. To that  
19 point, I will inform both the government as well as defense that I intend to specifically advise the  
20 members as follows – and I can certainly do it at this point. My attention is not to do it at this  
21 point; it's just to do it during the normal instructions.

1 MJ: But something to the effect as follows: Only you, the members of the court, can  
2 determine the credibility of the witnesses and what the facts of this case are. No witness can  
3 testify that the alleged victim's or accused's account of what occurred is true or credible, that the  
4 witness believes that the alleged victim or that a sexual encounter occurred. To the extent that  
5 you believe that Special Agent (b) (7) (c) or another agent testified or implied that he  
6 believed the alleged victim or the accused or that a crime occurred or that the alleged victim or  
7 accused is credible, you may not consider this as evidence that a crime occurred or that the  
8 alleged victim is credible. This is merely an investigative technique, and did not constitute an  
9 opinion as to either the accused or (b) (6) ' credibility.

10 Are there any further matters that we need to discuss before we continue with the  
11 members?

12 ATC: No, Your Honor.

13 CIV DC: Yes, Your Honor.

14 Given then that the government, since we identified this as a character for truthfulness  
15 witness, they did not ask for a 39(a) before we were committed to give this line of inquiry with  
16 this particular witness, and given that this instruction was not given at the time in the video tape  
17 where the statement "You're lying" was made, I would request an instruction right now before  
18 the members, saying that the defense called this witness as a character for truthfulness witness;  
19 they have objected to this; I am now – I'm sustaining their objection, and I want to give you an  
20 instruction along the lines that you just gave them because I think if we wait until the end of the  
21 trial, the impact of this will be lost.

22 MJ: Government?

1 ATC: Your Honor, we would object to an instruction stating what he was going to testify  
2 to, Your Honor.

3 CIV DC: Your Honor, I think we had already asked him “Do you have an opinion as to  
4 his character for truthfulness,” so it’s clear to the members that this witness was being called for  
5 a particular purpose.

6 MJ: I understand the defense’s position. I also understand that – I at least understand the  
7 concern as you have articulated. I will not instruct the members regarding what this witness  
8 would testify to if allowed to answer a question in which I sustained an objection. However,  
9 what I can do, and I will be glad to do, is I will provide at this point an instruction to the  
10 members regarding the videotape that they saw earlier. I’m just not going to highlight it in terms  
11 of what the defense’s intention was or the other tactical or strategic reasons that you may have of  
12 calling this witness.

13 Anything else, defense?

14 CIV DC: Yes, Your Honor.

15 MJ: Would you like for me to instruct, first, as to what I’d previously told you that I  
16 intended to instruct during the findings instructions? Would you like me to do that at this point  
17 or after this witness is finished?

18 CIV DC: Well, this is all that we had for this witness, so it would be both at this point  
19 and after this witness is finished.

20 Here’s the concern I have, Your Honor, is the government, knowing what this witness  
21 was being called for, elected to wait until that point to object. Now, I’m not saying that you have  
22 to state what his opinion would be; I’m saying that you sustain their objection, but he was called

1 as a character for truthfulness witness; that's why he was called. You can give that instruction  
2 without saying what his opinion is. And I'm trying to avoid any impact. I think that to –  
3 potentially, this could be an appellate issue in this case, and it may be new case law, potentially,  
4 and so I want to make sure that any negative impact of this objection, at this state, done this way,  
5 causes any prejudicial effect for my client, and now that the court is basically saying that the  
6 court recognizes that the agent was not giving an opinion for purposes of evidence, nonetheless,  
7 the members may not fully appreciate what we're going through here is a bunch of lawyers. And  
8 so I want to make sure that the court members fully understand the law in this area, and so I do  
9 want a very clear and thorough instruction on this point for the members at this time.

10 [The assistant trial counsel (Captain Beliles) stood.]

11 MJ: Government, is there anything else? I see you're standing. Is there something  
12 that...

13 ATC: Yes, Your Honor, I was just going to address...

14 MJ: ...you have not expressed?

15 ATC: ...the fact that we were not trying to do anything by surprise here. We also don't  
16 have the trial plan of the defense counsel, and we assumed that he was going to have some other  
17 relevant character trait or perfect character trait.

18 MJ: Regardless of that, I feel comfortable that I can properly instruct the members  
19 regarding what that videotape was or was not. And I will instruct the members specifically  
20 regarding that videotape as I just told both trial counsel and defense counsel. I do not and will  
21 not instruct the members as to why the defense counsel was calling this witness.

1 MJ: Now, if you don't have any additional questions of this witness, it is completely up  
2 to you, defense. You can have the witness step down. I'll just let the members know I sustained  
3 the objection; disregard the question, and then I'll provide an instruction. There's certainly no  
4 requirement that we then, you know, have the witness step down off the stand in front of the  
5 members. It's completely up to you as to that as we go forward.

6 Defense, what would you like to do?

7 CIV DC: Okay, let me first state that for clarity of your ruling, you're not saying that –  
8 you're just saying the issue has not been raised yet with respect to character for truthfulness,  
9 based on this state of the evidence.

10 MJ: At this point;...

11 CIV DC: Right. Now here's...

12 MJ: ...sure, at this point.

13 CIV DC: ...the problem I have. The government spent a few thousand dollars to bring  
14 this witness over here. We're going to release him because of his – he's a sole dentist  
15 practitioner, and so he has – he's scheduled to travel home tomorrow. Events may unfold over  
16 the next few days where character for truthfulness does become an issue. So what I would like  
17 to ask at this point is for him, on the record, in a 39(a), to give a response to this question so that  
18 if this – so we can release him so he can return to North Carolina tomorrow. Then, if this  
19 character for truthfulness does become an issue before both sides rest, we can provide his  
20 response and ask you to instruct them at that time that they then may consider his testimony.

21 MJ: That seems to be a reasonable approach and certainly one that I'll allow the defense  
22 counsel to pursue. So you may continue with your questions of this witness.

1           **Direct examination continued (outside the presence of the members):**

2           Q. Dr. Edrington, you said you had an opinion as to Colonel Wilkerson's character for  
3 truthfulness, correct?

4           A. Yes.

5           Q. What is that opinion?

6           A. There is no question in my mind of his truthfulness; there never has been. He's as  
7 honest a person that I have ever known.

8           CIV DC: No further questions, Your Honor.

9           MJ: Government, is there any additional questions of this witness for purposes of the  
10 39(a)?

11          ATC: No, Your Honor.

12          MJ: And, defense, what is your preference regarding when – the mechanics of when this  
13 witness may step down? Would you prefer to do that outside the presence of the members or  
14 once I call the members back?

15          CIV DC: I have no problem of him stepping down now. Now, I want to be clear; the  
16 government is not – they have an opportunity for cross-examination now, so they're electing not  
17 to engage in cross-examination. Am I correct in understanding that?

18          MJ: Government?

19          ATC: That is correct, Your Honor.

20          CIV DC: Then he may step down and, of course, we will be releasing him so that he can  
21 return home tomorrow.

22          MJ: And, government, subject to recall?



1 ATC: No, Your Honor.

2 MJ: You have been permanently excused, which means that it is not anticipated that  
3 either the trial counsel or the defense counsel will need to have you come back and testify further  
4 in this court. However, while this case is ongoing – and I would expect that this case would go  
5 no longer than probably Thursday, just for your general reference – while this case is ongoing do  
6 not discuss your knowledge of this case or your testimony with anyone other than counsel, the  
7 accused, or this court. You may step down. Thank you for your testimony.

8 [The witness left the courtroom.]

9 TC: Your Honor, just out of an abundance of caution, since Mr. Spinner and I both do  
10 appellate practice, and he's talking about the appellate record, I just want to make it perfectly  
11 clear that it was the government's honest opinion that this witness was being called for good  
12 military character. We're not trying to, in any way, do anything underhanded. The witness list  
13 we had had that he was a good military character and truthfulness witness. In addition, before  
14 lunch we asked the defense the way ahead; they told us they were going to be providing good  
15 military character affidavits, OPRs, and four good military character witnesses. We believed he  
16 was going to be a good military character witness. My co-counsel, Captain Beliles, and I kept  
17 going back and forth saying "Does this guy have sufficient basis for good military character?"  
18 We realized he had no military record, so we were most stunned by that – just for the appellate  
19 court.

20 MJ: Would you like to – is that a written document you'd like to have marked as an  
21 appellate exhibit – that you referenced?

22 TC: You know, I don't know if this document is a conglomeration of...

1 MJ: All right, well...

2 TC: This is what I had in my hands.

3 MJ: Then if that's sufficient for you...

4 [The civilian defense counsel stood.]

5 MJ: Mr. Spinner?

6 TC: Yes.

7 MJ: Mr. Spinner, did you have a question or...

8 CIV DC: Yes, Your Honor.

9 MJ: My intention is not to mark it at this time based on trial counsel's statement.

10 Is there anything further from the defense.

11 CIV DC: May I consult with trial counsel for just one moment, Your Honor?

12 MJ: You may.

13 [The civilian defense counsel and the assistant trial counsel (Captain Beliles) conferred.]

14 CIV DC: Okay, Your Honor, I think it was a mistake by the paralegal for government on  
15 this point. The defense request was solely to call him as character for truthfulness, and the  
16 convening authority approved it solely for that purpose. We never represented this as anything  
17 other than a character for truthfulness witness. I cannot account for what government paralegals  
18 may have done.

19 MJ: I don't – if you feel like you need to put something else on the record, that's fine. I  
20 think that the government's position, defense counsel's position, and intention are clear for the  
21 record. But is there something else that you...

1 CIV DC: No. I think the government will concede that the request was for character for  
2 truthfulness only, and the defense never represented that this was anything other than a character  
3 for truthfulness witness. That's the point I want clarify.

4 TC: Your Honor...

5 MJ: And so, defense, if you're not going here, that's fine, but so in light of the  
6 information that you know at this point, are you asserting that the government acted in some way  
7 bad faith by allowing you to get to that question before they objected?

8 CIV DC: I have no evidence of bad faith, so I will agree that there's no evidence of bad  
9 faith in that respect. But I do want to make clear what the defense representations were with  
10 respect to the request for funding for this witness.

11 TC: And, Your Honor, I'll concur with the – and to be honest, it is my position, I wasn't  
12 looking to see what the defense request for witnesses were prior to coming in here. I have a list,  
13 and it listed it as good military character for truthfulness. I will assume this was done by a  
14 paralegal, again, and I'll assume it's one of our paralegals. But the reality was – what we were  
15 really relying on was the information we were provided before lunch by defense counsel that  
16 they'd be putting on the good military character evidence after lunch. We were not trying to  
17 sharp-shoot them or anything like that – sandbag them. Captain Beliles and I were stunned. We  
18 couldn't figure out what this guy's basis was for good military character, so...

19 MJ: Thank you. I do appreciate that.

20 Is there anything further before I call the members?

21 CIV DC: So you're going to give an instruction now, though, regarding the OSI  
22 interview and...

1 MJ: Well, let me ask you this: I provided the instruction that I intend to provide to the  
2 members. I know that you've not seen that in written form, but that's what I read in court. Is  
3 there an objection to that instruction at this point, or do you believe that it, at least to the extent  
4 that an instruction can cure your concern, do you believe that that instruction is sufficient?

5 CIV DC: I'm not conceding that it cures anything, but I believe – I am requesting this  
6 instruction at this time.

7 MJ: Thank you very much.

8 Is there anything further before we call the members?

9 ATC: No, Your Honor.

10 MJ: Call the members.

11 [The bailiff left the courtroom.]

12 (The Article 39(a) session terminated at 1525 hours, 30 October 2012.)

13 **END OF PAGE**

1 (The court-martial was called to order at 1527 hours, 30 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 [The witness was no longer on the stand.]

6 MJ: Members, I sustained the objection. Disregard the question, and if there was an  
7 answer, the answer the witness provided. However, I do want to provide an additional  
8 instruction to you regarding the videotaped interview of the accused, which is Prosecution  
9 Exhibit 2.

10 Only you, the members of the court, determine the credibility of the witnesses and what  
11 the facts of this case are. No witness can testify that the alleged victim's or accused's account of  
12 what occurred is true or credible; that a witness believes the alleged victim or that a sexual  
13 encounter occurred. To the extent that you believe that Special Agent (b) (7) (c) or  
14 another agent testified or implied that he believed the alleged victim or the accused or that a  
15 crime occurred or that the alleged victim or the accused is credible, you may not consider this is  
16 evidence that a crime occurred or that the alleged victim is credible. This was merely an  
17 investigative technique, and did not constitute an opinion as to either the accused's or (b)  
18 (b) (6) ' credibility.

19 I will also include this portion of the instruction in my findings instructions that I will  
20 provide to you at the end of the case as well.

21 Defense counsel, would you like to proceed?

1 CIV DC: Yes, Your Honor, and may I just note for the record, our focus was on Major

2 (b) of the OSI, with respect to your instruction.

3 MJ: Thank you very much – and specifically referencing, I believe, there were several  
4 agents, one of them I believe was the agent that Mr. Spinner referenced regarding questioning.  
5 He may have had statements that he may have said. In that interview, to the accused, and that's  
6 what that instruction is driving at, is how to use that information, and, more specifically, how not  
7 to use it and what it was not.

8 Defense counsel, you may proceed.

9 CIV DC: Yes, Your Honor. At this time the defense calls Colonel Bob Harvey.

10 [The bailiff left the courtroom and returned with the witness.]

11 **COLONEL (RETIRED) ROBERT HARVEY**

12 was called as a witness for the defense, was sworn, and testified as follows:

13 **Question by the assistant trial counsel (Captain Beliles):**

14 Q. Please state your name for the record.

15 A. Robert Harvey.

16 Q. And are you retired from active duty, Sir?

17 A. Yes. I'm a retired Colonel from the United States Air Force.

18 Q. And how long did you serve on active duty, Sir?

19 A. I served in the United States Army for six years and the United States Air Force for  
20 27 years.

21 Q. And where do you currently reside?

22 A. (b) (6) Florida.

1 ATC: Your witness.

2 **DIRECT EXAMINATION**

3 **Questions by the civilian defense counsel:**

4 Q. Colonel Harvey, when did you retire from active duty?

5 A. I retired in December of 2009.

6 Q. And what is your current position or employment?

7 A. I'm the Director of Business Development for a startup airline in Coco, Florida,  
8 Athena Airways.

9 Q. Now could you provide the court members just a thumbnail sketch of your Army and  
10 your Air Force career?

11 A. Yes. I entered the Army after high school in late 1973. I served as an enlisted man  
12 for three years, and then I went to Army pilot training and became an Army helicopter pilot –  
13 Warrant Officer. I did three years as a Warrant Officer at Fort Lewis, Washington, where I left  
14 the Army and went back to school to get my four-year degree, and then I entered the United  
15 States Air Force from the Seattle area in '82. I did 27 years of service, reaching the rank of  
16 Colonel. I was primarily an Air Force F-16 pilot throughout those years; had a tour on the Joint  
17 Staff; I was a squadron commander and a group commander; I served time in both Desert Storm,  
18 as fighter pilot, and in Iraqi Freedom on the staff of the United States Army in Kuwait City.

19 Q. Have you served as an instructor and an evaluator pilot?

20 A. I was an instructor pilot for most of those years; a weapon's school graduate; and also  
21 I worked for Ninth Air Force AFCENT Stan Eval for the last three years of my active duty. In

1 that capacity I toured all of the Middle East and was responsible for the standardization and  
2 evaluation of all the air bases in AFCENT.

3 Q. Now, how do you know Colonel Wilkerson?

4 A. Colonel Wilkerson and I moved into the area of Timberline Meadows in South  
5 Carolina, outside of Shaw Air Force Base, at the same time in about September of 2007. We  
6 were neighbors, just down the street about five houses away. His family and my family spent a  
7 lot of time together in that neighborhood. And the, also, in my capacity as Ninth Air Force Stan  
8 Eval, I flew occasionally with the squadron that Colonel Wilkerson was flying with. I believe at  
9 one time I did fly with Colonel Wilkerson in a professional capacity.

10 Q. Were you also familiar with his reputation as an Air Force pilot?

11 A. Yes. I'm familiar with his reputation and an Air Force pilot as well as a commander  
12 when he went to further career moves, and kept up with him and the other officers around him  
13 throughout the succeeding years after I met him.

14 Q. Now, are you aware that in this proceeding he's been accused of sexual assault?

15 A. Yes, I am.

16 Q. Based on your knowledge of his reputation and your observations and contacts with  
17 him, have you formed an opinion of him, both as an officer in the United States Air Force and of  
18 his military character?

19 A. Yes, I have.

20 Q. And what is that opinion?

21 A. I believe him to be an exceptional officer, capable of greater leadership opportunities.  
22 I think he's a very professional officer and a gentleman.



1 CIV DC: No further questions, Your Honor.

2 MJ: Government?

3 ATC: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 **Questions by the assistant trial counsel (Captain Beliles):**

6 Q. Sir, do you know that on 12 August 2011, the accused, after drinking here on Aviano  
7 Air Base, burned a couch in a restricted area of the flight line without authorization?

8 A. I know that the squadron deployed from South Carolina at the time did that, yes.

9 Q. Were you aware that he was, in fact, part of that burning of that couch?

10 A. No, I was not aware.

11 Q. Were you aware, Sir, that he was stationed at Kunsan Air Base?

12 A. Yes.

13 Q. Were you aware that during his time of being at Kunsan Air Base he intentionally  
14 peered over a stall at a female urinating?

15 A. I'm not aware of that, no.

16 Q. Were you aware that he has sung sexually explicit raps at squadron functions?

17 A. No. I'm not aware of that.

18 Q. Are you aware that at times he has been verbally abusive to his subordinates?

19 A. No, I'm not aware of that.

20 Q. Hearing all of those things, does any of those things change your opinion, Sir?

21 A. Well, most of those I don't believe, so no, they don't change my opinion.

22 ATC: Thank you.

1 MJ: Defense?

2 CIV DC: Yes.

3 **REDIRECT EXAMINATION**

4 **Questions by the civilian defense counsel:**

5 Q. Sir, are you – do you have any evidence that any of those events occurred?

6 A. I have no evidence or knowledge that any of those events occurred, except for the  
7 couch-burning, which was told to me was a squadron from Shaw was responsible for that.

8 Q. And does couch burning have any significance to the F-16 community?

9 A. In the fighter pilot world, burning a couch or burning a piano at the end of a  
10 deployment has become something of a tradition. It's always reimbursed. But other than that, I  
11 don't know anything else about that.

12 Q. So it's part of the F-16 culture?

13 A. It's part of the fighter pilot culture, yes.

14 CIV DC: No further questions, Your Honor.

15 MJ: Government?

16 ATC: Nothing further, Your Honor.

17 MJ: Members, do you have any questions of this witness?

18 Apparently not.

19 Subject to recall, defense?

20 CIV DC: Yes, Your Honor.

1 MJ: Thank you for your testimony. While this case is ongoing do not discuss your  
2 knowledge of this case or your testimony with anyone other than counsel, the accused, or this  
3 court. You may step down.

4 WIT: Thank you, Sir.

5 [The witness left the courtroom.]

6 CIV DC: The defense calls Lieutenant Colonel Paul Willingham.

7 [The bailiff left the courtroom and returned with the witness.]

8 **LIEUTENANT COLONEL PAUL WILLINGHAM**

9 was called as a witness for the defense, was sworn, and testified as follows:

10 **Questions by the assistant trial counsel (Captain Beliles):**

11 Q. Sir, would you please state your name and rank for the record?

12 A. Paul Willingham, Lieutenant Colonel.

13 Q. And where are you currently assigned to?

14 A. Luke Air Force Base, Arizona.

15 ATC: Thank you.

16 Your witness.

17 **DIRECT EXAMINATION**

18 **Questions by the civilian defense counsel:**

19 Q. Colonel Willingham, what is your current duty title?

20 A. I'm the 56<sup>th</sup> Fighter Wing Director of Staff.

21 Q. Could you please, first of all, provide the court members a brief sketch of your Air  
22 Force history?

1           A. Okay. I started out as a C-130 nav in `98. I did that for a couple of years, and then  
2 went to pilot training, and had various F-16 assignments since then; Kunsan twice – remote  
3 tours; Spangdahlem; Luke – twice now. I spent a year at Fort Leavenworth with the Army as  
4 well, and then back at Luke now. Various deployments, TDY, *et cetera*, along the way – to the  
5 dessert.

6           Q. And have you served in combat operations then?

7           A. Yes.

8           Q. Have you served in any kind of instructor/evaluator pilot roles?

9           A. Yes. I initially qualified as an instructor at Spangdahlem, and then maintained  
10 instructor currencies throughout the rest of my career; also Chief of Stan Eval at Luke Air Force  
11 Base, which is the largest ops group – fighter ops group in the Air Force; currently an instructor  
12 and evaluator.

13          Q. Now, how is it that you know Lieutenant Colonel Wilkerson?

14          A. We met in summer of 2010. He was at Kunsan and I was leaving Fort Leavenworth  
15 and going to Kunsan. So probably within a day or so of my arrival, I met him then.

16          Q. How well did you get to know him?

17          A. Very well. Ah, we initially lived in some apartments for about the first month or so,  
18 and I was in a different apartment than he was, but they started undergoing construction, so they  
19 moved us into a dorm. And so our dorm rooms were right next to each other for the rest of that  
20 year that we were there. We spent every day together, other than probably being on – each of us  
21 taking leave at separate times. But I flew with his squadron, with the 80<sup>th</sup>, two to three days a  
22 week. I was the Chief of Safety there at the base, so a lot of interaction with him as far as that's

1 concerned as well. And then, socially, every night our doors are open; the guys that lived in that  
2 hallway – all of our doors were open, so there were several of us that were in each other’s rooms  
3 every night, and then, of course, Saturdays and Sundays, socially, going on runs, bike rides, *et*  
4 *cetera*.

5 Q. So, based on the time that you spent with him – first of all, you spent, as I understand,  
6 time with him professionally, but also extensive time with him socially?

7 A. Yes, probably even more socially.

8 Q. And is he superior in rank to you or are you the same rank?

9 A. At that time I was a Major; he was a Lieutenant Colonel, but we were kind of peers, if  
10 you will, as far as I was Chief of Safety, and he was a squadron commander.

11 Q. Now, based on your observations and your contacts with him, have you formed an  
12 opinion as to his military character?

13 A. Yes.

14 Q. What is that opinion?

15 A. It’s impeccable.

16 CIV DC: Thank you.

17 Your Honor, no further questions.

18 MJ: Government?

19 ATC: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 **Questions by the assistant trial counsel (Captain Beliles):**

1 Q. Sir, were you aware that while the accused was stationed at Kunsan Air Base, that he  
2 intentionally peered over a stall at the female spouse of one of his subordinates while she was  
3 urinating?

4 A. I was not aware of that until arriving here and hearing secondhand information. So I  
5 have no firsthand knowledge of that.

6 Q. And when were you informed of that? This weekend?

7 A. Yeah, probably within the last couple of days or so.

8 Q. Would that have been by the accused?

9 A. I don't remember who brought it up.

10 Q. If it wasn't the accused, who else would it have been, Sir?

11 A. Other people that are here as well – family members, friends.

12 Q. If that were true, would it change your opinion, Sir?

13 A. No.

14 ATC: Thank you.

15 No further questions.

16 **REDIRECT EXAMINATION**

17 **Questions by the civilian defense counsel:**

18 Q. Why would it not change your opinion?

19 A. Because I don't know the situation or the circumstances surrounding that situation.

20 First of all, I don't even know if it actually happened because I don't have firsthand knowledge  
21 of it. If it did, I don't know the circumstances surrounding it. And I base my opinion on, like I  
22 said, every day and every night being with Roscoe at Kunsan for an entire year.

1 Q. Are you familiar, though, firsthand with the location where this purportedly occurred?

2 A. Yes. I know the facility.

3 Q. Right. Could you explain for the court members why an allegation like this might  
4 even arise, based on what...

5 A. Well, I guess...

6 Q. ...you know personally about what occurred.

7 ATC: Objection, Your Honor. Speculation.

8 MJ: Defense, would you like to rephrase your question?

9 CIV DC: I asked him not to speculate. I asked him to identify, based on his personal  
10 observation of this particular location where it occurred, and he has personal knowledge of that,  
11 Your Honor.

12 MJ: So your intention is just to have him describe that location as he understands it?

13 CIV DC: Correct, Your Honor.

14 MJ: If that is what this witness is going to testify, not as to what other people may think,  
15 do or what have you, I will overrule the objection. If the witness' testimony gets into something  
16 that the government believes is speculation, object, and I will respond to that objection at that  
17 time.

18 You may continue, defense counsel, and re-ask the question if you like.

19 CIV DC: Yes.

20 **Redirect examination continued:**

21 Q. Could you describe how this particular location is set up, and what you know about it?

1 A. It's a one-room building about the size of this courtroom. And then there's one  
2 restroom facility in it, so it's – normally, the lights don't work too good; the air conditioning  
3 doesn't work too good; and the heat doesn't work very well either. So, it's just a place that the  
4 squadron would hang out on Friday afternoons – Friday evenings.

5 Q. And do you know if this facility was used by men and women?

6 A. Yes.

7 Q. So it wasn't just a women's bathroom, so to speak?

8 A. No. We only had one, so sometimes the guys would go outside, and sometimes guys  
9 would go inside. Ladies would normally go inside, but it was – everyone was using it if they  
10 decide to use a restroom.

11 CIV DC: No further questions, Your Honor.

12 MJ: Based on that?

13 ATC: Yes, Your Honor.

14 **RECROSS-EXAMINATION**

15 **Questions by the assistant trial counsel (Captain Beliles):**

16 Q. During your year there, did you ever accidentally peer over the stall at a female  
17 urinating in that stall?

18 A. [Long pause.] I don't think so.

19 ATC: Thank you.

20 CIV DC: No further questions, Your Honor.

21 MJ: Members, do you have any questions of this witness?

22 Apparently not.



1 MJ: Subject to recall?

2 CIV DC: Yes, Your Honor.

3 MJ: Thank you for your testimony. Do not discuss your knowledge of this case or your  
4 testimony with anyone other than the accused, counsel, or this court. You may step down.

5 [The witness left the courtroom.]

6 MJ: Defense?

7 CIV DC: Your Honor, at this time the defense calls Colonel Dave Walker.

8 [The bailiff left the courtroom and returned with the witness.]

9 **COLONEL DAVID WALKER**

10 was called as a witness for the defense, was sworn, and testified as follows:

11 **Questions by the trial counsel:**

12 Q. Please state your full name.

13 A. I'm David Walker.

14 Q. And you're a Colonel in the United States Air Force?

15 A. I am.

16 Q. And you're the Ops Group Commander here at Aviano?

17 A. I am.

18 TC: Mr. Spinner?

19 **DIRECT EXAMINATION**

20 **Questions by the civilian defense counsel:**

21 Q. Colonel Walker, how long have you been the Ops Group Commander?

22 A. I've been the Ops Group Commander almost a year and a half here at Aviano.

1 Q. Could you just give the court members a thumbnail sketch of your Air Force career?

2 A. Sure. I graduated from the US Air Force Academy in 1989, and I've served almost  
3 24 years now; mostly in the fighter world; mostly operational assignments; a couple of training  
4 command assignments. I had a Joint Staff assignment with US Northern Command, and I've  
5 attended all of the Air Force professional military education schools at the Major and Lieutenant  
6 Colonel level, and now I'm the Operations Group Commander. I've commanded at the squadron  
7 level as well.

8 Q. Have you been engaged in combat operations?

9 A. Yes, I have.

10 Q. When and how long and how much?

11 A. Most of my combat is in Iraq – and four combat deployments to Iraq. The latest one  
12 was in 2007.

13 Q. Have you served as an instructor and an evaluator pilot?

14 A. I have.

15 Q. On how many occasions?

16 A. I've been an instructor in two different airplanes, and with the exception of my very  
17 first assignment in the F-16, I've been an instructor and an evaluator at every base I've been  
18 assigned to.

19 Q. Now, do you know Lieutenant Colonel Wilkerson?

20 A. I do. He used to be my Deputy Operations Group Commander.

21 Q. When did you first meet him?

1           A. I first met him in 1999, when he was a student of mine at Luke Air Force Base. I was  
2 an F-16 instructor pilot.

3           Q. How much did you observe him and have an opportunity to interact with him at that  
4 time?

5           A. The interaction was only professionally when he was at the squadron, learning to fly  
6 the F-16, and then a little bit – I observed him a little bit as a leader when he had to step up as the  
7 class leader when the serving class leader had a family emergency.

8           Q. So over what period of time did you actually observe him?

9           A. A little bit less than a year; maybe nine-ten months.

10          Q. Now when did you next interact with him significantly?

11          A. When he was permanently stationed here in the summer of 2011 after he came from  
12 Kunsan, where he was the squadron commander.

13          Q. What opportunities did you have to interact with him here, both professionally and  
14 socially?

15          A. I interacted with him almost seven days a week, so at work he was my Deputy  
16 Commander – I saw him every day. And then I became friends with him and his family – his  
17 wife, Beth, and his son, <sup>(b) (6)</sup>. So we interacted on a personal level as well.

18          Q. And on a personal level, I mean are we talking once a month, once a week? How  
19 much social contact did you actually have with him?

20          A. Well, we'd probably go out to dinner with our two families and a couple of other  
21 families that we were close with, maybe once a week. And maybe one weekend a month, we'd  
22 get together at each other's houses with our families.

1 Q. Now, based on the observations you've had of him and the contacts you've had with  
2 him, consistent with your testimony, have you formed an opinion as to his military character?

3 A. I have. Like I said, I've been in almost 24 years, and I would rate his military  
4 character at the highest I've observed in the US Air Force.

5 CIV DC: No further questions at this time, Your Honor.

6 MJ: Government?

7 TC: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **Questions by the trial counsel:**

10 Q. Colonel Walker, I just want to talk a little about officership for a second. Would you  
11 agree with me that a good officer – just a good officer; not even a great officer – would be  
12 expected to enforce standards?

13 A. Yes.

14 Q. And I mean that's all standards; correct – all Air Force standards, correct?

15 A. Yes.

16 Q. And we don't expect the officer to pick and choose the standards he enforces, correct?

17 A. Yes.

18 Q. If the boss has made it clear he wants something to happen, we expect a good officer  
19 to salute and make sure those things happen, correct?

20 A. Yes.

21 Q. All the time, correct?

22 A. Yes.

1 Q. That officer never has an ability to say “You know what, I know the boss wants this,  
2 but I’m not going to do it”; correct?

3 A. No.

4 Q. And that’s something we expect 24 hours a day from that officer, correct?

5 A. Yes.

6 Q. Now, that is even more important when we’re talking about safety standards, is it not?

7 A. I wouldn’t say “more important.” I think it’s all equally important.

8 Q. Well, wouldn’t you agree with me that the consequences of violating safety standards  
9 can be extremely severe?

10 A. I think the consequences of violating all of the standards could be severe.

11 Q. But we have a reasonably, specifically – you don’t need to fight with me on this – we  
12 have to reasonably, specifically enforce safety standards, correct?

13 A. Sure.

14 Q. And that’s because we want to ensure the good health and morale of our troops,  
15 correct?

16 A. That’s one of the reasons, yes.

17 Q. Yes. Now, we have such things as Safety Officers within Wings, correct?

18 A. Yes.

19 Q. And, in fact, this individual over here, Lieutenant Colonel Wilkerson, was a Safety  
20 Officer at one time, was he not?

21 A. Yes.

1 Q. In fact, he was considered to be the Number One Safety Officer, I believe, in Ninth  
2 Air Force; is that not correct?

3 A. I'm unaware of that.

4 Q. Would it surprise you?

5 A. No.

6 Q. All right. Now, as a Safety Officer, he has even a higher degree of responsibility to  
7 ensure safety standards are enforced, correct?

8 A. No.

9 Q. You don't think so?

10 A. I think the Safety Officers have the duty to exercise the US Air Force Safety System.

11 Q. Don't you think they have a higher responsibility...

12 A. No, I – that's not what I had in mind.

13 Q. Let me ask the question, Colonel Walker. You don't think a Safety Officer, more  
14 than anyone else on the base, needs to be particularly attuned to the safety instructions and  
15 regulations of that base?

16 A. No, like I said before.

17 Q. Do you think they're just level with everybody else?

18 A. No. I think they're level with everyone except the Commander. The Commander has  
19 the highest responsibility.

20 Q. All right, regardless of your view of safety officers, you would agree with me that a  
21 Safety Officer should never turn a blind eye to safety violations?

22 A. No.

1 Q. Or should any officer?

2 A. No.

3 Q. And when that comes to seatbelt safety, that is important, too, correct?

4 A. Sure.

5 Q. And an officer demonstrates his good officership when he enforces seatbelt safety,  
6 doesn't he?

7 A. That's a stretch, but I'll give you that.

8 Q. Oh, you don't think it's important for an officer to enforce seatbelt safety?

9 A. I think it's important. I'll give you that.

10 Q. There's not a time when the officer gets to check out of enforcing seatbelt safety, is  
11 there?

12 A. No.

13 Q. In fact, when there are junior officers violating seatbelt safety, what is that superior  
14 officer's obligation to do?

15 A. Correct it.

16 Q. Correct it. And if an officer fails to correct seatbelt safety to a junior officer, is he  
17 meeting the standards that he should be meeting as an officer?

18 A. No.

19 Q. So it is possible for somebody to act outside the good officership by failing to enforce  
20 safety standards, is it not?

21 A. Yes.

1 Q. Now you know because the accused has told you about an incident in Kunsan,  
2 correct?

3 A. Yes.

4 Q. And incident where he's accused of peeking over into a woman in the stall?

5 A. Yes, he mentioned that to me.

6 Q. And he told you that last week, correct?

7 A. Yes.

8 TC: No further questions.

9 MJ: Defense?

10 **REDIRECT EXAMINATION**

11 **Questions by the civilian defense counsel:**

12 Q. Colonel Walker, if Colonel Wilkerson, on a single occasion, failed to direct a Captain  
13 in a vehicle to buckle a seatbelt or get out of a vehicle when the Vice Wing Commander is  
14 present, would that change anything about your opinion of him in terms of what you just  
15 expressed?

16 A. No.

17 Q. Why?

18 A. Well, I think we're all human and can make a mistake. And I think his mistakes are  
19 very minor, compared to others.

20 Q. Do you base your opinion of subordinate officers on single incidents or on what  
21 you've observed over years of service on a daily basis?



1 A. I based them over the whole man concept, so it's the entire length I've known them.  
2 It's not one event judgments.

3 Q. Now Colonel Christensen just asked you about something in Korea. What did you  
4 under – he didn't really elaborate what he was talking about. What did you understand him to be  
5 talking about?

6 A. Colonel Wilkerson had mentioned to me that there, at the place the squadron meets in  
7 their heritage room – it's called "Brunei's – at the 80<sup>th</sup> Fighter Squadron in Korea, was having a  
8 party and people were lined up for the bathroom, and he asked them why they were lined up, and  
9 they said, "Well, the stall is full." And he said, "There's no one in there," and he looked over  
10 and there actually was someone in there. And then he apologized.

11 Q. Does that – what – are you familiar with that location that he described to you?

12 A. Yes. I've been stationed there.

13 Q. And so you are aware of what he was talking about?

14 A. Yes.

15 Q. Do you see how something like that could happen?

16 A. Oh yeah, absolutely.

17 Q. Does that change your opinion of him in any way?

18 A. Not at all.

19 CIV DC: No further questions, Your Honor.

20 MJ: Government?

21 **REXCROSS-EXAMINATION**

22 **Questions by the trial counsel:**

1 Q. Colonel Walker, have you ever accidentally peered over a stall at a subordinate's  
2 spouse – his wife – while she was urinating?

3 A. Nope.

4 Q. And the only reason you don't think this – the reason you think this is an accident is  
5 because the accused told you that?

6 A. I do, and he's never lied to me.

7 Q. Right. And did you realize that the subordinate husband of the woman that was  
8 peeked in on wanted to punch Colonel Wilkerson?

9 A. Nope.

10 Q. Now when you talked about this as a one-time accident by not enforcing seatbelt  
11 instruction or seatbelt requirement, you would agree with me that USAFE has a policy that  
12 requires seatbelt wear, correct?

13 A. Yes.

14 Q. Italian law requires seatbelt use, correct?

15 A. I don't know.

16 Q. Do you have any reason to believe that's not true?

17 A. No.

18 Q. And traffic safety at Aviano is a concern, is it not?

19 A. Yes.

20 Q. In fact, you watch AFN and you'll see commercials talking about several roundabouts  
21 around the base that are particularly dangerous, correct?

22 A. Yes.

1 Q. And do you think that it is an excuse that “I just didn’t enforce regulations that one  
2 time” if some is hurt or killed in an accident?

3 A. No.

4 TC: Nothing further.

5 MJ: Defense?

6 [The defense counsel conferred.]

7 **REDIRECT EXAMINATION**

8 **Questions by the civilian defense counsel:**

9 Q. The particular incident that we’re talking about here, was anyone killed or hurt?

10 A. No.

11 CIV DC: No further questions, Your Honor.

12 TC: I’ve just got one more, Your Honor.

13 **RECROSS-EXAMINATION**

14 **Questions by the trial counsel:**

15 Q. Do we enforce regulations purely because someone was or was not killed? Is that  
16 why we do this?

17 A. No.

18 Q. It’s the risk, is it not?

19 A. Yes.

20 Q. And do you agree with me that when you have seven people in a five-passenger car  
21 that are not wearing seatbelts; almost every occupant in the car has been drinking, including the  
22 driver; and you’re driving on Italian roads at night, that is dangerous conduct?

1 A. It sounds like a bad mistake.

2 TC: Nothing further.

3 CIV DC: No further questions, Your Honor.

4 MJ: Members, do you have any questions for this witness?

5 Apparently not.

6 Subject to recall, defense?

7 CIV DC: Yes, Your Honor.

8 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
9 testimony or you knowledge of this case with anyone other than the accused, counsel, or this  
10 court. You may step down.

11 [The witness left the courtroom.]

12 MJ: I'm inclined to take a recess – a short recess at this point. The members have had a  
13 short break that the counsel have not had. However, if the counsel want to press forward at a  
14 minimal...

15 CIV DC: Actually, Your Honor, we're going to be seeking an overnight recess at this  
16 point. I've explained why to the government, and so we may want to have an 802 to discuss that.

17 MJ: Thank you very much.

18 All right, members, I intend to recess you, at least at this time, until 8:00 in the morning.  
19 If, for some reason, there's some other matters that we need to take up such that the time you  
20 need to report gets pushed back, I'll have the paralegal leave the message with you at some point  
21 so that you'll know the report time. But as of now, anticipate to show up and be ready to go on  
22 the record at 8:00 in the morning.

1 MJ: In addition, just a reminder, as we do or as we have done each of both of these days  
2 that we've had, this is not an opportunity or a time for you to discuss the facts of this case, the  
3 testimony of this case. It is not an opportunity for you to seek out any information regarding this  
4 case. Your determination in this case should and will be based on the evidence as presented in  
5 court after I have instructed you on the law.

6 Members, do you have any questions before I recess for – well, before I excuse you and  
7 have you recess until tomorrow morning?

8 No questions from the members.

9 Members, you are recessed until tomorrow at 8:00 in the morning.

10 (The members left the courtroom at 1600 hours, 30 October 2012.)

11 **END OF PAGE**

1 (The court-martial was called to order at 1601 hours, 30 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 I just wanted to make it clear, do either trial or defense counsel anticipate that we will go  
6 back on the record this evening for anything?

7 CIV DC: No, Your Honor.

8 ATC: No, Your Honor.

9 MJ: We are in recess.

10 (The Article 39(a) session terminated and the court-martial recessed at 1602 hours, 30  
11 October 2012.)

12 **END OF PAGE**

1 (The court-martial was called to order at 0806 hours, 31 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 We did have a short 802 during the recess with trial counsel and defense counsel present.

6 The subject of the 802 was just to notify the court of just the logistics as we're going forward,  
7 potential witness issues, a potential motion or at least an objection regarding the next witness,  
8 which I understand that is one of the things we're going to handle at this point.

9 Would either trial or defense counsel like to object or supplement what was discussed  
10 during the 802?

11 ATC: No, Your Honor.

12 CIV DC: No, Sir.

13 MJ: You may continue, defense.

14 CIV DC: Yes, Your Honor. The defense intends next to call Brigadier General, Air  
15 Force Reserve, Pamela Milligan as a character for untruthfulness witness with respect to (b)  
16 (b) (6) . We understand the government is objecting based on our alleged inability to establish a  
17 foundation, and we're prepared to do that in a 39(a) session.

18 MJ: That's fine. You may continue if she is available.

19 CIV DC: She is available. Your Honor, we have her set up on a VTC from Hawaii.

20 DC: General, are you there?

21 WIT: Yes, Sir. Off camera, as directed.

22

1 **BRIGADIER GENERAL PAMELA K. MILLIGAN**

2 was called as a witness for the defense, was sworn, and testified via VTC as follows:

3 **Questions by the trial counsel:**

4 Q. Could you please state your full name?

5 A. Pamela Kaye Milligan.

6 Q. And where do you currently reside?

7 A. (b) (6), Hawaii.

8 CIV DC: Ma'am, I'm Frank Spinner. I am the civilian defense counsel representing  
9 Lieutenant Colonel Wilkerson in this case.

10 First of all, could you just – and right now, so you understand, we're in what's called an  
11 Article 39(a) session. The court members are not present, and so we're going to go through your  
12 testimony right now based on a government objection. Okay?

13 WIT: Yes, Sir.

14 **DIRECT EXAMINATION**

15 **Questions by the civilian defense counsel:**

16 Q. Okay, I'd like you to begin just by providing the Judge a thumbnail sketch of your  
17 employment history.

18 A. Yes, Sir. You understand that I have been a Reserve officer for 30 years, so that  
19 means that I have had a dual-track career, so it's not easy to do a thumbnail, and I apologize if I  
20 bore you.

21 Ah, but, ah, I guess I'll start at the beginning, Sir. I graduated from college; went into  
22 social work. Because of my social behavioral background, I was recruited into the Ohio Air



1 National Guard, where I did Social Actions and Equal Opportunity while I attended graduate  
2 school. I graduated from Ohio State with a Master's Degree in Public Administration;  
3 immediately thereafter left for undergraduate navigator training at Mather Air Force Base. That  
4 was a yearlong training; returned to Ohio to fly with the Ohio Air National Guard, and  
5 immediately moved back shortly thereafter to California, where I joined the 940<sup>th</sup> Air Refueling  
6 Group. I was with that Group, professionally, for about 15 years, working my way up through  
7 the normal young aviator career track – instructor/navigator, Chief of Training, and then on to  
8 Mission Support Squadron Commander.

9 As a civilian during that time, I worked for the Governor of California, George  
10 Deukmejian, for about three years in his local government unit. Started – after I left the  
11 administration, I went to lobby for a local government – county government in California, and I  
12 did that for the next 15 years.

13 In 2000, I left the 940<sup>th</sup> Air Refueling Group, and went to Headquarters Fourth Air Force  
14 as Chief of Tanker Operations; was promoted to Colonel; was subsequently offered a command  
15 opportunity in Hawaii about the same time that Governor Davis was recalled and Governor  
16 Schwarzenegger was brought in as Governor of California, and with the crazy California politics,  
17 I left California for Hawaii.

18 I commanded the 624<sup>th</sup> Regional Support Group for four years, and then moved to the  
19 United States Pacific Command in a General Officer billet, where I was promoted to General  
20 Officer in 2009.

21 Once I was promoted, I could no longer be on orders for PACOM, so they hired me as a  
22 civilian. So currently I work as a civilian as the Chief of Staff at US PACOM J3. Militarily, I

1 am assigned as the Vice Commander of Fourth Air Force. That is the Air Force Reserve  
2 Command Strategic Airlift Numbered Air Force. We control 16 flying wings and 30,000+  
3 Airmen and reservists.

4 Q. Thank you, Ma'am. Now, I want to turn to the personal side of your life. And you are  
5 currently married?

6 A. I am married, yes, Sir; almost nine years in April.

7 Q. Who is your husband?

8 A. My husband is Randy Towers.

9 Q. Did you have a long personal relationship with him before you actually got married?

10 A. Yes, Sir. We married on the tenth anniversary of our first date.

11 Q. Now, was he previously married to (b) (6) ?

12 A. He was previously married to (b) (6) .

13 Q. And did they have a son together?

14 A. They do. Yes, they did have a son together, (b) (6) .

15 Q. Now, as you know, we're calling you as character witness. You understand that,  
16 correct?

17 A. Yes, Sir. I do, Sir.

18 Q. Could you describe for the court the length and the nature of your interaction with  
19 (b) (6) during that time that you were not yet married to (b) (6) father?

20 A. Yes, Sir. As most new relationships go, I reached out to (b) (6) , and for, I guess,  
21 the first eight or nine months of my early relationship with Randy, it was a friendly relationship

1 with her. Obviously, with a four, almost five-year-old son, it made sense for us all to just get  
2 along.

3 (b) (6) and Randy had been separated for a number of years, so there was no real contention  
4 there at all. So what started out to be a very workable relationship soon turned sour because of  
5 (b) (6) ' demands, I guess, on Randy's time and money, and certainly she wanted her own  
6 way in all things related to (b) (6)

7 So for many years it was kind of a not really contentious, but not really friendly  
8 relationship either.

9 She left him...

10 Q. Let me interrupt there.

11 A. She left him – she left to go to graduate school and gave (b) (6) to us, full  
12 physical custody, for about a year and a half. And when she returned, she wanted to resume her  
13 parenting responsibilities. That's when it became quite contentious.

14 Q. Okay, in those years that you had contact with her, did you personally communicate  
15 with her or communicate through court mediators with her?

16 A. Ah, no. Up until this point until I would say 2002 – 2001-2002, there were – the  
17 courts weren't really involved too much. It was only when she returned and wanted (b) (6)  
18 back, and created problems by saying untruthful things, that court mediators were involved.

19 Q. In any event, based on the contacts that you had with her over that entire period of  
20 time and through the court intervention/mediation, did you have sufficient contacts with her to  
21 form an opinion as to her character for truthfulness or untruthfulness?

1 A. Absolutely, Sir. Please remember that during this time we were all going to family  
2 intervention counseling together, so I had ample opportunity to observe her behavior and to  
3 make an assessment of her character.

4 Q. And what is your opinion?

5 A. My opinion is that she will say anything to further her own agenda. She's malicious  
6 in her dishonesty. She will go for the jugular to get what she wants, and she doesn't care who  
7 she hurts in the process.

8 Q. All right, so do you think she has a poor character for truthfulness?

9 A. Absolutely, Sir. I wouldn't believe a thing that came out of her mouth.

10 CIV DC: Okay, Ma'am, the government can cross-examine you at this point.

11 WIT: Okay.

12 **CROSS-EXAMINATION**

13 **Questions by the trial counsel:**

14 Q. General Milligan, are you on orders today?

15 A. I'm on A status, yes; Form 40a.

16 Q. Okay. I just didn't know if you were General or Ms. Milligan – or Ms. Milligan  
17 today. When was the last time you had any...

18 A. For the next four hours, Sir, I'm General.

19 Q. Okay. When was the last time you had personal interaction with (b) (6) ?

20 A. It was a decade ago, Sir.

21 Q. So it's been at least a decade. Now I want you to, for the judge, tell me the specific  
22 lies that (b) (6) said.

1           A. Yes, Sir. I actually have a document that I wrote in 2002 that responds directly to a  
2 court document that she submitted where she makes preposterous claims plans about my  
3 husband abusing his son, which is just a total mischaracterization.

4           Q. Okay, Ma'am, let me interrupt you.

5           A. She...

6           Q. Ma'am...

7           A. Okay.

8           Q. ...I'm going to interrupt you a second. Your husband, in fact, did hit his son in the  
9 face, in public; is that not true?

10          A. He did slap his son, yes, Sir.

11          Q. And when he assaulted his son in public, a bystander called the police, correct?

12          A. Ah, I don't believe at that time; later, after a conversation with (b) (6), I believe  
13 she called the police, yes.

14          Q. But this was a bystander who called the police, correct?

15          A. Not an innocent bystander or an unfamiliar bystander. This...

16          Q. Well, this....

17          A. ...was at the *tae kwon do* studio.

18          Q. Okay, (b) (6) ...

19          A. It was...

20          Q. (b) (6), Ma'am, (b) (6) was not present during this assault, was she?

21          A. During this disciplinary action and the medical emergency, I would say (b) (6)  
22 was not there, but she was familiar with the woman who ended up calling the police.

1 Q. So a woman called (b) (6) and told her that your husband assaulted her son?

2 A. That a father slapped his son who was having a temper tantrum during a medical  
3 emergency, yes.

4 Q. But that's not the way the woman described it, is it?

5 A. Ah, I believe, ultimately, those were the details; that it was during – a little boy was  
6 having an epileptic seizure...

7 Q. Ma'am. Ma'am...

8 A. ...and, yes, it – I believe...

9 Q. Ma'am...

10 A. ...she did describe it that way.

11 Q. She described it as your husband punched his son in the face, correct?

12 A. I don't remember the word "punched."

13 Q. Is it...

14 A. I believe that was not the case.

15 Q. Well, that's your opinion, but is that possibly what the bystander said?

16 A. It's possible, but that's not...

17 Q. Now, I need – I'm not concerned about your opinion of what happened. Now what  
18 was the next lie that you believe (b) (6) told?

19 A. Ah, she then said that I slapped (b) (6).

20 Q. Did she say that or was that...

21 A. I...

22 Q. Ma'am, did she say that or was that reported to (b) (6) by somebody else?

1 A. She said that in the court document, and I responded to that.

2 Q. Ma'am, I want you to listen very closely to what I am asking you. Did (b) (6) say  
3 that she witnessed you slap her son or did she say that she was reported that information through  
4 a school counselor?

5 A. Those details, Sir, are not familiar to me. I have here that she said, and I respond, that  
6 I slapped (b) (6) when I never slapped (b) (6)

7 Q. So you don't know that they...

8 A. She said that I...

9 Q. Ma'am, you don't know the basis...

10 A. She said...

11 Q. Ma'am, you don't know the basis of (b) (6) ' belief?

12 A. I know that (b) (6) said that I slapped (b) (6) , to the court mediators, and I  
13 did not. She said that...

14 Q. Ma'am, there wasn't...

15 A. She said that my mother slapped (b) (6) ...

16 Q. Ma'am...

17 A. ...and my mother had been dead for several years.

18 Q. Ma'am, there was an allegation...

19 A. These are...

20 MJ: Just one – General Milligan, can you hear me? This is Judge Brown.

21 WIT: Yes, Sir.

1 MJ: I think there may be a little bit of a time delay with this VTC, and, unfortunately as a  
2 result of that I think that both you and the trial counsel are occasionally talking over each other.  
3 So, if you hear the trial counsel attempting to talk to you, if you could just do me a favor and  
4 stop what you're saying so that we can let that lag catch up. Do you understand?

5 WIT: I understand.

6 MJ: Thank you very much.

7 And you may continue with your questioning.

8 **Cross-examination continued.**

9 Q. Ma'am, you're aware that (b) (6) actually reported to his school counselor that  
10 you, in fact, assaulted him, correct?

11 A. I don't believe that to be the case.

12 Q. Are you aware that that was an allegation that (b) (6) reported to his school  
13 counselor, that you slapped him or assaulted him?

14 A. No. I don't believe that is the case.

15 Q. All right, what is the next...

16 A. I believe that that might...

17 Q. ...what is the next lie you...

18 A. ...have been said.

19 Q. All right, you believe that might have been said?

20 A. I – yes – you do – Sir, if you've checked this file, that you do know then that there  
21 were huge allegations of parental alienation where...



1 Q. Ma'am, this isn't about your allegations of parental alienation. Do you understand  
2 that?

3 A. I know that, but what you're saying to me are things that maybe were put in  
4 (b) (6) head to say. I wish he were here today because he would deny all of this.

5 Q. Well, that's nice, Ma'am. Now my next question, what is the next lie that you believe  
6 he said – or he said?

7 A. Ah, in my response to the court, written in 2002, it was reported by (b) (6) that  
8 my mother slapped (b) (6). And by this time, my mother had been dead for several years,  
9 and only visited when I only met (b) (6) one time, and was already at that time very sick  
10 and dying of cancer. So there was – this was just preposterous.

11 Q. Do you know the basis for (b) (6)' belief?

12 A. [No response.]

13 Q. Do you know the basis for her belief?

14 A. I believe she – I have my opinion about the basis of her belief.

15 Q. But you don't know?

16 A. She would say anything to further her cause.

17 Q. Ma'am, isn't it true that you and your husband and (b) (6) went through a child  
18 custody dispute?

19 A. It is true.

20 Q. And that was ten years ago?

21 A. Yes, Sir.

22 Q. And you're just harboring a grudge at this point; is that not correct?

1 A. [Laughter.] Absolutely not. I'm not harboring a grudge. I left that ten years ago. I  
2 was asked to testify on her character. I know that she's malicious in her lies.

3 Q. What is the...

4 A. And...

5 Q. ...Ma'am, what is the last time that you believed (b) (6) lied to you?

6 A. Well, I haven't had any contact with her for ten years, so she hasn't lied ...

7 Q. All right...

8 A. ...so she hasn't lied to me for at least ten years.

9 TC: Nothing further.

10 MJ: Defense?

11 **REDIRECT EXAMINATION**

12 **Questions by the civilian defense counsel:**

13 Q. Ma'am, the prosecutor did not finish asking you why she had character for  
14 untruthfulness. There was another point that I think you wanted to make as far as other lies or  
15 manipulations by her. Can you address those?

16 A. Ah, well, I mean she's made serious allegations about Randy. Remember, Sir, that  
17 many of the allegations were about Randy's behavior before she asked us to take physical  
18 custody of him so she could go to graduate school. So these were not things that she apparently  
19 was concerned with at that time. She only said them when it was convenient for her custody  
20 issues. And so I would suggest to you that on its very face, is disingenuous and odd behavior.  
21 She – I mean that full almost two-year period, whenever she could lie and make my husband's  
22 life miserable, she absolutely did. I will tell you that you know I did not marry until I was 44

1 years old. I had relationships with – and to this day, I am friendly with those – my former  
2 boyfriends and their wives. Healthy people, Sir, have healthy relationships. This was not a  
3 healthy relationship, and not at our doing. This was (b) (6) ' misrepresentation of the events  
4 for her own agenda, for her attention-seeking behaviors. Now it has been a decade; I absolutely  
5 understand it's been a decade. But the traditional view of character is that it's stable and reliable  
6 and therefore predictable over time.

7 Q. Now, additionally, isn't it true that your – that (b) (6) had some developmental  
8 problems and that that presented challenges for his father?

9 A. Well, (b) (6) always did over characterize his abilities. She did say to the  
10 mediator that he was being considered for the GATE time he truly was failing math. He has –  
11 he's a very, very smart boy, doing very well in college here with us in Hawaii. But he struggled  
12 through school, and he was never...

13 Q. I meant behavior problems.

14 A. He was never considered for the GATE program. He had lots of behavioral  
15 problems, yes, he did.

16 Q. And what was the GATE program?

17 A. The GATE is for gifted students.

18 Q. In any event, you're basing your opinion on what you believe to be deliberate to be  
19 misrepresentations to court mediators and people in authority, correct?

20 A. Yes, Sir. I'm basing my characterization of (b) (6) on outrageous lies for her  
21 own personal agenda. And it's worrisome. It's worrisome to me that she might be doing the  
22 same thing in this case. I don't harbor ill feelings for her. Quite honestly, I rarely think of her. I

1 haven't thought of her for a decade; I've had no reason to. But this case was important enough  
2 to me. I know how vindictive; I know how malicious she can be, and I'm troubled by it.

3 CIV DC: Okay, Ma'am, I have no further questions. However, the prosecutor and the  
4 court may.

5 MJ: Government, anything further?

6 TC: [Nodded in the negative.]

7 MJ: And apparently not.

8 All right, General, at this point please stand by. We are going to probably mute this, and  
9 I'm going to hear the position of counsel, and then at that point we will come back on and let you  
10 know whether or not we're going to need to have you testify. It's not necessary, as long as you  
11 can hear, you don't have to sit there. As long as you want to go to a place so that we can get  
12 ahold of you when we need you, that will be perfectly fine. Do you understand?

13 WIT: I understand.

14 MJ: Thank you.

15 Bailiff, if you will please just mute the witness.

16 [The bailiff complied.]

17 MJ: Thank you.

18 In light of that testimony, government, do you have an objection as to her testifying  
19 regarding her opinion as to the alleged victim's character for truthfulness?

20 TC: Well, Your Honor, the court or the government does believe that her opinion is  
21 based on too remote of a time period. It's been over ten years, according to her, since she's had  
22 any contact with (b) (6) . If the court does decide that she should be permitted to testify, the

1 court would – excuse me – the government would ask the court to specifically instruct her that  
2 this isn't her opportunity to vent her personal feelings, that she is limited to "yes" or "no," she  
3 has a character for truthfulness. Her pure vial that she has in this for (b) (6) should not be  
4 coming through her spoken words. But I do believe, strongly, that ten – and it's obvious that  
5 what this is based on is a child custody case ten years ago. And it's totally insufficient.

6 MJ: To the extent that the government's position is that this opinion is, obviously, based  
7 on a child custody dispute, why does the government think it will not be adequate to inquire  
8 about that and expose the basis of this opinion to the members?

9 TC: I'm not suggesting that. I'm talking about the time. My timing is the basic thing.  
10 She said she has not had any contact with (b) (6) for ten years. These allegations occurred in  
11 March. It's too remote.

12 MJ: And is it the government's position that MRE 403 also applies to character  
13 evidence?

14 TC: Yes, Your Honor.

15 MJ: Thank you.

16 Defense counsel?

17 CIV DC: Your Honor, the government cites no case law for that proposition that an  
18 opinion, based on character, is limited by time. The fact of the matter – and I know there is some  
19 case law that has addressed information older than this, which is where it's been permitted. So...

20 MJ: Do you have any of those cases readily available?

21 CIV DC: I don't have them. I don't have it right here, right now, but the government is  
22 not citing any case law in favor of their objections.

1 MJ: I understand. Thank you.

2 CIV DC: The fact of the matter is character is something that is developed over a long  
3 period of time. Character witnesses typically, as to character for good military character and  
4 character for truthfulness, based their opinions on lengthy periods of time. So there's no  
5 requirement that it be an immediate relationship as the basis for that opinion, and the court is  
6 correct, these are issues that can be raised on cross-examination.

7 The key component here is that this wasn't just a case where (b) (6) was making  
8 these – casting aspersions just face-to-face or among the neighborhood or something like that.  
9 This case – this demonstrates – the basis for this opinion demonstrates that (b) (6) was  
10 willing to advance clear lies, in a court mediation process, to authorities, and that's why...

11 MJ: What's the basis for the defense position that this was clear lies? At least in the  
12 cross-examination from counsel, it appeared as though the witness said, "Yes, this could have  
13 come from other individuals," and her concern appeared to be as much that these were  
14 opportunistic allegations as they were potentially false.

15 CIV DC: Well, that's cross-examination, Your Honor. I mean here's the deal: The  
16 General basically said (b) (6) denied these allegations in the mediation process. General  
17 Milligan said that it was (b) (6), in her presence and in the presence of mediators, pushing  
18 these allegations forward. She said there was no dispute. She says that, with respect to this  
19 GATE program, her son – their son was flunking math, and that he was clearly and objectively  
20 not qualified for the GATE program. So all of those points go to weight, not admissibility, and  
21 go to the issue of the government's ability to cross-examine into these points. So these are – I  
22 think the court would err if the court takes the position that these were just matters of dispute as

1 opposed to the fact that these were issues addressed in mediation and mediation was shown to  
2 not be true.

3 MJ: Please address MRE 403. Even if this has some probative value, based on the  
4 length of time as well as the nature – the basis for this opinion, please address whether the  
5 probative value would not be substantially outweighed by unfair prejudice, confusion of the  
6 issues or by considerations of undue delay, waste of time or needless – well, obviously not  
7 needless presentation of cumulative evidence – but undue delay and waste of time.

8 CIV DC: Right.

9 MJ: Address 403, please.

10 CIV DC: Yes, well, Your Honor, it's very simple. All of that stuff doesn't go in under  
11 her direct examination. Her direct examination is "Based on this, have you formed an opinion?"  
12 Her answer is "Yes." What is that opinion? "She's an untruthful person." That's not a waste of  
13 time, it's not a confusion of the issues, and it's the government's election whether they want to  
14 create a fight over all these things. But it doesn't go to her testimony. Her testimony is standard  
15 and commonly accepted opinion evidence, and so her testimony does not confuse anything, it's  
16 not a waste of time, and has no impact in that respect. The government is able, in their cross-  
17 examination, to very clearly say "Your opinion is based on issues of child custody," and if they  
18 want to get into the weeds and make this a bigger deal than it is, that's their choice, Your Honor.  
19 That's what litigation is all about. And I'll just emphatically say, Your Honor, that I am  
20 prepared, if the court really wants to get into a 403 battle scene and say that this actually...

21 MJ: Actually, no, my intention is to avoid 403 battle scenes, so if you have a position  
22 you'd like the court to know about, I encourage you to do so.

1           CIV DC: Yes, Your Honor. Then it's my mistake. I have some cases back at the ADC  
2 Office, so I would like a recess to go get those cases because I believe there's case law on point  
3 that's cited, and it sounds like the court has – does the court have cases that I can – I mean I have  
4 cases and I'll go them, but...

5           MJ: The cases that the court has reviewed up to this time do not discuss the time...

6           CIV DC: The time.

7           MJ: ...period. I will tell both counsel that I have reviewed the following cases: *US v.*  
8 *Ferner*, 14 MJ 181, that was the CMA found that there was not a sufficient foundation; *US v.*  
9 *Metcliff* - that is actually a Navy-Marine Corps case from 1983, 15 MJ 1043. In that case, the  
10 Navy-Marine Corps, which, of course, is not binding here, but they found that there was  
11 sufficient foundation, and then *US v. Torro*, 37 MJ 313, CMA 1993, which just sets forth the  
12 general analysis as to the foundation. I will say, however, that none of those three cases address  
13 the time period that is at play here.

14           CIV DC: Yes. Your Honor, I apologize. Unfortunately, the defense counsel office is not  
15 collocated here, and it's going to take me a little while to go back and get those cases and bring  
16 them. So, we're going to have to take an extended recess for me to go there.

17           MJ: All right, is there a – I understand that there's a time issue that we're dealing with  
18 with this witness as well because she is currently testifying from Hawaii. In light of that, is the  
19 preference to – and does counsel believe that the best way forward is to resolve this issue before  
20 we handle any other matters with the members?

21           CIV DC: That's correct, Your Honor.

22           MJ: All right, government, is there anything further?



1 TC: No, Your Honor.

2 MJ: We will take a recess and I certainly will entertain any additional case law from  
3 either trial or defense counsel.

4 We are in recess.

5 (The Article 39(a) session terminated and the court-martial recessed at 0839 hours, 31  
6 October 2012.)

7 **END OF PAGE**

1 (The court-marital was called to order at 0926 hours, 31 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Defense counsel?

6 CIV DC: Your Honor, I had an opportunity to go back to the Area Defense Counsel  
7 Office and look at what I'd looked at previously. First of all, let me say upfront, I'm not aware  
8 of any military appellate decision on point. Now, in 20 some odd years of appellate practice in  
9 the military system, that, in itself, is instructed in my mind because if a judge had previously  
10 ruled the way it appears you are about to rule, and there had been a conviction, I think there's  
11 strong likelihood there would have been a case on that. So, my sort of starting point is that when  
12 it comes to character evidence, the kind of time limitation that the government used as a basis for  
13 their objection is not – has no merit. There's no case law that supports their objection.

14 Now, I had previously researched this issue last week when I was preparing for trial, and  
15 did some, I thought, was fairly thorough research, and I may have missed a case, and maybe the  
16 court has found one during our recess, but my understanding of character evidence is that, just  
17 we provided OPRs from my client's entire career, character evidence does not face a time  
18 limitation standing alone.

19 And so what that tells me is that, as the General said in her testimony, a person's  
20 character is their character, so the fact that I haven't talked to her in ten years you know is not  
21 significant. And I maintain that that is true, and that lies at the heart of character evidence. A  
22 number of our witnesses -- people have known our client you know for 30 years and some have

1 known him for ten years. Some knew him better many years ago and some knew him closer. So  
2 time – in essence, time is just not a consideration here.

3 CIV DC: That this case illustrates, and even the case I've provided to the court, and I've  
4 provided a copy to the government – *United States versus Edwards*, 549 Fed 2d 362, is not a  
5 case-in-point, but it illustrates the work and the interplay of character for truthfulness evidence,  
6 and so that's why it's instructed and helpful to the court. In this case, a character witness  
7 testified for the accused that he had known, on character for truthfulness, and I maintain, Your  
8 Honor, whether it's character for truthfulness or untruthfulness, again, that's not a factor – a  
9 distinguishable factor whether it's a character for truthfulness witness or a character for  
10 untruthfulness witness. But in this case, the character for truthfulness witness had known the  
11 appellant for more than 20 years, and so the opinion was based on knowledge of the accused that  
12 went back 20 years. In this case, we have a witness whose knowledge of the complaining  
13 witness goes back ten years. So in that sense, that's why I believe time is simply not a factor  
14 when it comes to character for truthfulness or untruthfulness testimony.

15 But the issue in this case, though, is was when a prosecutor, on cross-examination, raised  
16 specific instances of untruthfulness that went back more than 20 years. So the prosecutor is  
17 bringing in evidence that's highly – in my mind – highly prejudicial to the appellant – of the  
18 arrest and convictions in a 1950 or in the 1950s, and the government was permitted to use what  
19 might otherwise be considered something stale as a basis for cross-examination of a character  
20 witness.

21 And so the appellate court affirmed the conviction and said, basically, that the age of  
22 those convictions and arrest, and the nature of them was such that they provided a sufficient

1 basis for cross-examination. So what this tells me, ultimately is what's good for the goose is  
2 good for gander, and that is the idea that as courts look at age of either the testimony or the acts  
3 of misconduct that can be inquired into under cross-examinations, age is not the matter – is not  
4 the relevant deciding point.

5 CIV DC: Which brings me back to your 403 – discussion of 403. First of all, I didn't  
6 hear the government raise a 403 objection, so it strikes me that the court is interjecting itself here  
7 by bringing up 403, and the fact of the matter is confusion of the issues, waste of time, here we  
8 are now, we had this witness ready at 8 o'clock, we're spending more time litigating the issue  
9 when her testimony will take ten minutes in terms of here's who I am; here's how I know (b)  
10 (b) (6) ; do you have an opinion; yes, I have an opinion; that is that opinion; she's untruthful – ten  
11 minutes, so there's no confusion, waste of time on the issues. And this is opinion evidence, Your  
12 Honor. She's just giving an opinion as to truthfulness. She's not allowed to go into specific acts  
13 or address the basis for that opinion. So it strikes me that she, in fact, has that opinion, and  
14 there's no requirement that her opinion be based on something that has been established as  
15 untrue. I mean even in this case that I've cited to the court, it's based on arrest. The government  
16 was able to cross-examine someone based on an arrest, so it's not even whether the person was  
17 even guilty of committing a crime; it was just based on the arrest of the individual – in cross-  
18 examining the individual.

19 So I guess my position is that 403 – in conducting a 403 balancing test, and in that regard,  
20 she's the only character for untruthfulness witness we have with respect to the alleged victim in  
21 this case. This is a critical witness for the defense. Her opinion is her opinion. She is subject to  
22 cross-examination. The government can cross-examine her on the basis for her opinion, and so I

1 maintain that this idea of confusion or waste of time and confusion of the issues or whatever  
2 does not exist under 403, and especially on such a critical witness for the defense, we believe it  
3 would be prejudicial error, for appellate purposes, for this court to keep this witness from  
4 testifying.

5 MJ: Thank you, defense.

6 Government response?

7 TC: Your Honor, the *Mitciff* case – I’m not sure I’m pronouncing it right – case is right  
8 on point, in which the court there has said the exception to the rule is made for ones reputation  
9 for testimony of honesty, which is established by reputation evidence at the time of trial and  
10 during periods not remote thereto. The question for the members is was (b) (6) being  
11 truthful when she made the allegations in March of 2012. This witness has absolutely no  
12 interaction, by her own statements, for the last ten years. The court would point out that even  
13 under 609, Impeachment by Convictions, is limited by that ten-year timeframe. I think that’s...

14 MJ: Now you pointed that out, but you would concur that case law – actually even  
15 *Mitciff* even addressed that...

16 TC: Right.

17 MJ: ...and said that that bar does not apply necessarily to opinion...

18 TC: Right.

19 MJ: ...for testimony evidence?

20 TC: Right. What I’m saying is that the court – that is the law’s telling us that there is a  
21 remoteness standard there that we should look at. I would say where the court has allowed and  
22 the appellate courts have allowed old – extremely old, specific instances to come in is when the

1 person who's giving that character for opinion has had long-established interaction with  
2 whomever they're testifying about. So, yes, if you come up and say, "I've known the accused  
3 for 30 years, bla, bla, bla, and that brings open other things. The defense has put in 21 years  
4 work of OPRs. It would be fair for us, if we had evidence from 1993, it would be fair for us to  
5 then ask about those questions because they have established them. But this is not the threshold.  
6 We are taking about (b) (6) character for truthfulness in March of 2012 and today, not  
7 2002. The 403 balancing test is appropriate in this case, it's not just a waste of time; it's the  
8 confusion of issues, it's the unfair prejudice. Basically, what the defense is asking to do was to  
9 smear (b) (6) with stars from a disgruntle wife of her former husband. The court can  
10 consider that. They can consider all the factors. You saw her demeanor; you saw that she  
11 obviously has an axe to grind, and the ten-year remoteness clearly makes a 403 balancing test  
12 fall in the favor of the government and not the defense.

13 MJ: Thank you.

14 I've considered the arguments of both trial counsel and defense counsel as well as the  
15 additional – the case law that I previously articulated on the record, as well as the case as cited in  
16 reference by the defense, *United States versus Edwards*.

17 In making my ruling, I considered, obviously, the testimony of the General, and  
18 specifically note that the last contact with the alleged victim was more than ten years ago. This  
19 is a factor, and is certainly not a bar to the testimony ... and case law, including *Mitciff*, has  
20 made it clear both in the federal courts as well as in the military court, that the time limit under  
21 MRE 609, for example, does not in anyway – doesn't set forth any type of bar, but it is a factor  
22 to consider at the time. At least the court considers it to be a factor.

1 MJ: Also, that much of the basis for this appears to be secondhand information in the  
2 context of a heated child custody dispute. There appeared to be relatively limited dealings with  
3 the alleged victim outside of the context of the child custody dispute or child custody  
4 arrangements that this – the alleged victim and the alleged victim’s husband were engaging in  
5 more than ten years ago.

6 As well, the testimony of the witness that, at least in part, the concerns as voiced, appear  
7 to be based on the allegations being opportunistic allegations rather than necessarily untrue  
8 allegations, although, certainly, the witness made it clear that she believed they were untrue  
9 allegations. She repeatedly went back to them being opportunistic in that this information was  
10 known earlier and was only raised at a later time for the alleged victim to get what she wanted to  
11 – something along those lines.

12 In light of that, I’ve concluded that this witness does not have a sufficient foundation to  
13 provide the opinion as requested by the defense, to the extent that she does have a foundation,  
14 the court will and does apply MRE 403, and to the extent that there is some probative value, it is  
15 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by  
16 consideration of undue delay or waste of time. And in making that determination under MRE  
17 403, I consider the more than ten years ago that this was based on as well as the information was  
18 based on court filings in dispute in the context of a child custody dispute. As such, I sustain the  
19 government’s objection.

20 Defense, is there anything further?

21 CIV DC: No, Sir.

1 MJ: In light of my ruling, I do think that it makes sense for us to at least have a short  
2 recess so that you can talk to your – let the witness know so she’s not standing by, and that  
3 assuming that you’re prepared to go forward with the rest of the defense’s case, you have the  
4 opportunity to get that lined up as well.

5 CIV DC: Right. Your Honor, when you say “short recess,” we – I did not anticipate the  
6 length of time this would take. I need to confirm – some of the witnesses – here’s the situation –  
7 well, first of all, can we just release her?

8 MJ: Let me just ask, how much time do you need, defense?

9 CIV DC: I need – I want to say 30 minutes.

10 MJ: You’ve got 30 minutes.

11 CIV DC: Yes, Sir.

12 MJ: We’re in recess.

13 (The Article 39(a) session terminated and the court-martial recessed at 0940 hours, 31  
14 October 2012.)

15 **END OF PAGE**



1 (The court-martial was called to order at 1035 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, I understand that the – initially, the court had anticipated that we'd be going on  
6 the record with you at 8:00 in the morning. I had, initially, talked to you when you were first  
7 seated as panel members that sometimes there are hearings that are necessary that we have  
8 outside of your presence. I just wanted to let you know that the court certainly recognizes that  
9 your time is valuable, but we also – the court needs to take care of some matters so that we can  
10 best and most efficiently use your time.

11 And so thank you very much for your understanding as we go forward.

12 Defense?

13 CIV DC: Your Honor, at this time the defense calls Cheryl Pone.

14 [The bailiff left the courtroom and returned with the witness.]

15 **MRS. CHERYL E. PONE**

16 was called as a witness for the defense, was sworn, and testified as follows:

17 **Questions by the assistant trial counsel (Captain Beliles):**

18 Q. Ma'am, would you please state your name for the record?

19 A. Cheryl Evon Pone.

20 Q. And could you please spell Pone for the record?

21 A. P-O-N-E.

22 Q. Thank you, Ma'am. And where do you currently reside?

1 A. (b) (6) .

2 ATC: Thank you. Your witness.

3 **DIRECT EXAMINATION**

4 **Questions by the civilian defense counsel:**

5 Q. Ma'am, how long have you lived in Italy?

6 A. Since 2004.

7 Q. And was your husband assigned here before he passed away?

8 A. He was. He was assigned here from 2004 to about 2008.

9 Q. What was his last duty title or position?

10 A. He was a Colonel. He was the Director of Operations at Poggio Renatico, NATO

11 Base – the CAOC 5.

12 Q. He is no longer alive?

13 A. No.

14 Q. Can you describe, just briefly, the circumstances of his death?

15 A. He was killed in a car accident while driving to work on 20 January 2010. He was hit  
16 head-on.

17 Q. And to be absolutely clear, it was not a suicide, correct?

18 A. Absolutely not.

19 Q. Now you're aware that Colonel Wilkerson is the accused in this case?

20 A. Yes, I am.

21 Q. And you know him?

22 A. Yes, I do.

1 Q. And you know his wife, Beth?

2 A. Very well.

3 Q. Can you just describe, briefly, to the members, the kind of relationship you all had  
4 with the Wilkerson family?

5 A. We had an immediate friendship, like so many people do in the Air Force – just an  
6 immediate kinship. My children and I felt comfortable with them right away. We had a very  
7 close bonding. They looked at Colonel Wilkerson kind of as they did in their dad’s role, and that  
8 followed in the footsteps of just being a very good friend to me.

9 Q. Now I want to turn your attention to the events of the 23<sup>rd</sup> of March of this year. Did  
10 you have any interaction with the Wilkersons on that day?

11 A. I did.

12 Q. Can you just, again, describe what contact you had with the Wilkerson family?

13 A. I had a training class to attend that entire weekend, and I asked the Wilkersons if they  
14 would be willing to watch my children for the weekend.

15 Q. So at that point, you say “your children.” Identify your children by name and age.

16 A. (b) (6) is now 13, and (b) (6) is 9.

17 Q. Was this significant that you asked them to do that?

18 A. Very much so. They had not stayed away from me since my husband’s death.

19 Q. And were they still affected by your husband’s death?

20 A. Very much so; very worried that something would happen to me if I was out of sight,  
21 out of mind. Due to the nature of my husband’s death, it was a traumatic accident/incident. We  
22 were completely unprepared. So they were very much – they were very worried that something

1 would happen to me; that they would not be able to control that an accident would happen to me.

2 So this was definitely a significant event to leave them with somebody else.

3 Q. Why did you pick the Wilkersons for this?

4 A. My children felt extremely comfortable with them. I felt extremely comfortable with  
5 them. They seemed like a good `ole Air Force family; represented the same things that we did,  
6 and we just felt comfortable. My kids immediately felt a connection with them and their son.

7 Q. So approximately what time did you drop them off that day?

8 A. Actually, they went – I believe they went right after school. They rode the bus home  
9 and they went right after school because I was attending the class all day.

10 Q. What was the plan for the weekend as far as picking them up?

11 A. The plan, initially, was that they would stay Friday night. Saturday, I would pick  
12 them up at home --- I would pick them up and take them home Saturday night because I, too, had  
13 issues about being away from them. So, initially, they were supposed to just stay Friday and  
14 Saturday, and somebody else was supposed to take care of them on Sunday.

15 Q. Now, when you dropped them off, was either of the boys having – had suffered an  
16 injury or anything?

17 A. My son, (b) (6) had twisted his ankle – bruised it pretty badly. He had gotten it  
18 stuck in the spokes of a wheel. He had been riding barefoot – backseat with my other son during  
19 the week, and had twisted and bruised it pretty badly.

20 Q. Was he wearing any kind of bandage or anything?

21 A. He was. He had an Ace bandage and crutches.

22 Q. Did either of your boys have a rash when you dropped them off?

1 A. No, Sir.

2 Q. Now, so you dropped them off. When did you next see your sons?

3 A. I believe I saw them Saturday morning, briefly, on my way to my class, again at the  
4 base. I had class that – the next morning. I can't remember all of the details, to be honest with  
5 you, because I was in a hurry.

6 Q. And then did you see them again later in the day?

7 A. I did. I saw them later in the day when I went to go pick them up. They did not want  
8 to come home with me, especially (b) (6) . He was crying because the next day he was not  
9 supposed to come back. He was supposed to stay there for – you know only until Saturday, and  
10 then stay with another friend on Sunday. And Beth and Jay were nice enough to ask – you know  
11 to offer for them to stay the entire day on Sunday. And like I said, (b) (6) was crying because he  
12 didn't want to go home; he didn't want to – you know he wanted to stay and play and hang out  
13 with Miss Beth and Mr. Jay. So they ended up staying again on Sunday. So I brought them  
14 home Saturday night, and then they came back again Sunday morning.

15 Q. Did they seem to be upset in any way about anything that may have occurred at the  
16 Wilkerson residence?

17 A. Absolutely not.

18 CIV DC: One moment, please, Your Honor.

19 [The civilian defense counsel conferred with the defense expert consultant.]

20 CIV DC: No further questions at this time, Your Honor.

21 ATC: The government has no questions for this witness, Your Honor.

22 MJ: Members, do you have any questions for this witness?

1 MJ: A negative response form the members.

2 Subject to recall?

3 CIV DC: Yes, Your Honor.

4 Thank you for your testimony. Do not discuss your knowledge of this case or your  
5 testimony with anyone other than counsel or the accused or this court while the case is going on.  
6 You may step down.

7 WIT: Thank you.

8 [The witness left the courtroom.]

9 MJ: Defense?

10 CIV DC: Your Honor, we're just checking to confirm that a witness has arrived. I just  
11 sent someone out to check.

12 The defense next calls Major Goldsberry.

13 [The bailiff left the courtroom and returned with the witness.]

14 **MAJOR GERREMY GOLDSBERRY**

15 was called as a witness for the defense, was sworn, and testified as follows:

16 **Questions by the assistant trial counsel (Captain Beliles):**

17 Q. Would you please state your name and rank for the record?

18 A. Okay. Major Gerremy Goldsberry.

19 Q. And where are you currently assigned, Sir.

20 A. I'm currently assigned to the 31<sup>st</sup> Fighter Wing.

21 Q. Here at Aviano Air Base?

22 A. Correct.

1 Q. And do you know the accused in this case?

2 A. Yes.

3 ATC: Your witness.

4 DC: Good morning, Sir.

5 WIT: Good morning.

6 **DIRECT EXAMINATION**

7 **Questions by the defense counsel:**

8 Q. First off, can you please introduce yourself to the members; your Air Force career and  
9 background?

10 A. Okay. I'm currently assigned to the 31<sup>st</sup> Fighter Wing. I'm an F-16 pilot. I've been  
11 stationed here for about two years. I graduated from the United States Air Force Academy in  
12 2001, and then my first assignment was pilot training at Columbus, Mississippi, followed by –  
13 Air Force Base. My first assignment was an F-16 assignment at Cannon Air Force Base. From  
14 there, I went to Nellis as and F16 aggressor pilot, and then here after that.

15 Q. And how long have you been here at Aviano?

16 A. About a year; a year and ten months.

17 Q. So, when was that, roughly, that you arrived?

18 A. December of 2010.

19 Q. And you told Captain Beliles that you know Lieutenant Colonel Wilkerson. Can you  
20 tell the members how you know him?

21 A. Okay. I'd been here six months or so when he had arrived. He'd taken over as the  
22 Deputy OG and I got to know him through flying together in the fighter squadron, and then

1 socially, his son and my son played on the baseball team, and so we got to know each other  
2 through that as well.

3 Q. So you had both professional and social interactions?

4 A. Yes.

5 Q. I want to take you to the night of 23 March of this year. Do you remember going to  
6 Lieutenant Colonel Wilkerson's house at some point that night?

7 A. Yes.

8 Q. All right, can you please tell the members a little bit about how you got there?

9 A. Okay. We had decided that day – there was a Seether concert going on, and myself  
10 and Major Lowe had talked about it, and we decided “Hey, let's go.” We knew Colonel  
11 Wilkerson and Colonel Ostovich were going to go, so we decided to meet up with them at his  
12 house, and then continue to the Seether concert.

13 Q. So you say “we decided to meet up with them.” How did you get to Colonel  
14 Wilkerson's house?

15 A. I drove. I picked up Major Lowe on the way, and then drove over to his house, which  
16 is in Roverado, so it's pretty close to the base.

17 Q. And how long were you at Colonel Wilkerson's house before then going to the base?

18 A. We weren't there very long. It was probably 20 minutes or so – 20-30 minutes – and  
19 then we continued on.

20 Q. And how did you get from Colonel Wilkerson's house to base?

21 A. Ah, Colonel Ostovich drove. We decided to take one car, so we took his. And then I  
22 left my car there at Colonel Wilkerson's.



1 Q. At some point you went to the concert?

2 A. Yes.

3 Q. To the best of your memory, when did the concert begin and end?

4 A. Ah, the concert – 7:00-7:30 – somewhere around there, I believe.

5 Q. Is when it started?

6 A. Correct.

7 Q. Do you recall how long, roughly, it lasted for?

8 A. Ah, it was over an hour to maybe an hour and 20 minutes was the concert.

9 Q. And what happened after the concert?

10 A. After the concert, myself, Colonel Wilkerson, and Major Lowe, we waited on Colonel  
11 Ostovich, since he was the Vice Wing Commander, he was about to go back and talk to the band  
12 for a while, so we waited for him because we were just going to – he was our ride home, and so  
13 we were going to drive back to Colonel Wilkerson’s house. We waited for a while, and then  
14 tried to call him. Couldn’t get in touch with him, so we just made a decision, right on the spot, to  
15 go over to the O’ Club.

16 Q. And so when you say “we went over to the O’ Club,” is that you, Colonel Wilkerson,  
17 and Major Lowe?

18 A. Yes.

19 Q. When you got to the O’ Club, did you have an occasion to run into (b) (6)  
20 Captain Manning, and Captain Brock?

21 A. Yes.

22 Q. At some point did they kind of join the three of you?

1 A. Yes, at some point. Can I explain?

2 Q. How long do you think it was before they saw you?

3 A. Ah, at the Club?

4 Q. At the Club.

5 A. I don't know the answer to that, when they saw me. But...

6 Q. Or how long were you at the club before you guys started interacting?

7 A. It was probably five or ten minutes. Myself and Major Lowe are on one side of the  
8 bar, and then (b) (6) was on the other side of the bar, and that's when I looked over and saw  
9 her. She saw me, and then...

10 Q. And did you know her previously?

11 A. Yes.

12 Q. And just generically, tell the members how you knew her.

13 A. Okay. I know her through my wife. My wife works with her over in the Med Group,  
14 and so...

15 Q. Is that how the two of you knew each other?

16 A. Yes.

17 Q. Ever spend any social interaction or professional interaction with her?

18 A. The only social action was the Christmas party a little bit, and then when I'd go to my  
19 wife's work, a little bit of interaction with her at work.

20 Q. Okay, so not a thing like going out to dinner or going out for lunch or anything?

21 A. No.

22 Q. Did you know Captain Manning?

1 A. Yes.

2 Q. How did you know her?

3 A. I know her previous. Her son and my son played on the same – let's see, baseball and  
4 soccer teams together. So, actually, I coached the baseball team one year, and her son was on  
5 my team that I coached. That's how I know her.

6 Q. Other than that interaction through youth sports, any other professional or social  
7 interaction with her?

8 A. When she first arrived, she's – I met her at the housing office, and I found out she  
9 was a PA, and my wife is wanting to become a PA, so I just kind of mentioned that casually to  
10 my wife. And we probably had maybe one interaction with her socially at some point between  
11 March 23<sup>rd</sup> and previously.

12 Q. And did you know the third woman there?

13 A. No.

14 Q. At the Club, how long do you think you were at the Club for?

15 A. We were probably there 30-40 minutes.

16 Q. Did you have anything to drink at the Club?

17 A. Yes.

18 Q. And what was that?

19 A. A beer.

20 Q. Do you remember if Colonel Wilkerson had anything to drink at the Club?

21 A. Ah, yes. We did get around of beers. Now, I just know I ordered them. I ordered a  
22 round. That's what I know.

1 Q. So you ordered a round, and you're not sure what it was?

2 A. No, I ordered a round of beers, but...

3 Q. Okay, and that was for who?

4 A. Ah, Major Lowe, Colonel Wilkerson, and (b) , and I don't know if Tonya and the  
5 other lady were there yet.

6 Q. Okay. Now, at some point was there a conversation about leaving the Club?

7 A. Yes.

8 Q. Do you recall who started that conversation or how that conversation came up?

9 A. No.

10 Q. So what do you recall of that conversation about leaving?

11 A. Ah, I recall we were talking about going back – back to Colonel Wilkerson's house,  
12 and it was the game plan all along. And then there was some discussion about going to some  
13 bars around the base, but in the end, I had every intention of going back to Colonel Wilkerson's.  
14 I did not want to go to those bars.

15 Q. And why not?

16 A. I didn't want to go because my car was back there, and I wanted to get back home.

17 Q. So do you remember who was talking about pubs or anything like that or bars?

18 A. Ah, I just know there was a – I don't know a specific, but I know there was some talk  
19 about possible action.

20 Q. But you also remember talking about going to Colonel Wilkerson's house?

21 A. Yes.

1 Q. So now let me fast forward until you arrived at Colonel Wilkerson's house. Where  
2 do you remember the car being parked when you arrived?

3 A. Right out front.

4 Q. And then what happens after the car parks?

5 A. We get out, and go through the front gate, and walk up to the house.

6 Q. Do you remember who led the way up to the front gate?

7 A. No.

8 Q. Now, when you arrived at the house, did you have anything more to drink that night?

9 A. There was a round of drinks offered, but then I declined and decided that I wanted to  
10 make sure I was sober to drive home.

11 Q. Do you recall what time, roughly, it was that you arrived at Colonel Wilkerson's  
12 house?

13 A. It was probably between 10:00 and 10:30.

14 Q. And if you can, where did you spend time at Colonel Wilkerson's house that night?

15 A. I spent most of my time in the kitchen.

16 Q. Okay. Was anybody else in the kitchen with you?

17 A. Major Lowe. Beth was in there for a part. Colonel Wilkerson was in there for a part.  
18 Colonel Ostovich was in there. (b) was in there. And Tanya. Everyone, at some point, was in  
19 that kitchen.

20 Q. Now, is that the only room people were in or were people kind of in other rooms as  
21 well?

1           A. Nope. There was another room – those were like the main two rooms, and then they  
2 have a very wide hallway where the bar was.

3           Q. Now was this the first night that you had met Beth Wilkerson?

4           A. No.

5           Q. What was your impression of Beth’s reaction to everybody arriving back at the  
6 house?

7           A. Initially, she was not happy with us. She was frustrated. She was like, “Why; who  
8 are these people, and why are you bringing them here?” So...

9           Q. And do you remember her saying to you or to Colonel Wilkerson or...

10          A. Colonel Wilkerson, and me, since I knew her pretty well.

11          Q. But do you remember her making drinks or getting food or doing anything else like  
12 that?

13          A. Ah, I don’t recall her making drinks. I know she made some food. I asked; I was like  
14 “Hey, I’d like to make sure I have some food in my stomach.” And so she made some inside the  
15 kitchen.

16          Q. Now did you also see the Pone boys there?

17          A. Yes.

18          Q. Did you have any talks with them about anything through the course of the night?

19          A. Yeah. After about an hour or so, we kind of moved towards the living room, and I  
20 remember the Pone boys were out there for a little bit, and we were talking about jets.

21          Q. Was there anybody else there with you when you were talking to them or was it just  
22 the three of you?

1           A. Myself, Major Lowe, Beth and then the boys, and then Colonel Wilkerson and Osto,  
2 they were just kind of coming back and forth, and so were the ladies. But that was more like a  
3 set group.

4           Q. Now talking about Colonel Ostovich, what was your impression on how the three  
5 women were relating to him that night?

6           A. My impression was that the two Captains were like competing over him. In fact,  
7 myself and Major Lowe even made that comment that to us it looked kind of like they were kind  
8 of competing, and who was going go back with Colonel Ostovich that night.

9           Q. Now at some point do you remember Beth Wilkerson taking one of the Captains  
10 home?

11          A. Yes.

12          Q. All right. Could you please talk to the members about how you remember or what  
13 you remember about that?

14          A. We kind of joked – myself and Major Lowe kind of joked about it because she  
15 wanted to go home, so we just kind of said “Captain Manning won, and she got upset and went  
16 home.” But the bottom line was at about eleven-thirtyish, she didn’t want to be there anymore,  
17 wanted to go home, so Beth offered to give her a ride home. So she gave her a ride. It took  
18 about 20 minutes for her to there and back.

19          Q. Now, did you have a talk with Colonel Wilkerson or did he have a talk with you  
20 about getting people to leave his house?

21          A. Yes.

22          Q. Can you please tell the members about that?

1 A. Yep. It had been after about an hour, and I had mentioned a couple of times  
2 throughout the night that I thought these girls were trouble just from previous knowledge. And  
3 then after (b) started doing some strange things, he mentioned like he wanted the ladies to  
4 leave.

5 Q. Now did he say that just to you or do you recall him saying that to anybody else as  
6 well?

7 A. No. He said that to the room – to the room I know, initially, and then at the end of the  
8 night, specifically to me.

9 Q. And do you recall Beth saying anything about people having to go?

10 A. Yes.

11 Q. What was that?

12 A. Just that they – that everybody just needed to leave.

13 Q. All right, so after that, at some point, did you offer Colonel Ostovich a ride home?

14 A. Yes.

15 Q. Could you please tell the members about what happened there?

16 A. At the end of the night, we were all getting ready to leave, and Colonel Ostovich was  
17 by the door, and I said, “Hey, Sir, can I offer you a ride home?” And I said, “These girls are  
18 trouble. We don’t want – you don’t want to do this.” I was just looking out for him. And he  
19 said, “Yes.” And I said, “All right. I need to go use the restroom.” I went and used the restroom  
20 and came back, and then at that point him and Tanya had left.

21 Q. After you come out of the bathroom and they are already gone, did you have  
22 conversations with Beth Wilkerson about getting (b) (6) home?



1 A. We had a conversation prior to that.

2 Q. Okay.

3 A. And that was who was going to take her home. And I said I did not want to take her  
4 home. We were going a different way. Major Lowe and I were going to go back home. So I  
5 was under the impression that she was going to take her home.

6 Q. Do you remember anything at that time, too, about missing shoes or anything like  
7 that?

8 A. Yes.

9 Q. Tell the members about that.

10 A. Again, towards the end of the night we're trying to get everybody out of there. And  
11 she had lost her shoes, so we looked for about 10-15 minutes trying to find her shoes; couldn't  
12 find them.

13 Q. Do you remember Beth, at any point, figuring out a way to take care of (b) that night  
14 then?

15 A. Ah, she's the one that offered. She didn't want to drop her without having any shoes  
16 on, so we looked for a while, and then she's the one who offered the house for her to stay in, and  
17 find the shoes, and then take her in the morning.

18 Q. Do you ever recall finding the shoes?

19 A. No.

20 Q. Now did you have an opportunity to see Colonel Wilkerson the following day?

21 A. Yes.

22 Q. And what was that interaction? What was the nature of that interaction?

1 A. We were meeting up because we talked about the day or prior or whatever that we  
2 were going to meet up and the kids were going to practice baseball out on the baseball field.

3 Q. Do you remember, roughly, what time you met up?

4 A. It was probably – it was past 12 o'clock. I had a softball tryout in the morning, and  
5 then I was running late. We were going to meet at the BX.

6 Q. And that's the BX on base, here at Area F at Aviano?

7 A. Yes.

8 DC: Could I have one moment, please, Sir?

9 MJ: You may.

10 [The defense counsel conferred.]

11 Q. Now, Major Goldsberry, you said you went to the concert with Major Lowe, Colonel  
12 Wilkerson, and Major Ostovich?

13 A. Yes.

14 Q. Was your wife in town that weekend?

15 A. No.

16 Q. Where was she?

17 A. She was in Paris.

18 Q. And do you remember keeping contact with her through the night?

19 A. Ah, yes.

20 DC: Thank you.

21 Your Honor, I have nothing further.

22 MJ: Government?

1 ATC: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 **Questions by the assistant trial counsel (Captain Beliles):**

4 Q. Major Goldsberry, you mentioned that you are friends with the Wilkerson family,  
5 correct?

6 A. Yes.

7 Q. And you wife is friends with Mrs. Wilkerson, right?

8 A. Ah, I would not – oh, with Mrs. Wilkerson.

9 Q. With Mrs. Wilkerson?

10 A. Yep.

11 Q. And even after this incident, you've spent a lot of time with Colonel Wilkerson,  
12 correct?

13 A. Yes.

14 Q. You hang out with him off duty, right?

15 A. Yes.

16 Q. I want to direct your attention to when you were at the baseball field with Colonel  
17 Wilkerson the afternoon of the 24<sup>th</sup>. Do you remember that?

18 A. Yes.

19 Q. He was pitching batting practice, correct?

20 A. Yes.

21 Q. And he was batting as well, himself?

22 A. Uh-huh.

1 Q. While you were there with him, he stated to you that he had a hard time recalling  
2 everything from the night before, correct?

3 A. Not there. It was more at the BX, and it was just...

4 Q. A little bit earlier?

5 A. And may I explain?

6 Q. Sure.

7 A. Ah, he said that he had a headache, and that he couldn't remember some of the night.

8 Q. He couldn't remember some of the night?

9 A. Correct.

10 Q. He also stated to you or left you with the impression that (b) had been given a ride  
11 home during the night, correct?

12 A. Ah, I was under the impression that Beth had attempted to give her a ride home or  
13 had given her a ride home.

14 Q. Now you've made two statements about this, correct?

15 A. Yes.

16 Q. You made a statement to OSI on the Air Force Form 1168?

17 A. Yes.

18 Q. As well, you've testified at the Article 32 investigation?

19 A. Yes.

20 Q. And when you made that statement for OSI, that was a sworn statement, correct?

21 A. Yes.

1 Q. And you tried to put everything that you remembered from the night and the  
2 following day in that statement, correct?

3 A. I tried to.

4 ATC: Your Honor, may I approach the witness?

5 MJ: You may.

6 Q. I'm handing the witness his Air Force Form 1168. If you could turn to the last page  
7 of that, Sir?

8 A. Uh-huh.

9 Q. That is your statement, right, Sir?

10 A. Yes.

11 Q. Turn to the last page, could you read to me what you wrote about that interaction at  
12 the ball field and what the accused said?

13 A. "The next day at the softball tryouts, or I had softball tryouts at 10:00. And then  
14 myself and my boys met Wilkerson, his boy and the Pone boys at the BX. Wilkerson mentioned  
15 that he did not recall much of the night, which to him seemed kind of weird because he didn't  
16 feel like he drank too much. He also said he had a bad headache. I didn't really think much of it  
17 at the time. I again mentioned that those girls were bad news, and I thought that they were all  
18 trying to get with Colonel Ostovich since he's the Vice Wing Commander. I also know Tanya  
19 from our kids playing baseball together, and my wife and I talked with Tanya every now and  
20 again, but we think she is a little bit crazy. We talked a little more about the night, and I asked  
21 how the next day was dealing with (b) (6) And I had thought Wilkerson had said Beth had taken  
22 (b) (6) back to the TLF that night."

1 Q. Thank you. There's nothing further in there about what he says about (b) (6), right...

2 A. No, ah...

3 Q. ...in that statement?

4 A. Let me check. [Reviewed statement.] Not about (b) (6) other than...

5 Q. Nothing further about what Colonel Wilkerson says about (b) (6) ?

6 A. No.

7 ATC: I'm retrieving the document from the witness. Thank you, Sir.

8 Q. Now, after the Article 32 investigation, where you testified under oath, you also had  
9 the opportunity to review a summary of your testimony, correct, Sir?

10 A. Correct.

11 Q. And you understood that you had the opportunity to make sure it was correct?

12 A. Correct.

13 ATC: Your Honor, may I approach the witness?

14 MJ: You may.

15 Q. I'm handing the witness his Article 32 testimony. If I could direct your attention to  
16 the second paragraph on that second page. What did you say in there about what the accused  
17 told you about what had happened to (b) (6) that night?

18 A. In this, it says, "I thought it was a bad idea to go home with Captain Manning. I  
19 asked the accused how (b) (6) was that morning. I was left with the impression that Beth  
20 Wilkerson had taken her home at some point."

21 ATC: Thank you. I'm retrieving the document from the witness.

22 Thank you, Sir.

1 WIT: I would like to further that, though.

2 ATC: Defense counsel can give you the opportunity to do that.

3 WIT: Okay.

4 Q. In both of those documents, you stated that you were left with the impression that  
5 (b) had been driven home by Beth, correct?

6 A. In those documents, yes.

7 Q. Thank you, and you would agree both of those documents were much closer in time  
8 to actual events that occurred than your testimony today, correct?

9 A. Yes.

10 Q. Thank you. And both of those documents were also sworn, correct?

11 A. Yes.

12 Q. Thank you. Now, I'm going to direct your attention to the Club, earlier in the  
13 evening. While you were at the Club, you never heard (b), Beth or Dawn ever asking you – or  
14 Tanya – I'm sorry – Beth was not there – you never heard any of the three women asking  
15 anything about rank, correct?

16 A. No.

17 Q. Additionally, when you arrive at the Wilkerson house, the Wilkerson's were  
18 hospitable, correct?

19 A. When I initially arrived?

20 Q. Yes, Sir.

21 A. No. I thought Beth was – she didn't agree with us bringing those ladies in.

22 Q. But she also prepared some food, correct?

1 A. She did not prepare food. She, after about an hour, I asked for food, and so she  
2 prepared it.

3 Q. Okay, so after you asked?

4 A. Correct.

5 Q. Colonel Wilkerson was hospitable, however, to the people who were there?

6 A. Yes.

7 Q. He poured some drinks, correct?

8 A. Yes.

9 Q. He offered some drinks. It wasn't until about 11:30 that 12:00 that Colonel  
10 Wilkerson started asking people to leave, correct?

11 A. From my interaction with him, yes.

12 Q. Thank you. Now you mentioned, Sir, that you were under the impression that Dawn  
13 Brock and Tanya Manning were fighting over the attentions of Colonel Ostovich, correct?

14 A. Yes.

15 Q. That day, were you aware that Dawn Brock had been, just a few hours previously,

16 (b) (6) ?

17 A. No.

18 Q. Thank you. And when you left that night, you did not offer (b) (6) a ride home,  
19 correct?

20 A. No.

21 Q. And Colonel Ostovich left before you, correct?

22 A. Correct.



1 Q. And he did not offer<sup>(b)</sup><sub>(c)</sub> a ride home either?

2 A. I don't know.

3 Q. To your knowledge, you did not see him offer<sup>(b)</sup><sub>(c)</sub> a ride home?

4 A. No.

5 Q. And you were under the impression that he left with Tanya, correct?

6 A. I knew that he left with Tanya, but I don't know if he offered<sup>(b)</sup><sub>(c)</sub> a ride home.

7 ATC: Thank you.

8 Nothing further, Your Honor.

9 MJ: Defense?

10 DC: Thank you, Sir.

11 **REDIRECT EXAMINATION**

12 **Questions by the defense counsel:**

13 Q. Major Goldsberry, you seemed like you had more to say about what impression you  
14 had from Colonel Wilkerson that next morning. Would you please tell the members a little bit  
15 more about what you wanted to say?

16 A. Yes. In my Article 32 hearing, I said on the stand exactly what I'm telling you, that  
17 Beth either attempted to take her home or had taken her home. And I feel strongly that the way I  
18 was questioned it was a yes or no answer, and I tried to make a point of that even after the  
19 questions were asked. I remember telling the judge that, so...

20 Q. And Captain Beliles got into a little bit about how you are friends with Colonel  
21 Wilkerson.

22 A. I'm sorry?

1 Q. Do you remember Captain Beliles asking about your friendship with Colonel  
2 Wilkerson, in the beginning?

3 A. Yes.

4 Q. Would you lie for him?

5 A. No.

6 DC: Thank you, Sir, nothing further.

7 ATC: Could I have one moment, Sir?

8 MJ: You may.

9 [The trial counsel conferred.]

10 ATC: Briefly, Your Honor.

11 **REXCROSS-EXAMINATION**

12 **Questions by the assistant trial counsel (Captain Beliles):**

13 Q. Major Goldsberry, when you signed this document of your summarized testimony,  
14 you were told by the investigating officer that you could make changes to this, correct?

15 A. Yes.

16 Q. And you did not make any changes to this, correct?

17 A. I made several changes to that that I thought needed to be changed. And then there  
18 were some – I brought up a point of that, I was like I think you know it was either attempted or  
19 she brought her home, and she said, in the end, this is what is going to be written, so that's how  
20 it's written.

21 Q. Thank you, Sir, but in your statement...

22 A. But I did make it a point with the judge about that, verbally.

1 Q. Sir, in your statement on 24 May 2012, to OSI, you remember that statement, Sir?

2 A. Yes.

3 Q. The only thing you wrote about the issue was, "I had thought Wilkerson had said Beth  
4 had taken (b) back to the TLF that night"?

5 A. Yes.

6 ATC: Thank you.

7 No further questions, Your Honor.

8 DC: Nothing further, Sir.

9 MJ: Members – and we do have a question from Lieutenant Colonel Rood and as well as  
10 Colonel Stentz. If you could please grab both of those questions if they've already finished  
11 writing them and provide them to the trial counsel, the defense counsel and then to the court.

12 And, Colonel Stentz, have you finished writing your question yet?

13 MBR (Colonel Stentz): No, I have not.

14 MJ: Okay. That's fine. Just take your time and let us know when you finish it.

15 [The questions of Lieutenant Colonel Rood were reviewed by the counsel and handed to  
16 the military judge.]

17 MJ: Colonel Rood's question will be marked as Appellate Exhibit XII.

18 Oh, excuse me, it's Appellate Exhibit XVII, not XII.

19 [The questions of Colonel Stentz were reviewed by the counsel and handed to the  
20 military judge.]

21 **EXAMINATION BY THE COURT**

22 **Question by Lieutenant Colonel Rood (asked by the military judge):**

1 Q. Were you aware of the time the Pone boys went to bed?

2 A. No.

3 MJ: Colonel Stentz's question will be marked as Appellate Exhibit XVIII.

4 I'll ask you several questions. And then, Colonel Stentz, I may ask for a little bit of  
5 information as to the fourth question. I'm just having a hard time reading it. But let me ask the  
6 first three questions first.

7 **Questions by Colonel Stentz (asked by the military judge):**

8 Q. Major Goldsberry, did the talk of returning to the Wilkerson's house include (b)

9 (b) (6)

10 A. [Long pause.] I don't know.

11 Q. Specifically, how did the accused and Beth Wilkerson announce to the room people  
12 should leave?

13 A. Ah, I know, at least in the kitchen, I remember Beth saying that, "These people need  
14 to leave." So it was the people I know that were in there at the time were myself, Major Lowe,  
15 and Beth, and it was more of in discussion like "These girls need to leave."

16 Q. Who looked for the shoes and where, to the extent that you know, where did people  
17 look for the shoes?

18 A. Ah, I don't recall where, but I know myself, Major Lowe, Beth and Colonel  
19 Wilkerson were looking around the house – and (b)

20 MJ: Thank you. I can see the first part of your question, Colonel Stentz – "Was there  
21 direction conversation about (b) ..." and then I'm not sure exactly – I'm having a hard time

1 reading the question. What was your question? You can tell me what the question is that you  
2 wanted or the information that you were asking so that I can ask that of the witness.

3 MBR (Colonel Stentz): I'm going to have to see it again.

4 [Laughter.]

5 MJ: And I'll tell you what [to the bailiff], if you could just provide that to the member.

6 [The bailiff complied.]

7 MJ: And if you could just read that question out loud, please? And if you need to  
8 rephrase it – there's something – that's perfectly fine as long as it's the gist of what you have  
9 written down there.

10 **Examination by the court continued.**

11 **Question by Colonel Stentz, asked by Colonel Stentz:**

12 Q. The question was: Was there a direct conversation with Lieutenant Colonel Wilkerson  
13 about whether (b) was or was not at their home when he woke up that day?

14 MJ: Okay. All right. And you may answer that question.

15 A. There was no direct question.

16 MJ: If you would just please retrieve the question from Colonel Stentz?

17 [The bailiff complied.]

18 MJ: Thank you very much. I appreciate it.

19 We also have another question from Colonel Calta. If you could please retrieve that.

20 [The bailiff complied.] The question was reviewed by counsel and handed to the military  
21 judge.]

22 MJ: Colonel Calta's question will be marked as Appellate Exhibit XIX.

1 MJ: [To the member, Colonel Stentz.] Do you have an additional question?

2 MBR (Colonel Stentz): I don't think that one of the questions was completely answered,  
3 Sir.

4 MJ: Oh, okay. And what was – there was a follow up to one of those questions? What's  
5 the follow-up?

6 MBR (Colonel Stentz): It's not a follow up question, but, specifically how did  
7 Lieutenant Wilkerson and Beth Wilkerson ask the people to leave. It sounded like two separate  
8 events – two thought processes going on.

9 MJ: Okay. All right.

10 **Examination by the court continued.**

11 **Question by Colonel Stentz (asked by the military judge):**

12 Q. Major Goldsberry, first of all, when you were referencing the announcement to the  
13 room, do you recall whether – I think you talked about maybe –well, do you recall both the  
14 accused and the wife announcing something to the room? Can you talk a little bit more about  
15 that?

16 A. Sure. To the question, I don't specifically recall somebody making an announcement  
17 like "Hey, everybody, it's time to go." But what I recall is, in the kitchen, having a discussion  
18 how these ladies needed to leave, and then in the living room, specific interaction between  
19 myself and Lieutenant Colonel Wilkerson that it was time for these ladies to go.

20 Q. Now, in the living room, was that just a discussion with you or was that a discussion  
21 with the entire room in the living room?

22 A. Ah, it was between myself and Colonel Wilkerson in that – in the living room.

1 MJ: Does that answer your question?

2 MBR (Colonel Stentz): Yes.

3 MJ: As to the questions that have been asked up to this point, defense counsel, do you  
4 have any follow ups that you would like to ask of this witness as to the member questions?

5 DC: No, Your Honor.

6 MJ: And does the government have any follow ups based on these questions?

7 ATC: No, Your Honor.

8 MJ: All right, members, we're going to have a short hearing outside of your presence.

9 And I will return you to the deliberation room, and we'll be with you shortly. Members, you are  
10 in recess.

11 (The members left the courtroom at 1123 hours, 31 October 2012.)

12 **END OF PAGE**

1 (The court-martial was called to order at 1124 hours, 31 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 [The witness remains on the stand.]

6 MJ: Both trial counsel and defense counsel requested an Article 39(a). The question is –  
7 and [to the witness] I'm not asking it for you at this point. This is just so that the counsel recall  
8 and remember the question we're addressing.

9 "Other than your impression that she was trying to get with Colonel Ostovich, did you  
10 have any other reason to believe (b) (6) was trouble?"

11 Now, first, before we discuss this, does either trial or defense counsel, would you request  
12 that the witness step down off the stand?

13 ATC: No, Your Honor.

14 DC: No, Sir.

15 MJ: All right.

16 Government, you requested an Article 39(a); what would you like to discuss?

17 ATC: Could I have one moment, Your Honor?

18 MJ: You may.

19 [The trial counsel conferred.]

20 MJ: And I can hear from defense. I don't really care who I hear from first, if defense  
21 wants to address...

22 [The defense counsel conferred.]



1 ATC: Your Honor, twofold; one, I do believe it needs to be clarified that Major  
2 Goldsberry did not say, that (b) (6) was trying to get with Colonel Ostovich, in his testimony, and,  
3 secondly, we would object to as irrelevant to the second part of the question that there would be  
4 – his basically opining on why she would be trouble.

5 MJ: All right. All right, so, effectively, there are two aspects of this question. One, from  
6 the government's position, is whether or not this witness had an impression that (b) (6) was  
7 trying to get with Colonel Ostovich, and that – there's not an objection to that question of the  
8 witness. And then the second aspect, which you have an objection, is did he have any reason to  
9 believe that (b) (6) was trouble? Am I...

10 ATC: We object to that question, Yes, Sir.

11 MJ: All right, you object to that question.

12 Well, first of all, I'm inclined, as an initial matter, to at least ask both of those questions  
13 to this witness, and then I think we can address whether and to what extent we will ask any  
14 questions.

15 Major Goldsberry, first, did you have an impression that (b) (6) was trying to get  
16 with Colonel Ostovich?

17 WIT: No.

18 MJ: And did – well, I'll ask it in this way: Did you believe or have reason to believe, at  
19 that time, that (b) (6) was "trouble"? Is that who you were referring to when you said they  
20 were "trouble"?

21 WIT: Yeah – yes, Sir.

22 MJ: All right, and what was the reason your belief that (b) (6) was trouble?

1           WIT: Just from prior interaction – prior knowledge, and then just some of the events that  
2 took place that night.

3           MJ: All right, what prior knowledge are you referring to when you say “based on your  
4 prior dealings with her”?

5           WIT: Ah, some of the stories I’ve heard, through my wife, on her work ethic; some of  
6 the things that she’s done at work that I’ve heard.

7           MJ: All right, what about what you saw (b) (6) – what about how she was behaving  
8 that night made you think that she might be trouble? I think you said there was two things.

9           WIT: Yes, Your Honor. Ah, that night, specifically, she was holding on – what I thought  
10 was strange was she was holding onto Colonel Wilkerson at one point, like arms crossed. She  
11 came over to me; was leaning on me, holding onto my arm, putting her head on my shoulder, and  
12 then at one point she’d take Major Lowe’s head, held it, and said, “I can read your mind.”

13           And then the other one was when she was back with the Pone boys, I don’t know why –  
14 irrelevant – she was back with them, and then she came out and – she came out of there, not  
15 screaming, but voice was – loud voice saying how she had a conversation with the Pone boys  
16 about how their father had died, and it was fairly graphic.

17           So my impression there, Your Honor, was why you know why was she talking with those  
18 boys, and why was that conversation going on.

19           MJ: All right. In light of the questions and responses; first of all, defense, what is your  
20 position, regarding either this question or some derivation of that question?

21           DC: One moment, please, Sir.

22           [The defense counsel conferred.]

1 DC: Your Honor, we don't believe anything related from the stories his wife might have  
2 given him or anything like that would be relevant or something that he could testify to.  
3 However, we believe he can answer that question and give his personal perceptions of things he  
4 viewed that night, in answering that second part of the question.

5 MJ: All right. So, ah...

6 DC: It's kind of bifurcated there.

7 MJ: So, in other – so, defense, your proposal is to ask the question, did this witness have  
8 any reason to believe (b) (6) was trouble or what was – I mean what exactly are you asking  
9 as far as a way forward on this question?

10 [The defense counsel conferred.]

11 DC: The latter half of that question, you know why did he have reason to believe (b)  
12 (b) (6) was trouble or something to that effect – I can't remember the exact verbiage of it – and  
13 then the answer – allowing him to answer as to his specific observations from that night that  
14 allowed him to form that opinion.

15 MJ: All right, trial counsel, your position regarding defense's anticipated way forward?

16 ATC: Could I have one moment, Your Honor?

17 MJ: You may.

18 [The trial counsel conferred.]

19 ATC: Sir, it's the government's position that the line which he was quoting, Your Honor,  
20 he was talking about Dawn and (b) with respect to Colonel Ostovich in the context of that  
21 statement – pardon, Tanya and Dawn – with respect to that night.

1           ATC: Secondly, Your Honor, we would point out that he wasn't referring to trouble with  
2 respect to these other – just, generally, the fact that she was acting that night. That's not what he  
3 was talking about in that statement when he was talking about that line. So we would object.

4           MJ: Well, I mean whether or not – the witness can probably address as to what he meant  
5 or didn't mean. My intention, at this point, is to ask this witness two questions; whether or not  
6 he had an impression that (b) (6) was trying to get with Colonel Ostovich and then,  
7 secondly, did he have any specific observations of (b) (6) behavior that night that he found  
8 troubling. And then he can respond to that.

9           Now, the question, really, as we go forward, and I anticipate that it may be efficient for  
10 us to handle it now, is if either trial or defense counsel are anticipating asking any follow-ups to  
11 those questions, that either trial or defense counsel believe that it will be appropriate that we  
12 discuss at this point rather than a subsequent 39(a) or anything else, I can certainly entertain it.  
13 But my intention, at this point, is to ask those two questions and allow the witness to respond to  
14 that.

15           Government, in other words, are you planning to ask the question you just said, which is  
16 whether or not his reference to “trouble” was a reference to (b) (6) or not?

17           ATC: No, Your Honor.

18           MJ: Okay.

19           Defense counsel, are there any follow-ups that you anticipate based on those questions?

20           DC: Ah, if the witness could just go into maybe the when and where of what he  
21 observed; I think that might help clarify...

22           MJ: Sure, and...

1 DC: ...but otherwise, no additional questions.

2 MJ: I'll ask the question, and to the extent necessary, I'll ask follow-ups just to allow the  
3 witness to be able to describe the behavior when that occurred.

4 DC: Okay.

5 ATC: Sir, if I could just request that the witness be instructed that this is not an  
6 opportunity for him to talk about the things he's heard from his wife on prior occasions.

7 MJ: All right, and I believe you understand that what we are actually focusing now is  
8 what the behavior that you saw that night, that you testified, I believe, that you found troubling.

9 WIT: Yes, Your Honor. Okay. No problem.

10 MJ: And let me confirm; did I hear you correctly that you did characterize that behavior  
11 as – that you found troubling that night? Is that correct?

12 WIT: Yes.

13 MJ: All right, if that's the case, bailiff, call the members.

14 [The bailiff left the courtroom.]

15 (The Article 39(a) session terminated at 1134 hours, 31 October 2012.)

16 **END OF PAGE**

1 (The court-martial was called to order at 1135 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 [The witness remains on the stand.]

6 MJ: I have a couple of questions for you.

7 **Examination by the court continued.**

8 **Questions by Colonel Calta (asked by the military judge):**

9 Q. First, was it your impression that (b) (6) was trying to get with Colonel Ostovich  
10 that night?

11 A. No.

12 Q. Secondly, did you have any specific observations of (b) (6) and behavior that  
13 night that you found troubling?

14 A. Yes, I did, Your Honor.

15 Q. And what behavior of (b) (6) did you, at that time, find troubling? Can you  
16 describe that?

17 A. Ah, the specifics that I found troubling were she was leaning on Lieutenant Colonel  
18 Wilkerson and arms interlocked. And then later on she came over to me, interlocked arms with  
19 myself, put her head on my shoulder. She said several things that I knew were a lie just based on  
20 previous events.

21 ATC: Objection, Your Honor.

22 MJ: I'll address that at a later point.

1 MJ: Continue, please.

2 WIT: Okay.

3 **Examination by the court continued.**

4 A. And, ah, that was the first instance. The other one was she took Major Lowe's head,  
5 held onto it, and said that she could read his mind. And then another instance was later on in the  
6 evening, when the Pone boys were in their bedroom, she had gone, at some point, into that room,  
7 and had a conversation with them. She came out with not screaming, but her voice was raised,  
8 and indicated that she had a conversation with the kids and the kids had told her how their father  
9 had died in a car accident, and gave graphic details to that. So I thought that was troubling at the  
10 time, and questioned why she was in there talking to the boys about that.

11 Q. And when you said that questioned it, you just internally questioned it or did you  
12 actually ask her why she was in there? Do you recall?

13 A. I do not recall, Your Honor, but yes to internally, and I don't recall the other.

14 Q. Just so I can give you an opportunity to, at least to the extent that you can, talk about  
15 when these events happened that night. Do you recall when you talked about (b) (6) leaning  
16 on the accused, do you recall when that happened or where that happened?

17 A. Ah, it happened in the kitchen, and it was within the first hour.

18 Q. Do you remember who was there at the time when that happened?

19 A. Myself, Major Lowe, Beth and Colonel Wilkerson and (b) (6) .

20 Q. What about the portion where you said that she interlocked her hands in some way  
21 with you, when and where did that happen?

1           A. Also I the kitchen, roughly the same time period, and, again, I know Major Lowe and  
2 Beth were in the room.

3           Q. And then, finally, as to (b) (6) – your testimony that she came out the back room  
4 talking about the Pone kids, and the Pone kids' father, do you recall when that happened?

5           A. Ah, that was towards – that was definitely towards the end of the night, and I think  
6 that was about the time where things had changed – the dynamics, the situation. The party just  
7 kind of – I don't know the word I'm looking for, but it was no longer fun at that point. We – it  
8 was time to leave.

9           Q. And where were you when you described her coming out of the back room, where  
10 were you at the time?

11          A. Ah, I was in the kitchen.

12          Q. I believe you also provided testimony regarding a statement about reading Major  
13 Lowe's mind or something along those lines.

14          A. Yes, Sir.

15          Q. Where and when did that purportedly occur?

16          A. Ah, I know that happened in the kitchen. I'm not exactly sure of the timeline when  
17 that happened.

18          MJ: All right, based on those questions and responses, defense, do you have any follow  
19 up questions?

20          DC: No, Your Honor.

21          MJ: Government?

22          ATC: Yes, Your Honor.



1 **RECROSS-EXAMINATION**

2 **Questions by the assistant trial counsel (Captain Beliles):**

3 Q. Major Goldsberry, you just talked about the “hanging on of the arm” and “reading  
4 Major Lowe’s mind.”

5 A. Uh-huh.

6 Q. You do not interpret any of that conduct as flirtatious, in the moment, did you?

7 A. Ah, no. I thought she was being flirtatious.

8 Q. You thought she was being flirtatious?

9 A. Uh-huh.

10 Q. Do you remember your Article 32 testimony that you’ve already reviewed once?

11 A. Uh-huh.

12 Q. Do you remember stating that, “I did not interpret (b) (6) as being overly  
13 flirtatious”?

14 A. Yes, because we attempted to define “flirtatious” during that time, so I felt like she  
15 was holding onto us in a flirtatious manner; I did not feel like it was anything beyond that.

16 Q. You did not feel like it was inappropriate, did you?

17 A. Correct.

18 Q. And you did not feel like it was targeting any particular person, did you?

19 A. No.

20 ATC: Thank you.

21 MJ: Based on that?

22 DC: None. No, Your Honor.

1 MJ: Members, do you have any additional questions?

2 Apparently not.

3 Subject to recall?

4 DC: Yes, Sir.

5 Thank you for your testimony. While this case is ongoing do not discuss your knowledge  
6 of this case or your testimony with anyone other than the accused, counsel, and this court. You  
7 may step down.

8 [The witness left the courtroom.]

9 MJ: Defense based on being approximately 1145, is this a good time for us to take a  
10 recess for lunch or would you prefer to handle some other matters first?

11 CIV DC: I think this is a good time to take a lunch recess, Your Honor.

12 MJ: Would an hour lunch be sufficient for counsel?

13 CIV DC: Yes, Sir.

14 MJ: Government; yes?

15 ATC: Yes, Your Honor.

16 MJ: All right. We are in recess until 1245.

17 (The court-martial recessed at 1142 hours, 31 October 2012.)

18 **END OF PAGE**

1 (The court-martial was called to order at 1250 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense counsel, you may continue.

6 CIV DC: Your Honor, at this time the defense calls Suzanne Berrong to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 **MS. SUZANNE BERRONG**

9 was called as a witness for the defense, was sworn, and testified as follows:

10 **Questions by the assistant trial counsel (Captain Beliles):**

11 Q. Would you please state your name for the record?

12 A. Suzanne Berrong.

13 Q. And where do you currently reside?

14 A. I currently reside on (b) (6), (b) (6)

15 Q. And where are you employed?

16 A. I'm at the 31<sup>st</sup> Medical Group.

17 ATC: Thank you very much.

18 Your witness, Sir.

19 **DIRECT EXAMINATION**

20 **Questions by the civilian defense counsel:**

21 Q. Ma'am, what are your duties at the Medical Group?

1 A. I'm the Patient Safety Manager, and I monitor for compliance, process, protocol, that  
2 type of thing.

3 Q. How long have you worked for the Air Force?

4 A. Ah, this last tour I started at Aviano in 2008, but I've been working with the military  
5 since 2000 as a contractor.

6 Q. How long have you actually worked in the current job that you're in?

7 A. Since March 2008, here at Aviano.

8 Q. Now do you know (b) (6) ?

9 A. Yes.

10 Q. How is it that you know her?

11 A. Ah, I met her because she does work and is employed at the Med Group.

12 Q. And with respect to Colonel Wilkerson, do you know him?

13 A. Yes.

14 Q. But to be clear, you were not present at his home on the evening of the 23<sup>rd</sup> of March?

15 A. Correct.

16 Q. Have you socialized with (b) (6) ?

17 A. Yes.

18 Q. Up until from the point that you met her, until the 23<sup>rd</sup> of March of this year, how  
19 often would you say you socialized with her?

20 A. Pretty frequently. We probably had you know several times a week. It would depend  
21 what our schedules were. We'd go out for dinner or get together and talk on the phone, email,  
22 and that sort of thing.

1 Q. So would you say that you were fairly good friends?

2 A. I would say yes.

3 Q. Now, in terms of just where you live and where the base is, what is the approximate –  
4 well, first, where do you live?

5 A. I live in the center of (b) (6) .

6 Q. And how far is (b) (6) from Aviano Base, from approximately where we are right  
7 now?

8 A. Okay, so from my front door, if I go to get in my car, it's about a 15-minute drive  
9 start to finish.

10 Q. That's going which direction? Is that south or east or...

11 A. Oh, toward the mountain. [Laughter.] I don't know north, south, east, west I guess.  
12 Sorry.

13 Q. In any event, have you ever been to the Wilkerson home?

14 A. No, I have not.

15 Q. But do you know approximately where it's located?

16 A. I don't

17 Q. Ah, so at least, sitting here right now, you don't know how long it would take to get  
18 to his home from your home in (b) (6) ?

19 A. The town they're in, I believe, is Roverado. Roverado is on my way from my home  
20 to the base. It's just about halfway. So if I were driving there, it would take less than 15 minutes  
21 time.

1 Q. So at least if you had been asked to come to his home that night, it would have taken  
2 less than 15 minutes to get to his home – is your understanding?

3 A. Probably. Yes.

4 Q. Now, prior to that night, was it routine for you and (b) (6) to text each other or  
5 call each other on a regular basis?

6 A. Yes.

7 Q. And on the night of the 23<sup>rd</sup>, were you, in fact, communicating with her by either text  
8 or phone?

9 A. Yes.

10 Q. And where were you that night?

11 A. I was at a going away at the Pogue Mahone's in the center of Aviano.

12 Q. So from the base, where we are right now, about how long would it take to get here  
13 from where you were that night?

14 A. Maybe five minutes. It's just down the road, to the center.

15 Q. And so while you were there, did you have text message exchanges with (b) (6) ?

16 A. Yes.

17 Q. What was your understanding as to where she was and what she was doing that night?

18 A. My understanding – she had gone with a group of people. They were going to the  
19 Seether concert that was here. And we were texting off and on just you know what they were  
20 doing, having a good time. Ah, then I – at some point we had texted that they were – appeared to  
21 be moving from wherever the concert was to another location .

1 Q. Did it go beyond texting at some point, to a phone call?

2 A. Yes. Eventually, there was a phone call after midnight or so, I think.

3 Q. So where were you at midnight?

4 A. I'd already gone home, so I was home in (b) (6) .

5 Q. Were you up or were you in bed or...

6 A. I was already in bed, asleep.

7 Q. So you're in bed, asleep. It's after midnight, and did you receive a phone call – did  
8 you receive a phone call from or did you make a phone call to (b) (6) ?

9 A. I believe I make the phone call to her.

10 Q. And how long – we're going to talk about just the nature – we're not going to talk  
11 about the details of the call, but just when it occurred, how long it was.

12 A. Okay.

13 Q. I want to ask you a few questions about that. So, how long did that conversation last?

14 A. Approximately 15minutes, I think.

15 Q. And what was the general tone of the conversation from her end?

16 A. Do you mean how – what it seemed like her behavior was?

17 Q. Yes.

18 A. She, ah, she's a bit irritated because she had been left at the house – at a house – that  
19 the people that she came with had left her there, and she was irritated at this – a little upset about  
20 it.

21 Q. Why were you calling her at that point?

1 A. I had received a text message prior to, and I think we were going back and forth. I  
2 can't remember exactly what the text message was, but I called her.

3 Q. Could you tell if anyone was present near her before the end of that phone call?

4 A. When the phone call started, it sounded as if was just her. But toward the end of the  
5 phone call, I would hear a woman's voice.

6 Q. Did (b) (6) identify who the woman was?

7 A. Not by name; only referred to her as "the woman" or "the wife" of whatever  
8 household they were in.

9 Q. So by the time the conversation ended, did you have any idea whose home (b) (6)  
10 was in?

11 A. No.

12 Q. Did you have any idea who the person was that was in the room with her?

13 A. No. Well, when you say an idea, I did have a potential idea, yes.

14 Q. What was your thought?

15 A. I knew because I had texted or spoken directly on the phone with Colonel Ostovich,  
16 so they knew they were potentially going over to the Wilkersons' house. I didn't know them at  
17 the time; I only knew his call sign, Roscoe. So I had an idea of where she was, but she never  
18 said that's where she was.

19 Q. And I take it you never asked her "Are you at the Wilkersons'?"

20 A. No, because I didn't know that's who "Roscoe" was.

21 Q. Okay, so you just knew the name "Roscoe"?

22 A. Yes, but I didn't put the two together.



1 Q. In any event, you didn't even say "Are you at Roscoe's house?"

2 A. No. I just asked her, "Do you know where you are?" I mean, "Is there anybody  
3 around?" that she could ask.

4 Q. Now could you hear the woman or the wife, could you actually hear that person's  
5 voice at the other end of the phone call?

6 A. Yes.

7 Q. Do you recall what you heard the other woman say?

8 A. I recall (b) (6) had asked the woman if she knew Suzanne Berrong, and the woman  
9 answered, "No," because she didn't know me, I guess at the time. And then she asked her or  
10 they discussed something about making tea, and that she was going to have tea, and that's what I  
11 overheard in the talking.

12 Q. But you could actually hear the other woman's voice?

13 A. I could hear her voice as she was speaking.

14 Q. At any point, did (b) (6) indicate that there was man in the room with them?

15 A. No.

16 Q. Did you hear any man's voice?

17 A. No.

18 Q. Now going back to the phone call, did (b) (6) – what bothered her the most,  
19 besides just the fact that...

20 ATC: Objection, Your Honor. Speculation.

21 CIV DC: No, in terms of what she said, so I'm not asking her to speculate.

22 ATC: Objection. Hearsay, Your Honor.



1 (The court-martial was called to order at 1300 hours, 31 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent. The witness remains on the stand.

5 Ask your question, please, so I may hear the response.

6 CIV DC: Besides just the fact she was left there with her friends, based on what she told  
7 you during the phone call, why was (b) (6) upset?

8 WIT: Ah, she was really upset that she had been left, and – can I say what...

9 CIV DC: You can.

10 MJ: Don't worry about anything. Answer as fully and completely as you can at this  
11 point...

12 WIT: Okay.

13 MJ: ...so that I can actually rule on the objection as we go forward.

14 WIT: Okay.

15 CIV DC: Your Honor, I think the nature of her concern is the nature of the language that  
16 was used.

17 MJ: Oh, all right.

18 CIV DC: You're free to say that.

19 WIT: Okay. She did mention, "Because they fucking left her at the house," and she was  
20 upset about this, and that she'd also made mention of the interaction between other members that  
21 were there, that one person had the objective to take another person home to...

22 CIV DC: What did she say, Ma'am?



1 (The court-martial was called to order at 1303 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Mr. Spinner, you may continue.

6 **Direct examination continued.**

7 Q. So, Ma'am, how did (b) (6) express herself, first of all with respect to the fact  
8 that she was left there? What did she say?

9 A. That she had been fucking left; "They fucking left me."

10 Q. And then what did she say with respect to the other reason why she was upset?

11 A. That Captain Manning was there to go with Colonel Ostovich to fuck him.

12 Q. Now, ah, and what was the tone of her voice when she said the word you just stated?

13 A. She was very, ah, I don't know – I guess very direct about it.

14 Q. Now, at that point, you understand that she is, wherever she is, she's been left there?

15 A. Uh-huh.

16 Q. Did you say or do anything in terms of offering to come pick her up and help her?

17 A. Yes. I'd offered several times on the phone, and was practically yelling at her, you  
18 know to – especially when I heard the woman's voice – was to "Give her the phone," you know  
19 "Ask her for directions or hand her the phone, let her tell me where you are, and I'll come get  
20 you" – that "I could come get you."

21 Q. Now, if this phone call took place at approx – if the phone records show that this  
22 phone call took place at 0023 that morning, do you have any reason to dispute that?

1 A. The time?

2 Q. If the phone records show that you called her at 0023, now it's the 24<sup>th</sup> of March...

3 A. Uh-huh.

4 Q. ...do you have any reason to dispute that?

5 A. No, if that's that the records say, I don't dispute that.

6 Q. And, again, that the conversation lasted about 15 minutes?

7 A. Yes.

8 Q. Now, at the end of the conversation, did (b) (6) indicate whether she, first of all,  
9 would give the phone to the woman or the wife?

10 A. No. While I was asking her to do this, this is when I could hear them having the  
11 conversation about whether or not she knew me, and about making the tea. And I'm saying it at  
12 the same time, asking her, "(b) (6), give her the phone" or "Find out where you are. Ask where  
13 you are. Get directions. You know I'll come get you." So it was kind of going on at the same  
14 time with her interaction with the woman's voice in the background.

15 Q. In any event, (b) (6) did not give the woman or the wife the phone, correct?

16 A. She did not.

17 Q. Did she even ask the woman or the wife where they are so she could tell you where  
18 they were in relation to where you lived?

19 A. No. She did not. What she had said to the woman was, "It's too far for her to come  
20 and get me."

1 Q. How did she know where she was?

2 A. That, I don't know – to know that it's too far for me to come get her, I don't know  
3 because she said she didn't know where she was.

4 Q. So how did the phone call end at that point?

5 A. That she was going to – there was a room made up for her, and that she would be  
6 staying the night there at the house. And I finished by saying, “Okay, well if you change your  
7 mind or you need something, call me and I'll come get you.”

8 Q. In any event, you were awake at that point when the phone call ended?

9 A. Yes.

10 Q. And she could have called you back almost immediately if she wanted to?

11 A. Yes.

12 Q. Do you recall receiving a text message from (b) (6) at 0404 that morning?

13 A. Not until I woke up. I noticed I had missed messages and calls, but I did not hear my  
14 phone. It was on the screen.

15 Q. Do you recall what that message said – text message said?

16 A. I don't because when opened up the phone, it – I didn't see it after that, so I don't  
17 know.

18 Q. In any event, there's no question in your mind that you did receive a text message  
19 from (b) (6) at 0404?

20 A. I do because it's been shown to me – that it was there. But at the time, I didn't know  
21 for sure exactly what times I had missed calls or messages.

1 Q. So if the phone records reflect a text message from (b) (6) to you at 0404 on the  
2 24<sup>th</sup> of March, you have no reason to dispute that even though you don't recall it?

3 A. Correct.

4 Q. Now, in terms of your phone call, because the court members will have the records,  
5 you phone number – what is your phone number?

6 A. (b) (6)

7 Q. Off the top of your head, do you know her phone number?

8 A. No. I go by name.

9 Q. In any event, if the members, when they have the records, if they look at those times,  
10 they'll see your phone number on the phone records, correct?

11 A. I believe so. Yes.

12 Q. When did you next see (b) (6) ?

13 A. The next time I saw her was in the morning when I went to pick her up to take her to  
14 the Clinic.

15 Q. Approximately what time did you pick her up?

16 A. I think it was around 9 o'clock or so; whatever time the Clinic opened.

17 Q. Where did you pick her up?

18 A. At her house in (b) (6)

19 Q. We're not going to go into the conversation that you had with her at that time, but I  
20 do want clarification. Did you start discussing with her the events of the prior evening?

21 A. Yes.



1 Q. And so did something that she said suggest to you whether she remembered the 15-  
2 minute phone call the night before or not?

3 A. Ah, she – it’s not so much everything she had said as it was the whole conversation –  
4 I realized, at some point, that she did not remember that she had already told me that. So I  
5 waited until she had finished speaking, and then I told her I already knew that, that “You had  
6 already told me” – that we’d had the conversation already, and she seemed surprised at that. She  
7 didn’t remember that. Is that what you mean?

8 CIV DC: Yes. That’s what I was asking.

9 One moment, please, Your Honor.

10 MJ: [No response.]

11 [The defense counsel conferred.]

12 CIV DC: No further questions at this time, Your Honor.

13 MJ: Government?

14 ATC: Briefly, Your Honor.

15 **CROSS-EXAMINATION**

16 **Questions by the assistant trial counsel (Captain Beliles):**

17 Q. Ms. Berrong, you mentioned that you had a phone call with – a phone conversation  
18 with Colonel Ostovich late in the evening of the 23<sup>rd</sup> of March, correct?

19 A. Correct.

20 Q. Would it have been around 11 o’clock or thereabouts?

21 A. Yeah, somewhere in there.

22 Q. And the night before you had gone to dinner with him, correct?

1 A. Yeah, a night or so.

2 Q. And then the following day, on the 24<sup>th</sup>, you had some phone conversations with him  
3 on that day as well, correct?

4 A. I think late in the day, yes.

5 Q. Late in the day on the 24<sup>th</sup>?

6 A. I believe so.

7 Q. And you also saw him on the 25<sup>th</sup> of March as well, correct, Ma'am?

8 A. Right, on Sunday.

9 Q. And at some point you told him about the fact that you had taken (b) to the Clinic,  
10 correct?

11 A. Yes.

12 ATC: Thank you.

13 Nothing further, Your Honor.

14 MJ: Defense?

15 CIV DC: No further questions, Your Honor.

16 MJ: Any additional questions from the members?

17 MBR (Colonel Stentz): One moment.

18 MJ: That was Colonel Stentz who said, "One moment."

19 [Colonel Stentz took a moment to write out his question.]

20 MJ: Bailiff, if you will please retrieve that questionnaire from Colonel Stentz.

21 [The bailiff complied.]

22 MJ: It will be marked as Appellate Exhibit XX.

1 [After counsel for both sides reviewed the question, it was handed to the military judge.]

2 **EXAMINATION BY THE COURT**

3 **Question by Colonel Stentz (asked by the military judge):**

4 Q. How did you come about to pick up <sup>(b)</sup> at 0900?

5 A. Ah, via my car. Is that what you mean?

6 Q. I think, specifically, how did that happen... were you...

7 A. Well, we were having – I had called earlier. She had called me back or I got a hold of  
8 her. I don't remember which. But we were discussing – she was telling me, again, what had  
9 happened, and that when she told me what had happened, the offer was, "Do you want me to  
10 come get you? Do you need me to..." – she had talked about whether or not she needed to be  
11 tested; she thought she might have been drugged. And so we started talking whether or not, you  
12 know, not only just the story of what she had said, but these were some options of "What do you  
13 want to do? If you want to get tested, you could go Pordenone or you could go to the Clinic."  
14 You know what did she want to do? And then made the decision then to go to the Clinic, and I  
15 came and picked her up.

16 MJ: Does that answer your question?

17 MBR (Colonel Stentz): Yeah.

18 MJ: Any additional questions from the members?

19 [Negative response from the members.]

20 MJ: Defense counsel, do you have any follow-up based on that?

21 CIV DC: No, Sir.

22 MJ: Government?

1 ATC: No, Your Honor.

2 MJ: Subject to recall?

3 CIV DC: Yes, Your Honor.

4 MJ: Thank you for your testimony. You're temporarily excused. Before you leave, I'll  
5 just instruct you that while this case ongoing, do not discuss your knowledge of this case or your  
6 testimony with anyone other than counsel, the accused or this court. You may step down.

7 [The witness left the courtroom.]

8 DC: Your Honor, the defense calls Dr. Howard Taylor.

9 [The witness left the spectators' area and took the witness stand.]

10 **DR. EUGENE HOWARD TAYLOR**

11 was called as a witness for the defense, was sworn, and testified as follows:

12 **Questions by the assistant trial counsel:**

13 Q. Would you please state your name?

14 A. Eugene Howard Taylor.

15 Q. And where do you currently reside, Sir?

16 A. I live in (b) (6) Tennessee.

17 Q. And how are you currently employed, Sir?

18 A. I'm the President of National Toxicology Specialists in Nashville, Tennessee.

19 ATC: Thank you, Sir.

20 Your witness.

21 [The trial counsel conferred.]

1 ATC: And just, Your Honor, for the record, the government will stipulate that he is  
2 ostensibly qualified as an expert in toxicology.

3 MJ: Thank you.

4 DC: Your Honor, with that, we would offer Dr. Taylor as an expert in forensic  
5 toxicology.

6 MJ: All right. You may proceed.

7 **DIRECT EXAMINATION**

8 **Questions by the defense counsel:**

9 Q. Dr. Taylor, I still want to go over, briefly, though, if you can tell the members a little  
10 bit about your education and experience?

11 A. Surely. I have a BS in Chemistry from Armstrong State College in Savannah,  
12 Georgia, a PhD in Biochemistry from the Medical College of Georgia, which is a state medical  
13 school. I did a two-year fellowship in Charleston, South Carolina, at the Medical University of  
14 South Carolina, in clinical chemistry and toxicology. I served as a faculty member at the  
15 University of Arkansas for Medical Sciences in Little Rock, where I was Director of the Clinical  
16 Chemistry and Toxicology Laboratory – The Medical School. I taught clinical chemistry,  
17 laboratory medicine, and toxicology to medical students, pharmacy students, medical technology  
18 students. I left there as a tenured associate professor and went to work for a private toxicology  
19 laboratory and national reference laboratory. I was the Laboratory Director there for a forensic,  
20 federally-certified urine drug testing laboratory. And from then, I started the company I'm  
21 currently employed by, National Toxicologist Specialist.

1 I'm board certified by the American Board of Forensic Toxicology; board certified by the  
2 American Board of Clinical Chemistry with a specialty in toxicology; a breath alcohol instructor  
3 for the Department of Transportation Drug and Alcohol Testing Program, and also I serve as an  
4 inspector of laboratories for the federally certified laboratories.

5 Q. Dr. Taylor, have you ever testified before as an expert?

6 A. Yes, I have.

7 Q. And is that for both the prosecution and defense?

8 A. Yes.

9 Q. And civilian and military courts?

10 A. Yes.

11 DC: Dr. Taylor, I'm handing you what will be marked as Defense Exhibit next in line,  
12 which I think is N.

13 I'm handing it to the witness. And trial counsel has previously been provided a copy of  
14 it.

15 Q. Dr. Taylor, what is this document?

16 A. This is my *curriculum vitae*.

17 Q. And just run through it real quickly.

18 [The witness complied.]

19 A. Yes.

20 Q. Is this an accurate and up-to-date CV for you?

21 A. Yes, it is. I prepared it.

1 DC: Your Honor, at this time the defense would like to offer Defense Exhibit N for  
2 Identification as Defense Exhibit N.

3 ATC: No objection, Your Honor.

4 MJ: Admitted.

5 DC: May I publish, Sir?

6 MJ: You may.

7 I'm handing the military judge a working copy.

8 [The exhibit was so published.]

9 Q. Dr. Taylor, in preparation for your testimony today, what information have you  
10 reviewed or received?

11 A. I've been present during all the court proceedings; I've heard all of the witness  
12 testimony. In addition, I reviewed the report of investigation, including the laboratory results in  
13 this case.

14 Q. And you said you've heard all the testimony; did that include (b) (6) as well?

15 A. Yes, it does.

16 Q. In preparation for determining blood alcohol content, what formula – can you  
17 describe the formula that you use?

18 A. Yes, certainly. There is a method, an algorithm for calculating a blood alcohol  
19 concentration. Important factors to know are – is the gender of the individual, of course in this  
20 case, (b) (6) is female; her height and weight, in order to do a calculation of how much one  
21 drink would raise her blood alcohol, and, in addition to that, one would need to know how many

1 drinks she consumed, and, of course, over what time period. All of those factors are necessary to  
2 calculate a blood alcohol concentration at various time points.

3 Q. And what is a standard drink?

4 A. A standard drink is described as a 12-ounce beer that is 5 percent alcohol by volume  
5 or a five-ounce serving of wine, which is 12 percent alcohol by volume or, in the case of distilled  
6 spirits, a one and a half ounce of 80 proof, which is 40 percent alcohol, all of those contain the  
7 same amount of alcohol or .6 ounces of alcohol.

8 Q. And given that formula and what you've heard in testimony, did you calculate (b)  
9 (b) (6) blood alcohol level at various times?

10 A. Yes. The method of doing that, as I was explaining before, is to calculate how much  
11 one standard drink raises her blood alcohol. There's a formula that's actually developed by an  
12 Investigator Patricia Watson. It's published in the Journal of Studies on Alcohol, and it uses a  
13 formula using, as I said the before, the gender of the individual, the height and weight, and using  
14 that formula, I calculated that one drink, one standard drink, would raise (b) (6) blood  
15 alcohol by .036 for one drink. Of course, in this circumstance, she consumed a number of  
16 different drinks over the time period.

17 My assumptions were as follows: While at lodging, she consumed a half bottle of hot  
18 mulled wine, which is a red wine, and that would contain approximately two and a half drinks in  
19 that half bottle. In addition, while she was walking from the lodging over to the concert, there's  
20 some conflict here, she stated she took a sip from a container – a water bottle containing grape  
21 juice and some vodka. Major Manning testified that they shared the bottle throughout the trip  
22 over to the concert. I assumed that that was one half drink as a maximum.



1           While at the concert, she did not consume any alcohol. They walked over to the Bella  
2 Vista Club, and she consumed one and a half beers. She stated those were 12-ounce beers,  
3 which is a standard serving of beer, so that's one and a half additional drinks.

4           After the Club, they drove to the Wilkerson household where they arrived about 10:00 or  
5 10:30. She stated that she consumed one glass of white wine, perhaps *prosecco*, and she was  
6 very emphatic that that was in *Baccarat* crystal glass that only contained four ounces, which is  
7 less than a standard serving. As you recall, a standard serving is five ounces of wine.

8           There's some discussion about a later drink of white wine or *prosecco* around midnight.  
9 I did calculate it to include either of those options.

10           Using this calculation and the time, assuming one glass of wine about 10 o'clock, I  
11 calculated her blood alcohol value between midnight and 3 AM – those are the time points of  
12 interest. At midnight, her blood alcohol, as I calculated, was .059, at midnight, assuming the one  
13 glass. It's very easy to calculate the rate of metabolism because that's a constant for each  
14 individual. For a female, experienced drinker, the average rate of metabolism per hour is .022.  
15 So it's very simple to calculate, assuming no more alcohol, at midnight .059 – approximately .06,  
16 and just simply subtract off .022 per hour. So at 1 AM, that would be .037; at 2 AM about .015,  
17 and at 3 AM, essentially zero. That's the calculation assuming one glass of wine.

18           If we back up and then assume she had a second glass of wine at around midnight. At  
19 midnight, as I said before, her blood alcohol value would be .059 to start, so she consumes  
20 another four ounce serving of wine, and then at the same time she's metabolizing what alcohol  
21 she already has present in her body. At 1 AM, assuming a second glass, her blood alcohol  
22 content would be .066 at 1 AM. And then, again, as I said previously, you simply subtract .022

1 per hour, so doing that at 2 AM, she'd be .044; 3 AM .022, and at 4 AM, assuming no additional  
2 alcohol, would be 0 at 4 AM.

3 Q. And, Doctor, you heard (b) (6) testimony that at around midnight, she still felt  
4 slightly buzzed. Would that be consistent with the BAC you calculated at around midnight?

5 A. Yes. She had the equivalent of one drink, roughly, at -- later on, but at midnight, she  
6 said she had -- .06 is what I calculate about with the one drink -- yes, .06 would be slightly  
7 buzzed, and she would have some effect.

8 Q. And just for a frame of reference, in the United States, understanding she wasn't in  
9 the United States that night, but in the United States, just for a frame of reference, the legal limit  
10 to drive a vehicle is .08?

11 A. Yes, .08.

12 Q. Doctor, I now want to also talk about some drug testimony that you heard.

13 A. Yes.

14 Q. Did you have an opportunity to review any lab reports?

15 A. Yes, I did; her urine drug test.

16 Q. Specifically, I want to start off with Rohypnol.

17 A. Yes.

18 Q. Just a brief snapshot of what is Rohypnol?

19 A. Rohypnol is a flunitrazepam benzodiazepine drug that's fused. It's a sedative  
20 hypnotic used for sleep or antianxiety medication.

21 Q. And how long would Rohypnol remain or be detectable through a urine test if  
22 somebody consumed it?

1           A. Yes. The half-life of a flunitrazepam is anywhere from 11 to 25 hours, so, roughly,  
2 about 18 – 17-18 hours. It would be detectable in urine about four or five days if someone had  
3 ingested a single dose.

4           Q. And did you have an opportunity to review the testing procedures used in this case?

5           A. I did. They did two types of tests in this particular case. They did an immunoassay  
6 screening test for the class of drugs for benzodiazepines, and then they did an additional specific  
7 test for the flunitrazepam. The confirmation test was done by LCMSMS, which is liquid  
8 chromatography tandem mass spectrometry, in which they were looking for a very specific drug,  
9 not just simply the class of drugs. And the result, of course, was negative, with a cutoff of .2  
10 microgram per milliliter.

11          Q. So given the test they used and the cutoff level, based on your knowledge of it, would  
12 it have been detectable, given her test at about 9:30 in the morning?

13          A. Yes, very easily.

14          Q. Briefly going over some drugs that were tested, what other drugs do you recall being  
15 tested for?

16          A. Yes, as I mentioned, the screening test for the class of drugs, benzodiazepines, was  
17 negative. That would have include drugs like diazepam, which is Valium or Alprazolam, which  
18 is Xanax, or chlordiazepoxide, which is Librium. In addition, some other drugs – oxazepam,  
19 temazepam – several – all the class of benzodiazepines, so all of those drugs would be negative  
20 based on this test.

21          In addition, they test opiates. The opiates are codeine, morphine, and heroin. In some  
22 cases the actually look for the opioids, the synthetic opiates, hydrocodone, hydromorphone,

1 oxycodone. I'm not sure if that additional testing was done to look for those synthetic opiates,  
2 but the opiate class of drugs was negative as well. They also looked for methadone also, and  
3 those were the relevant drugs in this particular case.

4 Q. Given, like you talked about "half-life" and things like that before and the cutoff  
5 levels used, if any of those – would you have expected to see any of those drugs for a 9:30  
6 testing if they existed?

7 A. Yes. All of those have very long half-life, easily detected the next morning.

8 DC: Thank you, Your Honor. Nothing further.

9 MJ: Government?

10 ATC: Thank you, Your Honor.

### 11 CROSS-EXAMINATION

#### 12 Questions by the assistant trial counsel (Captain Beliles):

13 Q. So, just to clarify, you observed all of (b) (6) testimony, correct, Sir?

14 A. I did.

15 Q. And your findings were consistent with how she described she was feeling that  
16 evening, correct?

17 A. Yes, they were.

18 Q. So if someone was to say that she was "quite inebriated," that would be inconsistent  
19 with your findings?

20 A. Yes, and all the testimony I heard. She was not drunk; she was not intoxicated –  
21 that's the testimony I heard.

1 Q. Okay, so if someone said she was very drunk or very intoxicated, that would be  
2 inconsistent with your findings?

3 A. Depending on the time; again, this is all time dependent.

4 Q. But at midnight, it would be consistent?

5 A. If she had a blood alcohol level of .06, she may have had some outward signs;  
6 perhaps not noticeable.

7 Q. Now, Sir, you would agree that alcohol is a nervous system depressant, correct?

8 A. It is.

9 Q. And the nervous system, you would agree, is what's responsible for one's level of  
10 alertness, overall state of consciousness, Sir?

11 A. Yes.

12 Q. Pretty much what keeps us awake, correct, Sir?

13 A. Yes, sure.

14 ATC: Thank you.

15 No further questions, Your Honor.

16 MJ: Defense, based on that?

17 DC: Nothing further, Your Honor.

18 MJ: Members, do you have any questions for this witness?

19 And there are just a couple. That was Colonel Cunningham as well as Lieutenant  
20 Colonel Rood.

21 Just indicate if you have written a question out – just indicate once that has happened,  
22 and the bailiff will come over and retrieve it.

1 MJ: Lieutenant Colonel Rood's question will be marked as Appellate Exhibit XXI, and  
2 has been provided to trial and defense counsel and this court.

3 Colonel Cunningham's questions will be marked as Appellate Exhibit XXII, and I am  
4 now holding Appellate Exhibit XXI.

5 [Colonel Cunningham's questions were reviewed by counsel and handed to the military  
6 judge.]

7 MJ: Dr. Taylor, I've got a couple of questions for you.

#### 8 EXAMINATION BY THE COURT

##### 9 Questions by Lieutenant Colonel Rood (asked by the military judge):

10 Q. Would a person be likely to fall asleep quickly based upon the blood alcohol level at  
11 0100?

12 A. Yes. It does cause someone to fall asleep a little quicker, but it's more difficult to  
13 remain asleep because alcohol interferes with REM sleep. But, yes it would.

##### 14 Questions by Colonel Cunningham (asked by the military judge):

15 Q. Did you calculate the alcohol level of the accused, Lieutenant Colonel Wilkerson?

16 A. I did not.

17 Q. Are there any other factors, dehydration, recent or lack of food in system, other drug  
18 use, *et cetera*, that would affect the metabolism of alcohol or effects on the human body?

19 A. Ah, no. The main thing is gender; that has an effect on the metabolic rate. Women  
20 metabolize alcohol at a slightly faster rate than do men. The effect of food in the stomach has to  
21 do with absorption. If you have food in the stomach, it delays gastric emptying, delays  
22 absorption, so for someone on an empty stomach, they're going to absorb alcohol in about 30

1 minutes to an hour and a half, so roughly an hour's worth of time for an empty stomach. For a  
2 full stomach, it would take longer, perhaps, too, maybe even a little bit longer. In all of my  
3 assumptions, I assumed that she absorbed it fully because sufficient time had passed between  
4 drinks in order for to absorb all of this food [sic]. There is nothing else that would increase or  
5 decrease the metabolism of alcohol. There are some things that might influence the absorption,  
6 but I didn't take those into account since she had fully absorbed – had sufficient time to fully  
7 absorb all the alcohol that she was given.

8 MJ: Any additional questions from the members?

9 Negative response.

10 Defense counsel, follow-up questions?

11 DC: No, thank you, Sir.

12 MJ: Government?

13 ATC: No, Your Honor.

14 Thank you very much. You may step down.

15 [The witness resumed his seat in the spectators' section.]

16 DC: And, Your Honor, I'm retrieving Defense Exhibit N from the witness.

17 [The witness resumed his seat in the spectators' section.]

18 MJ: Let's go ahead and have a short recess.

19 We are in recess.

20 (The court-martial recessed at 1335 hours, 31 October 2012.)

21 **END OF PAGE**

1 (The court-martial was called to order at 1346 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense, you may continue.

6 CIV DC: Yes, Your Honor, at this time the defense calls Dr. Rex Frank.

7 [The witness left the spectators' sections and took the witness stand.]

8 **DR. REX FRANK**

9 was called as a witness for the defense, was sworn, and testified as follows:

10 **Questions by the trial counsel:**

11 Q. Would you please state your full name?

12 A. Rex Allen Frank.

13 Q. And the city and state where you reside:

14 A. San Antonio, Texas.

15 TC: And, Your Honor, the government will not be objecting to this witness being  
16 considered as an expert in forensic psychology.

17 MJ: Thank you.

18 CIV DC: Then, Your Honor, we will offer him as an expert in forensic psychology.

19 MJ: Thank you. You may continue.

20 **DIRECT EXAMINATION**

21 **Questions by the civilian defense counsel:**



1 Q. Dr. Frank, could you just briefly provide a little background on your education and  
2 licensing?

3 A. You bet. I have a Bachelor's Degree in Psychology and Religion from Saint Olaf  
4 College in Minnesota. I have a Master's Degree – I was also commissioned at Saint Olaf as a  
5 Second Lieutenant in the Air Force. I have a Master's Degree from Ball State University, taken  
6 in extension at RAF Bentwaters, England. I have a PhD from the University of Missouri in  
7 psychology. In the completion of my PhD, I had a one and a half year residency – that's one  
8 year half-time when you're full time – at the Truman Memorial Veterans' Administration  
9 Hospital in Columbia, Missouri.

10 Upon completion of that residency and granting of my degree, I entered active duty in the  
11 United States Air Force again a second time as a psychologist – clinical psychologist, and I'm  
12 licensed in the States of Texas and Florida, and board certified by the American Board of  
13 Professional Psychology in the sub specialty of counseling psychology.

14 Q. So I take it that you served a career in the Air Force then?

15 A. I did; 20 years.

16 Q. And you're currently retired from the Air Force?

17 A. I am; 1992.

18 Q. What was the last position you held?

19 A. I was the Chief of the Outpatient Mental Clinic at Willford Hall USAF Medical  
20 Center, San Antonio.

21 Q. Now, what is the difference – you talked about clinical psychology for a moment  
22 there, but what's the different between clinical psychology and forensic psychology?

1           A. Forensic psychology is largely the interface between psychology and the law. There  
2 are many different kinds of forensic psychologists, some of who are researchers. For example,  
3 I'm a practicing clinician as well as a forensic psychologist, which means that I make diagnosis.  
4 I do clinical evaluations. I'm licensed to make diagnoses, while a clinician, typically, is not  
5 educated or trained in the law and the court system. My background in that goes back to my  
6 time at Willford Hall and before. I've been testifying in military courts, literally, since my first  
7 on active duty. I taught forensic psychology and psychiatry at Willford Hall in the Residency  
8 Programs there while I was stationed at Willford Hall.

9           Q. So have you been recognized and testified as an expert in forensic psychology in both  
10 military and civilian courts?

11          A. Yes, I have.

12          Q. And have you appeared on behalf of both the prosecution and the defense?

13          A. Yes, I have.

14          Q. And is that true for all – almost all branches of the service?

15          A. All branches except for the Navy, and I did testify in a Coast Guard case, but not  
16 when I was a practicing forensic psychologist. That was when I was a clinician.

17          Q. Were you appointed by the convening authority as an expert consultant in forensic  
18 psychology for this case?

19          A. I was.

20          CIV DC: Your Honor, may I approach the witness?

21          MJ: You may.

1 CIV DC: Dr. Frank, I'm handing you what's been marked as Defense Exhibit N for  
2 Identification – well, let me check that. One moment, please.

3 Q. Dr. Frank, I'm now handing you what's now been marked as Defense Exhibit O for  
4 Identification. Can you take a minute to look at that?

5 A. [The witness complied.]

6 Q. Dr. Frank, what is that?

7 A. That's a copy of my CV or curriculum vitae. It's current and up-to-date as of this  
8 month.

9 CIV DC: Your Honor, I'd like to offer into evidence what's been marked a Defense  
10 Exhibit O for Identification as Defense Exhibit O.

11 MJ: Government?

12 TC: No objection.

13 MJ: Admitted.

14 CIV DC: I'm providing a copy to trial counsel, and may I publish copies to the court,  
15 Your Honor?

16 MJ: You may.

17 [The exhibit was so published.]

18 CIV DC: I'm handing a working copy to the judge.

19 MJ: Thank you.

20 **Direct examination continued.**

21 Q. Now Dr. Frank, I just asked you a minute ago if you were appointed as an expert to  
22 the defense team – as an expert consultant. What have you done up to the point in this case in

1 preparing for your potential testimony?

2 A. I started out by receiving the documents from the Article 32 Investigation – the  
3 attached witness statements – 1168s and all the pertaining documents, other than photographs to  
4 that. Then I conducted a current literature search for materials that related to the case. After  
5 completion of that research, then I traveled to Aviano. I participated in a variety of witness  
6 interviews, reviewed additional documents that were provided to me here that are not pertinent to  
7 the trial at this point, and have been through all testimony at the trial.

8 I think that covers it. I also have been to the scene of the events.

9 Q. And, furthermore, you've had the benefit of consulting with and hearing the  
10 testimony of Dr. Taylor?

11 A. I have.

12 Q. Now, you understand what the allegations are in this case, correct?

13 A. Yes.

14 Q. That, at least in two of the specifications, Specification 1 and 2 of Charge I, the  
15 government has to prove that Ms. (b)(6) was substantially incapable of appraising the  
16 nature of the sexual contact. Do you understand that?

17 A. I do.

18 Q. And so I want to direct my questions toward the effects of alcohol as it relates to her  
19 ability to appreciate what, if anything, was going on in the Wilkerson residence that night. Do  
20 you understand that?

21 A. I do.

1 Q. So, first of all – and, in fact, is it not true that it’s not just a matter of incapacitation,  
2 but there’s also questions of perception and memory about the events of that night?

3 A. Certainly.

4 Q. So which would you like to address first?

5 A. Whichever you prefer, Mr. Spinner.

6 Q. Okay, well, let’s talk about perception and the – what you can say to the members  
7 that would help them with respect to her abilities to perceive, based on her alcohol consumption  
8 that night.

9 A. With the figures that were provided by Dr. Taylor and his retrospective analysis of the  
10 potential maximum blood alcohol level, as he testified to, that was below the .08 level that the  
11 Department of Transportation in all states agree is the level for impaired driving.

12 While alcohol, even in small amounts, is known to have some impact on a number of  
13 things, one of which is memory for details. And, also known, in relatively small amounts to  
14 affect what is called “alcohol myopia” -- that is the narrowing of attention onto small features of  
15 what’s taken place at the exclusion of other things.

16 The amount of alcohol was not sufficient, based on Dr. Taylor’s estimate, to significantly  
17 impair driving, according to the National Transportation Board, so the impact, as far as memory  
18 directly related to the consumption of alcohol should be very minimal – similarly with  
19 perception, except for the minor narrowing of attention. That, given the levels of alcohol, would  
20 be minimal.

21 Q. Now there have been some indications in the testimony up to this point. For instance,  
22 (b)(6) testified that her recall was that she was told during the course of the evening that

1 Colonel Pone had committed suicide, and yet there is testimony that, in fact, she was told it was  
2 a car accident. Can you address memory as it relates to ability to recall what she was told that  
3 night, and why she would give, apparently one version one place and a different version in  
4 another place?

5 TC: I'm going to object to the form of that question. There is absolutely no evidence  
6 that she gave one version one place and another version at other places as far as the Pone  
7 children.

8 MJ: Would you like to restate your question?

9 **Direct examination continued.**

10 Q. Well, let me say that – well, first of all, are you aware, through all that you have  
11 examined, what she said about how he died, that night – what she learned that night about how  
12 he died?

13 A. Yes.

14 Q. Okay. And, in fact, there is evidence that he died a different way than what she  
15 described?

16 A. Yes.

17 Q. From a psychological standpoint, addressing either perception or memory as it  
18 applies, can you account for the differences?

19 A. And let me address that with respect to alcohol, as well, in the mix. The basic answer  
20 is no, I can't account for that. There are some circumstances related to the alcohol blackout  
21 mechanism that would account for a person having no recollection of the various kinds of  
22 activities during the night – things that they'd engaged in, things that they'd talked about, but the

1 amount of alcohol loading in this circumstance was insufficient to meet the lowest possible  
2 threshold for experiencing an alcohol related blackout. Consequently, I have no scientific  
3 explanation for that.

4 In conjunction with a blackout, occasionally when people are absent recollections for  
5 significant events, the general tendency that we have is to kind of fill in the gaps in our memory,  
6 to do what's called "confabulating," and it's very uncomfortable to now know things and we like  
7 to tend to account for our experiences and the missing pieces by seeking external information,  
8 trying to add that in in order to then account for the gaps and information. But in this instance, I  
9 have no scientific explanation for that transposition.

10 Q. Well, in that respect, I think there was some testimony from Suzanne Berrong about  
11 the fact that (b)(6), at least appeared to Ms. Berrong to not have recalled or remembered the  
12 phone call they had the night before. Do you recall that testimony?

13 A. Yes. That's a second feature that, in my judgment would be consistent with a  
14 sufficient degree of alcohol loading to be accounted ordinarily by an alcohol related blackout.  
15 But based on the information available and Dr. Taylor's estimations, the minimal possible  
16 threshold that I'm aware of in any literature that I've reviewed over the course of the last 30  
17 years would be a blood alcohol level of .14. In forensic experience, blood alcohol levels  
18 ordinarily are on the order of .2 or above are associated with the blackout phenomenon, and even  
19 doubling her alcohol loading is insufficient to reach that threshold.

20 Q. Now, and let's go back and be clear about some of these terms, because you talk  
21 about alcohol blackout. Do you recall that she acknowledged – (b)(6) acknowledged that  
22 she used the words "passed out" in the statement that she made to the SARC?

1 A. Yes.

2 Q. What is the difference between being “passed out” and a “blackout”?

3 A. There is a substantial difference, and I usually don’t use the term “pass out” when  
4 talking with witnesses because it is misused so frequently. I use “coma” or “involuntary loss of  
5 consciousness” as a clearer term. Pass out, in that sense, most of us are experienced with being  
6 trained in CPR, and the way that you determine if someone has involuntarily or otherwise lost  
7 consciousness for some reason is to go up the doll and shake it and say, “Annie, Annie, are you  
8 okay?” and when Annie doesn’t respond and is still breathing, we know that there has been a loss  
9 of consciousness. There are other medical methods of determining a state of consciousness, but  
10 that’s the basic premise.

11 During that time, memories are not formed in the same kind of way that memories are  
12 typically not formed during deep sleep. So blacking out is an entirely different mechanism. The  
13 individual is walking, talking, interacting, but a blackout is the complete failure of the brain to  
14 transfer immediate short term information into long term memory. At the same time, while the  
15 individual is functioning and behaving, they are able to carry on a conversation to participate in  
16 activities because long term memory, the basic stuff of who we are, what’s your social security  
17 number, what job do you have – a person can carry on a conversation about those things, but  
18 may very well carry on that same conversation a second or a third time being completely  
19 unaware, because it was never passed into long term memory, that they had the conversation  
20 earlier. The basic mechanism is that the brain is not processing that information into long term  
21 memory, therefore it simply isn’t there.



1 Q. Well, let's be clear then about the facts of this case. Now you do recall that [REDACTED]  
2 [REDACTED] testified that she wrote the words "passed out," but on the stand she said by that she  
3 simply meant that she went to sleep. Do you recall that testimony?

4 A. I do.

5 Q. So, in going back now to how you – the term you used for "passing out" I understood  
6 to be "involuntary loss of consciousness"?

7 A. Correct.

8 Q. Is there any evidence that you've seen in this case that she experienced an involuntary  
9 loss of consciousness at any point during the evening?

10 A. No, and with the alcohol loading and the absence of drugs, I find no reason why that  
11 could have occurred.

12 Q. Now, with respect to all that you've said so far about alcohol blackout, do you see  
13 any evidence that she experienced alcohol blackout that evening?

14 A. I only see the absence of memory for significant behaviors and events that are  
15 inexplicable by anything other than alcohol blackout, in my opinion. And I see insufficient  
16 alcohol loading to warrant suspicion of an alcohol related blackout.

17 Q. And so to the extent that she may have any memory loss or have a confused memory  
18 about what happened that night, do you see any evidence that would explain that, based on all  
19 the facts that you know about this case?

20 A. No. I participated in an interview with her, and in your cross-examination of her, a  
21 number of the questions that I had in my mind about past medical history – for example, head  
22 injury, history of seizure disorder, history of all kinds of medical possibilities, those were all

1 ruled out. There was no evidence to suggest psychogenic amnesia, which is a psychic  
2 phenomenon, so I have no reason that I can determine for the memory discrepancies.

3 Q. And so then, finally, and as a matter of conclusion, you cannot point to any  
4 explanation from a forensic psychological standpoint for either her memory gaps or her  
5 confusion about the facts?

6 A. Not based on the evidence available to me, no.

7 CIV DC: No further questions at this time, Your Honor.

8 Oh, and I'm returning to the court reporter what's now been admitted into evidence as  
9 Defense Exhibit O

10 MJ: Government?

### 11 **CROSS-EXAMINATION**

#### 12 **Questions by the trial counsel:**

13 Q. Now, Doctor, you're actually part of the defense team, correct?

14 A. Yes.

15 Q. And you've been behind counsel throughout the trial?

16 A. I've been...

17 Q. Sitting behind counsel throughout the trial?

18 A. Yes, I have.

19 Q. You've had many conversations with counsel about the case, correct?

20 A. Yes.

21 Q. You were here, in fact, a few days before the trial, correct?

22 A. Correct.

1 Q. And so I want to talk about – I’m really at a loss as to what’s the purpose of your  
2 testimony here is, so I want to see if we can focus this down. We talked last night, right?

3 A. We did.

4 Q. And it seemed to me that there were two issues about memory that you were  
5 concerned about. Is that correct?

6 A. Actually, three now, after Major Goldsberry’s testimony.

7 Q. All right, well, let’s get to the two we talked about last night, all right? One had to do  
8 with whether (b) (6) remembered putting a bandage on a child, correct?

9 A. Yes.

10 Q. And the other had to do with the phone call, right?

11 A. Correct.

12 Q. Now, in fact, (b)(6) did remember the phone call the next day when she talked to  
13 Suzanne Berrong, and Suzanne Berrong started talking about it, correct?

14 A. Ah, she remembers – appears to have remembered parts of it.

15 Q. Okay, but she, in fact, did remember, correct?

16 A. I wouldn’t classify it that way, no.

17 Q. Well, that’s your opinion, right?

18 A. That’s my opinion.

19 Q. She started talking – she said that when Suzanne Berrong started talking about the  
20 phone call, “I remember”; right?

21 A. She, from the testimony that I understood, said...

22 Q. Let me ask you this, Doctor, did she...

1 CIV DC: Your Honor, may he – I object. May he answer the question before he's  
2 interrupted with another question?

3 TC: It was a yes or no question; he didn't answer it yes or no.

4 MJ: A couple of things before we proceed. First of all, members, as to the testimony,  
5 several of these witnesses have references as to what their recollection was or wasn't. Your  
6 focus, as finders of fact in this situation is the evidence as you heard it. Your job is not to defer  
7 to what these witnesses think they may or may not have heard.

8 Now, having said that, ask your question and allow the witness to answer.

9 Thank you.

10 **Cross-examination continued.**

11 Q. This is cross-examination, Doctor, and I want you to answer my questions. You  
12 understand?

13 A. I'll do the very best I can.

14 Q. Suzanne Berrong made a phone call the night before, correct?

15 A. Yes.

16 Q. When she initially confronted – well, not even confronted – when she initially  
17 brought the phone call up with (b)(6) the next day, (b)(6) did not remember, correct?

18 A. Correct, or appeared not to remember it.

19 Q. She did, in fact, after being cued by Ms. Berrong, start saying, "Okay, I remember  
20 some of this," correct?

21 A. Yes.

1 Q. All right, now, in between the time of the phone call, and talking to Suzanne Berrong  
2 about it, (b)(6) ' testimony was that that man, right there [indicating the accused], (b)(6)  
3 (b)(6), correct?

4 A. Yes.

5 Q. And that that was a startling event for her, correct?

6 A. Yes.

7 Q. Do you think maybe her mind was on something else besides a phone call at that  
8 point?

9 A. It certainly could have been.

10 Q. Now, the band aid; there has been absolutely no testimony in this trial about a band  
11 aid being placed on a Pone child at this point, is that correct?

12 A. That's correct.

13 Q. And whether or not (b)(6) is wrong or right about that, it could be a conflict  
14 between her testimony and somebody else's testimony, right?

15 A. It depends on whether it really happened.

16 Q. Right, it depends on what really happened. So if somebody else is wrong in their  
17 testimony, that doesn't have any reason then to doubt (b)(6) ' memory as far as the band aid?

18 A. That's correct.

19 Q. Now, you sat through the cross-examination of Mr. Spinner of (b)(6), correct?

20 A. Yes.

21 Q. And Mr. Spinner asked a serious of questions about things that (b)(6) did not  
22 remember, correct?

1 A. He did.

2 Q. And as you sat there, you heard him ask questions about the landscaping, about the  
3 driveway, about the lights, correct?

4 A. Yes.

5 Q. Would you expect a woman in the situation that (b)(6) was in at that time to have  
6 a memory of the landscaping or have memory of the driveway or have memory of the way the  
7 outside was lit?

8 A. No, not at all.

9 Q. No. In fact, when she was introduced to people, there would be noting uncommon  
10 about a person being perfectly honest not remembering the names of people they've been  
11 introduced to?

12 A. Certainly, and I have the same difficulty.

13 Q. Yes. So when Dawn Brock talked about that she didn't remember names of people  
14 that she was introduced to, nothing unusual about that?

15 A. Very ordinary.

16 Q. When people are brought in as a group into a home and they started meeting people, it  
17 would not be unusual that they couldn't remember everybody they met?

18 A. Not at all.

19 Q. When people are brought into a home like this, and they're asked about it later, it  
20 wouldn't be surprising that they couldn't remember the exact layout of the house, would it?

21 A. Not at all.

1 Q. When people are brought into a situation like this, there wouldn't be a surprise that  
2 they couldn't remember what people were drinking, correct?

3 A. Right.

4 Q. Or what they were wearing, correct?

5 A. Right.

6 Q. Yet you sat through while you asked all those questions, right?

7 A. I did.

8 TC: Nothing further.

9 MJ: Anything further, defense?

10 CIV DC: Yes, Your Honor.

11 **REDIRECT EXAMINATION**

12 **Questions by the civilian defense counsel:**

13 Q. Dr. Frank, first of all, you're aware that in some of these sexual assault cases where  
14 the allegation is that the alleged victim was substantially incapable of understanding or  
15 appreciating something, sometimes it's because they're passed out, correct?

16 A. Correct.

17 Q. And so Ms. <sup>Exemption 6</sup> used the term "passed out" in this case, correct?

18 A. Yes – well – yes.

19 Q. Yes, and so you're simply here to make sure the members understand that in the  
20 government proving their case, it's not because that she was substantially incapacitated because  
21 she was passed out?

22 A. That's what I've said, the reason is yours.

1 Q. Right, and that's why you're presenting this testimony, correct?

2 A. Correct.

3 Q. And then in terms of whether or not – there are multiple possibilities to explain some  
4 of (b)(6) testimony, correct?

5 A. Yes.

6 Q. Including alcohol blackout?

7 A. That would be one.

8 Q. That would be one, and you're ruling that out?

9 A. Yes.

10 Q. And you understand that in the medical community, sometimes you rule things in and  
11 you rule them out, correct?

12 A. Right. You've got to start from the bottom and work your way up – have you had a  
13 head trauma, *et cetera*, seizures?

14 Q. And then, finally, there might be other explanations that impacted on her memory or  
15 ability to perceive that night, and to the degree you've been able, you've have ruled those out,  
16 correct?

17 A. Yes.

18 Q. Then – now you're not a human lie detector, right?

19 A. I'm certainly not.

20 Q. But that does narrow it down to one of the explanations could be that she's not being  
21 truthful about what happened that night, correct?

22 A. That's a possible explanation, or that she doesn't know.



1 CIV DC: No further questions, Your Honor.

2 [The trial counsel and the government expert consultant conferred.]

3 **RECROSS-EXAMINATION**

4 **Questions by the trial counsel:**

5 Q. Now, Doctor, you heard (b)(6) talk about “passed out,” correct?

6 A. Yes.

7 Q. In fact, she made it quite clear that she’s saying exactly what you’re saying, that she  
8 wasn’t passed out; she was using it in the colloquial sense, correct?

9 A. Correct, and the terms are often interchanged by people, which is why it’s important to  
10 be clear.

11 Q. Right, and she never, in anyway, inferred that she was knocked out by the alcohol, did  
12 she?

13 A. No, that was not the sense that I had from anything that I’ve reviewed.

14 Q. Now, when someone is asleep, it’s impossible for them to be consenting to sexual  
15 activity, is it not?

16 A. Yes.

17 TC: Nothing further.

18 CIV DC: No further questions, Your Honor.

19 MJ: And we do have a question from Colonel Rood.

20 MBR (Lieutenant Colonel Rood): Yes.

21 MJ: All right, bailiff, if you will please retrieve that question.

22 [The bailiff complied.]

1 MJ: It will be marked as Appellate Exhibit XXIII.

2 DC: I'm sorry, Your Honor, maybe I wasn't keeping track. What was Appellate Exhibit  
3 XXII?

4 MJ: I believe that was a question from Colonel Cunningham.

5 DC: Oh. Thank you, Your Honor.

6 [The question was reviewed by counsel and handed to the military judge.]

7 **EXAMINATION BY THE COURT**

8 **Question by Lieutenant Colonel Rood (asked by the military judge):**

9 Q. In your professional opinion, does a person's sexual responses heighten due to  
10 physical touch and the amount of alcohol consumed?

11 A. I would break that down and separate the two, and the answer to the question of  
12 physical touch, of course, depends on whether the sensory systems are operating. That very  
13 much depends upon the stage of sleep that a person happens to be in. In some stages of sleep,  
14 the brain responds to external stimuli based on whether it perceives a threat or not, and part of  
15 the brain's function is to turn off sensory stimulation interpretation or the processing of that  
16 information unless a threat is perceived.

17 At other times, not only can sensory stimulation be sensed, but, indeed, the individual can  
18 dream about such stimulation. Sexual dreams are common for males and females – adults, and,  
19 indeed, electromyographic evidence tells us that during rapid eye movement sleep that  
20 individuals actually have muscle movements that correspond to the content of dreams, much as  
21 we think of a dog dreaming about running and the paws move, so to an individual actually has  
22 corresponding muscular movements in response to dreaming. So it's a very mixed and

1 complicated bag. It depends on the stage of sleep. The follow-on to that would be much as Dr.  
2 Taylor testified, that is that alcohol can facilitate moving into what is called “deep sleep” or slow  
3 wave sleep – delta sleep, what is considered by the American Academy of Sleep Medicine to be  
4 the deepest stage of non-rapid eye movement sleep. Alcohol facilitates moving into that state of  
5 sleep earlier if alcohol is consumed within an hour of going to sleep.

6 Ordinarily, entry into deep sleep occurs within about 20 to 40 minutes following the  
7 initiation of sleep. With alcohol on board within the hour prior to sleep, that can be shortened  
8 down. The range that I’ve seen is – cuts it about in half.

9 And REM sleep, the form that we usually associate with dreaming, typically occurs after  
10 about 70 minutes into sleep. However, deep sleep – slow wave sleep – needs to be entered  
11 before rapid eye movement sleep typically. What that means is if a person goes into deep sleep  
12 quicker, then they go into REM sleep quicker.

13 So alcohol has the affect with the combination of sleep, again, as Dr. Taylor indicated,  
14 it’s a sedative, so there’s less psychological sensitivity, but facilitates stages of sleep in which  
15 dreaming occurs. We do usually associate our vivid dreams with rapid eye movement sleep, but  
16 the evidence indicates that there are more disconnected, vague dreams that occur during deep  
17 sleep.

18 MJ: Did that answer your question? Well, is there – [To the court reporter.] let me  
19 retrieved the question from you.

20 MBR (Lieutenant Colonel Rood): Can I add to that, Sir?

21 MJ: What is the follow up question you would like to ask?

1 MBR (Lieutenant Colonel Rood): Within an hour and a half, is it possible she was in  
2 REM sleep?

3 MJ: Trial or defense counsel, do either of you request a short hearing?

4 TC: I'm sorry, what was that?

5 MJ: Do either of you request a short hearing outside of the presence of the members?

6 TC: No, Your Honor.

7 CIV DC: No, Sir.

8 **Examination by the court continued.**

9 **Question by Lieutenant Colonel Rood (asked by the military judge):**

10 Q. Within an hour and a half, is it possible that the alleged victim in this case was within  
11 REMS sleep?

12 A. Yes.

13 MJ: Any further questions from the members?

14 Apparently not.

15 Defense counsel, any follow up questions?

16 CIV DC: No, Sir.

17 MJ: Government?

18 TC: Yes, Your Honor.

19 **RECROSS-EXAMINATION**

20 **Questions by the trial counsel:**

21 Q. Doctor, if someone's sleeping and it's hot, like it's a hot room, is it possible for them  
22 to incorporate that discomfort of the heat into a dream about being discomforted?

1 A. Oh, absolutely.

2 Q. Right, so senses – something that happens in the real world can be incorporated into  
3 the dream?

4 A. They do interact.

5 TC: Nothing further.

6 MJ: Defense?

7 CIV DC: No, Sir.

8 MJ: Nothing further in light of that.

9 Thank you for your testimony. You may step down.

10 WIT: Thank you, Your Honor.

11 [The witness resumed his seat in the spectators' section.]

12 MJ: Members, before we proceed, I just want to provide you a short instruction  
13 regarding specifically the last two witnesses. You have heard the testimony of Dr. Howard Taylor  
14 and Dr. Rex Frank. They are known as expert witnesses because their knowledge, skills,  
15 experience, training or education may assist you in understanding the evidence or determining a  
16 fact in issue. You are not required to accept the testimony of an expert or give it more weight  
17 than the testimony of an ordinary witness. You should, however, consider their qualifications as  
18 experts. When an expert witness answers a hypothetical question, the expert assumes as true  
19 every asserted fact stated in the question. Therefore, unless you find the evidence establishes the  
20 truth of the asserted facts in the hypothetical question, you cannot consider the answer of that  
21 expert witness to that hypothetical question.

22 MJ: Defense?

1 CIV DC: Yes, Your Honor, we're going to need a brief recess before the next witness.

2 We may have some equipment use, and so we need to set it up.

3 MJ: Thank you.

4 We'll be in a short recess.

5 (The court-martial recessed at 1423 hours, 31 October 2012.)

6 **END OF PAGE**

1 (The court-martial was called to order at 1436 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense?

6 CIV DC: Your Honor, at this time the defense calls Mrs. Beth Wilkerson to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 **MRS. BETH WILKERSON**

9 was called as a witness for the defense, was sworn, and testified as follows:

10 **Questions by the trial counsel:**

11 Q. Could you please state your full name?

12 A. It's Beth Renee Wilkerson.

13 Q. And you reside in the Aviano area, is that correct?

14 A. Yes, Sir.

15 Q. And you're married to Colonel Wilkerson?

16 A. Yes, I am.

17 TC: Mr. Spinner.

18 CIV DC: Thank you.

19 **DIRECT EXAMINATION**

20 **Questions by the civilian defense counsel:**

21 Q. Ma'am, you said that you're married to Lieutenant Colonel Wilkerson. How long  
22 have you been married?

1 A. Sixteen years.

2 Q. How many children do you have?

3 A. We have one child.

4 Q. What's his name?

5 A. (b) .

6 Q. How old is he?

7 A. He's nine.

8 Q. Now, were you previously married?

9 A. Yes, I was.

10 Q. And who is your former husband?

11 A. Blake Thomas.

12 Q. Did he serve in the Air Force?

13 A. Yes, he did.

14 Q. What rank did he achieve, and is he currently on active duty?

15 A. No, he retired as a Colonel.

16 Q. Did you have any children from that marriage?

17 A. No, I did not.

18 Q. And so you only have one son, his offspring?

19 A. Yes, Sir.

20 Q. With Jay?

21 A. Yes.



1 Q. Now, when I talked to you, your husband, obviously, you don't call him "Lieutenant  
2 Colonel Wilkerson." What do you call him?

3 A. Jay.

4 Q. Okay, if it's all right, I'll speak of him as "Jay" during this questioning.

5 A. [No response.]

6 Q. Now you understand why we're here, correct?

7 A. Yes, Sir.

8 Q. And it is a fact that you were present at your home on the 23<sup>rd</sup> of March, this year?

9 A. Yes, Sir.

10 Q. And we're going to get to that in a minute. But before we get into it, I'd just like you  
11 to share a little more of your background with the court members. Did you go to college; have  
12 you held any kind of employment through the years?

13 A. I went to college for a year, and I worked civil service for 11 years. And then I was a  
14 real estate agent.

15 Q. So approximately, if you would, just tell the court members how long were you a real  
16 estate agent?

17 A. For two years, and then I went into – my sister-in-law and I would buy a lot, build a  
18 spec house, and sell it.

19 Q. Where all have you been assigned with Jay?

20 A. Our first station was Shreveport, Louisiana, and then we moved to Minot, North  
21 Dakota, and from there we went to Phoenix, Arizona, and then to Miswawa Air Force Base,  
22 Japan, and back to Phoenix, Arizona, and then to Ohio, and Jay went to Turkey for a year,

1 remote, and I spent that year in Texas with my family. And then when he returned, we moved to  
2 Sumter, South Carolina, and he went remote again to Korea for a year, and I stayed in Sumter,  
3 and then we received an assignment here.

4 Q. Has he held command?

5 A. Yes, Sir.

6 Q. And the reason I've asked that is, then that means that you've served as a  
7 commander's wife?

8 A. Twice; my first husband was a squadron commander also.

9 Q. So you're familiar with the demands that are placed on a commander's wife?

10 A. Yes, Sir.

11 Q. So, in terms of those kinds of demands, would that be fair to say that includes  
12 socializing and entertaining in your home?

13 A. Ah, yes, Sir.

14 Q. When did you all arrive here at Aviano?

15 A. Ah, July 2011.

16 Q. What positions did Jay hold here at Aviano?

17 A. He came over here to be the Deputy OG, and by Christmastime he had been selected  
18 to be the IG.

19 Q. Did you reside in the same home the whole time since you've been here at Aviano?

20 A. No. We originally moved into a home in Longue, and then in January, the very end  
21 of January, we were offered the house that we live in now, and we moved into it.

22 Q. And the house you live in now, what is the name of the community?

1 A. Roverado.

2 Q. And approximately how long would it take to drive? I mean you just drove from your  
3 home out here, right?

4 A. Yes, Sir.

5 Q. How long did it take you to drive from your home to the building the courtroom is  
6 located in?

7 A. Three to four minutes.

8 Q. In terms of your home in Roverado, is this a government quarters or civilian quarters?

9 A. It's a government quarters, but it is a civilian home. It's called a GERP home where  
10 we don't only actually pay our rent or any of the utilities; the Housing Office does it for us.

11 Q. So it's a civilian home and in a civilian community, but the government, basically,  
12 provided it – the Air Force provided it to you all?

13 A. Yes, Sir.

14 Q. Let's just talk about the home for a minute. Ah, how many levels are there in the  
15 home?

16 A. There's three levels.

17 Q. And as someone walks into your home, what's on the main level?

18 A. The main level is a very large living room. It's like two separate living rooms, but  
19 one room. There's a dining room that leads into the kitchen. And going around that is a room  
20 that I call my pantry, and that leads to a hallway to a bedroom – an office, actually; there's a  
21 built-in desk and bookshelves. We have our desk there. There's a bathroom – a full bathroom,  
22 and then our guest bedroom, that also has a little bathroom.

1 Q. If you go upstairs, where do the stairs lead to?

2 A. The upstairs lead to a small landing, and there's a bedroom that is our son's bedroom,  
3 a bathroom, and our bedroom.

4 Q. If you go downstairs from the main level, what does that lead to?

5 A. It's the basement and as you – there's a landing, and if you turn to the left, there's a  
6 large room that is full of wardrobe closets and an extra refrigerator. And then if you went to the  
7 right, there's a hallway with a room that is the laundry room, and then also a large room that is  
8 my son's playroom.

9 Q. Is there any bedding in that playroom?

10 A. There's a daybed.

11 Q. What is that room used for, primarily?

12 A. My son's playroom.

13 Q. Right, but what's in there that he plays with?

14 A. There's a TV and a PS2 and a Oui, and the hallway that leads to that room is full of  
15 toys – Bob Begone and Pokémon cards.

16 Q. Now you may have said it, but how old is your son?

17 A. He's nine.

18 Q. Now we have some photographs, and I'm, going to walk those through you in a  
19 minute. But first I'd like to talk about some of the people who appeared in this trial, just to  
20 identify your relationship with them. First of all, do you know Colonel Ostovich?

21 A. Yes, Sir.

22 Q. Who is he?

1 A. He was the Vice Wing Commander.

2 Q. When you're having a glass of wine with him, how to you refer to him by name or  
3 otherwise?

4 A. Well, when I first refer to him, I always say "Sir," and he would say, "Call me Osto"  
5 or "Stop that, it's Osto." So it's Osto.

6 Q. Ah, there were some others that were there that night, and who have testified in this  
7 proceeding – Major Goldsberry?

8 A. Gerremy, yes, Sir.

9 Q. Major Lowe?

10 A. Al.

11 Q. There was also some women that were there that night, a Major – now Major  
12 Manning; then Captain Tanya Manning. Did you know her before that evening?

13 A. No, Sir.

14 Q. Did you know (b)(6) before that evening?

15 A. No.

16 Q. Did you know Captain Dawn Brock before that evening?

17 A. No, Sir.

18 Q. So at least prior to that evening, those three women were not part of your – on your  
19 radar screen, so to speak?

20 A. No, Sir.

21 Q. What do you call your husband – he goes by the call sign "Roscoe," correct?

22 A. Yes, Sir.

1 Q. Okay, do you call him Roscoe...

2 A. No.

3 Q. ...or just Jay?

4 A. No. I rarely call anybody by their call sign.

5 Q. Now, there's another person who was indirectly involved that night, Cheryl Pone.

6 A. Yes, Sir.

7 Q. Can you tell the court members how it is that you know Cheryl Pone?

8 A. I met Cheryl Pone at the bazaar, I believe – or – but I've met her since I've moved  
9 here.

10 Q. How did you get to know her?

11 A. We, ah – well, I met her and I saw her – maybe I met her before the bazaar, but I  
12 remember talking to her more so at the bazaar. And just in passing for the most part, and when  
13 Jay was promoted to Colonel, and we were having a little get together at the house, I invited her  
14 over, and she was not able to come because she was out of town and her mother was visiting.  
15 But shortly after that, she called me and told me how much she appreciated...

16 [Jet noise.]

17 CIV DC: I'm going to have to ask you to stop. From this side of the building, the planes  
18 flying interfere.

19 MJ: You may want to re-queue...

20 CIV DC: Repeat.

21 MJ: ...at least part of that question because I could not hear, and I don't know if the  
22 court reporter could hear, once the flyby finishes.

1 [Jet noise.]

2 **Direct examination continued.**

3 Q. Could you repeat your last answer in terms of how you – well...

4 A. We...

5 [Jet noise.]

6 Q. I'll try again.

7 A. Okay. We would see each other at the BX or the Commissary, and we would talk and  
8 talk. And she has children in between – or younger and older than my son. She'd say, "Let's get  
9 together. Let's do something." And we never did. But when we were having a get together at  
10 our house, I did call her and invite her to come to the promotion party, and she was actually  
11 driving to the mountains with her mother, who was visiting, and so that she would not be able to  
12 make it. And a week or so later, she called me, I believe, or we ran into each other, and she told  
13 me how much she appreciated that I had invited her to that. And after that, we just started  
14 talking to each other and seeing each other more.

15 Q. Now at the point that you got to know her, what was the status of her husband or  
16 former husband?

17 A. Her husband was killed in a car accident two years prior.

18 Q. Did he commit suicide?

19 A. No, Sir.

20 Q. Was there any confusion in your mind about that?

21 A. No, Sir.

22 Q. No, Sir.

1 Q. And so by March 23<sup>rd</sup> of this year, how close would you say you were with Cheryl  
2 and her sons?

3 A. We have become close. We were friends and doing things, and our children – we  
4 were taking turns babysitting each other’s children or letting them go home on the bus with one  
5 another if there was a need.

6 Q. So what – how did it come about then that on the 23<sup>rd</sup> of March you were watching  
7 her boys?

8 A. Cheryl was taking a test for her personal training certificate, and she asked me if I  
9 could watch (b)(6) and that it would be overnight and – because she would start  
10 early in the morning, and if they could come home on the bus with my son, (b)(6) and I would  
11 have them until Saturday evening between 6:00 and 6:30, when she finished with her testing.  
12 She wasn’t sure how long she would be, but that she would be over that evening. And I said,  
13 “Absolutely.”

14 Q. Do you know if the boys had been away from her overnight prior to this occasion?

15 A. They had never spent the night with anybody before.

16 Q. So what were your concerns about providing care for them that night?

17 A. Well, I was concerned because I know that whenever we have the kids – not us alone  
18 with them, but with her, I’ve watched them and I know that they’re very watchful of her and they  
19 call her name often, and they want to know that she’s okay. And we had talked, and she told me  
20 that you know that the kids were very clingy with her, and we wondered how it would actually  
21 go. And I know that the few times that they’d been in our house previously, they would call my  
22 name out and I would answer, and they would say, “Where are you?” And I’d say, “I’m in the



1 kitchen,” and they would say, “Are you okay?” And they would do the same thing with my  
2 husband, Jay.

3 Q. Would it be fair to say then that this was more than just typical babysitting?

4 A. Well, I was scared that – I did not want to have to call her in the night and say that  
5 this was not working out, and I was wanting them to have a good evening with us and the  
6 following day. And I was hoping that they would be comfortable and enjoy their time with us.

7 Q. Now, did your husband know – did Jay know that you were going to watch...

8 A. Yes, this was planned...

9 Q. ...the boys?

10 A. ...in advance. Absolutely.

11 Q. Ah, and so as that day began, where was Jay through the course of the day?

12 A. Working.

13 Q. What was your understanding regarding the plans for the evening, from his  
14 standpoint?

15 A. We had talked about – well, we were definitely going to do something with all three  
16 children, and we weren't sure if it was dinner at our house or to go to a movie or go into town for  
17 pizza. There wasn't a finalized plan.

18 Q. Well, how did it play out, regardless of the plan, how did it paly out?

19 A. I received a – either – I don't recall, but it was a phone call or a text from Jay, and he  
20 said that Colonel Ostovich...

21 TC: Objection. Hearsay.

1 CIV DC: I'm not offering it for the truth of the matter, Sir. But I don't need an answer  
2 to this question.

3 MJ: Move on to the next question then, please.

4 **Direct examination continued.**

5 Q. I don't need you to say what he said in the phone call. Just what did you understand  
6 he was going to do that evening?

7 TC: Objection. Hearsay. The foundation is the hearsay. What her understanding of  
8 what he was going to do can only come from what he told her.

9 WIT: He wasn't telling me.

10 MJ: What's the purpose of this question, counsel?

11 CIV DC: Well, Your Honor, he didn't come home. He went somewhere. She had some  
12 understanding about where he was. I'm not offering it to prove the truth that that's where he  
13 was, but that's just her understanding of where he was, or her...

14 MJ: All right, well...

15 CIV DC: He may not have been there.

16 MJ: Here's my question – we can have a 39(a) if we need to discuss it further – but is  
17 that testimony relevant for any purpose in the proceeding here. Can you move on to the next  
18 point?

19 CIV DC: Well, the point is she knew he wasn't coming home.

20 TC: Objection.

21 MJ: All right, let's go ahead and we'll have a short 39(a).

22 (The members left the courtroom at 1454 hours, 31 October 2012.)

1 (The court-martial was called to order at 1455 hours, 31 October 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent. The witness remains on the stand.

5 Please ask your question so I can hear the response.

6 CIV DC: What is your understanding of where your husband was going to be that night?

7 WIT: He was asking me if I would mind if he went to the concert with Colonel Ostovich  
8 that night.

9 CIV DC: That's it, Your Honor.

10 MJ: Is that anything further – well, so what's your next question after that? Is there  
11 another question along that line or is that the response you...

12 CIV DC: I don't have my questions written down, Your Honor. I'm just trying to walk  
13 her through the evening and what happened, and it's not contested; it's not a big issue. So I  
14 mean if the government wants to object to every question, we'll just let the members  
15 leave every time.

16 MJ: I don't think the government is objecting to every question, but they are objecting to  
17 this question.

18 Government, what is your position in light of that response?

19 TC: My position is they are hearsay statements of the accused. If he wants to take the  
20 stand, he can take the stand and say this. He doesn't get to testify through his wife.

21 CIV DC: And that's why I said I'm not offering it to prove that he went, Your Honor,  
22 I'm not offering it for that purpose.

1 MJ: So what are you offering it for?

2 CIV DC: To find out what her understanding or believe was as to where he would, but  
3 not that he went there. I can say that I'm going to the store, and then go somewhere else.

4 MJ: Oh, no, I understand. So – and if need be, the witness can step off the stand. I'm  
5 trying to figure out what relevance her thought process as to where her husband was to her  
6 testimony.

7 CIV DC: Why her husband wasn't home that evening. It's just telling the story to the  
8 members about what happened during the day and how they got to this point that he was not  
9 there and she was alone, and where she thought he was. It's that simple, Your Honor. This is  
10 not hearsay. Other witnesses have already placed him where he was. It's not hearsay, Your  
11 Honor.

12 MJ: I understand, and you can certainly reference that.

13 If, ah...

14 CIV DC: But we're going to spend a lot of time in 39(a)s if this is going to be a problem,  
15 because I know he wants my client to testify, and so he'll just throw up any objection to try to  
16 say my client has to testify.

17 MJ: Well, we're not going to go there. If the government wants to object and has a basis  
18 for the objection, they may object, and you can respond, and I will rule on that objection.

19 CIV DC: Yes, Your Honor.

20 TC: The government's only concern is that the testimony of the accused does not come  
21 through this witness. That is our only concern.

22 CIV DC: It has to be hearsay, Your Honor. It's not hearsay.

1 MJ: I'll sustain the objection, and, specifically, I'm sustaining the objection as to what  
2 the accused said to his wife, I guess earlier that day.

3 CIV DC: Your Honor, can I ask her if – where she thought he was that night, not relying  
4 on hear – I mean that's not hearsay to say "This is what was in my head and what I was  
5 thinking."

6 MJ: All right...

7 CIV DC: And I'm not offering it to prove that's where he was.

8 MJ: Okay. I understand.

9 Well, if, in light of that question, I would prefer, certainly, to resolve as many of these  
10 issues; allow me to rule on them while the members are out so that we don't slow this proceeding  
11 to an unnecessary halt. But based on that question, is there any objection, government?

12 TC: No, and the government's concern is that we start having him testify through her,  
13 and...

14 MJ: Okay.

15 TC: ...especially after this point, there's really no need to be hearing what Colonel  
16 Wilkerson said through this witness at this point.

17 MJ: All right, and let me ask you this because if we're able to resolve it now, it's always  
18 good to be able to resolve it at this point when the members are out and are not currently sitting  
19 in here.

20 At least at this point, defense, are you anticipating to elicit from this witness any  
21 statements by the accused?

1 CIV DC: No, Sir, and that's what I'm trying to explain that she's not trained in hearsay,  
2 and I didn't ask her; I said the plans changed, and then she started talking about what he said. I  
3 didn't tell her "You can't say what he said." So now we're going through this long dialog about  
4 something that's really very simple and not contested.

5 MJ: Okay. All right.

6 I will sustain the objection as to what your husband – and I'm talking to the witness now  
7 – what your husband told you or didn't tell you. And so at least I don't anticipate at this point,  
8 based on what Mr. Spinner just said, that he's going to be asking you to tell anyone what your  
9 husband told you. Do you understand?

10 WIT: Yes, Sir.

11 MJ: All right.

12 Is there anything further that we need to discuss before we recall the members?

13 TC: No, Your Honor.

14 CIV DC: No, Sir.

15 MJ: Call the members.

16 [The bailiff left the courtroom.]

17 (The Article 39(a) session terminated at 1500 hours, 31 October 2012.)

18 **END OF PAGE**

1 (The court-martial was called to order at 1501 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Mr. Spinner, you may continue.

6 **Direct examination continued.**

7 Q. Mrs. Wilkerson...

8 TC: Your Honor, could you make it clear the objection was sustained?

9 MJ: I sustained the objection, which just means to disregard that particular question. I  
10 don't think there was a response, but if there was, you can disregard that response.

11 Mr. Spinner, you may proceed.

12 **Direct examination continued.**

13 Q. Right. I'm asking you the same question a different way; what was your  
14 understanding of where your husband would be that night?

15 A. Going to the Seether concert with Colonel Ostovich.

16 Q. Okay. Thank you. Now, what time were the (b)(6) children coming over?

17 A. They came home on the school bus with my son at 3 PM.

18 Q. And then what time did Jay get home?

19 A. I'm not really...

20 Q. If you recall?

21 A. I don't recall, but it would have been 5:30- 6 o'clock – 6:30.

22 Q. Did anyone else come to your home prior to the concert?

1 A. Yes. Major Lowe's wife, Becky Lowe, and her young son, Exem

2 Q. How long did they stick around?

3 A. They stayed – the plan was for us to take all the kids into town for dinner that night.

4 Q. Okay, did anybody else come to your home that night?

5 A. Angela Newbill was at my house that afternoon, and she left around 3 o'clock, and  
6 while we were all sitting outside – it was a beautiful day – the kids were outside playing. She  
7 and her daughter were out walking the dog, and we stopped and talked for a little while, and then  
8 she went on with her daughter.

9 Q. Did anybody else come to your house that night, before the concert?

10 A. Yes. Major Lowe came over; Major Goldsberry came over; and Colonel Ostovich  
11 came over.

12 Q. How long were they there before they left for the concert?

13 A. They weren't there long. We had grilled some sausages for them to eat prior to going  
14 to the concert.

15 Q. Now, where did they park – do you know what arrangements were made as far as  
16 how they were going to get to the concert?

17 A. They were all going to ride in one car together.

18 Q. Do you know whose car they departed in?

19 A. I did not.

20 Q. But in terms of cars, what was your understanding when – whether they were all  
21 coming back together from the concert – did you have any understanding at all as to who was  
22 coming back to your house that night?



1           A. I knew that they would all come back to my house because their cars were out in our  
2 little driveway area.

3           Q. Okay. Do you have two different places where cars can be parked at your residence?

4           A. Yes. You can park in a small parking area that's good for two cars or maybe three at  
5 the most if they're small, and then there's the front gate there and you would have to be buzzed  
6 in to come up on – into the property. And then on the back side of the house, there's a large  
7 gate that we use as our driveway and access to our garage.

8           Q. What kind of fencing, if any, is around your house?

9           A. It's concrete.

10          Q. Does it completely circle the house?

11          A. Yes, it does.

12          Q. And is there landscaping?

13          A. Yes, there is.

14          Q. Can you just generally describe it?

15          A. The house is 30 years old, and the landscaping is beautiful. There's mature trees and  
16 lots of shrubbery and rosebushes and grass, and it's very nicely landscaped.

17          Q. To enter or depart from the driveway where you keep your personal cars, how does  
18 that mechanism work?

19          A. It's an electronic gate, and it's metal.

20          Q. And is there any kind of lighting associated with it...

21          A. There is a...

22          Q. ...when it's open?

1 A. ...blinking yellow light when you open or close the gate.

2 Q. How is the gate controlled?

3 A. There are two remote controls, which each of us have one in our cars, and then there  
4 is a – two different buttons. One's down in the garage and the other one is in the kitchen.

5 Q. And so to – you mentioned the small driveway in front, that's also controlled, right?

6 A. Yes, Sir.

7 Q. Is that remote controlled in the vehicle or is that only controlled through...

8 A. That is controlled differently. It's a phone, and there's one by each door, and also one  
9 in our bedroom.

10 Q. So after your husband and the others depart for the concert, was there some point  
11 where you settled down for the evening in your home with just the (b)(6) boys and your son?

12 A. Yes, Sir.

13 Q. Approximately what time was that?

14 A. It was 7:30-8 o'clock. It was early. The children were watching TV. There are two  
15 different living rooms; they were in one room – large room. They were watching TV and I was  
16 sitting on the other couch, either on the iPad or reading a book or a magazine.

17 Q. Did any of the boys go to bed at some point?

18 A. (b)(6) fell asleep on the couch, and I could tell that (b)(6) was tired, and it was  
19 around 8:30, so I went over and stirred him and got (b)(6), and took him upstairs to (b)(6)'s  
20 bedroom and put them in (b)(6)'s bed.

21 Q. Then so who was left with you at that point?

22 A. (b)(6) was left with me.

1 Q. What did you and (b)(6) do?

2 A. I gave him the iPad or he may have had it at that point. And I probably let him play  
3 on that, and I'm not sure what I did; I don't really remember, but I know at around 9:30 I texted  
4 Angela Newbill and said that my house was quiet and if she wanted to come over, she was  
5 welcome to. And she texted me back and said that her daughter, (b)(6), was still awake, and  
6 that they were doing something – watching a movie – and that she would talk to me the next day.

7 CIV DC: Okay.

8 Your Honor, may I approach the witness with an exhibit?

9 MJ: You may.

10 Your Honor, I'm handing the witness what's been marked as Prosecution [sic] Exhibit P  
11 for Identification, which consists of 12 pages. Copies have been provided to the government, I  
12 believe.

13 Q. Ma'am, before I ask any questions about those images, would you please just sort of  
14 go through them and familiarize yourself with them?

15 A. [The witness complied.]

16 Q. Do you recognize these photos?

17 A. Yes, Sir.

18 Q. Do they depict rooms in your home?

19 A. Yes, Sir.

20 Q. And the driveway out back?

21 A. Yes, Sir.

1 Q. Are these pictures fair and accurate representations of these rooms and the driveway  
2 in your home?

3 A. Yes, Sir.

4 CIV DC: Your Honor, I offer into evidence what's been marked as Defense Exhibit P for  
5 Identification as Defense Exhibit P.

6 TC: No objection.

7 MJ: Admitted.

8 CIV DC: Your Honor, may I publish copies to the court members?

9 MJ: You may.

10 [The exhibit was so published.]

11 MJ: Do you have a working copy for the court?

12 CIV DC: I have a copy marked "Judge."

13 MJ: Thank you.

14 CIV DC: I'm handing a copy to the judge.

15 **Direct examination continued.**

16 Q. Okay, Ma'am, we're going to go through this exhibit, Defense Exhibit P as in papa,  
17 and as you start, just to make sure the members are on the right page, hold the page up to show  
18 the members, and then you can look at it as you describe it.

19 A. Okay.

20 Q. Okay, page 1, hold it up; show the members.

21 A. [The witness complied.]

1 Q. There's a bar there [referring to the witness stand], so you have to hold it a little  
2 higher.

3 A. [The witness complied.]

4 Q. Okay. Okay, now you can turn and look at it. What is depicted in this on page 1.

5 A. That is our master bedroom.

6 Q. Where is it located in your home?

7 A. On the third floor.

8 Q. Okay. Now hold up page 2.

9 A. [The witness complied.]

10 Q. What is depicted in this photograph?

11 A. That is the hallway leading to our master bedroom on the third floor.

12 Q. Okay, hold up page 3.

13 A. [The witness complied.]

14 Q. What is depicted on page 3?

15 A. That's the guest bedroom that the (b)(6) children slept in.

16 Q. What level of your house is that on?

17 A. That is the main level of our house.

18 Q. Are there any other bedrooms than this bedroom on that level?

19 A. No, Sir.

20 Q. Please hold up page 4.

21 A. [The witness complied.]

- 1 Q. What is depicted in page 4?
- 2 A. It is starting with the pantry area that leads to the hallway that leads to the guest
- 3 bedroom on the main level.
- 4 Q. Where are you looking from?
- 5 A. The kitchen.
- 6 Q. And the pantry on the right, what's located there?
- 7 A. Appliances or?
- 8 Q. Right, just what you keep there.
- 9 A. Glasses and dishware.
- 10 Q. And what's maintained on the left?
- 11 A. That's the microwave and a bar.
- 12 Q. Now, as you walk that down – as you walk down the hall from where the picture has
- 13 been taken, what will be the first room on your left?
- 14 A. The office.
- 15 Q. Is there bed in that room?
- 16 A. No, Sir.
- 17 Q. What is the next room on the left?
- 18 A. A bathroom.
- 19 Q. Is there a bed in that bathroom?
- 20 A. No, Sir.
- 21 Q. What's the next – then you walk immediately into the...
- 22 A. Straight into.

1 Q. And this is where the (b)(6) boys slept?

2 A. Yes, Sir.

3 Q. And then once you enter that room, is there any other room on the left of that?

4 A. A bathroom.

5 Q. Now, is there any other bed on this floor of your house, the kitchen floor, as you've  
6 described it, is there any other bed on that floor?

7 A. No, Sir.

8 Q. And was that bed occupied by anyone other than the (b)(6) children that night?

9 A. No, Sir.

10 Q. Now from this floor, if you take two or three steps down any stairs, is there any  
11 bedroom?

12 A. No, Sir.

13 Q. If you'll hold up page 5, please?

14 A. [The witness complied.]

15 Q. Okay, now you can turn and look at it. What's depicted in page 5?

16 A. The bottom part, where the wood is, that's the garage. And when you go up the  
17 stairs, the window that leads into – or that window is the pantry room, and the door that leads  
18 into the kitchen.

19 Q. And this driveway, is that where your personal cars are parked?

20 A. Yes, Sir.

21 Q. That night, did anyone else use that driveway for parking?

22 A. No, Sir.

1 Q. Hold up page 6, please.

2 A. [The witness complied.]

3 Q. What is depicted in page 6?

4 A. The same driveway, headed to the street, and a gate that we drive out of.

5 Q. And that's the gate that open and closes when you come in or depart?

6 A. Yes, Sir.

7 Q. Hold up page 7, please.

8 A. [The witness complied.]

9 Q. What is depicted here?

10 A. That's our kitchen.

11 Q. Hold up page 8, please.

12 A. [The witness complied.]

13 Q. What is depicted here?

14 A. That is the kitchen – the door that leads to the driveway where we park our cars.

15 Q. And is this the door in the kitchen?

16 A. Yes, Sir.

17 Q. Hold up page 9, please.

18 A. [The witness complied.]

19 Q. What is depicted here?

20 A. Our stairwell.

21 Q. Is that going down from the master bedroom where...

22 A. It's going down from the third floor, yes.



1 Q. So that's just looking down at the stairs. Have you counted the stairs from that level  
2 down to the main level?

3 A. From the third floor down to the main level, there's 19 stairs.

4 Q. Nineteen steps?

5 A. Steps.

6 Q. Hold up the next picture, please.

7 A. [The witness complied, holding up page 10.]

8 Q. What is depicted here?

9 A. That is looking up from the landing coming up from the basement.

10 Q. Going up to the...

11 A. Main level.

12 Q. ...main level?

13 A. Yes, Sir.

14 Q. And approximately how many stairs are there there?

15 A. Seventeen.

16 Q. Hold up the next picture, please. We're now at 11.

17 A. [The witness complied.]

18 Q. What does this depict?

19 A. That's the basement level, looking up to the landing to where you turn to go to the  
20 main level.

21 Q. And what's on the right in that picture?

22 A. Ah, a wine stand.

1 Q. And, finally, now, page 12, what's depicted here?

2 A. That is the playroom on the third floor – the bottom floor – the basement.

3 Q. So is that on the same level as the picture just preceding it on page 11, that shows the  
4 wine rack?

5 A. Yes, Sir, it is.

6 Q. So you come down the stairs; you have to go past the wine rack, and then come  
7 around to this particular room, on page 12?

8 A. No, Sir.

9 Q. Okay, you don't come from...

10 A. Well, I mean you come down past that, but you turn right.

11 Q. Right; correct. It's the same level?

12 A. Yes, Sir, it is.

13 Q. Okay, that's why I – it's the same level?

14 A. Yes.

15 Q. Now, let's just look at the picture on page 12. What do you call that bed there as  
16 we're looking at it – with the Teddy bear on it?

17 A. It's a daybed.

18 Q. It's a daybed. Now, on the 23<sup>rd</sup> of March of this year, does that fairly and accurately  
19 represent the placement of that furniture on that day?

20 A. Yes, Sir.

21 Q. Did you have either a lampstand or a table holding a lamp next to that bed on the 23<sup>rd</sup>  
22 of March of this year?

1 A. No, Sir.

2 Q. What is on the right side of this picture?

3 A. That is a piece of furniture that was in the house when we moved into the house, and  
4 we use it as a TV stand with the Oui and the X-Box and my son's games.

5 Q. What is at the other end of this room that is not depicted?

6 A. There is a long table with chairs and a wraparound bench, and then also a sink and an  
7 outdoor – well, actually an indoor grill.

8 Q. Are there any other beds on this level?

9 A. No, Sir.

10 Q. In any of the rooms on this level?

11 A. No, Sir.

12 Q. Now, on the 23<sup>rd</sup> of March, did you take (b)(6) to a place where she could sleep  
13 that night?

14 A. Yes, Sir.

15 Q. Where was it?

16 A. It was in this room.

17 Q. And was that the bed you showed her?

18 A. That's the bed I showed her.

19 Q. And made available to her?

20 A. I did.

21 Q. What was the lighting mechanism for that room?

22 A. It's an overhead light.

1 Q. Where is the switch located?

2 A. Right as you walk in the door, on the right-hand side

3 CIV DC: Let the record reflect she took her right hand and pushed it toward her back.

4 Q. Okay, let's shift gears now that we've laid out the house for the members – at least  
5 parts of the home. You described how your husband was there with Osto – Colonel Ostovich –  
6 and two other officers, and they departed earlier in the evening, correct?

7 A. Yes, Sir.

8 Q. When did you next see them?

9 A. At 10 PM.

10 Q. What were you doing at 10 PM?

11 A. I was sitting on the couch with (b)(6) and we were looking at pictures of airplanes on  
12 the iPad.

13 Q. What was your reaction when they showed up?

14 A. I went outside, and Jay was ahead of everybody else, and he came up and he said,  
15 “Hey, these women are with Colonel Ostovich, and they're just going to have a drink, and  
16 they're not staying.”

17 Q. Did you, nonetheless, welcome them into your home?

18 A. I did.

19 Q. How did you feel at that point?

20 A. I, ah, well, I wasn't expecting it, and I was feeling that I hope that they had their drink  
21 and that they all left – everyone.

22 Q. Is it fair to say that you recognized the men?

1 A. Yes.

2 Q. They were the same men that had departed earlier?

3 A. Yes.

4 Q. How were introductions made between you and the women?

5 A. You know that I don't know that I was really introduced, in a way. I was there; I  
6 went back in; and it might have been a "hello" or a "hi," but I don't believe at that time anybody  
7 came over and said "Hi, my name is..." or Jay did not say, I don't believe, that "Beth this is..."  
8 and introduced me to the women. They just kind of came in, and I stayed on the couch. As a  
9 matter of fact, I did not even go into the kitchen. He said, "I'm going to make everybody a glass  
10 of wine" or "pour a glass of wine" or "a drink," and I stayed on the couch with (b)(6) and I  
11 asked him, I said, "Well, bring me a glass of *prosecco*, and then they went into the kitchen. They  
12 were giggling, they were laughing, they were talking and they were – I could hear them talking  
13 about the concert or...

14 Q. So how long did you remain on the couch?

15 A. Jay came back in with a glass of *prosecco*; he sat down on the couch; we talked for a  
16 moment and he went back into the kitchen.

17 Q. How long did you remain on the couch?

18 A. I remained on the couch.

19 Q. For how long?

20 A. Well, ah, 23 minutes – 15-20 minutes. I don't know, but when I got up, I went to –  
21 (b)(6) was sitting on the stairs leading down to the basement, and I went over and  
22 introduced myself and asked her if she was okay.

1 Q. Where was (b)(6) at this point?

2 A. Sitting on the couch.

3 Q. So he remained on the couch and you went over and talked to her?

4 A. Yes.

5 Q. At some point, did he go to bed?

6 A. While I was on the couch, talking with (b)(6) (b)(6) came down the  
7 stairs. And I didn't want him to become fully awake, and at that time it was after 10:30, I'm sure  
8 – maybe closer to 10:45. I don't know at the time. And I thought that it would be a good time  
9 for (b)(6) to go to bed and to get (b)(6) back in bed.

10 Q. Okay, where do you understand your son was at that point?

11 A. My son was asleep in his room.

12 Q. At any point that night, did you take (b)(6) up to your son's bedroom and  
13 engage in any conversation with them?

14 A. No, I didn't.

15 Q. To your knowledge, did she ever go up to that bedroom?

16 A. No.

17 Q. With respect to C<sup>(b)</sup>, did you introduce (b)(6) to (b)(6)

18 A. I did.

19 Q. And is there anything that stands out about that introduction or conversation?

20 A. She said that her son's name was (b)(6), and that he was 22 years old and in  
21 college.

22 Q. Did you explain to her who (b)(6) was?

1 A. No.

2 Q. And so then what did you do with (b)(6) ?

3 A. I got up, and I called for (b)(6) , and said that it was time to go to bed. I asked  
4 (b)(6) if he wanted to go back upstairs and sleep with (b)(6) or if wanted to go into the room  
5 with his brother and sleep with (b)(6)

6 Q. Now, just to be clear, the room that we're talking about right now is page 3 of  
7 Prosecution – or Defense Exhibit P?

8 A. Yes, it is. Yes, Sir.

9 Q. So at this point both of the boys go into that room and get into that bed?

10 A. Yes, Sir.

11 Q. Now, to your knowledge, did you son have a rash that night?

12 A. No, Sir.

13 Q. Did (b)(6) have a rash that night?

14 A. No, Sir.

15 Q. Did (b)(6) have a rash that night?

16 A. No, Sir.

17 Q. Did one of the boys have some sort of injury?

18 A. Ah, yes. (b)(6) had injured his leg – ankle earlier in the week with his bike.

19 Q. Was there anything on his ankle or foot?

20 A. An Ace bandage.

21 Q. What happened with respect to the Ace bandage?

1           A. As they were getting into the bed and I was talking to them, I noticed the Ace  
2 bandage and it was dirty. And by this time, though, (b)(6) had come into the room, and she  
3 was standing there when I saw the Ace bandage and mentioned to (b)(6) that we should  
4 take that off.

5           Q. So what did you do?

6           A. I took the Ace bandage off, and I was very surprised. His ankle was very bruised.  
7 And from earlier in the week, when Cheryl had called me and told me about the accident – and  
8 she did want to take him to either the Clinic or the Pordenone Hospital. She never followed up  
9 that it was as bad as it – it wasn't hurting – I mean he played and he didn't complain that whole  
10 afternoon, but it was very black and blue and bruised.

11          Q. In any event, did you have any interaction with (b)(6) in replacing that Ace  
12 bandage?

13          A. Yes. She was quite surprised and kind “ah,” when she saw it, and she asked me if I  
14 did that, and I'm not quite sure what that question was, but I said, “No.” And I was going to let  
15 him go to bed without the bandage, but she suggested that we put the bandage back on. I believe  
16 she said – I thought she said she was a nurse or she may have said that to him, but she said that  
17 we should leave the bandage on.

18          Q. Now, their mother is – the (b)(6) s mother is Cheryl Pone – the (b)(6) boys?

19          A. Yes, Sir.

20          Q. Was Cheryl there at any point at the same time that (b)(6) was there that night?

21          A. No. No, Sir,



1 Q. Name all the women that were there that night from the point Jay and them returned  
2 from the concert until the point everybody except (b)(6) left.

3 A. There was myself, Captain Brock, Major Manning and (b)(6)

4 Q. Now (b)(6) has described another woman as being there. Are you aware of any  
5 other woman that was there that night?

6 A. No, Sir.

7 Q. Can you account for who she's talking about?

8 A. No, Sir.

9 Q. How soon then did you turn out the lights and leave the (b)(6) boys be?

10 A. They were asking questions; who was there, and we were talking as I was getting  
11 them to bed, and I was explaining to them that Mr. Jay was home, and they were friends of his,  
12 and that they weren't going to be long. And I don't know our general conversation, but I know  
13 that we were talking and so he, as I said, they were always saying – they were calling out, "Miss  
14 Beth" or "Mr. Jay," and "Are you okay?" and "Where are you?" And one of them asked me  
15 about Jay, and I said, "I will go out and get him and he'll come in and tell you good night." And  
16 so I did. I went to the kitchen, and asked Jay if he would come back and tell the kids good night,  
17 which he did. And I'm not sure, but he told them a story, and it was a very short story. (b)(6)

18 (b)(6) was sitting there. Jay was there. I was there. And we told them good night, and the three  
19 of us headed towards the kitchen.

20 Q. What is your best estimate with respect to the time at that point?

21 A. Ah, 10:45 to 11:00, maybe.

1 Q. Okay. Was there anything unusual you observed about (b)(6) ' feet while she  
2 was there that evening?

3 A. Well, she had lost her shoes, and...

4 Q. Describe what you observed from the point that she arrived at least until the point that  
5 you took her to a bed where she could sleep; what did you observe with respect to her shoes and  
6 her feet?

7 A. She, at first, said that she had lost her purse, and I found her purse for her. And I  
8 think when she...

9 Q. Where was it?

10 A. It was by the stairwell, underneath the radiator.

11 Q. Did you put it there?

12 A. No, Sir.

13 And then with the – I think coming into the Pone room or prior to, she – her – she'd lost  
14 her shoes or took her – she took her shoes off. And then there was mention of her shoes, and I  
15 found her shoes in the bathroom – not the one with the guest bedroom, but the hallway  
16 bathroom. And I brought them...

17 Q. Now just to be clear what we're talking about right now, if you turn to Defense  
18 Exhibit P, and go to page 4.

19 A. [The witness complied.]

20 Q. Now there's no bathroom depicted here, but this is looking from the kitchen to the  
21 Pone – the bedroom where the (b)(6) boys are, correct?

22 A. Ah, yes, Sir.

1 Q. Did you find the shoes in a bathroom near this room?

2 A. I did.

3 Q. Okay, where was the bathroom?

4 A. It is to your left; the second door on your left.

5 Q. Okay, so it's before you go into the bedroom?

6 A. Yes, Sir.

7 Q. But past the study on the left?

8 A. Yes, Sir.

9 Q. That's where you found her shoes?

10 A. Yes.

11 Q. Okay, then what happened?

12 A. I brought them out and I put them on that rug in this picture, and she put them on.

13 Q. She put them on?

14 A. Ah, yes.

15 Q. Did they come off again later on?

16 A. They did.

17 Q. Did you – did she look for them again?

18 A. We looked for them when it was time for her to leave.

19 Q. Now, in any event, are you saying that she did not, when she entered the house, take  
20 her shoes off and just leave them at the front door and go barefoot all night in the house?

21 A. No, Sir. I did not leave that area for 15-20 minutes, and so but her shoes were not by  
22 the front door because I would walk past the front door, and I didn't even – I didn't look to see if

1 she had her shoes on or she didn't have her shoes on until she told me she didn't know where her  
2 shoes were.

3 Q. Have you ever had any other guests that had difficulty keeping track of their shoes at  
4 your residence?

5 A. No, Sir.

6 Q. How many – so did you just look for shoes the one time when you found them in the  
7 bathroom or did you look for them later again that evening?

8 A. Everybody in the house looked for her shoes at one point. But, yes, I found them the  
9 first time, and then when it was time for her to leave again, we all made an effort to find her  
10 shoes.

11 Q. Now, just going back to the (b)(6) boys for a minute, did you talk to (b)(6) about  
12 the circumstances of his death – their father's death?

13 A. No.

14 Q. So did you, specifically, did you tell her that he had committed suicide?

15 A. No, I did not.

16 Q. So of the party that arrived with your husband that night – well, let me step aside and  
17 get one other point clear. Did you have any alcohol to drink while they were there? You  
18 mentioned earlier a glass of *prosecco* I believe.

19 A. I did. I had a glass of *prosecco*, and when I came back from driving Captain Brock to  
20 the base, I probably poured another glass of *prosecco*.

21 Q. And while we're on that topic, the glasses – the stemware that you used to serve the  
22 *prosecco* or wine, is that Baccarat crystal?

1 A. No, Sir.

2 Q. What is it?

3 A. Makisia.

4 Q. So who is the first person to depart – of this group, who is the first person to depart  
5 that night?

6 A. Captain Brock.

7 Q. What were the circumstances of her leaving?

8 A. When we came out from the room where the (b)(6) children were, we went to the  
9 kitchen, and Major Goldsberry and Major Lowe were there. And I was going to go back into this  
10 little pantry area and get some crackers, and Captain Brock came around and asked me if I knew  
11 if there was a way to get a taxi or asked me for a ride home.

12 Q. And to be clear, please turn to page 7 of Defense Exhibit P.

13 A. [The witness complied.]

14 Q. Is that where this conversation took place?

15 A. No, Sir. It is back on the picture...

16 Q. Okay, where...

17 A. ...we were just on, in that pantry room.

18 Q. Okay. I'm sorry.

19 A. We had all walked back into the kitchen, but as you can see, there's not room from  
20 where the little breakfast nook is and the sink, and so when you have four adults in there, but we  
21 were there, and then I went back...

22 Q. Okay, let's stop for a minute and make sure we've got the right location.

1 A. Okay.

2 Q. So page 4 of Defense Exhibit P?

3 A. Yes, Sir, 4.

4 Q. That's the pantry; that's where you had the discussion about...

5 A. Yes.

6 Q. ...Brock leaving?

7 A. Yes.

8 Q. Okay, so what did you tell her to do, if anything?

9 A. I told her I would take her back to the base, but that I'd – because I had had the glass  
10 of *prosecco* – that I would, if she didn't mind, that I would drop her at the gate. And she said  
11 that she was fine.

12 Q. Now the gate that you're talking about where – and, in fact, you dropped her off at  
13 that gate, correct?

14 A. Yes, Sir.

15 Q. Standing from that gate and looking onto the base, what do you see?

16 A. On the right hand side are the billeting buildings, and on the left hand side is the Club.

17 Q. What was your understanding as far as where she was actually going to spend the  
18 night?

19 A. Billeting – in billeting.

20 Q. So you dropped her off at the gate, which meant she had to walk from the gate to  
21 wherever she was spending the night, correct?

22 A. Yes. Yes.

1 Q. What – did you offer anyone else a ride at that point? Since you were going to that  
2 trouble to take her back to the base, did you offer a ride to anyone else?

3 A. I offered a ride to (b)(6) She was standing – when I went back in, I told Jay  
4 that I was going to take her back to the base, and (b)(6) was standing there, and I asked her  
5 if she wanted to ride back to the base.

6 Q. What did she say?

7 A. “No.” “No, I’ll just stay here,” or “No.” It was definite she wasn’t going with me.

8 Q. Where was Colonel Ostovich through the course of the evening, based on your best  
9 recollection?

10 A. Colonel Ostovich was on the outside, on our front porch.

11 Q. Describe the front porch.

12 A. It’s a large front porch. There’s two rocking chairs with a table – small table in  
13 between. We also have an outdoor picnic type table that seats four. There’s a loveseat there  
14 with a coffee table and a bench and a grill.

15 Q. You’ve talked about your interaction with (b)(6) you’ve talked about taking  
16 Captain Brock back to the base. Did you interact much with now Major Manning or Captain  
17 Brock through the course of the evening?

18 A. The only thing I can remember is maybe saying “hi” to Major Manning. I don’t  
19 remember talking with her. I know that I’m sure that Captain Ostovich – or Colonel Ostovich  
20 said “hello” to me and we may have had a few words. But they were outside, on the porch the  
21 whole evening that I saw.

1 Q. On the way, taking Captain Brock, back to the base, do you recall talking to her about  
2 the evening or if there were any issues about the evening?

3 A. She mentioned to me that I didn't know who I had in my house, and I assumed she  
4 was talking about Colonel Ostovich being the Vice Wing Commander. And she did seem like  
5 when she said she wanted to go home, she said she wanted to go home "now." So I was  
6 wondering if something was said or done that upset her because of the way she wanted to leave  
7 at that point, right then and there.

8 Q. She has testified that you said...

9 TC: Objection. If he wants to ask something, but he doesn't get to ask what some other  
10 witness has said.

11 CIV DC: I just want to ask if she recalls making that statement, Your Honor. I have to  
12 tell her what the statement is to ask her whether or not she recalls making it.

13 TC: Ask if she made the statement; no need to ask what other witnesses testified to.

14 MJ: All right, and...

15 CIV DC: That's fine, Your Honor.

16 MJ: All right. Rephrase your question.

17 CIV DC: I'll do that.

18 MJ: That way, you can get to where you are intending to go.

19 CIV DC: Yes, Sir.

20 **Direct examination continued.**



1 Q. Did you tell Captain Brock or ask Captain Brock if your husband had done something  
2 to upset her or to her that night or words to that effect?

3 A. No, Sir.

4 Q. Do you recall saying something to that effect, at all?

5 A. I, ah, I asked her if Osto – if it had been Osto, because she was not in the house at all  
6 either. She spent most of her evening – I saw her the one time on the stairwell, talking to [REDACTED]  
7 [REDACTED] and then she was outside with Major Manning and Colonel Ostovich.

8 Q. And would you agree that “Osto” sounds like “Bosco” sounds like “Roscoe”?

9 A. Yes, Sir.

10 Q. Now you come back from dropping her off. Is everyone still there at this point?

11 A. Yes, Sir.

12 Q. Who departs next?

13 A. We were in the kitchen, myself, Major Lowe, Major Goldsberry, Jay. I don't  
14 remember if (b)(6) [REDACTED] was still in the kitchen or not. I know that she did go outside on the  
15 porch, and I know she was in between the kitchen and the porch, but Major Manning and  
16 Colonel Ostovich and all of us were still there.

17 Q. So who left?

18 A. Nobody had left.

19 Q. That's what I'm asking; who left next?

20 A. I'm sorry. No, Captain Brock left.

21 Q. No, after Captain Brock left, who left next?

22 A. Oh. Colonel Ostovich left and Captain Manning left.

1 Q. Did they just sort of disappear and you didn't see them or did they actually talk to you  
2 before they departed.

3 A. They did not talk to me before they departed.

4 Q. So how did you know that they were gone and not just outside on the patio?

5 A. Ah, I think I looked out there and there wasn't anybody there because Major  
6 Goldsberry mentioned that he was going to take Colonel Ostovich home and that they were all  
7 going to go, and I was expecting everybody to leave very soon.

8 Q. Did you express to Jay that you wanted people to leave?

9 A. I did. I told Jay, a couple of times, that it was time for everybody to go home.

10 Q. Now who left next, after you determined that Colonel Ostovich was no longer there,  
11 then who departed?

12 A. Major Goldsberry and Major Lowe said that they were leaving, and I asked Major  
13 Goldsberry would he take her to the base, and he said that he would, and that he would take her  
14 to the gate. And that's when we realized that her shoes were missing again. And I think all of us  
15 – I think Major Goldsberry and Major Lowe and myself, we went looking for her shoes and we  
16 were unable to find them.

17 Q. So what was the – so why did she decide to say – what's your understanding of why  
18 she decided to stay?

19 A. I, at that point, by Major Goldsberry – he said like “I can also drop her at the gate  
20 also,” and I said, “Go on. I'll get her to the base or she can stay the night here.”

21 Q. Now you testified earlier that there was a point where everyone was looking for her  
22 shoes. Was that the point that you were talking about?

1 A. Yes, Sir, that was the point.

2 Q. Did you find – and I take it – it’s pretty clear – you did not find her shoes?

3 A. No, we did not find her shoes.

4 Q. And so just to jump ahead, and then we’ll come back, but did you ever find her  
5 shoes?

6 A. I did find her shoes on Saturday.

7 Q. Where were they?

8 A. They were in the guest bedroom where the (b)(6) boys slept, on the side of the bed  
9 where the window is.

10 Q. Okay, so if you’ll turn to page 3 of Prosecution [sic] Exhibit P, is this the bedroom  
11 that you’re talking about?

12 A. Yes, Sir, it is.

13 Q. And so can you just hold up the picture and point approximately where you found the  
14 shoes? Hold it up so the members...

15 A. Oh, I’m sorry.

16 Q. Where – can you point to where you found the shoes?

17 A. Over here, on this side between the bed and the window.

18 CIV DC: Okay, let the record reflect that she’s pointing just to the center, right of the  
19 picture, between the bed and window as depicted in the scene.

20 Q. Did it surprise you that that’s where her shoes were?

21 A. It did surprise me.

22 Q. Where are those shoes today, if you know?

1 A. They're downstairs in our garage.

2 Q. Now, and again to get ahead, and then we're going to come back, the OSI came to  
3 your home, correct?

4 A. Yes, Sir, they did.

5 Q. After these allegations were made?

6 A. Yes, Sir.

7 Q. Did you tell them that you had the shoes?

8 A. Yes, Sir. I showed them the shoes.

9 Q. Did they ask whether they could take the shoes into evidence or not?

10 A. No, Sir.

11 Q. Did they take any pictures of your house?

12 A. No, Sir.

13 Q. Did they seize any evidence at all; the bed sheets, the covers, the pillows from the bed  
14 where this allegedly occurred?

15 A. No, Sir.

16 Q. But you made it available to them if they wanted to take anything, correct?

17 A. If they would have asked me, I would have said yes.

18 Q. And no one has ever come back and asked you for the shoes?

19 A. No, Sir.

20 Q. Do you know what to do with her shoes?

21 A. No, Sir.

22 Q. Why didn't you offer her some shoes? Or did you offer her some shoes?

1 A. I did offer her shoes.

2 Q. On what occasion?

3 A. I believe the one time when it was with Major Goldsberry and Major Lowe at that  
4 time when they were wanting to leave.

5 Q. Do you recall what she said, if anything?

6 A. I don't really recall what she said, but it was concerning her shoes and wanting her  
7 shoes.

8 Q. What is your best estimate as to what time it was when the two majors left?

9 A. Ah, 11:30 to 11:45.

10 Q. So they leave. Where is Jay at that point?

11 A. He's there. We're all there together, and but he walks Major Lowe and Major  
12 Goldsberry out to the front gate.

13 Q. So what arrangements did you make, at that point, for (b)(6) to spend the night?

14 A. I offered her a ride home. When we were standing their talking, I told her I would  
15 take her home. And I think that may have been when I offered her the shoes. But I wanted her  
16 to go home. I wanted everybody in the house to go home. It wasn't like I wanted her to stay or  
17 anything. I didn't know her.

18 Q. Where did you plan on placing her to sleep that night?

19 A. Downstairs in the playroom in the daybed.

20 Q. Did you – at any point then did Jay go to bed or did he stay up until after you got her  
21 – (b) – settled?

1 A. When Jay came back in from taking Major Goldsberry and Major Lowe out, he  
2 swung past me and I said, "Go ahead and go to bed. I'm either going to take her back to the base  
3 or I'll take her downstairs, and she can sleep there."

4 And he kind of gave me a wave and said, "Okay," and went upstairs.

5 Q. So at the time that he goes upstairs to bed, what time would you say – estimate it  
6 was?

7 A. Ah, 11:45-11:50. I was in bed by 12 o'clock.

8 Q. And in any event, the bed – did you find, in fact, find him in bed when you went to  
9 bed?

10 A. Yes, I did.

11 Q. And is that the bed shown on page 1 of Defense Exhibit P?

12 A. Yes, it is.

13 Q. Which side did he sleep on and which side did you sleep on?

14 A. He sleeps on the side with the lamp and the window.

15 Q. Was that where he was when you came to bed?

16 A. Yes, he was.

17 Q. We're going to talk about that in a minute – when you came up – but what did you do  
18 with (b)(6) before you came to bed, but after he had already gone to bed?

19 A. I told her that she could go downstairs and sleep. We walked down the stairs.  
20 Downstairs in the wardrobe room there was a refrigerator with water. I got her a bottle of water.  
21 I'm not for sure if she asked me for a bottle of water or if I offered her one, but I did get her one.  
22 I showed her that in the left or in the laundry room there's a toilet, and I took her down the

1 hallway and showed her the bed, and told her good night. We spoke very little, and she was  
2 standing there in front of the daybed when I turned around and walked back out.

3 Q. Do you recall was the light already on when you got down there or did you have to  
4 turn it on?

5 A. You know I don't recall. I'm assuming the kids had played down there that night,  
6 and so I did not go down there that night until I took her down, and I think that the lights were on  
7 because they'd been down there.

8 Q. Did you turn the light off before you left the room or did you leave her with the light  
9 on?

10 A. I left her with the light on.

11 Q. So what did you do next?

12 A. I went upstairs to the third floor. I took my contacts out.

13 Q. Well, let me ask you – let me just step back for a minute. When you're taking her to  
14 that bedroom, you described earlier, if I recall correctly, that it was 17 steps from the main level  
15 – the kitchen/Pone bedroom level – down to this particular room. Is that right?

16 A. Yes, that's correct.

17 Q. So you led her down those 17 steps, right?

18 A. Yes, I did.

19 Q. There's no bedroom that's two or three steps down and next to the kitchen?

20 A. No, Sir.

21 Q. Okay, now you're back up in your bedroom. What do you do to prepare for bed?

1           A. I'm getting ready for bed. It takes me just a few minutes. I get in bed. I had hurt my  
2 side earlier in the week, and I say to Jay that my side was hurting. And he said that I needed an  
3 Ibuprofen, and that he would get me one. And the bathroom that is right there by our bedroom,  
4 he went in and he brought me back one. And we got in bed and said goodnight.

5           Q. So, we're right about midnight or shortly thereafter, correct?

6           A. Yes, Sir.

7           Q. Does something stir you and cause you to get up and out of your bed?

8           A. Yes. I heard (b)(6) talking on the telephone.

9           Q. Now you're up in your bedroom on the fourth – on the third floor, and it's two flights  
10 of stairs down to the main level and then down a hallway to the kitchen, correct?

11          A. Yes, Sir.

12          Q. Where did you find her?

13          A. In the kitchen, leaning up against the stove.

14          Q. If you'll look at Defense Exhibit P, page 7.

15          A. [The witness complied.]

16          [Jet noise.]

17          Q. Using this photograph, can you identify approximately where you found her?

18          A. Right there...

19          Q. Hold it up, please.

20          A. [The witness complied.] ...in front of the stove.

21          CIV DC: And, again, for the record, she's pointing to the very left of the picture, in the  
22 center where a stove is located.



1 [Jet noise.]

2 Q. Did she – were you in the room before this call occurred – in the kitchen?

3 A. [No response.]

4 [Jet noise.]

5 CIV DC: Yeah, we'll just wait for a moment.

6 [Jet noise.]

7 CIV DC: Your Honor, I think I've been going for a while. I know I'm going to be going  
8 for a while longer. This might be a good point to take a break.

9 [Jet noise.]

10 MJ: We're in recess.

11 (The court-martial recessed at 1555 hours, 31 October 2012.)

12 **END OF PAGE**

1 (The court-martial was called to order at 1611 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Mr. Spinner, you may continue.

6 CIV DC: Thank you, Your Honor.

7 **Direct examination continued.**

8 Q. Okay, if I can, Mrs. Wilkerson, redirect you back to where we were.

9 A. Yes.

10 Q. We are at a point where you said you were in bed; you hear (b)(6) on a phone  
11 call; you come downstairs, and you find her talking on the phone.

12 A. Talking on the phone, yes, Sir.

13 Q. How is she clothed at this point?

14 A. She's fully dressed as – like she walked in.

15 Q. I take it she didn't have any shoes on?

16 A. No, but I wasn't – I didn't look at her feet.

17 Q. Now, you – so you see her on the phone. What do you do?

18 A. I listen to her. When I came downstairs, I could hear her talking on the telephone, so  
19 I stopped at the landing and listened, and then went around because she was getting loud, she  
20 was upset – louder – it wasn't like she was screaming or anything like that, but she was upset  
21 that her friends had left her, and that she did not know the people whose house she was at.

22 Q. Ah, was the door to the Pone boys' bedroom open or closed at that point?

1 A. It was open.

2 Q. And what was your concern?

3 A. Her waking up the Pone children.

4 Q. So what did you do? After you listened to this conversation for a minute, what did  
5 you do next?

6 A. I went into the kitchen and asked her if she'd please be quiet and she did. She calmed  
7 right down and lowered her voice.

8 Q. When you left your bedroom, where was Jay?

9 A. In our bed.

10 Q. What was he doing?

11 A. Sleeping.

12 Q. When you came down to the kitchen and found (b)(6) did he join you all at any  
13 point?

14 A. No, he did not.

15 Q. And so I'm going to jump to the end and then come back, but assuming you were  
16 there for her for approximately 40 minutes, plus or minus 10 minutes, at any point during that  
17 time did he come downstairs and join you all?

18 A. No, he did not.

19 Q. Did he come down and offer her some *prosecco*?

20 A. No, he did not.

21 Q. Did he offer her some juice?

22 A. No, he did not.

1 Q. And when you left her, after being with her down there, where did you go?

2 A. Pardon me?

3 Q. After that 30 or 40 or 50 minutes that you were with her, where did you go?

4 A. Oh, I went back to bed.

5 Q. And where was Jay when you went back to bed?

6 A. Jay was in bed.

7 Q. So let's talk about, now, that time that you spent with (b)(6) Did you actually  
8 talk to (b)(6) while she was still on the phone conversation?

9 A. I asked her to lower her voice and to please be quiet so she would not wake up the  
10 children.

11 Q. Could you overhear what the person on the other end of the phone was saying?

12 A. No, I could not hear. I mean I – no, I don't recall hearing anything.

13 Q. Okay. But based on the side of the conversation you could hear, could you tell  
14 whether there was a conversation about (b)(6) departing your house?

15 A. Ah, yes.

16 Q. So what did you hear at your end of the conversation?

17 A. I heard her say that, "It is okay. It's too far for you to come," or "...too far to come  
18 get me," or "I'll just stay here, it's too far."

19 Q. So, when she – how long did the conversation last then before the phone call ended,  
20 approximately?

21 A. I – it was five or ten minutes. I let her finish her conversation. She was talking on  
22 the phone; I came down; I asked her to please be quiet. I heard her talking that it was too far for

1 her friend to come pick her up, who I didn't know who it was. I didn't know if it was a male or a  
2 female. And but I sat there and I listened to her, and she said – I heard her say to her that, “The  
3 wife is here, and the wife will make me tea.”

4 Q. So when she hung up the phone, did you reengage with her at all about her leaving –  
5 the possibility of her leaving?

6 A. I did – well, I don't know where the “tea” came from, other – and when she hung up,  
7 she asked me if I would make her tea. And I did. And I made myself a cup of coffee. And we  
8 were talking, and I told her – I asked her where her friend lived, and she said, “Pordenone.” And  
9 I told her, again, “That's not very far. It's either ten or fifteen minutes into Pordenone from our  
10 house,” and I offered her – I said, “If you want to go home, I will take you home.”

11 Q. Did she, at any point, suggest “No. I'll just call my friend back up and you can give  
12 her directions to your house”?

13 A. No, she did not.

14 Q. Did she express any desire to leave your house at that point?

15 A. No. I – she was offered many rides home and, for whatever reason, would not take a  
16 ride home.

17 Q. So you said you made some tea, and did you make any other drinks?

18 A. No, I didn't.

19 Q. Did you make any coffee or anything like that?

20 A. Oh, I made coffee for myself, yes, Sir.

21 Q. Right. Ah, so about how long did it take you to make the tea and coffee?

1           A. Ah, well, it takes at least ten – over ten to fifteen minutes to boil the water for the tea.  
2 The coffee – it’s an espresso machine and that doesn’t take long at all.

3           Q. What is your best estimate as to how long then – so you made the tea, you made the  
4 coffee, you’re drinking tea and coffee...

5           A. Yes, Sir.

6           Q. Did either of you have any wine or *prosecco* or anything during this entire visit?

7           A. No, Sir.

8           Q. And I say “this visit” – in the middle of the night. You understand that?

9           A. I do. No, no, I was awoken and brought downstairs and we had – we did not have  
10 any alcohol.

11          Q. So what – just – I don’t want you to recite the conversation y’all had, but what was  
12 the nature – what was the topics you guys talked about as you drank your tea and coffee?

13          A. Ah, the way that Colonel Ostovich and Tanya Manning left the house; she was  
14 interested in that. And we talked some about Colonel Ostovich. And we talked about the  
15 children, and ah it was just a – I don’t know – we had a vacation coming up; I think I may have  
16 mentioned that. But she – we just had a conversation.

17          Q. Did you talk about any of her experience as a PA or any of that type of stuff – her  
18 background or work?

19          A. No.

20          Q. Okay, and just to be clear, when you talked earlier about the Ace bandage, was the  
21 Ace bandage replaced or not or how did that end? Did he just go to sleep?

1           A. No. She wanted me to put the Ace bandage back on her [sic] and because it was so  
2 dirty, I didn't want him sleeping in it – with a dirty Ace bandage on, we had some left over from  
3 when our son broke his arm prior to that. And I went into the bathroom and got her another Ace  
4 bandage, and she did wrap<sup>(b)(6)</sup> leg.

5           Q. Okay. Ah, and so we broke away there, but now we're back in the conversation,  
6 drinking tea and coffee. Ah, so how did that end?

7           A. After we sat there for a while, I wanted to go to bed. I had offered her a ride back to  
8 the base, which she did not take me up on. And I said you know I was tired and ready to go to  
9 bed, and then she went back down. Then I was going to load the dishwasher and go up to my  
10 bed.

11          Q. So, in fact, is that what happened?

12          A. That's exactly what happened.

13          Q. She departed – I mean to your knowledge, she went back downstairs, correct?

14          A. Yes.

15          Q. You didn't actually go down with her to make sure she was tucking herself in bed?

16          A. No.

17          Q. And about how much time did you then spend with the dishwasher or doing whatever  
18 you were doing?

19          A. Not long. It was the coffee cup, the tea cup – just what was right there I wiped down,  
20 and I went up.

21          Q. You go up to bed...

22          A. I did.

1 Q. ...and what did you find in your bedroom?

2 A. Jay, sleeping.

3 Q. Did you wake him up or talk to him about what had just happened?

4 A. No, I did not.

5 Q. So what is it your estimate that it is at about this point in time?

6 A. I'm thinking it was a quarter of 2; 2 o'clock.

7 Q. Ah, what did you do then? You're back in bed; what did you do?'

8 A. I tried to go to sleep.

9 Q. Were you awakened again that night?

10 A. Yes, I was.

11 Q. What awakened you?

12 A. I heard the floors squeaking; walking around.

13 Q. Describe the floors in your house.

14 A. The house has all hardwood floors except the kitchen, and the kitchen is marble.

15 Q. So do the floors creak?

16 A. Yes, they do.

17 Q. Was it quiet in the house that night?

18 A. It was quiet in the house that night.

19 Q. Is it unusual for you to hear creaking when it's quite in the house at night?

20 A. No, I would hear it, and I knew that the Pone boys were downstairs, and I had them

21 that if they needed me, they could come find me. So it was a different night all the way around

22 because she was there, and the Pone children were there, and so I...



1 Q. So when you heard this creaking, what did you do?

2 A. At first I thought “Well, I’m hoping that is not the Pone boys that are now awake.”

3 But I listened; I didn’t hear anything – my name or what. So I went down and turned on the light  
4 and (b)(6) was standing in the bedroom door of the Pone room – where they were sleeping  
5 – the guest bedroom.

6 Q. Do you know approximately what time it was now? You said, earlier, that you had  
7 gone back to bed around 2:45 or so – I mean 1:45 to 2 o’clock...

8 A. Right, 1:45.

9 Q. ...so how much time had you been in bed before you heard this creaking and got up –  
10 would you estimate?

11 A. Ah, I don’t know exactly. It seemed like not very long. I may have dozed off, but I  
12 didn’t think that it had been 15-20 minutes. It could have been longer. I didn’t look at the clock.  
13 When I came down, I turned the light on, and she was standing in the doorway where the kids’  
14 bedroom is.

15 Q. Did this surprise you – seeing her standing in the doorway to the (b)(6) boys’  
16 bedroom?

17 A. Yeah, it surprised me, but I also didn’t know – I mean I – yes, it surprised me.

18 Q. You didn’t expect to see her there, did you?

19 A. No, I didn’t expect to see her there.

20 Q. Did this upset you?

21 A. I was tired. I had spent time with her. I had made her tea. I was nice to her. And I  
22 either wanted her to go to bed or I wanted her to go home. She had been offered many a ride

1 home; she wouldn't accept it. And I was – yes, I was ready for her to – I had her for the majority  
2 of five hours that night, and I was expecting her go home or go to bed.

3 Q. When you left your room to come down to the point where you heard her after you  
4 heard the creaking, where was Jay?

5 A. In our bed.

6 Q. Was he awake or was he asleep?

7 A. No, he was asleep.

8 Q. Now I know some wives would wake up their husbands to go see the creaking noise.  
9 Are you saying you didn't wake him up to go check this out?

10 A. No, because I knew that it was – I was assuming that it might have been the (b)(6)  
11 children or her. She had already woke me up once. And so no. I mean we're in Italy; I wasn't  
12 expecting somebody breaking into the house or anything such as that.

13 Q. So at this point, you had sent her to bed twice that night, correct?

14 A. Yes, Sir.

15 Q. Before you had the coffee and tea, you left her downstairs in that bedroom?

16 A. Yes, Sir.

17 Q. And then after the coffee and tea, you left her downstairs – well you assumed that she  
18 went...

19 A. I assumed that she went downstairs. I did not see her go down the stairs.

20 Q. Now, from the point that you first took her downstairs, before the coffee and tea, and  
21 said, "This is where you can sleep," did you go back downstairs in that bedroom that entire  
22 night?

1 A. No, I did not.

2 Q. Did you go downstairs in that bedroom again that night and find your husband in bed  
3 with her?

4 A. No, I did not.

5 Q. Did you yell at her at any point that night?

6 A. No, I did not.

7 Q. Did you make any kind of statement like “What are you doing?” or “Get the hell out  
8 of my house.” or any statement to her like that that night?

9 A. No, I did not.

10 Q. In fact, were you concerned about waking the Pone boys up and making noise?

11 A. Yeah – well, I didn’t want her waking up the Pone boys.

12 Q. You didn’t want anybody waking them up?

13 A. No. We went to bed, and she was the one who was up roaming the house and  
14 keeping me awake.

15 Q. Did the (b)(6) boys wake up at any point that night?

16 A. No, the Pone boys did not wake up.

17 Q. Did, to your knowledge, Jay wake up at any point that night?

18 A. No, he did not.

19 Q. Did your son, at any point, wake up that night?

20 A. No, he did not.

21 Q. Okay, so you testified that you told her, “Enough is enough. Leave or go back to  
22 bed.” Where did that conversation take place?

1 A. In the kitchen, by that back door that's in the picture.

2 Q. Okay, let's turn to the picture, page..

3 A. Eight.

4 Q. Eight, yes.

5 A. Yes.

6 Q. So page 8 of Defense Exhibit P, this is where that conversation took place?

7 A. Yes, Sir.

8 Q. And if you open that door, what do you see?

9 A. The driveway where we park our cars.

10 Q. Right, so page 5 shows that door from the outside, correct?

11 A. Ah, yes, it does.

12 Q. And then so from that door, you can look down and see the driveway?

13 A. Ah, yes, Sir.

14 Q. Okay. So you basically give her an option here. Did that option include – you said  
15 that you wanted her to leave, but did that option include you taking her somewhere or were you  
16 kicking her out of your house?

17 A. I was not kicking her out of the house. When I saw her in the doorway to the (b)(6)  
18 children's room, I waived her towards me, towards the kitchen where we ended up here by this  
19 door [referencing Defense Exhibit P, page 5], and I think I may have said "Look, you need to or  
20 you have a choice, but you need to either go to bed or you need to leave or you need to go  
21 home." And it wasn't like I was kicking her out, but I would have given her a ride home. I'd  
22 already offered her a ride home three other times that night, and I would have gladly driven her

1 home right then and there, but she opened the door, and her purse was there, and she picked up  
2 her purse and she walked out that back door.

3 Q. Did you observe whether she had shoes on or not at that point?

4 A. I did not observe, but it didn't enter my mind, but I'm assuming that she probably did  
5 not because I don't think that she went – unless she was looking for her shoes while she – I heard  
6 her walking around the second time. She may have found them, which I know she did not, but  
7 no, I did not look to see if she had shoes on or not.

8 Q. So she walks out the door?

9 A. She walks out the door.

10 Q. What did you do?

11 A. I opened the gate.

12 Q. And how are you dressed at this point?

13 A. I have pajamas on.

14 Q. You don't have a – anything – any coat or any kind of...

15 A. No.

16 Q. ...bathrobe or anything like that?

17 A. No. I have my pajamas on.

18 Q. Did you have anything on – your shoes?

19 A. No.

20 Q. Did you have your car keys or your purse nearby?

21 A. No, I did not.

22 Q. Okay, so what did you do?

1 A. I was – this hallway here or that’s outside this picture, I...

2 Q. Okay, what’s the page number on the picture?

3 A. I’m sorry. It’s number 5.

4 Q. Right.

5 A. She walked towards the steps and so I thought she was leaving to go, so I went back  
6 in. I got a sweatshirt out of the closet – it’s a circle – so I could stop. I got a jacket – a  
7 sweatshirt. When you go through the dining room is my purse; I picked up my purse, and I went  
8 right back out that door, and went to get into the car and to go find her.

9 Q. Well, at some point, did you open the gate?

10 A. I did open the gate.

11 Q. At what point in what you just described did you open the gate?

12 A. When she opened the door and she walked out, I opened the gate.

13 Q. So before you went to get your keys or...

14 A. Yes.

15 Q. ...and the outer garments?

16 A. Yes.

17 Q. And when you open the gate, and this is at night, correct?

18 A. Yes.

19 Q. What happens with the gate? There’s – the gate opens, and there’s the yellow,  
20 flashing light. But it is very well lit up. There are street lights. You can see very well the gate  
21 and the street.

22 Q. Yeah. If you would, turn to page 6 of Defense Exhibit P.

1 A. [The witness complied.]

2 Q. Now we're talking about a gate. Is that the gate at the top of the driveway there?

3 A. This picture?

4 Q. Yes.

5 A. Ah, yes, Sir.

6 Q. Can you see the light that you're talking about right now?

7 A. You can see a light to the right, and then there's one right over here also, on the left.

8 Q. Okay, but can you actually see it in the picture?

9 A. Yeah, I can see the light here. Oh, the flashing yellow light...

10 Q. Yeah.

11 A. ...or a street light?

12 Q. The flashing yellow light?

13 A. No, you cannot see it.

14 Q. Okay, so point in the picture approximately where it would be, holding the picture up.

15 A. It's on this side of the gate.

16 Q. Okay, so you're pointing about the left center of the page, where the top of the gate

17 hits some bushes?

18 A. Yes, Sir.

19 Q. And so there's a yellow, flashing light there?

20 A. Yes, there is.

1 Q. And then the light you were talking about was the street light, which is on the post in  
2 the middle – the top middle of the picture?

3 A. Ah, no, it's off here...

4 Q. Oh, I'm sorry.

5 A. ...to the right of the picture.

6 Q. Okay, can we see it?

7 A. I can, yes, Sir.

8 Q. Okay, maybe I'm missing it. I'm...

9 CIV DC: May I approach the witness, Your Honor?

10 MJ: You may.

11 A. Right here.

12 Q. Oh, oh.

13 A. I'm sorry.

14 Q. I'm sorry; I had a fold in my page and I couldn't see. It's at the very far right upper  
15 corner of the picture, correct?

16 A. Right. And there's another one to the left, the same distance away from the pole that  
17 you see in the center of the picture.

18 Q. Okay, so this is a well-lit area?

19 A. Very well.

20 Q. Ah, so you've come out. Is the gate open or closed at this point, when you come  
21 outside?

22 A. Closed or it's closing.



1 Q. Closing?

2 A. Yes, it only – I'm not for sure how long it stays open, but it automatically closes.

3 Q. So what did you do?

4 A. I went and got into the car and opened the gate, and started the car, and backed out of  
5 the driveway, and went and looked for her.

6 Q. Ah, where did you first look for?

7 A. I drove to the base and back on the AP highway, which is the highway right there that  
8 leads to the base.

9 Q. It's just basically a block off your residence?

10 A. Yes.

11 Q. Ah, so driving out to the base and back on the highway, did you see her anywhere?

12 A. No, I did not.

13 Q. You get back to the house, and now what did you do?

14 A. I...

15 Q. Did you go back down the highway the opposite way or did you come back to your  
16 house?

17 A. I went further past where I would normally turn in to come to our house, and went up  
18 to the red light, and went around that way so that I circled our whole block, and then went back  
19 in. And I wondered to myself, since I didn't leave her or see her leave the property, maybe she  
20 was still on the property. So I came back, and I went and looked to see if I could see her down  
21 by the front or on the porch or anywhere. And I did not, so I came back in and when I came

1 back into the house, and sat my purse down, and went back out on the front porch because I  
2 thought “Well, maybe she’d come back.”

3 Q. Did you find her that night?

4 A. No, I did not find her that night.

5 Q. Ah, do you know about what time it was that you actually got back to the house and  
6 went back to bed?

7 A. When I came back through to the house, through this door on the other side, there’s a  
8 clock, and it was 3 o’clock – a little bit before 3 o’clock – 3 o’clock in the morning.

9 Q. What did you do next?

10 A. I waited up for – I don’t know – an hour, and I went to bed.

11 Q. Where was Jay when you went to bed?

12 A. He was in our bed, asleep.

13 Q. At any time that night, did you find your husband in any bed in that house, with (b)  
14 (b)(6) ?

15 A. No, I did not.

16 Q. When you all woke up the next morning, did you share – how did you account for the  
17 location of (b)(6) when your husband woke up? Who woke up first, first of all? You or  
18 him?

19 A. Jay woke up first.

20 Q. And what – so when you woke up, what did you wake up to?

21 A. Jay woke me up with a cup of coffee.

22 Q. Do you know about what time it was?

1 A. I think it was around 9 o'clock.

2 Q. Did you reveal to him where (b)(6) was or what had happened or did he  
3 confront you about where she was?

4 A. No. He came up with a cup of coffee, and I can't remember his wording, but the plan  
5 – or at one point was that – earlier in the night – because she was staying at the billeting – and  
6 she kept insisting that she would have to – check out was either 10 o'clock or 11 o'clock. And  
7 so he said, "Are you going to wake her up and take her to billeting?" And I said, "She's not  
8 here." And he was surprised by that.

9 Q. Okay, well let's just stop right there. Did – first of all, when she left that night, do  
10 you know if she had a cell phone or not?

11 A. She did have a cell phone.

12 Q. You had observed her with one earlier?

13 A. Yes. She was talking on it.

14 Q. Okay. So at least, is it fair to say you knew she had the ability to call somebody  
15 because the cell phone was not at your house?

16 A. No, the cell phone – well, yes, she did, because she did call somebody for a ride.

17 Q. At some point, did the OSI contact you and attempt an interview about what  
18 happened that night?

19 A. Yes, the OSI called my phone and asked if they could come over and interview me. I  
20 missed the first portion of the conversation with the OSI, and I was expecting the Internet  
21 company to come.

22 Q. Right. There was a phone call and you were confused as to who was calling?

1 A. Yes.

2 Q. When did you realize it was the OSI that was trying to reach you?

3 A. I buzzed the gate, and went out like I do because I can't see from the glass doors, and  
4 so I walk out and look around the shrubbery, and it was two gentlemen. One was in a suit, and  
5 the other one was dressed nice. And they introduced themselves to me and told me that they  
6 were OSI agents.

7 Q. Did you bring them into your home?

8 A. I did bring them into my home?

9 Q. Did you have any idea why they – had you ever had OSI come to your house like this  
10 in your entire Air Force experience?

11 A. No. I never had the OSI come to my house.

12 Q. So did they tell you why they were there or did you have any idea what this was  
13 about?

14 A. No. And I invited them in, but the first thing they said to me was they wanted to talk  
15 to me about the night of the Seether concert.

16 Q. What were you thinking at that point – why they were there?

17 A. Well, I knew. I asked them. I asked them if I was in any trouble because (b)(6)  
18 had left our house.

19 Q. At some point while they were interviewing you, did it become clear that maybe they  
20 were there for a different reason?

21 A. Ah, in the beginning, no. They asked me questions and what had happened that  
22 evening, and who had come to our house, and they asked me if I'd like to make a statement or

1 write down my statement, and I said that I would. And we moved into the dining room, and I  
2 wrote my statement out for them. And then one of the gentlemen said, "We're here because  
3 [REDACTED] has accused your husband of sexually assaulting her."

4 Q. In any event, did you make your home completely available to do whatever they  
5 wanted to do, either to collect evidence or otherwise examine the premises?

6 A. I did. I absolutely did.

7 Q. Was that the only time that you were interviewed by the OSI?

8 A. Yes, Sir.

9 Q. Now I want to discuss with you the nature of the bedroom downstairs, the room that  
10 you took (b)(6) [REDACTED] to spend that night.

11 A. Yes, Sir.

12 Q. You previously testified that there was no lamp, either standing lamp or table lamp in  
13 that room, correct?

14 A. No, Sir.

15 Q. When you hit the switch – I mean you can see the level of brightness of the lights of  
16 this room, correct?

17 A. Yes.

18 Q. When you hit the switch to turn on the overhead light, it is immediately at its  
19 brightest?

20 A. No, Sir.

21 Q. What happens with the light?

22 A. It's an energy-saving light or it's – it starts out dim and then it becomes brighter.

1 Q. Do you have sense of how long it takes to get – to achieve full brightness?

2 A. I would say a minute or two.

3 Q. Now, when you come out of that room, if you go immediately down the hall out of  
4 that room, can you, from that level, go directly outside?

5 A. Yes, You can

6 Q. And how would you do that?

7 A. There's a door at the end of the hallway that leads into the garage.

8 Q. And if you get into the garage, how do you get out of the garage to the outside?

9 A. There is the garage door that opens with a remote control, where I park my car, and  
10 then the other garage does not have a garage door opener on it, but it does have a door, and there  
11 is a deadbolt.

12 Q. So if you leave that room and you go straight down the hall, you end up in the -- is  
13 the door to the garage open or closed?

14 A. It's closed.

15 Q. Okay. If you open that door and you go in the garage, the only ways to get out is  
16 through a garage door?

17 A. Yes, Sir.

18 Q. For you to get back up on the main level, how many steps do you have to take from  
19 that level?

20 A. Ah, 17.

21 Q. And when you get to the top of that level, as you come to the top of the stairs, what is  
22 directly in front of you?

1 A. Two closets.

2 Q. And so if a person wants to go to another place in the house, what are their options?

3 A. You can go left, into the living room or right, into the hallway.

4 CIV DC: Your Honor, at this time I would like to play what will be marked as Defense  
5 Exhibit Q for Identification.

6 MJ: You may.

7 CIV DC: Is there a – I'm not sure how to use this courtroom. Can we have the witness  
8 come and stand at least in a place where she can see?

9 MJ: That's fine.

10 CIV DC: Ma'am, would you step out from the witness box?

11 [The witness complied.]

12 CIV DC: What I'd like you to do is just go stand in the corner by the judge, and just  
13 watch what plays.

14 [The witness complied.]

15 [Defense Exhibit Q for Identification, a video of various areas of the accused's residence  
16 was played for the court.]

17 CIV DC: Okay, Ma'am, can you retake the witness stand?

18 [The witness complied.]

19 **Direct examination continued:**

20 Q. Can you describe for the court members what was just displayed on that very brief  
21 exhibit?

1           A. That's the downstairs bedroom, at nighttime. It was starting from the downstairs  
2 playroom where the daybed is, showing the light fixtures or the above lights, and then going  
3 down the hallway into the garage, showing where the laundry room is, what I call the wardrobe  
4 room, and going up the two flights of stairs to the main level where it dead ends at the closets,  
5 where you either have to go left or right.

6           Q. Is that a fair and accurate depiction of your house at night, going from the downstairs  
7 bedroom back to the upstairs?

8           A. Yes, Sir.

9           Q. I think we're just about done. I'd like to just address one other topic. In the month of  
10 March, and this is about the 23<sup>rd</sup> of March, is there anything significant that your husband did  
11 this year with his unit or with other pilots?

12          A. Ah, they all grew moustaches.

13          Q. Did your husband grow a moustache?

14          A. Yes, my husband did.

15          Q. Do you know when he started growing it?

16          A. March 1<sup>st</sup>.

17          Q. As of the 23<sup>rd</sup> of March – 24<sup>th</sup> of March, was his moustache visible?

18          A. Very, very visible.

19          Q. If you were six inches away from his face, looking at him, is there any way you could  
20 avoid seeing a moustache above his upper lip?

21          A. No, it was very wide and very big this way [indicating the width with her hands] and  
22 very full, and you could not have missed that moustache.



1 CIV DC: I have no further questions at this time, Your Honor.

2 MJ: Government?

3 **CROSS-EXAMINATION**

4 **Questions by the trial counsel:**

5 Q. Ma'am, tell me a little bit about (b)(6)

6 A. He's nine years old, and we knew that when we married that I could not get pregnant,  
7 and so we spent seven years trying to get pregnant. I did a lot of artificial insemination and  
8 three IVFs to be able to have (b)(6) and he's been a great kid.

9 Q. I imagine you consider him like a gift from God, then?

10 A. Absolutely, he was.

11 Q. Probably the most important thing in your life is (b)(6), isn't it?

12 A. My family.

13 Q. But (b)(6)

14 A. And my husband and my family, yes, absolutely.

15 Q. (b)(6) played basketball last year?

16 A. Yes, he did.

17 Q. And what age was he? You said nine?

18 A. He's nine. He turned nine April 18<sup>th</sup>.

19 Q. Okay, so he was eight during last year's basketball season?

20 A. Yes.

21 Q. Okay. Did you go to his games?

22 A. Not all of them, but yes.

1 Q. As many as you could, I imagine, as a proud mother, correct?

2 A. Absolutely. We went together.

3 Q. Yeah, I mean unless something pressing was going on, you'd be at his game, I would  
4 imagine?

5 A. Ah, yes, Sir.

6 Q. Okay. On the morning of the 24<sup>th</sup>, did (b) have an end-of-season basketball lunch?

7 A. Ah, yes, he did.

8 Q. Okay, and where was that?

9 A. At the Burger King in the food court.

10 Q. Okay, and what was the purpose of that?

11 A. It was the – the season had ended, and the coach was just inviting the kids to come  
12 and have lunch.

13 Q. A last get together, a celebration of the season?

14 A. Yes.

15 Q. Now, on the 23<sup>rd</sup> of March, when your husband showed up with people at your house,  
16 now you testified that you're a squadron commander's wife, been in the Air Force for a long  
17 time, it's not really unusual in the fighter pilot world to kind of have an impromptu get together,  
18 is it?

19 A. Ah, no, Sir.

20 Q. And I mean you've had a long history of the Air Force; you father was career Air  
21 Force, correct?

22 A. Yes, Sir.

1 Q. And your stepfather.

2 A. Well, my real father was killed, and...

3 Q. Okay, but he was an Air Force officer?

4 A. Yes, he was.

5 Q. And then your stepfather was an Air Force officer?

6 A. Yes, he was.

7 Q. And then you were married to another Air Force officer?

8 A. Yes.

9 Q. And now you're married to a current Air Force officer?

10 A. Yes.

11 Q. So I mean you are engrained in the culture of the Air Force, correct?

12 A. Yes, Sir.

13 Q. And almost all of these people are fighter pilots as well, right?

14 A. Yes, Sir.

15 Q. Your father, your stepfather, your first husband, your current husband, correct?

16 A. Yes, Sir.

17 Q. So you're ingrained in the fighter pilot culture as well?

18 A. Yes, Sir.

19 Q. Now, the way you described (b)(6) – well, first, was she intoxicated that night?

20 A. When I first encountered her, when I spoke with her when she was sitting on the  
21 stairs, yes, I thought she was intoxicated. She slurred some of her words some, and so I could  
22 tell that she had been drinking.

1 Q. Well, in fact, you believed that she was very intoxicated, didn't you?

2 A. I did write in my statement that she was very drunk.

3 Q. Well, in fact, you went to the length in your statement, you described at the  
4 beginning, "These three women were very drunk," correct?

5 A. I did write that.

6 Q. And then at the end, you said, "One last thing is that she was very drunk," correct?

7 A. I did, but I also...

8 Q. Did you write that?

9 A. Yes, Sir.

10 Q. Because that's the question. Did you write that?

11 A. Yes, Sir.

12 Q. And you put that at the end of your statement to the OSI, correct?

13 A. Yes, Sir.

14 Q. And you wanted to make sure, I mean that was one last thing you said, "She was very  
15 drunk." Correct?

16 A. Yes, Sir.

17 Q. Now, you describe a woman that sounds psychotic in your – walking around your  
18 house. Are you saying she was psychotic?

19 A. I did not describe her like that.

20 Q. I mean you describe a woman who is just wandering about, who won't go to sleep,  
21 and refusing to take directions. Isn't that what you were really describing?

22 A. No, Sir.

1 Q. You don't think so? Now think back to what you've just testified to.

2 A. I realize that.

3 Q. Just think back to what you've just testified to. Think about how you've described

4 (b)(6) Wouldn't you say that your testimony is talking about a crazy woman?

5 A. I thought she wanted to leave when she's on the phone asking for someone to pick her  
6 up.

7 Q. Well, my question for you, Ma'am, in your description of (b)(6) aren't you  
8 basically talking about a crazy woman?

9 A. No, Sir.

10 Q. Okay, so she wasn't acting crazy?

11 A. No, Sir.

12 Q. All right, would a better description be that she was just a nice, normal woman that  
13 was at your house? That's a simple yes or no.

14 A. No, Sir.

15 Q. She wasn't a nice, normal woman? Did you have any kind of run-ins with her?

16 A. She was not normal, no, Sir.

17 Q. Thank you. Did you have any kind of run-ins with her?

18 A. No, Sir.

19 Q. Did she try to steal things from your house?

20 A. No, Sir.

21 Q. Did she threaten anybody in your house?

22 A. No, Sir.

1 Q. Did you have some nice, normal conversations with her? Maybe you talked about her  
2 son; you talked about your son.

3 A. Yes, Sir.

4 Q. In fact, you kind of liked her.

5 A. I did not like her or dislike her.

6 Q. Well, Ma'am, do you remember testifying earlier that you, in fact, did like her?

7 A. I did not dislike her. I don't remember that, no, Sir.

8 Q. Is it possible that you testified earlier that you liked her?

9 A. I don't think that I would say that I liked her.

10 Q. And now is that in hindsight after she accused your husband or at the time did you  
11 have any kind of dislike for her?

12 A. I did not have any dislike or like. She was there for the evening. I spent five hours  
13 with her.

14 Q. Well, you know she was a physician's assistant, correct?

15 A. I thought she was a nurse.

16 Q. Okay, you knew she worked in the Medical Group?

17 A. Yes.

18 Q. Now the next morning, what time did you wake up on the 24<sup>th</sup>?

19 A. At 9 o'clock.

20 Q. You woke up at 9 o'clock?

21 A. Yes, Sir.

22 Q. Now you had something going on that day, correct? You had plans for that day?

1 A. Yes, Sir, I had the Pone children there, and we were going to do a barbeque outside.

2 Q. And who all was coming to the barbeque?

3 A. The Newbills were coming and the Reeds were coming.

4 Q. Okay, and that would be Anna Reed and her husband?

5 A. Yes, Sir.

6 Q. All right, and what time was that barbeque supposed to be?

7 A. Two or three o'clock in the afternoon.

8 Q. And did the barbeque happen with those people invited and did Anna Reed show up?

9 A. No, Sir. I called or texted and canceled.

10 Q. And why did you cancel?

11 A. Because Angela told me that her and Raymond were not going to be coming, and it

12 was actually her and I who had decided to have the barbeque.

13 [Jet noise.]

14 TC: Can you hold one second?

15 [The witness complied.]

16 Q. Okay, you can go ahead

17 A. Angela had...

18 Q. Angela Newbill?

19 A. Newbill notified me that morning...

20 TC: I'm sorry, just one second again.

21 WIT: I'm sorry.

22 [Jet noise.]

1 TC: I think that's it.

2 Q. Okay, so Angela Newbill...

3 A. Told me that her and Raymond would not be coming to a barbeque.

4 Q. Okay, so the reason you canceled the barbeque is because Angela Newbill wasn't  
5 coming to the barbeque?

6 A. I was tired. I had been up most of the evening until 4 o'clock in the morning, and if it  
7 was just going to be the Reeds and us, I was tired and I had to go to the Commissary...

8 TC: I'm sorry. Just a second.

9 [Jet noise.]

10 TC: Okay. Go ahead.

11 A. I didn't want to put a big effort into it if it was just going to be a few people.

12 Q. All right, so I just want to make it clear, okay, so you had a barbeque scheduled for  
13 that day, and because you had gone to bed about four...

14 A. Yes, Sir.

15 Q. ...and awakened around nine...

16 A. Yes, Sir.

17 Q. ...you were tired, right?

18 A. Yes, Sir.

19 Q. And because the Newbills canceled, you didn't want to go through with this?

20 A. Yes.

21 Q. Now, how was your husband feeling that day?

22 A. He was – he said he was hung over.



1 Q. Okay, hung over. Did he describe anything else?

2 A. No, he was hung over and but for being hung over, he did an awful lot that day.

3 Q. Yeah, what did he do that day?

4 A. He got up early with the children, when they first woke up, and he went down and he  
5 made a big breakfast for them. And when I came down at 9 o'clock, he was preparing for the  
6 barbeque. We had not decided at that point we were going to cancel it. I had not talked to  
7 Angela. And he went ahead and prepared the ribs to go into the smoker, and the brisket, and  
8 then he went to – he took the kids to Burger King to have lunch.

9 Q. And that was also for (b) s...

10 A. Yes.

11 Q. ...end of the basketball season?

12 A. I had said – I suggested, “Take them early so that (b)(6) and (b)(6) could have  
13 lunch or all three of them,” and then.

14 Q. Yes. I just want to stop you a second. But that lunch was going to be (b) s end-of-  
15 the- season basketball get together?

16 A. It was not like it was a – the kids were there, they were all having lunch, and yes, it  
17 was, and those children were there, and the Pone boys had a good time because there were lots of  
18 kids from the basketball team.

19 Q. All right. So they are going to (b) end-of-the-season basketball gathering, and  
20 they're going to have lunch there, correct?

21 A. Correct.

1 Q. All right, so go on. Sounds like Colonel Wilkerson is a busy little bee, but go on.  
2 What else is going on?

3 A. After they had lunch and the end-of-season basketball party, he met up with Major  
4 Goldsberry and his children, and they went and played baseball.

5 Q. Okay, and then after they played baseball, what did he do?

6 A. He came home.

7 Q. And what did he do when he came home?

8 A. Angela Newbill was over at the house, and her and I were sitting outside. It was a  
9 beautiful day, and he came in and he sat down next to me, and the three of us talked.

10 Q. All right.

11 A. And the kids were running around, playing.

12 Q. The kids ran around and played, and about what time did you go to bed?

13 A. That night?

14 Q. Yeah.

15 A. I went to bed at like 9:15-9:25.

16 Q. And how about you husband?

17 A. He was minutes behind me.

18 Q. All right. And so we've talked about what he was doing that day, what did you do  
19 after you woke up?

20 A. I cleaned the kitchen. I made all the beds. I organized the house and the Pone  
21 children's stuff. Cheryl was to be coming by that evening to pick the kids up, so I got their book  
22 bags together, I packed up their suitcase, made sure that I went through the house and that I had

1 all of the Pone children's belongings so that when their mother came, I would have everything  
2 ready for her.

3 Q. Sounds like you had a full day, too?

4 A. Well, no – well, Angela came over and we actually sat outside and talked.

5 Q. All right, so you had a friend over; you took care of the house; you took care of the  
6 children; a full, typical Saturday for you?

7 A. Yes.

8 Q. And other than being tired, you felt fine?

9 A. Yes, I did.

10 Q. Do you remember sending a text to Anna Reed on the morning of 24 March?

11 A. I did.

12 Q. And in that text, you told Anna Reed, "Hey, I'm sorry, but we have to cancel today,"  
13 correct?

14 A. I did.

15 Q. And you said, "I am very sick this morning," didn't you? Is that true?

16 A. Uh-huh.

17 Q. "And not getting any better." Isn't that what the text says?

18 A. Yes, it does.

19 Q. "Not sure what is wrong, but I was up to 5 AM." That's what the text says, correct?

20 A. Yes, that's correct.

21 Q. "And I can't keep anything down," is what the text says, correct?

22 A. Uh-huh.

1 Q. "Sorry, we'll have to try again soon." Is that what it says?  
2 A. Yes, Sir.  
3 Q. Was that a lie?  
4 A. It was a story just to cancel...  
5 Q. Was that a lie?  
6 A. ...the barbeque.  
7 Q. Was that a lie?  
8 A. Yes, Sir.  
9 Q. So you lied to your friend, and you told her details about being very sick, correct?  
10 A. I did.  
11 Q. You lied to your friend and said you couldn't keep food down, correct?  
12 A. Yes, Sir.  
13 Q. You lied to your friend and said you were up until five in the morning, correct?  
14 A. Correct.  
15 Q. Now your husband has referred to you as a "lost dog." Have you ever heard him talk  
16 to you about that way?  
17 A. Pardon me?  
18 Q. Your husband has referred to you as a "lost dog." Have you ever heard him talk to  
19 you about that?  
20 A. No, Sir.  
21 Q. I guess the reference is that you're the kind of person if there's a lost dog out there...  
22 A. Oh, I'm sorry. Yes, I do. I know what you're saying.

1 Q. What does that mean to you?

2 A. Well, that I do take in friends who need help, and also stray animals or – but he’s not  
3 calling me a “lost dog,” he’s calling me what some of my friends – not friends, but people that I  
4 do things for and get involved with.

5 Q. All right. And, basically, you’re a kind-hearted person who will take care of other  
6 people, correct?

7 A. Yes, Sir.

8 Q. Now, (b) left at approximately three in the morning, correct?

9 A. Yes, Sir.

10 Q. And that was without shoes?

11 A. Yes, Sir.

12 Q. Without a sweater?

13 A. I don’t know anything about the sweater.

14 Q. All right, did you see a sweater on her when she left?

15 A. She looked like she did – she had on black and jeans and a belt.

16 Q. But she clearly wasn’t wearing a coat, correct?

17 A. No.

18 Q. All right, and the temperature that morning at three was about 45 degrees.

19 A. Okay.

20 Q. Does that sound about right?

21 A. Yes, Sir.

22 Q. So it was chilly, correct?

1 A. Yes, Sir.

2 Q. And so a woman goes out in an Italian night at three in the morning without shoes,  
3 you had to have been concerned, right?

4 A. I was concerned. I went looking for her.

5 Q. Okay, what did you do the next morning to make sure she was okay?

6 A. Jay and I were discussing what had happened the night before with her leaving, when  
7 Colonel Ostovich arrived. And when he came into the house, I explained to him what had  
8 happened with (b)(6) the night before.

9 Q. And what did that have to do with making sure she was okay?

10 A. Colonel Ostovich had just dropped off Captain Manning at billeting, and I thought  
11 that he was going to...

12 TC: Hold on a second.

13 [Jet noise.]

14 Q. Please continue.

15 A. ...check with her to make sure that everyone got home okay.

16 Q. Did you check with her?

17 A. Did I check with her?

18 Q. Right.

19 A. No, I did not.

20 Q. Now, you're pretty well knitted into the community here in Aviano, correct? You're  
21 the IG's wife; the Deputy Ops Group Commander's wife. You're part of the Aviano base

1 community, right?

2 A. Yes, Sir.

3 Q. All right, now, your husband is part of the Wing leadership, correct?

4 A. Yes, Sir.

5 Q. In fact, I think we have a letter touting his great military character from the Medical  
6 Group Deputy Commander.

7 A. Yes, Sir.

8 Q. He's friends with the Medical Group Deputy Commander, correct?

9 A. Yes, Sir.

10 Q. And you knew that (b)(6) was a member of the Medical Group, correct?

11 A. Yes, Sir.

12 Q. Did either you or your husband that morning say "You know, I've got an idea, we'll

(b) call our good friend the Medical Group Deputy Commander and ask him to make sure (b)(6)

(6) got home that night"? Did you do that?

15 A. No, but we asked the Vice Wing Commander.

16 Q. That wasn't my question. My question is did you call your good friend or you  
17 husband's good friend and make sure she got home?

18 A. No, Sir.

19 Q. And when you asked the Vice Wing Commander, did he say "Yes, she's all right;  
20 nothing to worry about"?

21 A. Ah, no, Sir.

1 Q. All right. So you just left it at that point. Is that what I'm to understand?

2 A. Yes, Sir.

3 Q. All right, did you call Security Forces and say, "Hey, you know I'm kind of  
4 concerned. There is this woman. She left my house at three in the morning. She didn't have  
5 shoes on, there wasn't a coat, it was cold. You know can you make sure she's okay. Did you do  
6 that?

7 A. No, Sir. I did not know her last name.

8 Q. But do you have to know her last name to call the police and make sure "Hey, there  
9 was a woman. Her name was (b b) She's works at the Hospital. She left last night in the middle  
10 of night. Do you have any reports, anything like that?" Do you have to know her last name to  
11 do that?

12 A. No, Sir.

13 Q. Did you – I mean your husband has a direct line. He can call Colonel Ostovich any  
14 time, correct?

15 A. Yes, Sir.

16 Q. And I imagine that the Wing Commander is somebody he can talk to at any time he  
17 wants to.

18 A. Yes, Sir.

19 Q. Did you bother to call the Wing Commander? "Hey, Sir, it's kind of embarrassing,  
20 but you know how we're using the wingman concept in the Air Force. There's a woman who  
21 left the house last night, and I just want to make sure she's okay." Did you do that?

22 A. We could have done that, yes, Sir.



1 Q. You could have done that, but you didn't do it, but you didn't do it, did you?

2 A. No, Sir.

3 Q. Basically, you made absolutely no effort to make sure that the woman that left your  
4 house, that you described as "very drunk" at three in the morning was okay. You made zero  
5 effort, is that not correct?

6 A. Other than talking to Colonel Ostovich.

7 Q. And that wasn't until 11 the next morning, correct?

8 A. I believe it was before then, but close to it.

9 Q. Close to 11?

10 A. Yes, Sir.

11 Q. Well, I'm kind of confused here too. So you said that you showed (b)(6) the door; she  
12 leaves; you go driving around looking for her. Is that correct?

13 A. Yes, Sir.

14 Q. Now these (b)(6) boys seem to be – and I'm not making light of things – but they seem  
15 to be somebody you've got to keep a close eye on, correct?

16 A. You don't have to keep a close eye on them, they want to know where you're at.

17 Q. But if they wake up, your concern is that if they wake up and they call "Miss Beth,  
18 Miss Beth," and there's not an answer, there could be issues, correct? Is that what you're  
19 saying?

20 A. Jay would have heard them Jay would have come down.

1 Q. Okay. That's not what I'm asking. I'm asking is are you telling the court, telling me  
2 that the (b)(6) boys are such that it would not be good for them to wake up in the middle of the  
3 night and not be able to get ahold of somebody, that they might freak out?

4 A. I just said, earlier, that if they woke up, they could come upstairs and get me.

5 Q. Well, again, Ma'am, that's not my question. My question is: Would it be bad for the  
6 (b)(6) boys if they woke up in the middle of the night and they were calling out "Miss Beth, Miss  
7 Beth" and no one answered?

8 A. If there was not an adult in the house.

9 Q. It could cause issues, correct?

10 A. Absolutely.

11 Q. All right, so I imagine before you drove out in the middle of the night, at three in the  
12 morning, that you went upstairs and you said [knocked on wood] "Hey, Jay, you know that crazy  
13 lady? I've got to go find her. I'm going to be gone for a while. Listen for the (b)(6) boys." You  
14 did that, right, before you left?

15 A. No, I did not.

16 Q. So you just left in the middle of the night with your husband who can apparently  
17 sleep through everything you cannot sleep through – he sleeps through (b)(6) "screaming"  
18 on the phone, as you describe it.

19 A. Actually, she was not screaming.

20 Q. Well, other have, as yelling "Hey, you know fucking this and fucking that."

21 Apparently he can sleep through that, but you weren't concerned that he might not be able to

1 hear the poor (b)(6) boys saying “Miss Beth, Miss Beth”? Were you concerned, at all, when you  
2 left that the (b)(6) boys would be left alone in that house?

3 A. They were not left alone in the house.

4 Q. While your husband has slept through all this commotion that has awakened you,  
5 correct?

6 A. There was...

7 Q. The question is: Did your husband sleep through the commotion that awakened you?

8 A. Yes, Sir.

9 Q. All right. So, when you got back at four in the morning, I’m certain that the first  
10 thing you did was go up and tell Jay, dependable Jay that “Man, I’ve been out for the last hour,  
11 trying to find this woman. I cannot find her. What are we going to do?” Did you wake him up  
12 at that time?

13 A. No, I didn’t.

14 Q. So the first time you informed Jay that (b)(6) left in the middle of the night is  
15 when he brought you coffee at 0900?

16 A. Yes, Sir.

17 Q. And his question to you was, “Hey, do we need to wake our guest up and take her  
18 back to billeting?” Is that right?

19 A. “Are you going to?”

20 Q. “Are you going to wake our quest up and take her back to billeting?” All right, and  
21 what did you say at that time?

22 A. I said that she was not there.

1 Q. And did you go into the details of how (b)(6) was not there?

2 A. I did. I was telling him the whole story of the evening, of what happened.

3 Q. And what did your husband do at that point?

4 A. He was not happy, and was quite surprised at what happened during the night, and as  
5 we were discussing it, that's when Colonel Ostovich stopped in.

6 Q. So you must have discussed it for quite some time.

7 A. Well, I got up and went to the bathroom, and put my contacts on, and came down into  
8 the kitchen. There were kids, there were three different kids there. They haven't seen me since  
9 the night before.

10 Q. So a couple of hours have passed?

11 A. Not a couple of hours, but I got up at 9:00 and I think Colonel Ostovich came through  
12 at 10:30. We were talking.

13 Q. All right, an hour and a half. In that hour and a half, did either of you make any  
14 attempt to find out the location of (b)(6) ?

15 A. Jay texted Colonel Ostovich and asked if everyone had gotten home okay, and shortly  
16 thereafter Colonel Ostovich came through.

17 Q. Why would Colonel Ostovich know where (b)(6) was? You know he left before  
18 she did.

19 A. But (b)(6) – he left with Tanya Manning, who was her friend, and the three  
20 women were together, staying at billeting together.

21 Q. You never got the answer, did you? Did Colonel Ostovich ever tell you on the 24<sup>th</sup> of  
22 March that (b)(6) is okay?

1 A. No, he did not.

2 Q. Now, again being the kind and considerate and pillar of the fighter wing community, I  
3 would imagine that you made some efforts to return (b)(6) shoes to her?

4 A. No, I did not.

5 Q. I'm confused. Why would you not try to get this woman's shoes back?

6 A. It was not my responsibility. I was kind to her. I offered her to stay in my home.  
7 She was the one who was up and out or walking around, and she walked out the door. It was not  
8 my responsibility to find her and give her her shoes.

9 Q. So what you're saying is that it was too much of an effort to say "Hey Jay, why don't  
10 you swing by the Med Group, drop these off with the Ops Group – the Med Group Commander  
11 or the Deputy Commander, your great friend, and see if he can find out where these shoes go?"  
12 That was just too much?

13 A. Jay flew Monday, Tuesday, Wednesday and Thursday of that week. The last thing  
14 Jay's going to do is take a pair of shoes over to the Med Group to return to somebody.

15 Q. Seriously, Ma'am, that's too hard to go drive by the Med Group?

16 A. Was it too hard for her to drive by our house?

17 Q. Does she know where you live, Ma'am?

18 A. She could have asked.

19 Q. Who was she supposed to ask?

20 A. Well, she knew Gerremy Goldsberry.

21 Q. But you made absolutely zero effort to return her property, correct? Is that correct?

22 A. Yes. Yes, Sir.

1 Q. Now your testimony is, and I want to make sure you're one hundred percent clear on  
2 this, your testimony is the OSI came to your house, correct?

3 A. Yes, they did.

4 Q. You offered the shoes to the OSI, correct?

5 A. I did.

6 Q. And they refused to take them into evidence, correct?

7 A. Yes, they did – or they did not take them.

8 Q. Ma'am, again, your entire life sounds like it's been involved with the Air Force, so I  
9 imagine you know what it means to be an officer in the Air Force, correct?

10 A. Yes.

11 Q. And you would agree with me that if an officer were to climb into bed with a woman  
12 who was asleep and put his hands into her vagina, that would be conduct unbecoming an officer  
13 and a gentleman, correct?

14 A. Yes.

15 Q. Do you refer to Colonel Ostovich as "your husband"?

16 A. No, I don't.

17 Q. And your testimony is that Gerremy Goldsberry said that he would take (b)(6)  
18 home, correct?

19 A. He – I...

20 Q. That's a simple yes or no.

21 A. Yes.

1 Q. Do you often send your husband up to bed? I mean are you the one that tells him  
2 when it's time for him to go to bed?

3 A. Ah, no.

4 Q. Was your husband intoxicated on the 23<sup>rd</sup>?

5 A. He had had I think four or five drinks.

6 Q. Was he intoxicated to your knowledge?

7 A. I would not call it intoxicated.

8 Q. At some point your son and the youngest (b)(6) boy were asleep in the bedroom  
9 upstairs, correct?

10 A. Yes.

11 Q. And your testimony is that the youngest (b)(6) boy – is that (b)(6) ?

12 A. That's (b)(6) .

13 Q. Came down stairs, and that you put him in bed with the oldest (b)(6) boy – is that  
14 (b)(6) ?

15 A. (b)(6)

16 Q. (b)(6) – you put them in bed in the bedroom on the same floor where the party was,  
17 correct?

18 A. It was not a party. It was just a gathering.

19 Q. Well, okay the gathering – the same floor that the gathering was, correct?

20 A. Yes, Sir.

21 Q. While the people were still there?

22 A. Yes, Sir.

1 Q. Ah, now when – the next morning, you weren't mad at your husband?

2 A. I was mad at my husband. I was mad – I wasn't mad at my husband; I was mad that I  
3 was up all night.

4 Q. Yeah, but you didn't ask him to help, right?

5 A. Help what?

6 Q. With (b)(6); you didn't ask him to help with that situation.

7 A. No.

8 Q. Okay, so you, on your own, were the one who stayed up, right?

9 A. I did.

10 Q. And it wasn't your husband's fault that those people came home, right? I mean you  
11 blame Colonel Ostovich, right?

12 A. I don't blame Colonel Ostovich. Jay asked him to take them and go and it somehow  
13 came about that they were going to come in for one drink.

14 Q. Ma'am, I really need you to listen to the question I ask. Okay?

15 A. Yes.

16 Q. That's a simple yes or no; do you blame Colonel Ostovich for the women coming  
17 over there?

18 A. It's his fault that the women came to our house that night.

19 Q. Yes, so your husband had done nothing wrong on Friday night, right?

20 A. No, he did not.

21 Q. So there would be absolutely no reason for you to be angry with him on Saturday  
22 morning, correct?



1 A. Correct.

2 Q. Now when Colonel Ostovich came over, there was some point where Colonel  
3 Ostovich and your husband were outside on the – like a balcony or a patio or a deck or  
4 something that you have there at the house, talking, correct?

5 A. Yes, Sir.

6 Q. And that's when your husband was making his world famous barbeque or something,  
7 right?

8 A. It was right there outside that kitchen door.

9 Q. All right, and you weren't privy to the conversation that was going on over there,  
10 were you?

11 A. The door was open, but I wasn't listening.

12 Q. You weren't listening to the conversation?

13 A. No.

14 Q. And so they talked out there for a while, and you don't know what they talked about,  
15 right?

16 A. I do know what they talked about?

17 Q. What did they talk about?

18 A. They talked about Colonel Ostovich bringing Captain Manning back to the base and  
19 dropping her off, and they had the time of the check in [sic] wrong.

20 Q. All right, and so that's all they talked about is the fact that Captain Manning had a  
21 late checkout?

22 A. That's what Jay said to me, yes.

1 Q. All right, so you only know because your husband told you that, wasn't it? You  
2 didn't hear the conversation?

3 A. No.

4 Q. And how long did they talk?

5 A. Not very long. Just a few minutes.

6 Q. Now you and your husband weren't fighting that day, were you?

7 A. No, we were not fighting.

8 Q. It was just an average, normal day, right?

9 A. Yes, Sir.

10 Q. Now, Ma'am, the reality is that you did not offer (b)(6) a ride when you told her  
11 to leave at three in the morning, did you?

12 A. I did not mean for her to leave in the fashion that she went. I would have offered her  
13 a ride, and I went to look for her.

14 Q. All right, the question...

15 A. She...

16 Q. ...the reality is you did not offer her a ride at three in the morning, did you?

17 A. When she walked out the door, I said, "I will give you a ride."

18 Q. Now, Ma'am, in any statement that you had made, whether it's to the OSI or at the  
19 Article 32 investigation, have those words ever come out of your mouth, that you offered her a  
20 ride as she was leaving?

21 A. Yes, they did.

1 Q. Okay, and I'm going to show you both of those statements at this point, and I want  
2 you to read them carefully and tell me where it shows that you offered her a ride after she walked  
3 out the door.

4 [The witness reviewed the statements.]

5 A. It says it right here, where it says, "I offered her a ride to the base, and she said no.  
6 She seemed upset and chose to leave."

7 Q. If you will turn to your 32 testimony where it says, "I make the following corrections  
8 to my statement:" What does it say?

9 A. "I offered her a ride earlier in the evening."

10 Q. "Early in the evening"; correct?

11 A. But I offered a ride three different times. But that's – I don't know the context of  
12 this.

13 Q. And, Ma'am, you chose to put those words on that 1168, correct, that form right  
14 there. Those are your words, correct?

15 A. They are, and I wrote those down.

16 Q. Does it say "I told (b)(6) to leave. She walked out the door. And I was like  
17 'Wait (b)(6), let me give you a ride.'"

18 A. I said, "I will give you a ride."

19 Q. Do it say this after she left the house?

20 A. It does in this statement.

21 Q. After she left the house? Please read it.

1 A. "She seemed upset and she chose to leave. I offered her a ride to the base, and she  
2 said no."

3 Q. Does it say "after she left the house"?

4 A. That's the only time she left the house.

5 Q. All right. Now I want you to turn to your Article 32 testimony in which you  
6 specifically describe this. "I told her she had two choices; either she could leave or she could go  
7 back to bed." Remember that?

8 A. Ah, yes, it's in both statements I believe.

9 Q. All right. That's nice. Do you remember that?

10 A. Ah, yes.

11 Q. Does it say in that statement that she chose to leave and I said "(b) (6)", wait, no, I will  
12 give you a ride"?

13 A. I'm sure it's not written here, but that's what happened.

14 Q. Okay. Now you had an opportunity to read – I'm going to retrieve both of those  
15 statements from you.

16 A. Okay.

17 Q. You had an opportunity to review that statement before you signed it, correct?

18 A. I did.

19 Q. And you had an opportunity to make any corrections to it if you didn't think it was  
20 accurate, correct?

21 A. I did.

1 Q. And you took an oath and your swore to God that that statement was true to the best  
2 of your knowledge and belief, did you not?

3 A. Yes.

4 Q. And you lied in that statement just like you lied to your friend when you said that you  
5 were sick. Is that not true?

6 A. I did not lie in that statement.

7 Q. But you did lie to your friend?

8 A. I did not lie to my friend; I was just making...

9 Q. We've already gone through that, Ma'am. Wasn't – didn't I ask you a series of  
10 questions?

11 A. Yes.

12 Q. We went through each one of those and you admitted those were lies, correct?

13 A. I think a lie over a barbeque is a lot different than a lie under oath.

14 Q. I'm certain you do. Now, Ma'am, the truth is (b)(6) has absolutely zero  
15 reason...

16 CIV DC: I object, Your Honor. She's not to speculate on whether another person would  
17 tell the truth or not.

18 TC: She can tell me if she knows it or not. I'll ask...

19 MJ: I will sustain the objection based on how that phrasing was going. If you want to  
20 rephrase your question, we'll see if there's an objection at that point.

21 **Cross-examination continued.**

22 Q. You treated (b)(6) with nothing but hospitality that night, correct?

1 A. Yes, I was hospitable.

2 Q. You were friendly to her, correct?

3 A. Yes, I was.

4 Q. You didn't try to steal from her?

5 A. No.

6 Q. You didn't in any way yell at her?

7 A. No.

8 Q. [Approaching witness.] You did absolutely nothing to give her a reason to falsely  
9 accuse your husband of putting his finger in her vagina?

10 CIV DC: Your Honor, I object to him approaching the witness like this. I think it's  
11 intimidating and improper. He can step back, but I believe that this is an improper use of the  
12 courtroom.

13 MJ: I'll overrule the objection, and you may continue.

14 **Cross-examination continued.**

15 Q. Did you hear the question?

16 A. My husband did not do that.

17 Q. The question was not that. The question was do you know of any reason why she  
18 would falsely accuse your husband of putting his finger in her vagina?

19 A. Ah, no, I don't know of any reason.

20 TC: Nothing further.

21 MJ: Defense?

22 CIV DC: We'd like a recess, Your Honor.

1 MJ: We will have a short recess.

2 (The court-martial recessed at 1727 hours, 31 October 2012.)

3 **END OF PAGE**

1 (The court-martial was called to order at 1748 hours, 31 October 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Defense counsel, when you're ready.

6 [The defense counsel conferred.]

7 **REDIRECT EXAMINATION**

8 **Questions by the civilian defense counsel:**

9 Q. Ma'am, during the cross-examination, the trial counsel asked you about your family  
10 history.

11 A. Yes, Sir.

12 Q. Air Force father; former Air Force husband; current Air Force husband. You  
13 understand what Air Force Core Values are, correct?

14 A. Yes, Sir.

15 Q. And even had said that, you divorced an Air Force member, correct?

16 A. Yes, Sir.

17 Q. And so do you in any way, shape or form feel that you have to save your marriage to  
18 have some livelihood for you and your son?

19 A. No, Sir.

20 Q. If, in fact, these allegations were true, would you, for one minute, abide what your  
21 husband did?

22 A. Absolutely not.



1 Q. Do you actually have choices in life?

2 A. Yes, Sir.

3 Q. That you could pursue?

4 A. Yes, Sir.

5 Q. And you've pursued them before, haven't you?

6 A. Yes, I have.

7 Q. And you have a family that would support you?

8 A. Yes, I do.

9 Q. Ma'am, did you find your husband in bed with another woman at your home on the  
10 23<sup>rd</sup> through the 24<sup>th</sup> of March of this year?

11 A. No, I did not.

12 Q. Now, the next morning, when Colonel Ostovich came by, you explained to him that  
13 (b) left during the night, correct?  
(c)

14 A. I did.

15 Q. And is he in a position of authority?

16 A. Yes, Sir.

17 Q. And did you trust that if there was or something that could be done, he would follow  
18 up on it?

19 A. Yes, Sir.

20 Q. Was it wrong when you sent this text to – what's her name – Reed?

21 A. Anna Reed.

1 Q. Was it wrong for you to not be fully forthcoming about why you were canceling the  
2 barbeque?

3 A. Yes, Sir.

4 Q. Would you like to explain to the court members why you felt it was okay to tell her  
5 what you did?

6 A. Well, I – well, I mean I always feel bad to cancel something that I’ve invited  
7 somebody to, and I just was tired, and Angela wasn’t coming, and I did make up a story, and I  
8 will apologize to her for that. That’s not right.

9 Q. Now one last thing, with respect to the OSI statement, at the very end of the OSI  
10 statement that you gave, where it said I think something about (b)(6) being very drunk...

11 A. Yes, Sir.

12 Q. Why did you write that?

13 A. The OSI agent asked me to.

14 Q. Can you explain how that came about?

15 A. Because he said about her that we should say she was very drunk, and I said that I did  
16 write in there that she was very drunk. And he actually, when I was writing my statement at the  
17 table, the phone rang, and one of the OSI agents got up and went into the living room and was  
18 talking on the phone when I finished my statement. And I handed it or passed it over to him. He  
19 read it; kept it in front of him. And when the other agent came in from talking on the phone, he  
20 turned it and he read it, and he made a comment that I should mention about them – her being  
21 very drunk. And I said, “I did put that in there.” And he said, “When we Z this out and you initial

1 it, you cannot add any more to it.” And I did that last statement was after – I wrote after they  
2 both read it.

3 Q. In any event, at 3 o’clock in the morning when she left your home, was she very  
4 drunk?

5 A. No. Like I said in the Article 32, she had rallied right after we had the moment of  
6 talking on the steps. She seemed fine to me. She was erratic and somewhat had no direction, but  
7 she was not intoxicated or falling down drunk. I did not put her downstairs in a room where she  
8 was incapacitated. She was back up; she was talking on the phone; she was – my best way to  
9 describe her was erratic that night.

10 Q. And this was a mature woman; you would agree with that?

11 A. Yes, a middle-aged woman.

12 Q. Who had a cell phone and who knew how to use it?

13 A. Yes, Sir.

14 CIV DC: Your Honor, I did fail earlier to admit the video; Defense Exhibit Q for  
15 Identification I offer now into evidence as Defense Exhibit Q.

16 TC: No objection.

17 MJ: Admitted.

18 CIV DC: I have no further questions at this time, Your Honor.

19 MJ: Anything further, government?

20 TC: Yes, Your Honor.

21 **RE-CROSS-EXAMINATION**

22 **Questions by the trial counsel:**

1 Q. Ma'am, I believe you when you say, "She wasn't drunk," but at the time you did your  
2 1168, and that's your statement to the OSI, correct?

3 A. Yes, Sir.

4 Q. Okay. You described (b) as, "She kept introducing herself to me, and asking where  
5 her purse and shoes were," correct?

6 A. Yes.

7 Q. And that is after you said, "One last thing is that she was very drunk, and did not  
8 know who I was or where any of her belongs were," correct? Did you say that?

9 A. I did. I wrote that. That was the last paragraph.

10 Q. So the last thing that you put on your 1168 made it perfectly clear that you were  
11 trying to convey the impression that (b)(6) was very drunk, correct?

12 A. Yes, Sir.

13 TC: Nothing further.

14 MJ: Based on that?

15 CIV DC: No further questions, Your Honor.

16 MJ: Members do you have any questions of this witness?

17 And Colonel Rood does. Just indicate one you've had an opportunity to write the  
18 question out.

19 [After the question was reviewed by counsel, the bailiff handed it to the military judge.]

20 MJ: Lieutenant Colonel Rood's question will be marked as Appellate Exhibit XXIV.

21 Appellate Exhibit XXIII is the prior question to Dr. Frank from Colonel Rood.

22 A couple of questions for you.



1           A. When I was in the room putting the kids to bed, they both or one of them asked about  
2 Jay, and I said that I would go get him and have him come in and tell them good night. And I  
3 did. I went in, and Jay followed me back. (b)(6) was sitting on the other side of the bed  
4 where (b)(6) was because she had wrapped his leg or his ankle with the Ace bandage. And  
5 Jay came in, and he was on the side where the bathroom would be, and he told them a quick  
6 airplane story. There was no book, and he did not read a story.

7           Q. And how many people were in there when the accused was telling that story that you  
8 were just talking about?

9           A. Myself, (b)(6), the P(b)(6) children and Jay.

10          Q. Would you please describe when (b)(6) would have ever been in the bedroom  
11 alone with the children to hear about their father's death and what happened after she exited, if  
12 you are able to answer that question, and if you don't understand the question, then...

13          A. I understand. I think the only time she would have been there alone is when I walked  
14 to find Jay to bring him back to read the story or to tell the story.

15          Any follow-ups to either of those questions?

16          MBR (Colonel Stentz): [Nodded in the affirmative.]

17          MJ: And I've got an additional question from Colonel Calta.

18          And if the bailiff will retrieve that question.

19          [The bailiff complied.]

20          MBR (Colonel Stentz): Would you want the follow-up now, Sir?

21          MJ: Oh, I'm sorry. I must have misunderstood the nod.

1 MJ: You say there is a follow-up question – if you can just voice what is the follow-up  
2 question?

3 MBR (Colonel Stentz): You didn't quite answer the question, the second half of it  
4 because...

5 MJ: All right, if you could explain as far as the – and what happened after she exited. If  
6 you could explain a little bit more about that question?

7 MBR (Colonel Stentz): Her demeanor, what she talked about, what she did with other  
8 people...

9 MJ: After she exited what?

10 MBR (Colonel Stentz): Hearing the story about the father.

11 MJ: Okay. All right. Thank you very much.

12 **Examination by the court continued.**

13 **Questions by Colonel Stentz (asked by the military judge):**

14 Q. Can you describe a little bit what happened, what (b)(6) – her demeanor was  
15 after she exited after the bedroom story – the bedtime story – excuse me.

16 A. That's when she was – before we went into the bedroom to put the kids to bed, she  
17 had been sitting by herself on the stairs. And when we came out of the bedroom, she seemed a  
18 little more lively. We went into the kitchen. She was talking to Major Goldsberry; she was  
19 talking to Major Lowe; she was talking to Jay and myself. And she seemed better, fine, more  
20 participating in what was going on in the house.

21 MJ: Do you have any follow-up along those lines regarding those questions or does that  
22 answer your question?

1 MBR (Colonel Stentz): I don't how to answer that, Sir.

2 MJ: All right, if there is – if you're thinking and if there's another question you want to  
3 ask, then you can certainly write it down and we can take a look at it, so let me know if that is  
4 something that you would like to do.

5 [After Colonel Calta's questions were reviewed by counsel, the bailiff handed them to the  
6 military judge.]

7 MJ: Colonel Calta's question will be marked as Appellate Exhibit XXVI.

8 I have a couple of questions for you.

9 **Questions by Colonel Calta (asked by the military judge):**

10 Q. Was (b) crying when she was on the phone to Suzanne Berrong or whoever she was  
11 on the telephone to, that you had testified about?

12 A. No, She was not crying. That's when she was being kind of loud and using bad  
13 language, saying that she was at a house where she didn't know who the people were.

14 Q. Were your husband and (b) ever alone in the room with the (b)(6) boys to the best of  
15 your knowledge?

16 A. No, they were – or no.

17 MJ: And I've got another question from Colonel Rood and another Question from  
18 Colonel Stentz. If you could just please retrieve both of those?

19 [The bailiff complied.]

20 WIT: Can I say something to answer his question?

21 MJ: Yeah, if there is...

22 **Examination by the court continued.**



1           **In response to the question of Colonel Stentz:**

2           A. Colonel Stentz, just as we first came out and was in the kitchen is when I was talking  
3 to Captain Brock, and I took her home. And when I can back five minutes later is when (b) and  
4 everybody – not Colonel Ostovich and Major Manning, but all of us were in the kitchen, and  
5 that’s when she was talking and seem fine, as best as fine was that night.

6           [After Lieutenant Colonel Rood’s questions were reviewed by counsel, the bailiff handed  
7 them to the military judge.]

8           MJ: Colonel Rood’s – his – this question will be marked as Appellate Exhibit XXVII,  
9 and Colonel Stentz’s question is going to be marked as Appellate Exhibit XXVIII.

10          All right, the first question.

11           **Questions by Lieutenant Colonel Rood (asked by the military judge):**

12          Q. Did (b) ever wrap her arm around your husband’s during the time in the kitchen?

13          A. She put her arms around both of us at one time, at the same time. She was in between  
14 us.

15          Q. How did that make you feel at that time?

16          A. I didn’t think that she was flirting or that it was just a “Oh,” like “my new friends,” or  
17 something such as that. It wasn’t uncomfortable or anything like that, and it was very quick, but  
18 it was both of us at the same time like “Oh, you guys are fun,” or “Oh, I’m glad to be here.” I  
19 don’t even remember the comment, but it was just something that was said and it was not in any  
20 way strange or flirting or like that.

21          MJ: All right.

1 MJ: Colonel Stentz, your question, at least as it's phrased here, I don't see a question that  
2 I can ask or that can be answered. If there is a question that you would like to have asked of this  
3 witness, then you may.

4 MBR (Colonel Stentz): I don't know how to ask it without it being "meaning" or  
5 "implying" or...

6 MJ: Well, I will say this: Don't you – thank you – in formulating your questions, the  
7 easy thing to do is to ask the question that you feel that you need the answer to. And then we  
8 will respond, and you're not an attorney, I don't expect you to try and anticipate what you can or  
9 can't ask. Ask what you – or ask us the questions you would like to ask, and then we will  
10 potentially ask what we think...

11 CIV DC: If I may, Your Honor, may I ask some follow-up questions, and then I may be  
12 able to address those points or not, and then if he still has a question, obviously...

13 MJ: And, Sir, I mean – what we can go ahead and do is just – I mean we've had a fair  
14 number of questions that have been asked and answered up to this point. I have not yet given,  
15 although we certainly will be giving both defense and trial counsel an opportunity to ask any  
16 follow-up questions. I think at this juncture, I'd be glad to allow defense to ask some follow-up  
17 questions, as well as trial counsel. So you may do so if you would like.

18 CIV DC: Yes, Your Honor.

19 **REDIRECT EXAMINATION**

20 **Questions by the civilian defense counsel:**

1 Q. Mrs. Wilkerson, did you – first of all, there was the period of time that you took  
2 Captain Brock back to the base and then came back, so you don't know what was happening  
3 while you were gone, correct?

4 A. Yes, Sir.

5 Q. Okay, so things may have happened outside of your presence?

6 A. Yes.

7 Q. Secondly, you were – people were in the kitchen and different times, correct?

8 A. It was the kitchen and the porch.

9 Q. Right, so you were not with everybody all the time?

10 A. No, I was not.

11 Q. Now, with respect to what you did observe, did you see any kind of physical  
12 interaction between (b)(6) and either Major Lowe, Major Goldsberry or your husband  
13 independent of the time you say you saw her – that she was between you and your husband?

14 A. Ah, I saw her talking to Major Goldsberry, and I can't remember if she just had her  
15 hand on his shoulder, but she was leaning in and saying something to him. And I also witnessed  
16 her kind of hit [hit her hands together] Major Lowe.

17 Q. Did you see, at any point, her touch his head in any way?

18 A. Oh, it was his head. I'm sorry.

19 CIV DC: No further questions, Your Honor.

20 MJ: Do you have any follow-up to any of the questions, trial counsel?

21 TC: No, Your Honor.

1 MJ: In light of those questions and responses, do the members have any additional  
2 questions of this witness?

3 That's a negative response from the members.

4 Presumably subject to recall?

5 CIV DC: Yes, Your Honor.

6 MJ: Thank you for your testimony. You're going to be temporarily excused, which  
7 means that your testimony may be needed at some later point.

8 WIT: Okay.

9 MJ: Do not discuss your knowledge of this case or your testimony with anyone other  
10 than counsel, the accused or this court.

11 WIT: Yes, Sir.

12 MJ: You may step down.

13 WIT: Yes, Sir.

14 CIV DC: Your Honor, I've recovered Defense Exhibit P from the witness and I'm  
15 returning it to the court reporter.

16 [The witness left the courtroom.]

17 MJ: All right, members, we are at a good breaking point for the evening. I will remind  
18 you that you have not heard or received all of the evidence in this case, and you certainly have  
19 not received the law in this case. This is not the time to deliberate or discuss amongst yourself or  
20 to begin deliberative process. I'm not going to repeat the instructions regarding what you're not  
21 supposed to do; we've talked about it numerous times. If, however, the members have any  
22 questions regarding those instructions, I'll be glad to respond to them.

1 MJ: Members, do you have any questions before I release you until tomorrow, ready to  
2 go back on the record at eight in the morning tomorrow morning? Are there any questions from  
3 the members?

4 That's a negative response from the members.

5 We are in in recess until 8 o'clock tomorrow.

6 (The court-marital recessed at 1815 hours, 31 October 2012.)

7 **END OF PAGE**

1 (The court-martial was called to order at 0810 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Prior to coming on the record this morning I did have an 802 with trial and defense  
6 counsel present. During that 802 defense counsel informed me that he understood that a court  
7 member approached Dr. Frank and commented that he had some questions for Dr. Frank, the  
8 expert witness for the defense. At least to the defense counsel's understanding, there were no  
9 substantive matters discussed and there were no questions actually provided. However, the  
10 defense counsel wanted to ensure that we address that on the record.

11 Does either trial or defense counsel like to object to or supplement what was discussed  
12 during that 802?

13 ATC: No, Your Honor.

14 CIV DC: No, Sir.

15 MJ: All right, the court's intention is to bring the member, Colonel Calta and to first  
16 confirm whether such a conversation occurred and the parameters of that conversation, and to  
17 then, assuming that it is as was at least initially understood by the defense counsel, my intention  
18 is just to ensure that the member understands that there is a process that there are any questions  
19 that he can ask those questions – in fact, that he can even ask those questions even if a witness is  
20 no longer on the stand, and then we can at least address whatever questions he may have.

21 Bailiff, if you would please have Colonel Calta come out.

22 [The bailiff left the courtroom and returned with Colonel Calta.]

1 MJ: Colonel Calta, if you'd just come in – you can actually have a seat in your seat back  
2 there if you like.

3 All right, Colonel Calta, I just wanted to confirm a couple of things with you. First, did  
4 you have an opportunity at some point last night to see Dr. Frank? Dr. Frank was one of the  
5 witnesses that testified in the trial. Did you have an opportunity to see or talk to him at any point  
6 last night?

7 MBR (Colonel Calta): Just so I'm clear, Dr. Frank is the one in the yellow tie.

8 MJ: Right.

9 MBR (Colonel Calta): I saw him this morning at the coffee bar and said hi to him.

10 MJ: Okay. All right.

11 At any point, do you recall if you made a comment or to the effect of you may have some  
12 questions for him?

13 MBR (Colonel Calta): I did. I said I had some questions I'd like to ask him, but I knew I  
14 couldn't at that time.

15 MJ: All right. Outstanding. And just so you know, there's no information that came to  
16 me that would suggest that the conversation was anything more than what you just said. But in  
17 light of that conversation, I just wanted to ensure that you understood that if you have substantial  
18 questions of any witnesses, that you do have an opportunity to ask those questions and even in a  
19 circumstance such as this, where the witness is no longer on the stand, if you still have a question  
20 for a witness and just that you can use the court member questionnaires, provide that question to  
21 the court, and then we can address whether or not or to what extent we can provide a response.

1 MJ: But my goal here was just to ensure that you understood that there was a process, so  
2 as things develop, and you do have a question relative to this case for that individual, that we can  
3 actually do that.

4 MBR (Colonel Calta): [Nodded understanding.]

5 MJ: Colonel Calta, I'm seeing from the nod of your head that you understand.

6 MBR (Colonel Calta): Yes, Your Honor.

7 MJ: You understand the process?

8 MBR (Colonel Calta): Yes.

9 MJ: Any follow-up questions – individual questions from either defense or trial counsel?

10 CIV DC: No, Sir.

11 ATC: No, Sir.

12 MJ: All right, Colonel Calta, you can return back to the deliberation room. We will be  
13 with all of you very shortly. Thank you.

14 [Colonel Calta left the courtroom.]

15 MJ: All right, trial counsel and defense counsel, any further questions or issues that you  
16 would want to bring to the attention of the court before we proceed?

17 ATC: No, Your Honor.

18 CIV DC: No, Sir.

19 MJ: Defense, you are prepared with your witnesses at this point. Is that correct?

20 CIV DC: We are ready, Your Honor.

21 MJ: Bailiff, if you will let the members know that we are ready for them to come out,  
22 and bring them out.



1 [The bailiff left the courtroom.]

2 (The Article 39(a) session terminated at 0816 hours, 1 November 2012.)

3 **END OF PAGE**

1 (The court-martial was called to order at 0817 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense counsel, you may continue.

6 CIV DC: Your Honor, at this time the defense calls Emily Ozgul to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 **MRS. EMILY ANN OZGUL**

9 was called as a witness for the defense, was sworn, and testified as follows:

10 **Questions by the assistant trial counsel (Captain Beliles):**

11 Q. Would you please state your name for the record, Ma'am?

12 A. Emily Ann Ozgul.

13 Q. And where do you currently reside?

14 A. Exemption, Italy.

15 Q. And do you know the accused in this case?

16 A. Yes.

17 ATC: Thank you.

18 Your witness.

19 CIV DC: Thank you.

20 **DIRECT EXAMINATION**

21 **Questions by the civilian defense counsel:**

22 Q. Ma'am, are you married?

1 A. Yes.

2 Q. Who is your husband?

3 A. Ender Ozgul.

4 Q. Is he assigned here at Aviano?

5 A. Yes, he is. He is the Deputy Commander for the Medical Group.

6 Q. Now, can you briefly describe for the court members just your experience of with the  
7 Air Force, moving around, assignments, and that sort of thing?

8 A. Okay. Yeah, ah, we've been in for 15 years. Our first assignment was at Tinker.  
9 You want that kind of history or would you...

10 Q. Right. Right. Exactly.

11 A. We were at Tinker for a year and a half. We were in San Antonio for five years. We  
12 were at Clovis, New Mexico, for two years; Incirlik, Turkey, for two years; McGuire for two  
13 years; Maxwell for one year; and we've been here for a year and a half.

14 Q. Now, have you been independently employed outside the home?

15 A. Yes, I have. Several times.

16 Q. Can you describe for the court members your education and the types of jobs you've  
17 had?

18 A. I have a Bachelor's in Psychology and a Master's Degree in Agency Counseling.  
19 I've had my degree for 21 years. I'm licensed in, currently, three states – Missouri, Texas, and  
20 Alabama. Do you want my whole work history or...

21 Q. Well, just, again, sort of...

1           A. Primarily, I've worked with lots of adolescents and lots of adults. My last  
2 employment was in Alabama, where I worked as an outpatient intensive therapist with adults  
3 who were having mental health issues and also addictions in adolescents.

4           Q. Okay. That's great. Thank you very much. Now, how long have you been assigned  
5 here?

6           A. Since June of 2011.

7           Q. You said, a minute ago, you knew Colonel Wilkerson. Do you also know his wife,  
8 Beth?

9           A. Yes.

10          Q. Have you had opportunities to interact with them socially?

11          A. Yes.

12          Q. Can you describe to the court members the kind of social activities you've been  
13 involved in with the Wilkersons as husband and wife?

14          A. Ah, many times we've gotten together as a group of people. We see them at the Air  
15 Force functions. We've gone on three family vacations with them. Their family has been at our  
16 house; we've been at their house; we've been at other you know friends' homes. There's been  
17 times that we've gone shopping together, for day trips, for tours around the Aviano area.

18          Q. Now you mentioned three family vacations. Can you describe just the location and  
19 the duration of those vacations?

20          A. Our first trip was in February of last year. We went up to Garmisch for the long  
21 weekend.

22          Q. Was that February last year or this year?

1 A. Oh, this year. I'm sorry. Yes. I'm sorry. Yeah, February of this past year.

2 And we went for a long weekend with a group of friends, and we went skiing and  
3 snowboarding and sledding and out to dinner. And the second trip was in April, and we went to  
4 Crete, once again with a group of friends and our children, and it was for four nights and five  
5 days. And then, recently, in August, we went to Austria for a long weekend, and it was just us  
6 and the Wilkersons at that point.

7 Q. So would it be fair to say, then, on these vacations you were with them – you saw  
8 them, really, over an extended period of time, but...

9 A. Yes.

10 Q. ...hourly, if not daily?

11 A. Yes.

12 Q. Okay. Now, did you have – let's take the vacation in February that you had with  
13 them. Did you have an opportunity to observe their interaction and demeanor as husband and  
14 wife?

15 ATC: Objection, Your Honor. Relevance?

16 MJ: Response? One word response?

17 CIV DC: Yes, Your Honor, they had an opportunity to observe their demeanor before  
18 the incident.

19 MJ: All right, what we'll do then, members, we'll – it's clear we're going to have to  
20 discuss this potentially in a little bit more detail. So, in light of that, members, if you would  
21 please return to the deliberation room.

22 (The members left the courtroom at 0822 hours, 1 November 2012.)

1 (The court-marital was called to order at 0823 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 [The witness remained on the witness stand.]

6 MJ: Before we get to the substance of this objection and response, since there is the – my  
7 intention is to disclose to both trial and defense counsel that I am acquaintances with Emily  
8 Ozgul. Her and her husband were at Incirlik while I was at Incirlik as an SJA. I don't know of  
9 anything that would cause a conflict in me sitting as the judge, and our interactions were  
10 primarily professional. My wife, I think, spent time with them as well. However, certainly since  
11 there's an objection I'm going to be ruling on at this time, and it's brought to my attention that  
12 this is the witness, I certainly will open myself up to any further questions by either the defense  
13 counsel or trial counsel as to my ability to sit as a judge in this case.

14 Does either trial counsel or defense wish to ask any additional questions of this court?

15 ATC: No, Your Honor.

16 MJ: Okay.

17 CIV DC: No, Your Honor. We were aware of that, and since we're not going judge  
18 alone, we're not concerned.

19 MJ: All right.

20 Now, to the objection. First of all, if you would go ahead and please ask the question so I  
21 can hear the response and then we can resolve this objection.

1 CIV DC: Well, may I just proffer it, Your Honor, because it's more extended than just a  
2 question?

3 MJ: Sure. Okay, then please do so.

4 CIV DC: Right. We're asking her to just describe their demeanor, no conversations, no  
5 hearsay, no anything like that, but just their demeanor as husband and wife and their interactions  
6 in February. Then they go on an extended vacation in April, which is after the incident, and we  
7 anticipate she's going to testify that their demeanor was the same as husband and wife in their  
8 interactions after the incident. Given that the government's theory is that Beth Wilkerson found  
9 her husband in a sexual act with another woman, the fair inference would be that that would  
10 disrupt their relationship in some way, and we want to show that at least for someone who had  
11 observed them just before and just after, there was no change in their demeanor. And so we're  
12 offering that as circumstantial evidence.

13 MJ: Based on that proffer, government, do you still have an objection?

14 ATC: We do, Your Honor. We think this would essentially be improper opinion  
15 evidence about the state of the marriage of the Wilkersons, Your Honor. We were under the  
16 impression he was laying a foundation for character for truthfulness. Obviously, this is a  
17 different course. However, we don't believe this is a permissible character trait to provide  
18 evidence for, and that doesn't seem to be his intention. I don't think she's qualified to express  
19 opinions about the state of their marriage.

20 MJ: All right, I will – to the extent that the defense is going to be eliciting demeanor  
21 evidence and not an opinion as to the state of their marriage, just what she observed and whether  
22 or not there was a change when there's two different times, I will overrule the objection.

1 MJ: If, obviously, government, if it goes beyond that, if there's an additional objection,  
2 then voice the objection at that time.

3 CIV DC: And may I state, I am not going to ask for an opinion about the state of their  
4 marriage. I'm just going to ask her to describe demeanor, and then we will do the character for  
5 truthfulness.

6 MJ: Thank you. The objection is overruled – by the government.

7 Call the members, please.

8 [The bailiff left the courtroom and returned and spoke with the military judge.]

9 MJ: All right, actually, Mrs. Ozgul, you may temporarily step down from the stand. We  
10 will be with you very shortly.

11 [The witness left the courtroom.]

12 MJ: Everyone may be seated.

13 The bailiff just brought it to my attention – more specifically, a court member recognized  
14 or was aware that when Mrs. Ozgul was called to testify that – and this is just how the  
15 information was relayed to me, is that he had gone out to dinner with or in some form or fashion,  
16 had gone out to dinner with Mrs. Ozgul and her family, and knew, in some capacity, her family,  
17 and wanted to bring that to the attention of the court so that we could potentially resolve this. I  
18 don't know anything more than that, but my intention is, and I understand we're breaking up the  
19 witness a little bit, but based on the nature of this, as well as potentially just the nature of the  
20 testimony that's being elicited, which I think is going to be relatively short, but that my intention  
21 is to have the member come out and then we can just put on the record what the information is



1 and then we can determine whether there's any second or third order effect that we need to  
2 address.

3 MJ: Trial or defense counsel, do you have any additional comment or position prior to  
4 me calling out Colonel Marks?

5 ATC: No, Your Honor.

6 CIV DC: No, Sir.

7 MJ: Bailiff, please bring out Colonel Marks.

8 [The bailiff left the courtroom and returned with Colonel Marks.]

9 MJ: Colonel Marks, please have a seat.

10 [The member complied.]

11 MJ: All right, I understand there was a matter you wanted to bring to the court's  
12 attention.

13 MBR (Colonel Marks): I just met Mrs. Ozgul for this – I came down here TDY as part of  
14 my official duties, and I went to dinner with the staff of the Medical Group. Other than that  
15 interaction, I don't know her.

16 MJ: Okay. And so how long ago was this that it happened?

17 MBR (Colonel Marks): Just under a year.

18 MJ: And how many times? Was this just on one occasion?

19 MBR (Colonel Marks): Oh, it was just one occasion.

20 MJ: What was the approximate size of the dinner gathering – the dinner party?

21 MBR (Colonel Marks): It was about 15-20 folks.

22 MJ: Did you have an opportunity to have one-on-one personal inaction?

1 MBR (Colonel Marks): We were just talking across the table.

2 MJ: Now, other than the generalized respect that you might naturally feel for the spouse  
3 of a military member, is there anything particular about your acquaintance with Mrs. Ozgul that  
4 would cause you to give her testimony any more weight than you would give – or less weight –  
5 that you would give to the testimony of any other witness?

6 MBR (Colonel Marks): No.

7 MJ: Will you apply the same standards in weighing and evaluating the testimony of Mrs.  
8 Ozgul that you would apply in weighing and evaluating the testimony of any other witness?

9 MBR (Colonel Marks): I'm sorry, would I...

10 MJ: I apologize. Will you apply the same standards in weighing and evaluating the  
11 testimony of Mrs. Ozgul that you would apply in weighing and evaluating the testimony of any  
12 other witness?

13 MBR (Colonel Marks): Yes, Sir.

14 MJ: Is there anything about this prior acquaintance that might cause you to question  
15 whether you're the right person to sit as a member in this case?

16 MBR: No.

17 MJ: Defense counsel, is there anything further?

18 CIV DC: No, Sir.

19 MJ: Trial counsel, anything further?

20 ATC: No, Your Honor.

21 MJ: All right, thank you very much, and you may return back to the deliberation room.

22 [Colonel Marks left the courtroom.]

1 MJ: Based on those responses, is there any challenge for cause as to this member,  
2 defense?

3 CIV DC: No, Sir.

4 MJ: Trial counsel?

5 ATC: No, Sir.

6 MJ: Bailiff, if you would have Mrs. Ozgul come back and return to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 MJ: The witness has now entered the courtroom.

9 Is there anything further before we call the members?

10 CIV DC: No, Sir.

11 ATC: No, Your Honor.

12 MJ: Call the members, bailiff.

13 [The bailiff left the courtroom.]

14 (The Article 39(a) session terminated at 0835 hours, 1 November 2012.)

15 **END OF PAGE**

1 (The court-martial was called to order at 0836 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Mr. Spinner, you may proceed.

6 **Direct examination continued.**

7 Q. Ma'am, let's go back to where we were. If you recall, I was asking you a question  
8 about the demeanor of the Wilkersons as husband and wife as you observed them in the February  
9 vacation. Did you have an opportunity to observe their demeanor at that time?

10 A. Yes, I did.

11 Q. And what was the general nature of their demeanor?

12 A. Happy, getting along, friends, joking around, spending time together, holding hands,  
13 getting along – getting along with each other, getting along with other people in the room.

14 Q. Okay. Thank you. Now, you said that in April...

15 A. Uh-huh.

16 Q. ...do you recall what part of April you had an opportunity to go to Crete with them?

17 A. It was the first part of April. I believe it was – it was a Monday through Friday. I  
18 don't know the exact dates of it, but we left on Monday and returned on a Friday.

19 Q. But just within a week or two weeks after the 23<sup>rd</sup> of March?

20 A. Yeah. It was the first week in April, whatever those dates were.

21 Q. And did everybody stay in the same hotel on Crete?

1           A. Yes, we all stayed in the same hotel. We were – there was maybe one or two other  
2 families in the hotel. It was kind of like their off season, so we basically had the hotel to  
3 ourselves.

4           Q. Now, did you see any changes in their demeanor and interaction as husband and wife  
5 during that week?

6           A. None.

7           Q. From what you had seen in February?

8           A. None. No changes.

9           Q. Now, I'd like to turn to another issue. First of all, you're aware of what the  
10 allegations are in this case?

11          A. Yes.

12          Q. Based on the contact you've had with Beth Wilkerson, the opportunities you've had  
13 to observe her and interact with her, have you formed an opinion as to her character for  
14 truthfulness?

15          A. Yes, I have.

16          Q. And what...

17          A. I find her to be very truthful.

18          CIV DC: No further questions, Your Honor.

19          MJ: Government?

20          ATC: Your Honor, we have no questions for this witness.

21          MJ: Members, do you have any questions of this witness?

22          Apparently not.

1 MJ: Subject to recall?

2 CIV DC: Yes, Your Honor.

3 MJ: Thank you for your testimony. You are temporarily excused which means that your  
4 testimony may be needed at some later point. While this case is ongoing, do not discuss your  
5 knowledge of this case or your testimony with anyone other than counsel, the accused or this  
6 court. You may step down.

7 WIT: Thank you.

8 [The witness left the courtroom.]

9 MJ: Defense?

10 DC: Your Honor, the defense calls Mrs. Connie Harvey.

11 [The bailiff left the courtroom and returned with the witness.]

12 **MRS. CONNIE HARVEY**

13 was called as a witness for the defense, was sworn, and testified as follows:

14 **Questions by the assistant trial counsel (Captain Beliles):**

15 Q. Ma'am, would you please state your name for the record?

16 A. My name is Connie Harvey.

17 Q. And, Ma'am, where do you currently reside?

18 A. In **Exe**, Florida.  
mtia

19 Q. And you are a friend of the accused?

20 A. Yes.

21 ATC: Thank you.

22 Your witness.

1 DC: Thank you.

2 Good morning, Ma'am.

3 WIT: Good morning.

4 **DIRECT EXAMINATION**

5 **Questions by the defense counsel:**

6 Q. Just to be clear, you're the spouse of retired Colonel Bob Harvey, who already  
7 testified in this proceeding?

8 A. That's correct.

9 Q. Ma'am, can you please tell the members a little bit about yourself and your  
10 background?

11 A. Sure. I was born in Ohio; grew up. I went to college in Kentucky; graduated from  
12 Bereta College. And after that, I moved to South Florida; lived there for about ten years. During  
13 that time is when I met my future husband. I worked for local government while there – the City  
14 of Coral Springs. After that, my husband was reassigned to the Pentagon, and so I moved to  
15 Washington DC, and began my career with the American Red Cross, and I've worked there since  
16 1996. And my job there, I am both with communications and educational development,  
17 primarily in aquatics, but we, obviously, as an organization such as the Red Cross, if not here, I  
18 would be supporting disaster relief efforts that are going on in the US right now. So, yes, it's a  
19 great, great job. I really like what I do.

20 Q. And you're still in that job?

1           A. I am still in that job, absolutely. My title is Product Manager for Aquatics. The  
2 specialty is in teaching – making sure we have a training system for people to learn how to swim,  
3 life guarding, making sure people are safe in, on, and around the water.

4           Q. Now, Ma'am, do you know the Wilkersons?

5           A. Yes. My husband and I moved into the same neighborhood at about the same time in  
6 like 2007 – in the fall of 2007. We lived a few doors down from one another. You know as  
7 typical in a military community, we really became fast friends, and had a lot of shared or similar  
8 experiences. We've never been stationed with them anywhere before, but had been in different  
9 places – in similar places at different times. So, of course had a lot of similar experiences that  
10 allowed us to be really fast friends. We spent a lot of time at each other's homes; became  
11 friendly enough that we would go to the beach house – they have a beach house in North  
12 Carolina, and we would go with them sometimes when you know both of our – Jay and my  
13 husband were gone a lot during that time, and so sometimes we would go with them. Both Bob  
14 and I would go; sometimes it would be – I would be the guest of Jay and Beth, and we would go  
15 together and spend great weekends together, spending the night in their home many times.

16           Q. And Ma'am, when you say you moved in – were neighbors with them or moved in  
17 close to them, where was that, exactly?

18           A. Sumter, South Carolina. Both were assigned to Shaw Air Force Base.

19           Q. And, Ma'am, did you have an opportunity to spend time alone with Beth Wilkerson?

20           A. Oh, absolutely, yes. We spent a lot of time together, whether out exercising, talking  
21 politics – yes, we spent a great deal of time together.

22           Q. Now you understand the allegations in this case?



1 A. I do.

2 Q. Based on your interactions and observations of Beth Wilkerson, have you formed an  
3 opinion as to her truthfulness?

4 A. Absolutely. I believe she's very truthful.

5 DC: Thank you, Your Honor. No further questions.

6 MJ: Government?

7 ATC: No questions for this witness, Your Honor.

8 MJ: Members?

9 No questions from the members.

10 Subject to recall, defense?

11 CIV DC: Yes, Your Honor.

12 MJ: Thank you for your testimony. Do not discuss your knowledge of the case or your  
13 testimony with anyone other than the accused, counsel, or this court while this case is ongoing.  
14 You may step down.

15 WIT: Thank you.

16 [The witness left the courtroom.]

17 MJ: Defense?

18 DC: Your Honor, the defense calls Ms. Susan Schriver.

19 [The bailiff left the courtroom and returned with the witness.]

20 **MS. SUSAN SCHRIVER**

21 was called as a witness for the defense, was sworn, and testified as follows:

22 **Questions by the assistant trial counsel (Captain Beliles):**

1 Q. Would you please state your name for the record?

2 A. Susan Schriver.

3 Q. And, Ma'am, where do you currently reside?

4 A. Exemption South Carolina.

5 Q. And do you know the accused in this case, Lieutenant Colonel Wilkerson?

6 A. I sure do.

7 ATC: Thank you.

8 Your witness.

9 DC: Thank you.

10 Good morning, Ma'am.

11 WIT: Good morning.

12 **DIRECT EXAMINATION**

13 **Questions by the defense counsel:**

14 Q. Could you please tell the members a little bit about your education and background?

15 A. Yes, Sir. I was born and raised in Exempti North Carolina, and went to school at  
16 Elon College; got a Bachelor of Science Degree in Physical Education with a teacher's certificate  
17 in '93, and have been teaching school for about 18 years.

18 Q. And that's in South Carolina where you're teaching?

19 A. I've taught in North Carolina and South Carolina.

20 Q. And what grades do you teach?

21 A. Kindergarten through fifth grade.

1 Q. Ah, Ma'am, do you know the Wilkersons?

2 A. Yes, Sir.

3 Q. And how do you know them?

4 A. Ah, 30 years for Jay, and about 16 or so for Beth. Jay's family and my family moved  
5 into the same beach house condominium area – townhouse area, and so I've known Jay that long,  
6 and Beth since they've been married, plus a couple of years of dating.

7 Q. Now through this at least 16 years since you've known Beth also, how often do you  
8 get to talk with them/interact with them?

9 A. A whole lot more now since they were able to come to Shaw. We never visited them  
10 when they were like at Minot or Japan or anywhere like that, but when they were in Shaw, we  
11 were at their house or they were at our house every weekend – every other weekend, and most of  
12 the time would spend the night.

13 Q. Now did you have any opportunity to spend time alone with Beth Wilkerson?

14 A. Oh yes, yes.

15 Q. Could you please tell the members about some of those times?

16 A. Oh, goodness, you know the girl thing to go shopping and talk about everything from  
17 their child to politics, and you know just like normal girlfriends, basically.

18 Q. Ma'am, based on your interactions and observations of Beth Wilkerson, have you  
19 been able to form an opinion as to her truthfulness?

20 A. Yes, Sir.

21 Q. And can you please tell the members what that opinion is?

22 A. She is one of the most truthful people I know.

1 CIV DC: Thank you, Ma'am.

2 No further questions, Your Honor.

3 MJ: Government?

4 ATC: No questions, Your Honor.

5 MJ: Members?

6 Negative response from the members.

7 Subject to recall?

8 CIV DC: Yes, Your Honor.

9 MJ: Thank you for your testimony. Before you leave; do not discuss your knowledge of  
10 this case or your testimony with anyone other than the accused, counsel, or this court while this  
11 case is ongoing. You may step down.

12 [The witness left the courtroom.]

13 Defense?

14 CIV DC: Yes, Your Honor, I would like an Article 39(a) session to be followed by a  
15 recess.

16 MJ: Thank you very much.

17 Members we'll go ahead and put you into recess at this time.

18 (The members left the courtroom at 0846 hours, 1 November 2012.)

19 **END OF PAGE**

1 (The court-martial was called to order at 0847 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Mr. Spinner?

6 CIV DC: Yes, Your Honor. I need one last recess to talk to my client because we're  
7 about to close – rest – I'm sorry. But I did want to clarify one issue for the court, which would  
8 impact whether I call any additional witnesses. I understood by the court's ruling, previously,  
9 when we called Dr. Ederington that we could not present character for truthfulness evidence for  
10 my client, that that applies to any character for truthfulness witnesses at all. In other words, as I  
11 understood the court's ruling, the issue has not been raised such that we can call a character for  
12 truthfulness witness for my client.

13 MJ: I appreciate it. A couple of things; first of all, the basis of my prior ruling where I  
14 sustained the government's objection was based upon a finding that it was not -- that such  
15 evidence was not proper evidence at that time. Basically, the defense's understanding of the  
16 court's ruling is correct, although I have not, of course, made any rulings regarding any future  
17 witnesses you may call, and so, certainly, if you have some intention on calling those witnesses,  
18 you can say the witnesses that you would have called; proffer what their testimony would have  
19 been; I can hear whether or not there's an objection by the government; and then I can get it in  
20 the record an actual ruling if you would like.

21 CIV DC: That's what I want. I want to preserve the issue for the record for appeals.

1 MJ: Please go through then and just indicate who these witnesses are, and then,  
2 presumably, what you're saying is that would testify as to the truthfulness of the accused. Is that  
3 correct?

4 CIV DC: That's correct, Your Honor.

5 We would call – of course we would bring back Dr. Ederington's testimony, which we've  
6 preserved on the record. We would call Lieutenant Colonel – recall Lieutenant Colonel Paul  
7 Willingham to the stand; we would recall Colonel Harvey to the stand; and we would recall  
8 Colonel Walker to the stand.

9 Furthermore, we have approximately 12 affidavits of character for truthfulness that we  
10 would present to the court, so... [Referring to 13 exhibits, Defense Exhibits R-AD for  
11 Identification.]

12 MJ: Would you like to have those marked as an appellate exhibit or would you rather  
13 wait...

14 CIV DC: Well, I don't want to mark them as appellate exhibits until this issue is  
15 resolved. If it's determined that they're not admissible to go to the court members, then yes, we  
16 do want to preserve them and marked them as appellate exhibits.

17 MJ: All right.

18 CIV DC: I mean there's no need to mark them yet until the court rules.

19 MJ: No. I understand. I understand.

20 All right, a couple of things: first of all, government, is there an objection as to the calling  
21 of the witnesses as set forth for the purpose of character for truthfulness of the accused?

22 ATC: There is, Your Honor.

1 MJ: And the objection is as previously stated?

2 ATC: Yes, Your Honor. It's our position that nothing has changed. We're still in the  
3 defense case; we've put on no evidence of character for untruthfulness of the accused.

4 MJ: And, defense, is there any additional argument that has not otherwise been made  
5 regarding this issue?

6 CIV DC: Yes, Your Honor, if it's the court's position that a lying OSI agent, who is  
7 lying as part of his duties by expressing his opinion – not a lying OSI agent – if an OSI agent  
8 expresses an opinion that my client is lying, as he did during the video, as I understood the  
9 court's ruling it's that OSI agents can make accusations like that; they've not personal beliefs.

10 MJ: Well, actually, I...

11 CIV DC: Okay.

12 MJ: ...will clarify what I said; is that that was not an opinion regarding the credibility of  
13 the accused in the same way that any statements saying the alleged victim was a truthful person  
14 or that her allegations were true was an opinion. That was an investigative technique, and I will  
15 and have instructed the members to that effect.

16 CIV DC: Right. And this is why I believe it's error by the court to make that ruling.  
17 The appellate decisions have said that this issue can be raised by cross-examination. In cross-  
18 examination the trial counsel is not expressing an opinion. In cross-examination about  
19 truthfulness of either the alleged victim or the untruthfulness of the accused. And so my position  
20 is that a trial counsel, in cross-examination in raising the issue is no different than an OSI agent  
21 doing what he is doing in the video. So I just want to say for the record that I see a parallel

1 between those two, and if it can be raised through cross-examination, then it can also be raised  
2 by an OSI agent during an OSI interview. That's the only point I wanted to make.

3 MJ: And I've believe you have preserved the issue, and this court is not ruling that in  
4 every case an OSI agent could not make an opinion regarding the truthfulness of an accused or  
5 anyone else such that that wouldn't be raised, but in this particular situation, that was not the  
6 case, and as a result of that, that would not be proper evidence at this point. Is sustain the  
7 objection as to the testimony as proffered by the defense counsel.

8 As to the affidavits, presumably, government – well, first of all, these affidavits are solely  
9 for the purpose of character for truthfulness. Is that correct?

10 CIV DC: That's correct, Your Honor.

11 MJ: Thank you.

12 And, presumably, government, you have a similar objection to the admissibility of these  
13 affidavits?

14 ATC: We do, Your Honor.

15 MJ: That being the case, at this point I will sustain the objection for the reasons  
16 previously stated, and defense, you may have those marked as an appellate exhibit if preferred,  
17 or a defense exhibit not admitted.

18 CIV DC: Yes, Your Honor. I think we'll make them defense exhibits not admitted.

19 MJ: That's fine. Then let's go ahead and go through the process of marking those  
20 exhibits or – and if you prefer, just to make it a little bit kind of clear, if you want to bulk them as  
21 one defense exhibit, which will be Defense Exhibit R, and you can just indicated to me the  
22 numbers, pages, and provide a copy to me, we can ensure that the record is marked



1 appropriately. If you want to individually mark them or if you've already done so, that's fine,  
2 too.

3 DC: Sir, just for the record they've already been individually marked. I mean I'm sure  
4 the court reporter, depending on what he wants to do, can...

5 MJ: If they've already been individually marked, that's fine; it's going to be easier for us  
6 to have them individually marked.

7 DC: I'm handing a working copy to trial counsel; a working copy to the military judge;  
8 and the originals to the court reporter.

9 MJ: And so this would be Defense Exhibits R through what letter for Identification?

10 DC: One second, please, Your Honor?

11 MJ: [No response.]

12 [The defense counsel reviewed the exhibits.]

13 DC: By my calculation, AD.

14 MJ: Defense Exhibits R through AD are marked but not admitted.

15 Defense counsel, as to the witnesses and affidavits, if circumstances change in this trial  
16 such that you want to re-raise this motion based on changes circumstances, certainly do so, and I  
17 will, at that point, reconsider the motion.

18 Is there anything further before we go into recess?

19 CIV DC: No, Sir.

20 ATC: No, Your Honor.

21 MJ: We are in recess.

1 (The Article 39(a) session terminated and the court-martial recessed at 0857 hours, 1  
2 November 2012.)

3 **END OF PAGE**

1 (The court-martial was called to order at 0921 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense, you may continue.

6 CIV DC: Your Honor, at this time the defense rests.

7 MJ: Government, do you anticipate having rebuttal?

8 ATC: We do, Your Honor.

9 MJ: All right, members, we're going to have a recess of approximately 30 minutes  
10 before we begin the rebuttal portion of the case. However, I will remind you that you have not  
11 received all of the evidence in this case at this point, nor have you received the instructions from  
12 the court on the law – hence my repeated instruction to you. During any recess or adjournment  
13 you may not discuss the case with anyone, not even among yourselves. You must not listen to or  
14 read any account of the trial or consult any source, written or otherwise, as to matters involved in  
15 the case. You must hold your discussion of the case until you are all together in your closed  
16 session deliberations so that all of the panel members have the benefit of your discussion. Do  
17 not purposely visit the scene of any incident alleged in the specifications or involved in the trial.  
18 You must also avoid contact with witnesses or potential witnesses in this case. If anyone  
19 attempts to discuss the case in your presence during any recess or adjournment, you must  
20 immediately tell them to stop, and report the occurrence to me at the next session.

21 We are in recess.

22 (The court-martial recessed at 0923 hours, 1 November 2012.)

1 (The court-martial was called to order at 1030 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Government, you may continue.

6 TC: Your Honor, at this time the government offers Prosecution Exhibit 6 for  
7 Identification, a copy which has been previously provided to the defense. I'm handing the  
8 original to the court reporter; I'm handing a copy to the military judge. And we offer  
9 Prosecution Exhibit 6 for Identification at this time.

10 MJ: Defense?

11 DC: No objection, Your Honor.

12 MJ: Admitted.

13 TC: And if I may publish copies of Prosecution Exhibit 6 to the members?

14 MJ: You may.

15 TC: I'm handing the members a copy of Prosecution Exhibit 6.

16 If I could just give the members one moment to read it?

17 MJ: That's fine.

18 [A moment was taken.]

19 TC: At this time the government recalls Captain Dawn Brock to the stand.

20 [The bailiff left the courtroom and returned with the witness.]

21 TC: Captain Brock, if you could just take the witness stand.

22 [The witness complied.]

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**CAPTAIN DAWN BROCK**

was recalled as a witness for the prosecution, was reminded she had been previously sworn, and testified as follows:

**DIRECT EXAMINATION**

**Questions by the trial counsel.**

Q. Are you the same Captain Dawn Brock who testified previously in this court?

A. Yes, Sir.

Q. I remind you that you are still under oath.

A. Yes, Sir.

Q. I want to turn your attention to when you were in the car with Mrs. Beth Wilkerson.

Do you remember that time?

A. Yes.

Q. Did you say anything to her such as “You don’t know who you have in your house”?

A. No, Sir.

Q. Or any words to that effect?

A. No, Sir.

Q. When you had testified previously that she asked you if her husband – if “...my husband did anything?” is that correct?

A. Correct.

Q. Did she say “Did Osto do anything?”

A. No, Sir.

Q. Did she say “Did Roscoe do anything?”

1 A. No, Sir.

2 Q. Are you a hundred percent certain that she said "...my husband...?"

3 A. Yes, Sir.

4 CIV DC: No further questions.

5 MJ: Defense?

6 **CROSS-EXAMINATION**

7 **Questions by the civilian defense counsel:**

8 Q. Ma'am, you had – you were confused with Colonel Wilkerson's name, correct?

9 A. Correct.

10 Q. You thought it was Bosco, not Roscoe?

11 A. Correct.

12 Q. You've since learned that it was Roscoe?

13 A. Yes.

14 Q. And you were confused that night, weren't you?

15 A. No.

16 Q. Oh, you knew it was Roscoe that night?

17 A. No. I'm answering "no" – I was confused about his name; not that I was confused

18 that night.

19 Q. But you thought it was Bosco, correct?

20 A. Correct.

21 Q. And "Osto" sounds like "Bosco," correct?

22 A. No.

1 Q. You don't think "Osto" sounds like "Bosco"?

2 A. No, Sir.

3 Q. Do you think "Bosco" sounds like "Roscoe"?

4 A. My understanding that evening was that he said "Bosco."

5 CIV DC: No further questions, Your Honor.

6 MJ: Government?

7 **REDIRECT EXAMINATION**

8 **Questions by the trial counsel:**

9 Q. Captain Brock, were you intoxicated that night?

10 A. Ah, I was under the influence. I don't know how intoxicated I may have been. I have  
11 no difficulties walking, and no one had expressed concern about me, but I had been drinking.

12 Q. You had been drinking, but you felt like you understood what was going on?

13 A. Correct.

14 Q. And to make it perfectly clear, you were not, in any way, hitting on Colonel  
15 Ostovich?

16 A. No, Sir.

17 Q. You were not interested in Colonel Ostovich?

18 A. No, Sir.

19 TC: Nothing further.

20 CIV DC: One moment, Your Honor.

21 [The defense counsel conferred.]

22 CIV DC: No questions, Your Honor.

1 MJ: Members, do you have any questions of this witness?

2 Apparently not.

3 Government, subject to recall?

4 TC: No, Your Honor.

5 MJ: Thank you for your testimony. You are excused. However, do not discuss your  
6 testimony or your knowledge of this case with anyone other than the accused, counsel, and this  
7 court. You may step down.

8 [The witness left the courtroom.]

9 MJ: Government?

10 ATC: Your Honor, at this time the government calls Special Agent (b)(7)(C) to the  
11 stand.

12 [The bailiff left the courtroom and returned with the witness.]

13 **SPECIAL AGENT (b)(7)(C)**

14 was called as a witness for the prosecution, was sworn, and testified as follows:

15 **DIRECT EXAMINATION**

16 **Questions by the assistant trial counsel (Captain Beliles):**

17 Q. Would you please state your name and duty title for the record?

18 A. My name is (b)(7)(C). I'm the Superintendent at the Detachment.

19 Q. And when you say "the Detachment," what are you referring to exactly?

20 A. OSI.

21 Q. Here at Aviano Air Base?

22 A. Yes.



1 Q. How long have you been working for OSI?

2 A. Slightly over nine years.

3 Q. Did you go to the Wilkerson residence on 19 April 2012?

4 A. Yes, Sir.

5 Q. And were you aware when you arrived at that residence that Colonel Wilkerson was  
6 currently at the OSI Detachment?

7 A. Yes.

8 Q. Who did you meet when you arrived at the residence?

9 A. Mrs. Wilkerson.

10 Q. Now, you've interviewed her on that occasion, correct?

11 A. Yes, Sir.

12 Q. Do you remember her ever offering you a pair of shoes that would have been owned  
13 by Ms. Exemption 6

14 A. No, Sir.

15 Q. Did she ever offer you that pair of shoes?

16 A. No, Sir.

17 Q. Do you have any doubt about that in your mind?

18 A. No.

19 Q. Did you, in fact, ask her if she had those shoes?

20 A. Yes, we did.

21 Q. Did you, in fact, ask her if she knew where those shoes were?

22 A. Yes, Sir, we did.

1 Q. And did she express any knowledge of those shoes?

2 A. No, Sir, she didn't.

3 Q. Do you typically decline evidence at any point in your career as an OSI agent?

4 A. Never, Sir.

5 ATC: Thank you.

6 No further questions.

7 MJ: Defense?

8 CIV DC: Yes, Your Honor.

9 **CROSS-EXAMINATION**

10 **Questions by the civilian defense counsel:**

11 Q. Agent, did you take a sworn statement from her that day?

12 A. Yes, Sir, we did.

13 Q. And in that sworn statement, did you ask her to indicate whether or not the shoes  
14 were present?

15 A. No, Sir, we didn't.

16 Q. So at least as far as an investigative matter, that wasn't important to any statement  
17 you obtained from her, correct?

18 A. No, Sir. We'd asked her, and she said, "No." She was pretty adamant about it.

19 Q. All right, so you elected not – you could have asked her when you asked her to make  
20 the written statement, "Would you please write in the statement where the shoes are?"

21 A. Yes, we could have.

22 Q. And you didn't, did you?

1 A. No, Sir.

2 Q. Now, she cooperated with everything you did during that visit, correct?

3 A. Yes, Sir.

4 Q. If you wanted to take pictures, there was no indication she was opposed to you taking  
5 pictures?

6 A. No, Sir.

7 Q. She consented to show you the room where the alleged offense occurred, correct?

8 A. Yes, Sir.

9 Q. And you could have seized any evidence you wanted to seize that day, right?

10 A. We could have, Sir.

11 Q. Ah, and you elected not to even go get a search authority, didn't you?

12 A. We – before prior to going into any scene, we always consult with our forensic  
13 science consultant and legal. And based on the nature of the allegation and the time from when  
14 the incident occurred, we were not given search authority.

15 Q. Did you seek search authorization?

16 A. No, Sir, we did not, based on the consultation and the recommendation of our forensic  
17 science consultant.

18 Q. I understand that, but is this typical for the OSI not to search crime scenes and obtain  
19 search authorization?

20 A. It depends on the nature of the allegation and the type of crime scene we're going to.

21 Q. Sexual assault allegations – you would agree that seizing sheets might be important?

22 A. It depends on the nature of the allegation.

1 Q. If it's a sexual assault allegation, do you think that seizing the sheets where the sexual  
2 assault occurred could be important?

3 A. Yes, Sir.

4 Q. Seizing other bedding or clothing?

5 A. Depending on the nature of the allegations.

6 Q. Right. You understand that you have a forensic laboratory that can do DNA – test for  
7 DNA?

8 A. Yes, Sir.

9 Q. And do you understand how trace evidence works?

10 A. Yes, I do, Sir.

11 Q. And that even a touch can leave evidence of DNA, correct?

12 A. Yes, Sir.

13 Q. So you could have seized her property there and sent off for DNA testing at the  
14 USACIL Crime Lab, correct?

15 A. If we were advised to do that by our forensic science consultant.

16 Q. Right, but you were the agent at the scene, correct?

17 A. Yes, Sir.

18 Q. And you understand that you could have asked her to consent to provide you're the  
19 sheets or bedding or other items, regardless of what your forensic consultant said?

20 A. Yes. Current policy, Sir, is that you can get consent, but search authority is the  
21 preferred method if we're going to seize evidence because consent can be revoked at any point.

1 Q. Right, but consent can be given at – once consent is given and some person says “You  
2 can have the sheets,” then they can’t come back and get the sheets from you, can they?

3 A. Yes, they can. They can seize – they can revoke consent at any point up until where  
4 the evidence is processed for analysis at USACIL.

5 Q. Okay. In any event, you could have asked for consent to obtain the property, correct?

6 A. We could have, yes, Sir.

7 Q. And you could have obtained search authority – you could have at least attempted to  
8 obtain search authority, and you didn’t?

9 A. Based on the recommendations of our forensic science consultant.

10 Q. Right. It’s not unusual for sexual assault allegations to arise sometime after the  
11 alleged event occurred, correct?

12 A. Can you rephrase that, Sir?

13 Q. It’s not unusual [pause] for sexual assault allegations to arise [pause] some period of  
14 time after the alleged assault occurred?

15 A. Correct. Correct.

16 Q. Okay. And so it’s – a matter of time does not automatically preclude the ability to get  
17 search authorization; you would agree with that?

18 A. Correct, Sir.

19 Q. Now, with respect to the shoes, did the prosecution make you aware that at the Article  
20 32 hearing into this matter, that Beth Wilkerson was asked if she still had the shoes, and under  
21 oath – at this time under oath, she said she still had the shoes?

1           A. Pretty much, Sir, we were made aware that she had stated during the Article 32 that  
2 she had offered us the shoes.

3           Q. No; that she still had the shoes.

4           A. That part, I can't speak to that. I can tell you what we were made aware of, which  
5 was that she had offered us the shoes, which would mean she had the shoes.

6           Q. So the prosecutors didn't tell you, "I still have Exemption 6 ' shoes" – that she said that  
7 at the Article 32, under oath?

8           A. Around, pretty much, Sir.

9           Q. They did tell you.

10          A. But what I was told was that she stated that she had offered us the shoes, using those  
11 words, which would mean she had possession of the shoes.

12          Q. Okay. Please listen to my question, and if you don't understand it, let me know. Did  
13 the prosecutors tell you that at the Article 32 hearing, under oath, Beth Wilkerson was asked  
14 whether she still had the shoes, and she said, "I still have Exemption 6 ' shoes." Did they tell you  
15 that?

16          A. Not verbatim, Sir.

17          Q. Did they tell you that she had the shoes?

18          A. What I just relayed, Sir, that she offered the shoes to us when we were there, which  
19 would mean she was saying she had the shoes.

20          Q. You said that previously she said she didn't have the shoes.

1 A. Sir, when we went to the house, we specifically asked her if she had the shoes or if  
2 she knew where the shoes were at. And she told us she had no knowledge of where the shoes  
3 were at.

4 Q. But you understand, nonetheless, that at the Article 32...

5 ATC: Objection. Asked and answered, Your Honor.

6 MJ: Counsel...

7 CIV DC: My last attempt to get clarification.

8 MJ: I think this witness has answered the question. I'll allow you to ask the question one  
9 more time. Move on to your next topic after that, please.

10 **Cross-examination continued.**

11 Q. Were you made aware as of approximately 21 June 2012, that she said she had the  
12 shoes?

13 A. Yes, Sir.

14 Q. Did you attempt to go get the shoes?

15 A. No, Sir.

16 CIV DC: No further questions, Your Honor.

17 MJ: Government, anything further?

18 ATC: Briefly, Your Honor. If I could have one moment?

19 [The trial counsel conferred.]

20 **REDIRECT EXAMINATION**

21 **Questions by the assistant trial counsel (Captain Beliles):**

1 Q. Agent Exemp  
tion 6, you talked about the fact of the nature of the allegation precluded you  
2 from seizing the sheets. What did you mean by “the nature of the allegation”?

3 A. Well, Sir, based on the nature of the allegation, which was a victim alluding to the  
4 subject using or potentially placing his hand within her waistline. One we relayed that  
5 information to the forensic science consultant, he opined that the chances of any evidence being  
6 there at the scene with that amount of time in between was unlikely. And, therefore, we didn’t  
7 seek the search authority.

8 Q. Lack of an allegation of ejaculation, specifically?

9 A. Right, ejaculation or pen... – yeah, clothes coming off and that.

10 Q. Clothes coming off, yes. And you also wouldn’t have known what sheets – whether  
11 those were the same sheets on the bed after three weeks, correct?

12 A. Yes, Sir. Correct.

13 ATC: Thank you.

14 MJ: Defense:

15 [The defense counsel conferred.]

16 **REXCROSS-EXAMINATION**

17 Q. In any event, and I just used the sheets as an illustration, you understand that the  
18 laboratory and the sensitivity of DNA testing is such that if he had, in fact, put his hands down  
19 her panties...

20 A. Yes, Sir.

21 Q. ...then her panties could have had DNA evidence, correct?

22 A. Well, Sir, that would be her DNA on her panties.



1 Q. No, if he put his hand down her panties, there could be DNA evidence of him  
2 touching her panties. Do you understand that that's how sensitive...

3 A. That is a possibility, yes, Sir, but...

4 Q. And you...

5 A. ...Sir, can I clarify?

6 Q. Yes.

7 A. Based on the fact that at the time the allegation was brought forward to OSI, three  
8 weeks – approximately more than three weeks later, it was ruled out that any trace evidence from  
9 his skin cells or hand that would have transferred to the underwear probably would not have been  
10 there.

11 Q. Right, but the only way you can ever conclusively determine that is by seizing the  
12 evidence and running the test, correct?

13 A. Correct.

14 CIV DC: No further questions.

15 MJ: Government, anything further?

16 ATC: No further questions, Your Honor.

17 MJ: Members, do you have any additional questions of this witness?

18 Apparently not.

19 Subject to recall?

20 ATC: No, Your Honor.

21 CIV DC: No, Your Honor.

1 MJ: Thank you for your testimony. You are excused, however, while this case is  
2 ongoing, do not discuss your testimony or your knowledge of the case with anyone other than  
3 counsel, the accused, or this court. You may step down.

4 WIT: Thank you, Sir.

5 [The witness left the courtroom.]

6 MJ: Government?

7 ATC: Your Honor, at this time the government calls Mr. Scott Cusimano.

8 [The bailiff left the courtroom and returned with the witness.]

9 **MR. SCOTT CUSIMANO**

10 was called as a witness for the prosecution, was sworn, and testified as follows:

11 **DIRECT EXAMINATION**

12 **Questions by the assistant trial counsel (Captain Beliles):**

13 Q. Would you please state your name for the record?

14 A. Scott Cusimano.

15 Q. And where do you currently reside, Sir?

16 A. I currently reside **Exemptio** California.

17 Q. And how are you currently employed?

18 A. I am employed with the Defense Logistics Agency.

19 Q. Prior to being deployed there at Tracy, California.

20 MJ: Counsel, let me stop you there.

21 If you could just please have the witness spell his last name?

22 ATC: Yes. Thank you, Sir.

1 Q. Please spell your last name.

2 A. C-U-S-I-M-A-N-O.

3 MJ: Thank you. You may continue.

4 ATC: Thank you, Sir.

5 Q. Can you give us a thumbnail sketch of your experience with the military, Sir?

6 A. Yes, I graduated from West Point; was an active duty Army officer for about seven  
7 plus years, then a traditional Air Force Reservists for about 16 years, and then completed my  
8 military career in Uniform – it was six years active duty in the mobility Air Force side at Scott  
9 Air Force Base in US Trans Com, and hit my mandatory separation date in May of 2010, and I  
10 retired as an O6.

11 Q. Sir, in your seven years on active duty in the Army, what did you do with the Army?

12 A. What I did in the Army was combat arms. I was an Air Defense Artillery Officer as  
13 well as an Infantry Officer, with a specialty in logistics. I was Ranger and Airborne qualified  
14 and had an assignment in Vicenza, Italy, so brigade level and below assignments – tactical  
15 operational level assignments in the Army.

16 Q. And, Sir, as a civilian, were you also employed her for the Wing staff?

17 A. Yes, I was. I was the Director of Staff from 30 March of 2011 until 2 October of this  
18 year.

19 Q. Of 2012, just his past month?

20 A. Correct.

21 Q. Sir, during your time working with the Wing staff, did you have an opportunity to  
22 interact with Lieutenant Colonel Wilkerson?

1 A. I did.

2 Q. Could you give us the general nature of what kind of interactions you had with him?

3 A. Sure. My interactions would have been sometimes daily, at least multiple times  
4 during the week. He initially came as the Deputy Ops Group Commander, and as the Director of  
5 Staff, we had a group known as the Deputy's' Counsel, so I would interact with him in that  
6 smaller group. And then once he transitioned to take responsibility to stand up the IG program  
7 for the Wing, since he became a Wing Staff Agency Chief, I had additional interaction with him  
8 then, and I certainly reached out and made the effort for him being as new Wing Staff Agency  
9 Chief, on behalf of the Commander, to assist him with administrative type of issues and setup  
10 and those type of things – not with the content of the work he would be doing as the IG, but just  
11 in an administrative sense just like I would for all the different 16 other Wing Staff Agency  
12 Chiefs.

13 Q. Thank you, Sir. During your time interacting with him, did you form an opinion as to  
14 his military character?

15 A. I did, and...

16 Q. And what is that, Sir?

17 A. I found him to be unprofessional, exercising poor judgment at times, and not acting  
18 commensurate with someone who would eventually pin on senior officer rank.

19 ATC: Thank you, Sir.

20 No further questions, Your Honor.

21 MJ: Defense?

22 **CROSS-EXAMINATION**

1           **Questions by the civilian defense counsel:**

2           Q. Sir, so you worked directly for General Zobrist?

3           A. Yes.

4           Q. Did I say his name correctly?

5           A. Yes.

6           I did work directly for General Zobrist.

7           Q. Okay. So whatever issues you had with Colonel Wilkerson, did you take them to  
8 General Zobrist and express what you thought of Colonel Wilkerson to him?

9           A. I did in the context of the overall standup of the IG, and to give you more specifics on  
10 that, I had people that were working with Colonel Wilkerson...

11          Q. Here's my question...

12          A. Okay.

13          Q. I'm asking you, did you take whatever issues you had to General Zobrist with respect  
14 to Colonel Wilkerson?

15          A. Ah, yes.

16          Q. And did you – are you aware that General Zobrist would sign his efficiency – OPR –  
17 I'm sorry?

18          A. Yes.

19          CIV DCL My era goes back to OERs, so I had to think of OPR.

20          Q. So, it's fair to – it would be reasonable to conclude that whatever concerns you had  
21 about Colonel Wilkerson's professionalism were addressed with General Zobrist in the  
22 preparation of his OPR? He had that information to factor in?

1 A. He had that information.

2 Q. No, you're no longer here, correct?

3 A. That's correct.

4 Q. Your position – the Director of Staff civilian position no longer exists?

5 A. Correct.

6 Q. So you were the last one to hold that position?

7 A. Officially, yes.

8 Q. Officially. Okay. And you arrived here in Aviano when...

9 A. I arrived...

10 Q. ...to fill that position?

11 A. I arrived 30 March of 2011.

12 Q. And then when did Colonel Wilkerson arrive?

13 A. I believe he arrived June or July of 2011.

14 Q. In any event, you were not happy with General Zobrist's leadership, were you?

15 ATC: Objection, Your Honor; relevance?

16 CIV DC: To show bias, Your Honor, and it will – I will further develop that in my

17 questioning.

18 MJ: Members, we'll have a short 39(a) out of your presence.

19 (The members left the courtroom at 1052 hours, 1 November 2012.)

20 **END OF PAGE**

1 (The court-marital was called to order at 1053 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Would you like for the witness to remain on the stand, either trial counsel – or is there  
6 any concern with the witness staying on the stand?

7 ATC: No, Your Honor.

8 CIV DC: No, Your Honor.

9 MJ: Will you provide a proffer of the information that you expect to elicit from this  
10 witness regarding an opinion about Brigadier General Zobrist?

11 CIV DC: Yes, Your Honor, I believe this witness had numerous concerns with the  
12 operational leadership here, including Colonel Wilkerson, Colonel Ostovich, and General  
13 Zobrist; that he made an IG complaint against Colonel Ostovich, and that General Zobrist was –  
14 did not appear to take these complaints seriously, and that ultimately there was a discretion in  
15 terminating or closing the Director of Staff position and a political struggle within the  
16 Wing. That's why his position was closed and he left this position. And so my position is that  
17 this shows that in the nature of someone who's disgruntle or unhappy, that that could be a basis  
18 for his opinion...

19 MJ: All right, assuming...

20 CIV DC: ...and that he's biased in that sense against Lieutenant Colonel Wilkerson.

21 MJ: I understand.

1 MJ: Assuming just solely for the purposes of this objection at this time, I understand that  
2 this proffer is not evidence, but based on that proffer, government, is there an objection?

3 ATC: Could I have one moment, Your Honor?

4 MJ: [No response.]

5 [The trial counsel conferred.]

6 ATC: No objections, Your Honor.

7 MJ: Thank you very much.

8 Recall the members.

9 [The bailiff left the court room.]

10 (The Article 39(a) session terminated at 1055 hours, 1 November 2012.)

11 **END OF PAGE**



1 (The court-martial was called to order at 1056 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Defense, you may continue.

6 **Cross-examination continued.**

7 Q. So, do you prefer to be call Colonel or Mr. Cusimano?

8 A. Whatever you prefer.

9 Q. Well, I'll call you, since you're in a civilian capacity, I'll refer to you as Mister, if  
10 that's okay.

11 A. Okay.

12 Q. Mr. Cusimano, first of all, did you take issue with the way General Zobrist was  
13 handling issues at the leadership level of the Wing.

14 A. I'd have to ask you to clarify that in terms of what type of issues because operational  
15 issues versus administrative issues are important matters to make distinctions of in my opinion.  
16 But I will tell you that as someone who reported directly to him, and the nature of my position, I  
17 felt that I owed him my frank and honest feedback and opinion, if you will, on a host of issues,  
18 and I was very honest and upfront in communicating that to him in many methods of  
19 communication.

20 Q. Well, you filed an IG complaint against Colonel Ostovich, correct?

21 A. That's correct.

1 Q. And you claimed that he attempted to assault you in General Zobrist's presence,  
2 correct?

3 A. That is correct, with Chief Craver present as well.

4 Q. Right, and it was after you attacked Colonel Ostovich's integrity, correct?

5 A. I was making an argument with him in a very measured and calm manner, and I did  
6 use the words "If you are man of interiority" and was cut off at that point as he lunged across  
7 [lunging forward in the witness stand] the table to grab me. So I was not able to complete my  
8 thought, but I did use those words, "If you..."

9 Q. And General...

10 Right; I'm sorry.

11 A. "If you are a man of integrity," and I never got to the rest of my argument or my  
12 statement that I was trying to make.

13 Q. Right, and so you filed an IG complaint after General Zobrist did not address the  
14 issue to your satisfaction?

15 A. He did not address the issue, period. I waited five days, I believe, and in past  
16 instances what General Zobrist had done – there had been other incidents – he tended to wait a  
17 few days, and then he would come to me and apologize. There were more outbursts...

18 Q. When you're saying "he," you're referring to General Zobrist?

19 A. That is correct.

20 So I felt the reasonable thing to do was give the Commander time to process what had  
21 happened. I tried to be as measured as I could about the incident. But, basically, after he took no  
22 action, I felt that the workplace was a hostile environment, and I could not come to work each

1 day knowing that I would be subject to that potential physical abuse, so I chose to file a  
2 complaint with Lieutenant Colonel Gatlin, our local IG, and the matter was made a matter of  
3 record and documented.

4 Q. And so did General Zobrist come back and apologize to you about that or at least  
5 explain that he felt satisfactory action had been taken?

6 A. What he did was talked to Colonel Ostovich separately with Chief Craver present,  
7 and then after a period of a few days, he issued us both a letter, and, again, I don't know what  
8 was in the letter to Colonel Ostovich, but the letter to me was basically "You have to find a way  
9 to communicate with the Vice Commander" – those kind of things. It was – the letter was not  
10 dated; it was not addressed to me personally, so I kind of took it as well "I'm treating both of you  
11 as equally to blame," if you will, "for this situation with a lack of harmony in the front office."  
12 So...

13 Q. And so did the hostile work environment go away after that?

14 A. Basically, the same time that the general gave us the letter, he basically issued  
15 Colonel Ostovich a no contact order with me, that we were not to be alone. He was talking to  
16 him – not to be alone in the room together, that our interactions would be in a public forum, and  
17 that we were expected, for the Wing's benefit, the Airmen's benefit, the community's benefit, to  
18 be able to conduct ourselves professionally in any open environments. But the environment  
19 improved because Colonel Ostovich was no longer allowed to come into my face, into my  
20 presence or into my office, and I no longer felt threatened by that. And I also will tell you that I  
21 made a conscious effort never to be the last one in the office with him in the night, which  
22 heretofore before all these incidents took place, I was typically one of the last people if not the

1 last person out of the office at night. But after that, a long story short, we basically would not be  
2 one-on-one with each other. And that seemed to mitigate the situation.

3 Q. And so he was Vice Wing Commander...

4 A. That's correct.

5 Q. ...during this period of time?

6 A. Uh-huh.

7 Q. In any event, when the – in January of this year, your position was eliminated. Is that  
8 correct?

9 A. That's correct. The Air Force corporate structured a decision, as I was informed,  
10 eliminated all the Director of Staff positions at the Wing level, and USAFE A1, Colonel Sharpe,  
11 contacted General Zobrist. It was late in the resource management decision 703 rounds.  
12 Apparently my position was missed for some reason, and although I wasn't given the details of  
13 the conversation, apparently the question was asked, "Do you want to keep the position here?  
14 Are you comfortable with Air Force corporate structure decision to go ahead and eliminate the  
15 DS position? And what the General did was he called me with the CPO – Civilian Personnel  
16 Officer present, Eleanor Gonzalez, sometime in mid-January and informed me that he was  
17 deciding to go along with the corporate structure decision/USAFE recommendation and just  
18 eliminate my position.

19 At that point I had six months to basically find placement. I did have return rights to  
20 Peterson Air Force Base, Colorado, so there was not really viewed as an acute situation; I still  
21 had a job to go back to in the CONUS.

22 CIV DC: No further questions, Your Honor.

1 MJ: Government?

2 ATC: Thank you, Your Honor.

3 **REDIRECT EXAMINATION**

4 **Questions by the assistant trial counsel (Captain Beliles):**

5 Q. Now, Sir, prior to your leaving here on 2 October 2012, did General Zobrist ever  
6 apologize to you for not taking your advice about Colonel Wilkerson and Colonel Ostovich?

7 A. Ah, he apologized to me several times throughout the last six months. Specifically on  
8 the Thursday before I left, whatever date that was – 27-28 September – he again apologized to  
9 me and said, “I know, Scott, you take issue with the fact that I didn’t respond quickly enough,  
10 but you need to understand, too, that you know I do things behind the scenes or don’t think that I  
11 haven’t held people accountable.” But I will tell you that he never – he never acknowledged that  
12 in a public forum. It was always behind closed doors, and at his discretion. But there were  
13 actually multiple times, specifically with the IG standup, when I remarked to him about the  
14 “scorched earth, take no prisoners” type of approach of bringing us to initial operational  
15 capability status with the unprofessionalism that...

16 Q. Thank you, Sir. Thank you, Sir. I’ll ask that you stop there. Ah, and those apologies  
17 were all after the incidents that led us to this court-martial, correct?

18 A. That is correct.

19 Q. And these are also after he had fired both Colonel Wilkerson and Colonel Ostovich,  
20 correct?

21 A. That is correct.

22 ATC: Thank you.

1

ATC: No further questions.

2

CIV DC: I object, Your Honor. We need a 39(a).

3

MJ: All right, members, we will put you back into recess.

4

(The members left the courtroom at 1104 hours, 1 November 2012.)

5

**END OF PAGE**

1 (The court-martial session began at 1105 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 [The parties were present. The members were absent. The witness remained on the  
4 stand.]

5 CIV DC: I would like the witness removed on this.

6 MJ: You may step down off the stand. And just so, actually, as I understand as we go  
7 forward, at this point I haven't given the members the opportunity to potentially ask questions of  
8 this witness. At this point, do either – defense, are you anticipating asking additional questions  
9 of this witness or is this just a related matter regarding one of the last questions?

10 CIV DC: One of the last questions, Your Honor.

11 MJ: All right. I will go ahead and give you – I'll go ahead and give you your  
12 instructions as you're departing. However, there is a potential that after we resolve this matter  
13 the members may have some questions of you, so I do ask that you stay in the area.

14 If we don't recall you, however, do not discuss, while this case is ongoing, your  
15 testimony or your knowledge of this case with anyone other than counsel, the accused, or this  
16 court. You may step down off the stand. Thank you.

17 WIT: Yes, Sir.

18 [The witness left the courtroom.]

19 MJ: Defense?

20 CIV DC: Your Honor, I think trial counsel's question was an improper question, saying  
21 that after my client was "fired." He has never been fired. These allegations, as in many cases,  
22 are allegations. Decisions were made what to do pending resolution of the allegations. The

1 implication that my client was fired based on these allegations certainly suggests that General  
2 Zobrist had taken a position on the merit of the allegations, and so at this point I'm not sure  
3 what relief I want, but I'm concerned that that cannot be – we have a potential issue of unlawful  
4 command influence, and there may be an instruction that can be given to address this, but that  
5 was an improper question, Your Honor.

6 MJ: All right. As an initial matter, defense, as you are well aware, in order – if your  
7 attention is to object, and you did object, it is necessary for this court to know what relief or what  
8 you're requesting of this court. Having said that, I understand that you haven't had an  
9 opportunity to discuss it with your co-counsel. That being the case, I will give you a short recess  
10 so that you can make a determination as to what, if anything, you are requesting of this court, be  
11 it an instruction or anything else.

12 Please notify the bailiff as soon as possible when you are ready to go back on the record.

13 We are in recess.

14 (The Article 39(a) session terminated and the court-marital recessed at 1107 hours, 1  
15 November 2012.)

16 **END OF PAGE**



1 (The court-martial was called to order at 1127 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness is no longer on the stand.

5 Members, you have not yet had an opportunity – if you have any questions for the last  
6 witness, that witness is available. Just from a logistics point of view, it didn't make a whole of  
7 sense to bring him in and then immediately excuse him, unless there was a question.

8 Members, do you have any questions for the last witness?

9 And there is. Okay, have you already written out that question?

10 MBR (Colonel Calta): No, Your Honor.

11 MJ: All right, Colonel, if you can go ahead and write that question out, please?

12 [To the bailiff.] And if you would please recall the witness? Thank you.

13 [The bailiff left the courtroom and returned with the witness.]

14 MJ: Colonel Calta's question will be marked as the appellate exhibit next in order. That  
15 should be XXIX.

16 And the witness has retaken the stand.

17 [After counsel reviewed the question, the bailiff handed it to the military judge.]

18 MJ: All right, Colonel Calta, I am not going to ask that question at this time. The  
19 response to that question, at least at this point, is not an issue for your consideration. If for some  
20 reason it later becomes something that would be a proper consideration, then we can address it at  
21 that point.

22 Any additional questions of this witness?

1 MJ: Apparently not.

2 [To the witness.] Thank you. I've already advised you regarding your instructions.

3 Witness, you may step down.

4 [The witness left the courtroom.]

5 MJ: Government?

6 TC: The government calls Sergeant Chavez.

7 [The bailiff left the courtroom and returned with the witness.]

8 **STAFF SERGEANT EVELYN CHAVEZ**

9 was called as a witness for the prosecution, was sworn, and testified as follows:

10 **DIRECT EXAMINATION**

11 **Questions by the trial counsel:**

12 Q. Could you please state your full name?

13 A. Staff Sergeant Evelyn Chavez.

14 Q. And you're currently in the United States Air Force?

15 A. Yes, Sir.

16 Q. And where are you assigned?

17 A. Aviano Air Force Base – Air Base – I'm sorry.

18 Q. And what do you do at Aviano?

19 A. I'm a Photo Journalist.

20 Q. And how long have you been serving as a Photo Journalist?

21 A. Five years, Sir.

1 Q. All right. Now, have you been asked to go to the Wilkerson home to take  
2 photographs?

3 A. Yes, Sir.

4 Q. Okay, and when was the first time you were asked to go?

5 A. It was June. Sometime in June.

6 Q. And were you asked by the defense at that time to go?

7 A. Yes, Sir. I believe it was the defense. I wasn't aware.

8 Q. All right, somebody asked you to go?

9 A. Yes, Sir.

10 Q. And you went and took photographs?

11 A. Yes, Sir.

12 Q. And at that time were you taking photographs inside the house?

13 A. Yes, Sir.

14 Q. And did you take photographs in the back yard?

15 A. Yes, Sir.

16 Q. Did you take any photographs in the front yard?

17 A. Ah, from the front, yeah. From the front door, yes, Sir.

18 Q. From the front door?

19 A. Yes, Sir.

20 Q. Did you have another occasion to go back to the Wilkerson residence?

21 A. Yes, Sir.

22 Q. And was that with Captain Nguyen?

1 A. Yes, Sir.

2 Q. At that time, did Captain Nguyen ask you to go to the front yard and take photos?

3 A. Yes, Sir.

4 Q. I want to talk about – was there a wall in the front yard?

5 A. Yes, Sir.

6 Q. And did you observe that wall closely?

7 A. Yes, Sir.

8 Q. How tall are you?

9 A. I'm 5' 4".

10 Q. Is it your belief that you would have been able to sit on that wall easily from the  
11 inside?

12 A. Yes, Sir.

13 Q. And is it your believe that you could have swung your legs over that wall and  
14 dropped to the ground?

15 A. Yes, Sir.

16 Q. And that wasn't like a tall drop, correct?

17 A. No, Sir.

18 Q. And was that wall, at the point that point that you could have sat on it easily,  
19 obstructed by trees or bushes or rosebushes or anything like that?

20 A. No, Sir.

21 TC: No further questions.

22 [The civilian defense counsel and the defense paralegal conferred.]

1 MJ: Defense?

2 **CROSS-EXAMINATION**

3 **Questions by the civilian defense counsel:**

4 Q. First of all, I want to be clear, you don't know Exemption , do you?

5 A. No, Sir.

6 Q. At any time that you've taken any photographs, whether for the prosecution or  
7 defense, she has never been present, correct?

8 A. No, Sir.

9 Q. And so the – how long would you say the wall is? There's a side street and a front  
10 street, on either side, how long would you say the wall is?

11 A. From the side street or – I'm not...

12 Q. Well, they met at a corner, correct?

13 A. Yes, Sir.

14 Q. So just estimate the length of the wall on those two sides.

15 A. The one side of the wall is taller, and the other side is way shorter.

16 Q. No, the length of the wall, not the height.

17 A. I wouldn't be able to tell you, Sir.

18 Q. Fifty yards, 25 yards?

19 A. I wouldn't be able to tell you, Sir.

20 Q. Okay. So this place where you went over the wall, that was picked by the prosecutors  
21 for the place for you to go over the wall, correct?

22 A. Yes, Sir.

1 Q. There were many other places where the person could go over that wall, right?

2 A. Yes, Sir.

3 Q. And in some of those places, the drop is five feet, correct?

4 A. Yes, Sir. Some places are high – some are taller, and other places are shorter.

5 Q. So you have no personal knowledge for the wall – if Exemption went over the wall,  
6 correct?

7 A. I do not know, Sir.

8 Q. And it was the prosecution that picked the location for you to try this out, correct?

9 A. Yes, Sir.

10 CIV DC: Okay.

11 No further questions, Your Honor.

12 MJ: Government?

13 **REDIRECT EXAMINATION**

14 **Questions by the trial counsel:**

15 Q. The first time you went with the defense, did they ask you take pictures and  
16 measurements of the wall?

17 A. Yes, Sir, on one side of the wall.

18 Q. On one side, and all of those were where the wall was high, right?

19 A. Yes, Sir.

20 Q. They didn't ask you to take measurements where the wall was low, did they?

21 A. No, Sir.

22 TC: Nothing further.

1 CIV DC: No questions, Your Honor.

2 MJ: Members, do you have any questions for this witness?

3 Apparently not.

4 Subject to recall?

5 TC: No, Your Honor.

6 CIV DC: No, Your Honor.

7 MJ: Thank you for your testimony. While this case is ongoing, do not discuss your  
8 testimony or your knowledge of this case with anyone other than counsel, the accused, or this  
9 court. You may step down.

10 WIT: Thank you.

11 [The witness left the courtroom.]

12 MJ: All right, counsel, this appears to be a good time for a break. I know that there are  
13 some administrative – a fair amount of administrative matters that I need to actually resolve as  
14 well. In light of that, my intention is to go ahead and for all the parties take a lunch recess.

15 Members, based on the administrative stuff that I believe that I need to take care of, I  
16 anticipate that it makes much more sense for me to put you into lunch recess until approximately  
17 12:45. At 12:45, return to your rooms or wherever ultimately the Legal Office can contact you,  
18 and that way, rather than having you sitting here as I'm working through some of the things that  
19 I need to work through, you can at least be in the comfort of not being in the courtroom –  
20 deliberation room. I will say, however, that you, again, you have not received all of the evidence  
21 in this case and, regardless of that, you've certainly not been instructed on the law, and still the

1 time where it is not time for you to discuss the evidence in the case, your thoughts on this case,  
2 or to begin deliberating in any way on this case.

3 MJ: Members do you have any questions before I release you for lunch and then for you  
4 to be where the Legal Office can contact you as of 12:45? Any questions?

5 [There were no questions from the members.]

6 MJ: All right, members, you are released.

7 (The members left the courtroom at 1138 hours, 1 November 2012.)

8 **END OF PAGE**



1 (The court-martial was called to order at 1139 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Counsel, is this a good time as well for the court to take a lunch recess or would you  
6 prefer to take a recess – a short recess, handle some preliminary matters, and then go into a lunch  
7 for the parties. Is there a preference?

8 TC: Well, the government's preference is a lunch recess at this time, and then come back  
9 and handle the issues, but if the defense is opposed, then...

10 CIV DC: That's fine, Your Honor.

11 MJ: All right. Recess until 12:45 sufficient for counsel?

12 TC: Yes, Your Honor.

13 CIV DC: Yes, Sir.

14 MJ: We're in recess.

15 (The Article 39(a) session terminated at 1140 hours, 1 November 2012.)

16 **END OF PAGE**

1 (The court-martial was called to order at 1440 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 During the 802 I did have a short discussion with both trial and defense counsel – I say  
6 “discussion” – it was primarily defense counsel informing the court that they requested some  
7 additional time such that both they as well as trial counsel would have an opportunity to  
8 interview General Zobrist.

9 Furthermore, trial and defense counsel just provided the court what they expected the  
10 anticipated way forward would be at this point.

11 Trial counsel, defense counsel, do you object to or would like to supplement what was  
12 discussed during the 802?

13 TC: No, Your Honor.

14 CIV DC: Just one point, Your Honor, I think we addressed an issue regarding Mr.  
15 Cusimano and responded to a court members question on specific acts and both sides have  
16 agreed that question should not be answered.

17 MJ: Right. Thank you very much.

18 Specifically referencing Appellate Exhibit XXIX, that was a question from Colonel  
19 Calta. There was not an objection by the prosecution. There was an objection by the defense. I  
20 elected not to ask the question of that witness at that point. However, I notified trial and defense  
21 counsel that that was not – that I had not yet ruled on whether or not it was or was not proper,

1 and that if the government elected, that I would give them an opportunity on whether or not that  
2 was a proper question.

3 MJ: The government informed both the defense as well as the court that they did not  
4 intend to request argument or they did not request that that question, as listed in Appellate  
5 Exhibit XXIX, be asked of the witness.

6 With that additional supplement, does trial counsel or defense counsel wish further  
7 supplement that 802 or object to any aspect of the summary?

8 TC: No, Your Honor.

9 CIV DC: No, Sir.

10 MJ: All right, defense counsel, previously you objected to I believe the – at least the  
11 question of trial counsel – potentially the response of the witness. Would you like to address that  
12 at this point?

13 CIV DC: Yes, Your Honor. AT this point, under rule 915 of Rules for Court-Martial,  
14 the defense moves for a mistrial. Rule 915 says that, “The military judge may, as a matter of  
15 discretion, declare a mistrial when such action is manifestly necessary in the interest of justice  
16 because of circumstances arising during the proceedings which cast substantial doubt upon the  
17 fairness of the proceedings. A mistrial may be declared as to some or all charges and as to the  
18 entire proceedings or as to only the proceedings after findings.” And, Your Honor, we’re asking  
19 for a mistrial as to the entire proceedings.

20 It is our position that the question that was asked Mr. Cusimano in which facts were  
21 assumed that were not in evidence, that my client was fired because of the allegations that were  
22 brought against him, that that part of the question created, at least as a minimum, an inference

1 that General Zobrist, the Wing Commander, had already made a determination as to Colonel  
2 Wilkerson's guilt, which, in effect, led to the firing. There was also either a prior question and  
3 part of that question had to do with apologies and about my client's potential other misconduct,  
4 and so when you mix that all together, we believe that question raises a specter of unlawful  
5 command influence, an attempt to influence the court members improperly, and so that's the  
6 basis for our motion.

7 CIV DC: Essentially, our position is that once you've rung the bell, you can't un-ring it.  
8 And so, especially coming this late in the proceeding after hearing all of the evidence, we're in  
9 the rebuttal phase, and we just don't see how the court members can deliberate impartially and  
10 fairly when – if they're under the belief that Colonel Wilkerson was actually fired by the Wing  
11 Commander because of these allegations.

12 MJ: Just a couple of questions for you before you sit down, defense.

13 The members in this case, are they subject to the command or the authority of General  
14 Zobrist, to your understanding?

15 CIV DC: They are not in his chain of command. I believe all of them are from  
16 Ramstein; none of them work for him. Now, having said that, the concern I have is that I don't  
17 know where General Zobrist is going in his career, but as Fighter Wing Commander, I think  
18 there's a fair likelihood that he could be going on to higher positions, and that is not to say that  
19 someday they would not be under his command or would not be influenced because he is a  
20 General Officer.

21 MJ: And General Zobrist, his role in this court-martial was what; forwarding charges  
22 with a recommendation to the general court-martial authority?

1 CIV DC: That's correct, Your Honor.

2 MJ: And it was the general court-martial authority, not General Zobrist, that made the  
3 determination to refer this to a general court-marital. Is that correct?

4 CIV DC: That is correct, Your Honor.

5 MJ: Thank you.

6 Trial counsel, your response?

7 TC: The government, obviously, opposes, Your Honor. I believe, although the question  
8 – the term “fired,” and there is no “fired” or “not fired” within the military construct – relieved,  
9 fired – I don't know if there's really a lot of difference, but he's relieved from his position. I  
10 think the question and the question before talking about the apologies were fairly raised by the  
11 questions of the defense in their cross-examination – these are the response. Having said that, I  
12 think the way ahead in this case is to simply instruct the members to disregard the question and  
13 answer; give some sort of limiting instruction about “fired.” Obviously, the three star general  
14 who referred these charges has taken some sort of action. We expect members to be able to set  
15 aside things like that. We instruct them right from the beginning the fact that a General has or  
16 has not done something is not unlawful command influence; they have to do these certain things.

17 The impression put forward by the defense was that General Zobrist loved Colonel  
18 Wilkerson because of the OPR, and somehow that was rebutting what Mr. Cusimano said. The  
19 questions asked by assistant trial counsel did nothing more to put it into balance that, in fact,  
20 Colonel Wilkerson had been relieved to give a full impression.

21 But, again, as the court is well aware, well aware, a mistrial is only granted in the most  
22 unusual circumstances; this hardly meets that threshold.

1 MJ: Defense counsel, one point of clarification with you regarding your assertion of  
2 undue command influence or unlawful command influence, is the defense's assertion that this  
3 was unlawful command influence on the members that that is what your concern is, is that this  
4 information has an impact on the members?

5 CIV DC: Correct, Your Honor. And, furthermore, it wasn't in a response just provided  
6 by a witness. This was a statement that the trial counsel used in framing a question. And so one  
7 of the concerns I have is that the trial counsel – the members would assume that perhaps the trial  
8 counsel has information and that this was a way to share that information with them that the  
9 convening authority – I mean the Wing Commander had already formed an opinion as to the  
10 validity of the charges, and that this would be a way to influence them.

11 Now I want to make perfectly clear, I firmly believe that Captain Beliles chose the wrong  
12 words at that time. I am making no argument that there was an intent to misrepresent the Wing  
13 Commander or anyone else, so to that extent, there was no bad faith or no intent by the trial  
14 counsel. I have complete respect for him, his professionalism throughout these proceedings.  
15 And so I want to make that abundantly clear.

16 The problem I have, though, is that it's what the members heard; it's not what the trial  
17 counsel's intent was, and it is indirectly a way – potential way that they would be influenced.  
18 And we just don't know how to fix that problem, given this stage of the proceedings that we're  
19 in.

20 MJ: And, defense, you are not requesting either this court or yourself have an  
21 opportunity to *voir dire* the members regarding this matter, is that correct?

22 CIV DC: I'm not requesting a *voir dire* of the members.

1 MJ: At trial, the burden of raising the issue of unlawful command influence, or UCI,  
2 rests with the defense. The defense must bring forth some evidence that raises UCI which  
3 potentially cause the proceedings to be unfair. Once the issue of UCI is raised, the burden shifts  
4 to the government to prove beyond reasonable doubt that the predicate facts do not exist or that  
5 the facts do not constitute unlawful command influence or that the unlawful command influence  
6 will not be prejudice or did not affect the findings and sentence.

7 And that test has been used repeatedly by CAAF, although I'll cite to *United States*  
8 *versus Biagase*, 50 MJ 143, as well as *United States versus Reed*, 65 MJ 487. The threshold for  
9 raising the issue at trial is low, but more than mere allegation or speculation.

10 Unlawful command influence is the mortal enemy of military justice. Where it exists,  
11 judicial authorities must take those steps necessary to preserve both the actual and apparent  
12 fairness of the criminal proceeding.

13 The appearance of unlawful command influence is as devastating to the military justice  
14 system as the actual manipulation of any given trial. One of the most sacred duties of the  
15 commander is to administer fairly the military justice system under his command.

16 Whether the conduct of the government in this case created an unlawful command  
17 influence is determined objectively. Even if there was no actual unlawful command influence,  
18 there may be a question whether the influence of the command placed an intolerable strain on  
19 public perception of the military justice system. Consequently, in the course of addressing these  
20 issues, military judges and appellate courts must consider apparent as well as actual unlawful  
21 command influence.

1 MJ: Turning to this particular situation and the facts effectively as alleged by the  
2 defense, and the facts at alleged by the defense are certainly not in dispute. And the facts are that  
3 the trial counsel asked a question about whether, after the allegations arose, the Wing  
4 Commander fired the accused as well as the Vice Commander, and whether there was ultimately  
5 an apology to the witness based on, presumably, that the witness expressing his concerns about  
6 both the Vice Commander and potentially the accused at some earlier time or earlier session.

7 The context of the majority of the witness' testimony appeared to revolve not around the  
8 accused and these allegations; it appeared to revolve around an unrelated IG complaint by the  
9 witness involving the conduct of the Vice Commander.

10 The court is also mindful that in this particular situation, General Zobrist is not in the  
11 direct command authority of any of these members, and he did not – he was not the convening  
12 that referred this to trial; that was another convening authority – the general court-martial  
13 authority. The general court-martial authority, not General Zobrist, is the individual that selected  
14 these particular members to sit as members in this court-martial.

15 Consequently, the court, in considering both the testimony and the context of how the  
16 testimony was elicited, as well as the arguments of both trial and defense counsel, have  
17 determined that the defense has not brought forth some evidence that raises UCI which could  
18 potentially cause the proceedings to be unfair. Even if, for the sake of argument, this courts  
19 assumes that the defense has met their burden of showing some evidence of UCI, the court finds  
20 that the government, at least at this time, has proven beyond a reasonable doubt that the facts do  
21 not constitute unlawful command influence or that the unlawful command influence will not  
22 prejudice or did not affect the findings and sentence.



1 MJ: Now to that secondary item, I will, and my intention is to instruct the members  
2 regarding disregarding that question and that answer, and specifically effectively addressing the  
3 defense counsel's concerns as they have argued to the court.

4 In addition, certainly the trial counsel or defense counsel are free to, if you so choose, call  
5 a witness to further clarify that the accused was not, in fact, fired or that the General had not  
6 made any type of determination regarding what did or did not occur on 23 March of 2012  
7 involving the accused. Wherefore, the defense's motion for mistrial is denied.

8 As to the instruction, I intend to instruct the members as follows:

9 You shall disregard any question or answer regarding whether the accused was fired  
10 following this allegation. There is no evidence that the accused was fired. Even assuming that  
11 the accused was administratively reassigned, this has no bearing whatsoever in your  
12 determination of the facts in this case or the application of the facts to the law.

13 In addition, to the extent that you believe the question regarding an apology by Brigadier  
14 General Zobrist to this witness regarding the accused either implied or inferred in any way that  
15 General Zobrist had made a determination regarding what did or did not occur on or about 23  
16 March 2012, you must disregard both the question and the answer.

17 As to that proposed instruction, does the defense object to that instruction or request a  
18 modification of that proposed instruction?

19 CIV DC: We do not object; we do not request a modification. However, we're not  
20 satisfied that it will actually cure the error, but we do not object to it. And, if I may, Your  
21 Honor?

22 MJ: You may.



1 **DIRECT EXAMINATION**

2 **Questions by the trial counsel:**

3 Q. Sergeant Speed, could you please state your full name?

4 A. Jameon David Speed.

5 Q. And you're a Technical Sergeant in the United States Air Force?

6 A. Yes, Sir.

7 Q. Where are you currently assigned?

8 A. The 31<sup>st</sup> Security Forces Squadron.

9 Q. And is that here at Aviano?

10 A. Yes, Sir.

11 Q. And how long have you been here at Aviano?

12 A. Since June of 2010.

13 Q. And how long have you been in the Air Force?

14 A. Since April of 1998, so 14 years and seven months today.

15 Q. And have you been a member of the Security Forces that entire time?

16 A. The entirety of the time, yes, Sir.

17 Q. Have you served in any other branches?

18 A. No, Sir.

19 Q. Okay. Were you a – just one second.

20 [The trial counsel conferred.]

21 Q. On 12 August of 2011, were you on duty?

22 A. I was, Sir.

1 Q. And were you – did you receive a call about an incident occurring in the restricted  
2 area of Aviano Air Base?

3 A. Yes, Sir, I did.

4 Q. And what was that related to?

5 A. It was – I was told over the radio, over a handheld two-way radio that there was a fire  
6 in a parking lot.

7 Q. And what did you do once you received that call?

8 A. I immediately proceeded to the zulu entry control point to find out exactly where the  
9 fire was.

10 Q. And what did you discover when you arrived?

11 A. The entry controller that was posted at the time told me that the fire was located  
12 adjacent to the Triple Nickel building. And proceed around the corner and saw that there was a  
13 couch that had been burning, and one officer was extinguishing the fire while a lot of individuals  
14 were being shooed inside.

15 Q. And what did you do after you observed this?

16 A. I immediately contacted the on-duty Flight Commander at the time, which was  
17 Lieutenant Keith Corollo.

18 Q. And why did you do that?

19 A. They were requesting over the radio for a situation report to just to kind of get an idea  
20 of what exactly was going on.

21 Q. And what happened after that?

1           A. At the time that I was calling Lieutenant Corollo, there was an individual that was  
2 walking towards me, and the area was kind of dark, so whenever the individual walked up, I just  
3 noticed the name tag "Roscoe," and he either asked me you know, "What seems to be the  
4 problem here? I'm the one that called this in."

5           Q. What did you respond to that?

6           A. I told him, verbatim, "Sir, it's pretty obvious what the problem is. There's a fire in a  
7 restricted area."

8           Q. And how did he respond?

9           A. He didn't respond immediately to that, but at that time Lieutenant Corollo had picked  
10 up when I was calling him from government cell phone, and I was giving him an update of  
11 exactly what I had seen.

12          Q. And what did this "Roscoe" person do at that time?

13          A. He was demanding to speak to Lieutenant Corollo as I was trying to relay the  
14 information that I had firsthand knowledge of.

15          Q. And what happened after that?

16          A. After I got done giving Lieutenant Corollo a situation report of exactly what all was  
17 going on, the individual who had demanded to speak to Lieutenant Corollo, so I told Lieutenant  
18 Corollo, "Hey, Sir, this individual would like to speak to you." And he said, "Okay, go ahead  
19 and put him on the phone." Well, as I went to hand the phone to the individual, he yanked it  
20 from my hand and walked away from where I was located, and had a private conversation with  
21 Lieutenant Corollo.

22          Q. And what happened after that private conversation?

1           A. The individual returned the phone to me, and I was standing by at the time with a  
2 Master Sergeant Codispote, from CE. He was the on duty Fire Chief, and Master Sergeant  
3 Codispote had had a conversation with the individual before they both returned over to my  
4 vehicle, and once they got back, the individual gave the phone back to me, and that was the  
5 extent of it, Sir.

6           Q. Now, was there some point in there where you referred to him as “Roscoe”?

7           A. I initially told Lieutenant Corollo there was a – I noticed the rank, eventually,  
8 Lieutenant Colonel – I told him “Lieutenant Colonel Roscoe.” And at that time the individual  
9 removed his nametag and said, “Let me talk to him. He can call me by my name, Lieutenant  
10 Colonel Wilkerson. I’m the Operations – Deputy Commander for the Operations Group.

11          Q. All right. Now, during this interaction, was Colonel Wilkerson being polite to you?

12          A. No.

13          Q. Was he being disrespectful to you?

14          A. Well, he was being forceful. He seemed a bit aggressive for the situation at hand.

15          Q. Was he acting the way that you, based on your 14 years of service – is that what you  
16 said?

17          A. Yes, Sir.

18          Q. Was he acting in a way that, based upon your 14 years of service, that you expected  
19 as a Lieutenant Colonel?

20          A. It was behavior that I wouldn’t expect from anyone, officer or enlisted.

21          Q. All right. Now, based upon your interaction with him, did you form an opinion about  
22 his military character?

1 A. Yes, Sir.

2 Q. And what was that opinion?

3 A. My first impression was less than professional, Sir.

4 TC: All right.

5 No further questions.

6 MJ: Defense, cross-examination?

7 CIV DC: One moment, please.

8 [The defense counsel conferred.]

9 **CROSS-EXAMINATION**

10 **Questions by the civilian defense counsel:**

11 Q. Sergeant Speed, so the duration of him grabbing the phone from you and returning it  
12 lasted about three minutes?

13 A. I would say anywhere between three to five minutes. Yes, Sir, it was very brief.

14 Q. Had you ever had any contact with Colonel Wilkerson before this incident?

15 A. No, Sir.

16 Q. Have you had any conflict with Colonel Wilkerson after this incident?

17 A. No, Sir.

18 Q. So you're basing your entire opinion on just this three-minute interaction with  
19 Colonel Wilkerson?

20 A. Yes, Sir.

21 CIV DC: No further questions, Your Honor.

22 TC: If I may, Your Honor?

1 MJ: You may.

2 **REDIRECT EXAMINATION**

3 **Questions by the trial counsel:**

4 Q. Did you smell alcohol on Colonel Wilkerson?

5 A. I did, Sir. I was standing approximately three feet or less from the individual the  
6 entire time he was demanding to speak to Lieutenant Corollo, and when I noticed the odor of an  
7 alcoholic beverage, I just kind of took that into account.

8 TC: Okay.

9 I think that's all the questions I have, Your Honor.

10 MJ: Thank you.

11 CIV DC: Follow-up, Your Honor.

12 **RECROSS-EXAMINATION**

13 Q. Sergeant Speed, I interviewed you a little while ago, and we asked you what was the  
14 basis for your opinion, correct?

15 A. Yes, Sir.

16 Q. And you didn't bring up the odor of alcohol on his breath as a basis for your opinion,  
17 did you?

18 A. No, Sir.

19 CIV DC: Okay.

20 No further questions, Your Honor.

21 MJ: The court doesn't have any questions of this witness.



1 MJ: You may step down. Don't leave at this point. Certainly, I have not made any type  
2 of ruling at this point, but you may step down off the stand.

3 WIT: Yes, Sir.

4 [The witness left the courtroom.]

5 MJ: Defense counsel, based on that testimony, do you object, and if you do object,  
6 please provide the basis for your objection.

7 CIV DC: Yes, Your Honor. First of all, this appears to be an attempt to bring in a  
8 specific incidence of conduct, which is not admissible under Rule 405(b) because it doesn't go to  
9 an essential element of the offense, so that's number one. Number two, this is an insufficient  
10 basis upon which to form an opinion as to character – a single three-minute interaction between  
11 two individuals of this nature. And so, finally, under Rule 403, I would say the prejudicial effect  
12 is substantially outweighed by the probative value. I may have said that backwards – the  
13 probative value is substantially outweighed by the prejudice effect.

14 MJ: Thank you, counsel.

15 Two things, first, as to the question regarding the basis for this opinion, is the government  
16 intending to elicit that in front of the members or was this only for the purpose of determining  
17 whether this witness had a sufficient basis on which to form his opinion?

18 TC: Only for the purpose for letting this court know what the basis was; we would not  
19 ask those questions in front of the members.

20 MJ: All right, so that being the case then, address – you don't need to address then the  
21 specific instance aspect of the objection since you're not intending to go there. Why does trial  
22 counsel believe that there's a sufficient basis for this witness to testify?

1 TC: Your Honor, the defense has put forward a good military character defense through  
2 affidavits and testimony in which they have printed or painted a picture of Lieutenant Colonel  
3 Wilkerson as being like a model officer. For example the affidavit from Jay Bloom – Major  
4 General Jay Bloom – saying that Major Wilkerson’s character is beyond reproach. We have  
5 Brigadier General Dolan saying he has excellent military character. We have affidavit after  
6 affidavit talking about he lives the core value; outstanding military character; utmost military  
7 character. The government’s belief is this is like character for truthfulness; either you have it or  
8 you don’t. It has to be there all the time because that’s what the defense’s theory is – because he  
9 has this character, he always has this character. And so it is natural rebuttal.

10 MJ: Isn’t that the argument that defense made that ultimately – they didn’t prevail once  
11 the court did an MRE 403 balancing test?

12 TC: Well, the difference was, Your Honor, this is an occasion that happened a year ago  
13 versus ten or eleven years ago. This is an occasion that rebuts the specific letters and testimony  
14 that they have that at this relevant time period he has this perfect, impeccable military character.

15 MJ: All right, so paint the picture a little bit for me or let me make sure that I’ve got the  
16 picture –the accused puts forth all these affidavits from individuals that describe how long  
17 they’ve known him and the period of time that they’ve known him, and that they’ve formed an  
18 opinion as to his outstanding military character?

19 TC: Correct.

20 MJ: And then the government, to rebut that, is going to put on a Tech Sergeant who will  
21 say that I’ve had hardly any dealings with him. I had one dealing with him on one occasion, so  
22 I’m not going to get into the specifics, and I formed an opinion that he’s not – doesn’t have

1 outstanding military character. That's the picture you were requesting or intending to present to  
2 the members to rebut?

3 TC: Yes. Yes, Your Honor. I would say it's the equivalent – and there is case law right  
4 on the point of calling the one lie being sufficient for someone to develop an opinion about  
5 someone's poor character for truthfulness. Now there's no case law right on point as far as good  
6 military character, but I would say, by analogy, they're the same. If one lie can say that someone  
7 has poor character for truthfulness, clearly an incident when a Lieutenant Colonel was drinking  
8 in uniform and acting like a fool and acting like a jerk to a Security Forces member – enlisted  
9 member performing his official police duties, that gives that – and that has significant enough  
10 impact on that Security Forces member that a year later he still remembers the incident and still  
11 feels strongly that the officer he dealt with did not act professionally is sufficient basis. The  
12 minimal contact is perfect cross-examination for the defense, but it should not go to the  
13 admissibility of it.

14 MJ: All right, and you reference – your reference is general. I understand you may not  
15 have the case law in front of you, but regarding “one lie may be sufficient to form a foundation  
16 for an opinion as to an individual being untruthful,” is that – was the one lie the only contact that  
17 individual had with the person on which he was rendering an opinion or was it “I knew the  
18 individual or four months, and during that four-month period of time he provided a lie, and so  
19 now I have this opinion”?

20 TC: I believe it was a First Sergeant; it was one of his troops. I don't remember the  
21 deal.

1 MJ: I understand. So at least as you reference it, and I do not need to get the specific  
2 case, but as you represent it and as you understand it, is an individual that has more than a five to  
3 ten-minute knowledge of the individual; it just happens to be based on – the opinion – on one  
4 negative thing amongst the sea of other – whatever it was?

5 TC: Correct. And the government's main point is the defense has painted a picture to, in  
6 order to get the instruction from the judge, which the judge will give, that good military character  
7 alone may raise reasonable doubt. And we believe that it's fair for an accurate picture to be  
8 before the members that Colonel Wilkerson is not universally thought of as this person with  
9 great military character.

10 MJ: I understand. Thank you.

11 CIV DC: Do I – I'm prepared – yes, Sir.

12 MJ: I'll sustain defense's objection. I find that this witness does not have sufficient  
13 foundation on which to render this opinion or to the extent that he has that based on a three, four,  
14 five-minute interaction, that turning then to the MRE 403 balancing test, that any probative value  
15 of this testimony that appears to be based on one instance and one instance only, is substantially  
16 outweighed by the danger of unfair prejudice, confusion of the issues, and a waste of time. The  
17 court finds as persuasive the case of *United States versus Perner* - P-E-R-N-E-R, 14 MJ 181.  
18 It's a CMA 1982 case. In that particular situation the appellate court determined that three  
19 meetings by a witness was insufficient on which to – to provide an insufficient foundation for  
20 that witness to testify as to the truthfulness of the particular individual that he had met on three  
21 occasions.

1 MJ: There were some other aspects of that opinion, but I find it persuasive in revolving  
2 this issue.

3 Are there any additional matters that we – actually, we’ve been going for some time. I do  
4 intend to recess prior to continuing with the members, but is there any other matter that we need  
5 to discuss during the Article 39(a)? Defense?

6 CIV DC: No, Sir.

7 MJ: Government?

8 ATC: No, Your Honor.

9 MJ: We’ll be in recess for five to ten minutes, and then we will begin with the rest of the  
10 case.

11 We’re in recess.

12 (The Article 39(a) session terminated and the court-martial recessed at 1516 hours, 1  
13 November 2012.)

14 **END OF PAGE**

1 (The court-martial was called to order at 1528 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, regarding the testimony of Mr. Scott Cusimano, you shall disregard any  
6 question or answer regarding whether the accused was fired following this allegation. There is  
7 no evidence that the accused was fired. Even assuming the accused was administratively  
8 reassigned, this has no bearing whatsoever in your determination of the facts in this case or to the  
9 application of the facts to the law.

10 In addition to the extent that you believe the question regarding an apology by Brigadier  
11 Zobrist to Mr. Scott Cusimano regarding the accused implied or inferred in any way that  
12 Brigadier General Zobrist had made a determination regarding what did or did not occur on or  
13 about 23 March 2012, such a situation you must disregard both the question and the answer.

14 Trial counsel?

15 TC: The government rests.

16 MJ: Defense?

17 CIV DC: Yes, Sir. The defense calls Brigadier General Scott Zobrist to the stand.

18 [The bailiff left the courtroom and returned with the witness.]

19 **BRIGADIER GENERAL SCOTT J. ZOBRIST**

20 was called as a witness by the defense, was sworn, and testified as follows:

21 **Questions by the trial counsel:**

22 Q. And General Zobrist, could you please state your full name?

1 A. Scott John Zobrist.

2 Q. And you're the Wing Commander here at Aviano Air Base?

3 A. Yes, the 31<sup>st</sup> Fighter Wing Commander.

4 TC: All right.

5 Mr. Spinner?

6 CIV DC: Thank you, Sir.

7 **DIRECT EXAMINATION**

8 **Questions by the civilian defense counsel:**

9 Q. General Zobrist, do you know Lieutenant Colonel Wilkerson?

10 A. Yes, I do.

11 Q. How is it that you know him?

12 A. I know him because he is a member of the 31<sup>st</sup> Fighter Wing.

13 Q. How long have you known him?

14 A. Approximately a year and a half.

15 Q. Now before we get into some questions I have specifically, could you please provide  
16 the court members a thumbnail sketch of your Air Force assignments?

17 A. I'm sorry; say again, please.

18 Q. Would you please provide the court members a thumbnail sketch of your Air Force  
19 assignments?

20 A. Locations?

21 Q. Locations and duty positions.

1           A. I've been an F-16 pilot throughout my entire career. I started at pilot training, flying  
2 T-37s and T-38s at Sheppard Air Force Base, and was commissioned through Air Force ROTC,  
3 first of all. Following Sheppard, I moved on to F-16 training at Luke and a variety of operational  
4 assignments to include Hahn Air Base in Germany, Homestead in Florida, Shaw Air Force Base  
5 in South Carolina. I went weapons school, and following weapons school was assigned to  
6 Aviano, and other operational assignments that have included Hill. I've been to Aviano three  
7 times, and Hill twice, and, also, I had some staff assignments in there at Shaw, the Pentagon, and  
8 at Yokota Air Base in Japan.

9           Q. Now, did you have a Mr. Cusimano that worked for you at one point?

10          A. Yes. Mr. Cusimano did work for me.

11          Q. When did he work for you?

12          A. He worked for me over the last year or so – since I arrived. He was the Director of  
13 Staff, and he departed recently, around the early part of October.

14          Q. Was a decision made in approximately January of this year to get rid of that position  
15 as a civilian Direct of Staff position?

16          A. I don't recall the exact dates that the Air Force illuminated that position, but that's  
17 approximately the timeframe.

18          Q. Now, did Mr. Cusimano come to you at any particular point and express concerns in  
19 terms of his working relationship with Colonel Wilkerson?

20          A. Yes, he did.

21          Q. What was the nature of the issue or issues that he raised with you?



1           A. At one time, he addressed his concern that Lieutenant Colonel Wilkerson, who was  
2 currently in the Inspector General position, was not attending or sending anyone to attend the  
3 Director of Staff Wing Staff Meetings. The Direct of Staff, for background, is a conduit of  
4 information to the other staff agencies, and in that capacity, he had meetings every two weeks at  
5 which all the different staff agency chiefs were expected to attend. He expressed concern that on  
6 several occasions Colonel Wilkerson did not attend. I took note of that and addressed that. I  
7 don't recall if I addressed it directly to Lieutenant Colonel Wilkerson or through others in my  
8 staff. And I considered the issue closed at that point.

9           Q. Now, did Mr. Cusimano raise any other issues in terms of his professional working  
10 relationship with Colonel Wilkerson during the last period of his OPR from 27 February 2011  
11 through 26 February 2012?

12           A. Not to my recollection.

13           Q. Now when you wrote that OPR, is it fair to say you factored in every aspect of  
14 Colonel Wilkerson's performance that was known by you at that time?

15           A. Yes.

16           CIV DC: May I approach the witness?

17           MJ: You may.

18           CIV DC: Your Honor, I'm handing the witness what has previously been admitted as  
19 Defense Exhibit A, pages 39 and 40.

20           Q. General, will you just take a moment and familiarize yourself with that document?

21           A. Yes, I will.

22           [The witness reviewed the document.]

1 Q. Sir, have you read the document?

2 A. Yes, and I am familiar.

3 Q. What is it?

4 A. It is a performance report for Lieutenant Colonel James H. Wilkerson, in the position  
5 of when he was – for the timeframe of 27 February 2011 to 26 February 2012.

6 Q. Did you sign that document?

7 A. Yes, I did, electronically.

8 Q. And in terms of that rating period that's reflected on that document, do you, sitting  
9 here today, stand by what you wrote in that document?

10 A. My characterization of Lieutenant Colonel Wilkerson's performance from the 27<sup>th</sup> of  
11 February 2011 and to the 26<sup>th</sup> of February 2012 as indicated on this form is accurate.

12 CIV DC: May I recover the exhibit, Your Honor?

13 MJ: You May.

14 [The exhibit was recovered.]

15 CIV DC: Thank you, Sir.

16 Q. Now, you're aware that Colonel Wilkerson is facing charges in this court-martial  
17 proceeding?

18 A. I am.

19 Q. Did you "fire" Colonel Wilkerson from the position he held previously, based on  
20 these allegations? And understand I'm using the word "fire."



1 Q. And you signed it later, after the allegations, correct?

2 A. That is correct. I was aware of the allegations at the time of the signing.

3 Q. And you are reflecting an objective, honest view of what you believed his duty  
4 performance was during that reporting period?

5 A. During that reporting period, as characterized by the OPR, that is what I'm reporting  
6 on, despite the fact it was later, in June, when I actually signed it.

7 Q. And signing in June is in no way an indication one way or the other about these  
8 charges, correct?

9 A. That is correct. It is Air Force procedure that you follow – that you are reflecting  
10 only on the rating period, so from my perspective as the Wing Commander, that's what I saw,  
11 and that's what I signed.

12 Q. All right, and then I want to talk to you about your perspective as the Wing  
13 Commander. Obviously, you've got a lot of experience in the Air Force, correct, Sir?

14 A. That is correct.

15 Q. And a lot of supervisory experience?

16 A. Yes, quite a bit.

17 Q. And is it your experience that often – well, I should say “often times,” but from time  
18 to time, officers act different in front of their superiors than they do their subordinates?

19 A. Quite often they do.

20 Q. And even as a Wing Commander, you may – they may do that to you, correct?

21 A. Absolutely.

22 Q. And so you're reflecting what you have personally seen, correct?

1 A. I reflected on the incidents – the situation that I saw, that I was aware of as the Wing  
2 Commander.

3 TC: All right. Thank you.

4 Nothing further.

5 CIV DC: Just a brief follow-up.

6 **REDIRECT EXAMINATION**

7 **Questions by the civilian defense counsel:**

8 Q. Sir, it's not just what you saw, but you knew him by reputation. You rely on the  
9 opinions of others of how he's performing, as well, when you form your own opinion?

10 A. That is correct.

11 CIV DC: No further questions, Your Honor.

12 MJ: Anything further?

13 **RECROSS-EXAMINATION**

14 **Questions by the trial counsel:**

15 Q. And the primary source of that would have been Colonel Walker?

16 A. There are many sources, to include situations that occurred on the base, people that  
17 have reported to me things that he said or did – positive and negative. All those were factored  
18 into my decisions.

19 Q. All right, and I'm talking about the OPR. The initial blocks are from Colonel Walker,  
20 correct?

21 A. Correct.

1 Q. And like most Wing Commanders, you're going to be relying a lot on what the  
2 immediate commander...

3 A. I relied heavily on Colonel Walker for his help and assistance in the assessment on  
4 that OPR.

5 CIV DC: All right.

6 Nothing further.

7 **REDIRECT EXAMINATION**

8 **Questions by the civilian defense counsel:**

9 Q. Yes, but, again, you're not a rubber stamp for Colonel Walker, correct?

10 A. I am not.

11 CIV DC: No further questions, Your Honor.

12 MJ: Nothing further, government?

13 TC: No, Your Honor.

14 MJ: Members – and there appears to be a question from Colonel Rood.

15 Bailiff, if you will please retrieve the question from Lieutenant Colonel Rood and provide  
16 it to trial counsel.

17 [The bailiff complied.]

18 [After review by counsel, the question was handed to the military judge.]

19 MJ: The question will be marked as Appellate Exhibit XXX.

20 All right, General Zobrist, I do have a question for you.

21 **EXAMINATION BY THE COURT**

22 **Questions by Lieutenant Colonel Rood (asked by the military judge):**

1 Q. And the question is, if you could change the last line of that performance report as of  
2 today's performance, how would you rate him? And I will read out the line from page 39, and if  
3 you'd like to see the entire thing, you may, but I'll read it out for you. "#1/4 Grp CDs;  
4 exemplary during cmbt air oops from in-garrison; OG/CC next for this AF superstar, ten key  
5 joint job."

6 And the question, again, is, if you could change the last line of that performance report as  
7 of today's performance, how would you rate him?

8 A. It's a very difficult question. I've gone to great lengths to allow the investigation and  
9 the proceedings to continue. There are some things that have – that as of that period, for the  
10 rating period?

11 Q. Well, the...

12 A. Repeat the question, Sir.

13 MJ: Let's go ahead and do this: We will have a quick recess outside the presence of the  
14 members, and then that will give me an opportunity to more explicitly phrase the question.

15 Members, you are in recess.

16 (The members left the courtroom at 1543 hours, 1 November 2012.)

17 **END OF PAGE**

1 (The court-martial was called to order at 1544 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The witness remains on the stand.

5 [The members were absent.]

6 MJ: Defense counsel?

7 CIV DC: I think I'm going to change my position to an objection. There may be other  
8 issues out there, and I don't think it's really a proper question at this point, especially given the  
9 nature of these proceedings. But I...

10 TC: I would concur with Mr. Spinner. I think, as much as I'd like the answer to come  
11 out, I believe it would be inappropriate and I think the court's best course of action is to instruct  
12 that he cannot answer that question.

13 MJ: The court concurs.

14 Call the members.

15 [The bailiff left the courtroom.]

16 (The Article 39(a) session terminated at 1545 hours, 1 November 2012.)

17 **END OF PAGE**



1 (The court-martial was called to order at 1546 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present. The witness remains on the stand.

5 Members, after further consideration, I've determined that this is not an appropriate  
6 question, nor would it elicit a response or answer that would be appropriate for your  
7 consideration. As such, I will not ask that question, and you are to disregard the question as well  
8 as – there wasn't an answer, but as well as the answer to the extent that there was an answer.

9 Are there any additional questions from the members as to this witness?

10 Apparently not.

11 Defense counsel, subject to recall?

12 CIV DC: No, Sir.

13 TC: No, Sir.

14 MJ: Thank you for your testimony. You are permanently excused. You may step down.

15 WIT: Thank you.

16 [The witness left the courtroom.]

17 MJ: Defense?

18 CIV DC: Your Honor, the defense rests.

19 MJ: Government, is there rebuttal to that witness?

20 TC: No, Your Honor.

21 MJ: All right, members, we do need to have a hearing outside of your presence to  
22 discuss the instructions. At this juncture, I want to have a hearing outside your presence so I can

1 better determine the amount of time it's going to take me to do what I need to do so that I can  
2 make determinations as to whether or not it really makes more sense at this point to recess you  
3 until tomorrow or whether we will be able to continue into early evening with at least some  
4 matters with the matters.

5 MJ: So as such, members, I'm going to put you on recess, and then I will readdress with  
6 you as we're going forward.

7 Members, you are...

8 CIV DC: May I just question, Your Honor?

9 MJ: All right, we're going to go into a 39(a).

10 CIV DC: Right.

11 MJ: Is this a question you need to ask at this point?

12 CIV DC: No, Sir.

13 MJ: All right.

14 Members, you are in recess.

15 (The members left the courtroom at 1547 hours, 1 November 2012.)

16 **END OF PAGE**

1 (The court-martial was called to order at 1548 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Counsel, based on this being a quarter to four, my inclination is that it makes more of  
6 sense, because of the length of the instructions as well as the discussion that I anticipate that we  
7 need to have on these instructions, to release the members for the evening, and begin with the  
8 members tomorrow morning at eight in the morning. However, if there are logistics or other  
9 reasons that I'm unaware of such that trial and defense counsel would prefer that we leave open  
10 the possibility of bringing in members, I certainly will entertain that.

11 Defense, do you concur with releasing them for the evening?

12 CIV DC: I concur, Your Honor. What I was starting to say, and realized we needed to  
13 address in the 39(a), is we had the earlier issue with Colonel Calta, and I just – the one thing I  
14 hope we can avoid is coming in in the morning and them saying “We have a question or a  
15 witness we want recalled.” So with that one issue hanging out there, I agree with that plan.

16 MJ: Thank you.

17 TC: And I concur, Your Honor. In fact, we have a number of witnesses who are, I think,  
18 anxious to return to the United States. If the court could ask, because we have a number of these  
19 witnesses that been kept for recall, specifically Colonel Ostovich, I believe, one, if we could ask  
20 the members if they believe they have any questions at this time, and then with the court's  
21 permission, maybe we can start flying some of these witnesses home.

22 MJ: Thank you.

1 MJ: As far as tomorrow morning, in resolving whether or not there are any additional  
2 questions from the members to these witnesses or otherwise, putting that aside, is there – is eight  
3 in the morning sufficient, you anticipate at this point, sufficient to begin with instructions as well  
4 as argument?

5 CIV DC: Yes, Sir.

6 TC: Yes, Your Honor.

7 MJ: Bailiff, please call the members.

8 [The bailiff left the courtroom.]

9 (The Article 39(a) session terminated at 1550 hours, 1 November 2012.)

10

**END OF PAGE**

1 (The court-martial was called to order at 1551 hours, 1 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, at this point, both trial and defense counsel have presented – you have all the  
6 evidence at this point at least that it's anticipated you will have for your consideration. You have  
7 not, of course, been instructed on the law. However, before I release you for today, I wanted to  
8 ensure that the members didn't have any additional questions of any of the witnesses that may  
9 have testified up to this point. If there is a potential question or you are internally debating  
10 whether to ask a question, the preference is to address it today because it may be that the  
11 witnesses are unavailable come tomorrow.

12 So as an initial matter, are there any additional questions the members have of any of the  
13 witnesses or otherwise that you would request of this court?

14 All right – and Colonel Calta, I have an affirmative response from you. Would you like  
15 to have an opportunity – I don't know if you've already written down a question. If you know  
16 what it is, I'll – is this a pretty straightforward question that you can kind of write down right  
17 now or would you prefer – we've got some other stuff that we can do. We can put you in recess  
18 while you formulate that question, and then you can let the bailiff know one you're ready, and  
19 then at that point we can bring you back in and we can address that.

20 Which would be your preference?

21 MBR (Colonel Calta): I think I would rather go into recess and think about it a little bit.

1 MJ: All right. Now, again, I will say this: This is not the time to begin discussing the  
2 evidence or the case. In other words, Colonel Calta, this is your question; this is not the question  
3 of anyone else. This is not a public kind of discussion amongst the members as to what should  
4 or shouldn't be asked. However, if any member, individually, have any questions they may have  
5 of a witness or otherwise, this is an opportunity, certainly, for you to bring that to the court's  
6 attention.

7 Members...

8 Yes, Colonel Stentz?

9 MBR (Colonel Stentz): Are we able to take our notes with us to just...

10 MJ: Oh, all right. And I would say this as well: At this point as I put you back in recess,  
11 you may certainly take the notes that you have with you. You may take any of the exhibits – the  
12 prosecution or defense – that have been provided to you. You may familiarize yourself with  
13 these exhibits, with these notes. You just may not begin the actual deliberations.

14 MBR (Colonel Stentz): As far as formulating the questions?

15 MJ: Sure, of course. Of course. To the extent that those notes help you recall a question  
16 you might have, you certainly may take those notes back for your own use.

17 All right, members, you are in recess.

18 (The members left the courtroom at 1554 hours, 1 November 2012.)

19 **END OF PAGE**

1 (The court-martial was called to order at 1555 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Understanding that if, in fact, any of the members have questions, that – or there’s  
6 additional evidence, that as a result of that is provided in this case, we certainly can readdress, as  
7 necessary, any potential instructional issues.

8 However, based on where we are at this point and the evidence as it has been presented  
9 up to this point, do counsel see any lesser-included offenses that they believe are in issue in this  
10 case? Trial counsel?

11 ATC: Your Honor, wrongful sexual contact for Specification 1 of Charge I, as well as  
12 the attempted aggravated sexual assault for Specification 2 of Charge I.

13 MJ: A couple of questions for you. Well, first, let me ask you this:

14 Defense counsel, do you object or do you concur that those have been raised by the  
15 evidence?

16 CIV DC: We object, Your Honor.

17 MJ: A couple of questions, if you’re prepared to respond to it at this point.

18 ATC: Yes, Your Honor.

19 MJ: Address, as to Specification 1, address what facts you believe have reasonably been  
20 raised such that an LIO of wrongful sexual contact has been raised by the evidence.

21 ATC: Your Honor, the defense has put on a lot of evidence attempting that she was not  
22 substantially incapacitated or substantially incapable to appraise the nature of the sexual contact,

1 to include both of their experts, especially Dr. Taylor. Obviously, she's testified about feeling as  
2 if she were in a dream. You know one could argue that she was not in a dream, but that she was  
3 – she thought she was in a dream, based upon her testimony. If so, then she would not actually  
4 be technically substantially incapacitated and thus it would only be a sexual contact without her  
5 permission, and thus would meet the elements, arguably, of wrongful sexual contact under  
6 Article 120, UCMJ.

7 MJ: And it's the government's position that under the *United States versus Jones* and its  
8 progeny that wrongful sexual contact is a lesser-included offense of abusive sexual contact?

9 ATC: Yes, Your Honor, it is the government's position.

10 MJ: Turning then to the attempted aggravated sexual assault, what evidence do you  
11 believe has reasonably raised that as an LIO?

12 ATC: The same circumstance, Your Honor. The defense has put on a lot of evidence  
13 showing that she was not – arguing that she was not substantially incapacitated. If she were not,  
14 then it would not meet the elements of actual aggravated sexual assault, and thus it would be  
15 merely an attempt to sexually assault her during her sleep or her inability to appraise the nature  
16 of the sexual act.

17 MJ: At least as the government believes the evidence has been raised, what does the  
18 government believe will the “but for” that the element – why would this be an attempt as  
19 opposed to an aggravated sexual assault? In other words, is this a situation where he thought she  
20 was substantially incapacitated, arguably, and it turned out that she wasn't? Is that the theory  
21 that you're going forward or was it something else?



1 ATC: Your Honor, that was the theory, but we're going to withdraw that request, Your  
2 Honor.

3 MJ: All right, so the only issue that we've got at this point then is as to the wrongful  
4 sexual contact being the lesser-included offense. Defense counsel, are you prepared to respond  
5 to that request for a lesser-included offense?

6 CIV DC: Yes, Your Honor, our position is that it didn't occur, and so therefore it's our  
7 position that there's no LIO, and to the extent that the court may think there's an LIO, we're  
8 affirmatively waiving any lesser-included offenses instruction. We're taking, essentially, an all  
9 or nothing position.

10 MJ: What is defense's position regarding whether wrongful sexual contact could be, in  
11 the rights facts or circumstances, could be a lesser-included offense of abusive sexual contact  
12 under *US v. Jones* and its progeny?

13 CIV DC: I have not researched that.

14 MJ: And if you don't – if, because you're not requesting it you're not in a position to say  
15 what your position is, that's fine. I understand that you are requesting it, and you would object  
16 to that being instructed. Is that correct?

17 CIV DC: That's correct, Your Honor, and, in part, part of it is the idea that I have had  
18 cases where, arguably, under the law there is a lesser-included offense, but, nonetheless, I take  
19 the position that we're taking it – our position is an all or nothing defense, and so we're prepared  
20 to live whatever the outcome is.

21 MJ: Thank you.

1 MJ: Government, just so I understand your position, at least as to defense saying they are  
2 willing to go all or nothing for this abusive sexual contact, you still are requesting this being an  
3 LIO, and you believe it has been reasonably raised by evidence. Is that correct?

4 ATC: Yes, Your Honor. Yes to both.

5 MJ: Thank you.

6 Colonel Wilkerson, you did not testify during the findings phase of the trial. Was it your  
7 personal decision not to testify?

8 ACC: Yes, Sir.

9 MJ: Defense, do you wish for me to instruct on the fact that the accused did not testify?

10 CIV DC: Yes, Your Honor.

11 MJ: We will be in recess.

12 (The Article 39(a) session terminated and the court-martial recessed at 1601 hours 1  
13 November 2012.)

14 **END OF PAGE**

1 (The court-martial was called to order at 1714 hours, 1 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 During the recess, the bailiff provided me with nine separate questionnaire forms from  
6 the members regarding questions to certain witnesses. We will get to those shortly. I provided  
7 copies of all of those questions to both trial counsel as well as defense counsel.

8 I had an 802 with trial counsel and defense counsel where they – trial and defense  
9 counsel provided their recommended way forward. In addition, during an 802, I provided  
10 counsel an opportunity to suggest to the court any specific instructions that they would be  
11 requesting for the findings instructions portion. During that 802 I did not take in any evidence  
12 nor did I make any rulings or decisions.

13 Trial counsel and defense counsel, before we get to the substance of your questions,  
14 would you like to object to or supplement what was discussed during the 802?

15 ATC: No, Your Honor.

16 CIV DC: No, Sir.

17 MJ: The first question for the court members will be marked as Appellate Exhibit XXXI.  
18 It's from Colonel Calta to Suzanne Berrong. There is no objection to the questions from either  
19 trial counsel or defense counsel. Is that correct?

20 ATC: Yes, Your Honor.

21 CIV DC: Correct, Your Honor.

1 MJ: All right, and does trial counsel and defense counsel – well, the questions that I read.  
2 First, “When you spoke to Exemption 6 – this is to Suzanne Berrong – “When you spoke to  
3 Exemption 6 around midnight on 23 March 2012, was she slurring her words? Did it sound  
4 like she was crying?”

5 Do trial counsel and defense counsel, do you have a request as to what to provide to the  
6 members as to that question or whether or not that question should be posed directly to Ms.  
7 Berrong?

8 ATC: Your Honor, we request that the answers be given to the members that she would  
9 have testified that “Yes, she was slurring her words, and that she did not sound like she was  
10 crying.” And I believe defense counsel is in agreement.

11 CIV DC: We concur, Your Honor.

12 MJ: The second question there is: “Do you consider Exemption 6 a truthful person?”  
13 The proposed way forward, trial counsel?

14 ATC: We would propose that the members be told that she would have testified that she  
15 has no opinion on that issue.

16 MJ: Defense?

17 CIV DC: We concur, Your Honor.

18 MJ: Appellate Exhibit XXXII is a questionnaire from Colonel Calta to Mrs. Pone. No  
19 objection by either trial counsel or defense counsel. The question is: “Did either of the boys  
20 mention a commotion in the Wilkerson house at three in the morning on 24 March of 2012?”

21 Recommend response, trial counsel?

22 ATC: Your Honor, we propose that the answer “No” be given to the members.

1 CIV DC: We concur, Your Honor.

2 MJ: Appellate Exhibit XXXIII is a question from Colonel Cunningham to Dr. Taylor.

3 There's no objection by prosecution or defense. The question is: "What would be the calculated  
4 blood alcohol for Lieutenant Colonel Wilkerson from midnight, 23 March 2012, through three in  
5 the morning, 24 March 2012, at hourly intervals?"

6 Recommended way forward, counsel?

7 ATC: Your Honor, I believe we're both in agreement that they should be told that Dr.  
8 Taylor did not calculate Lieutenant Colonel Wilkerson's blood alcohol that night.

9 MJ: Defense?

10 CIV DC: We concur, Your Honor.

11 MJ: Appellate Exhibit XXXIV will be the questionnaire from Colonel Stentz a witness,  
12 Colonel Ostovich. No objection to those questions; is that correct trial counsel and defense  
13 counsel?

14 ATC: That's correct, Your Honor.

15 CIV DC: Correct, Your Honor.

16 MJ: And the anticipated way forward is to recall the witness to ask these questions to  
17 him. Is that correct?

18 ATC: Yes, Your Honor.

19 CIV DC: Correct, Your Honor.

20 MJ: Appellate Exhibit XXXV is a question from Colonel Marks to Colonel Ostovich. It  
21 appears to be almost identical to the question that I just related from Colonel Stentz. No  
22 objection from trial counsel or defense counsel?

1 ATC: No, Your Honor.

2 CIV DC: Correct, Your Honor.

3 MJ: Appellate Exhibit XXXVI is a question from Lieutenant Colonel Rood to Ms.

4 **Exem**. No objection by either trial or defense counsel. Is the recommended way forward to call,  
5 **ntion 6** tomorrow morning, Ms. **Exem**s and ask these three questions of her?  
**ntion 6**

6 ATC: Yes, Your Honor.

7 CIV DC: Correct, Your Honor.

8 MJ: Appellate Exhibit XXXVII is a questionnaire from Colonel Calta to Ms. **Exemp**  
**tion 6**

9 This the one question regarding the Article 32 – regarding what she may have said during an  
10 Article 32. No objection by either trial counsel or defense counsel?

11 ATC: Correct, Your Honor.

12 CIV DC: Correct, Your Honor.

13 MJ: Appellate Exhibit XXXVIII is a question from Colonel Calta to Ms. **Exem**. This  
**tion 6**  
14 one is the one that has two questions on it. No objection by either trial or defense counsel?

15 ATC: No, Your Honor.

16 CIV DC: Correct, Your Honor.

17 MJ: And Appellate Exhibit XXXIX is a question from Colonel Stentz to Ms. **Exem**. No  
**tion 6**  
18 objection by either trial counsel or defense counsel, and I believe this question has previously  
19 been asked by a member, but there's no objection to this question, correct?

20 ATC: No objection, Your Honor. I would say, thought, we should only ask it once, and  
21 it's better to ask it the way Lieutenant Colonel Rood asks it.

1 MJ: All right, and what we will do is, certainly, as we go through these questions, I will  
2 give trial counsel and defense counsel an opportunity to ask any follow-up questions as they  
3 believe is necessary.

4 Defense counsel, do you concur?

5 CIV DC: We concur, Your Honor. We would only note that when you ask the questions,  
6 it's Master Sergeant Dunnivant, not "Donavon" as stated in the questions.

7 MJ: Thank you very much. I appreciate it.

8 I will provide a copy of my draft – proposed draft instructions to both trial counsel and  
9 defense counsel this evening so that we can address any of those instructional matters in more  
10 detail tomorrow. At that point we will also address the findings worksheet and any other matters  
11 similar to that.

12 Are there any other matters that we need to discuss on the record this evening?

13 ATC: No, Your Honor.

14 CIV DC: No, Sir.

15 MJ: We are in recess for the evening.

16 (The Article 39(a) session terminated and the court-martial recessed at 1722 hours, 1  
17 November 2012.)

18 **END OF PAGE**

1 (The court-martial was called to order at 0808 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Prior to coming on the record, I did have a short 802 with counsel. During that 802, I  
6 notified both trial and defense counsel that one of the members, Colonel Marks, approached me  
7 this morning, and just said that he inadvertently ran into Colonel Ostovich and wanted to bring it  
8 to my attention so that I could provide that information to the counsel, and I just instructed him  
9 that we have him come out and explain the circumstances of that meeting.

10 In addition, just other minor logistics, plans, way forward that trial and defense counsel  
11 provided the court as far as then anticipated today proceeding. So either trial or defense counsel  
12 object to or would like to supplement what was discussed during the 802?

13 CIV DC: Just to supplement, Your Honor, I did inform the court that we were releasing  
14 our case-in-chief witnesses.

15 MJ: Thank you. That's fine, and what we can end up doing right now is I understand at  
16 this point that Colonel Ostovich as well as Ms. **Exemp** will be called back to testify, so all of  
17 defense counsel witnesses, they are requesting that they be released. Is that correct?

18 CIV DC: One moment.

19 [The defense counsel conferred.]

20 CIV DC: All except Beth Wilkerson.



1 MJ: Government, is there an objection to excusing all of the defense witnesses with the  
2 exception of Beth Wilkerson?

3 ATC: No, Your Honor.

4 MJ: And government, as to your witnesses, are there any witnesses that at this point you  
5 are requesting to be excused – permanently excused?

6 ATC: Your Honor, they can all be as soon as the two take the stand.

7 MJ: Defense, do you have any objection to the prosecution witnesses being excused?

8 CIV DC: No, Your Honor.

9 MJ: All right, the defense's – their witnesses, with the exception of Beth Wilkerson, will  
10 be permanently excused, and I'll excuse all of the trial counsel witnesses after we actually have  
11 Colonel Ostovich and Ms. Exemp  
tion 6 testify.

12 Is there anything further we need to discuss on the record prior to bringing in, first,  
13 Colonel Marks?

14 ATC: No, Your Honor.

15 CIV DC: No, Sir.

16 MJ: Bailiff, please bring in Colonel Marks.

17 [The bailiff left the courtroom and returned with Colonel Marks.]

18 MJ: Please come in and have a seat.

19 MBR (Colonel Marks): Yes, Sir.

1 MJ: Colonel Marks, I understand that you want to bring it to the court's attention that  
2 you inadvertently ran into a witness or a potential witness at some point last night. Is that  
3 correct?

4 MBR (Colonel Marks): Yes, Sir.

5 MJ: Okay, can you tell a little bit about who that witness is and what the circumstances  
6 were?

7 MBR (Colonel Marks): Just in the lobby of billeting, I ran into Colonel Ostovich. He  
8 was speaking to an individual. As I was standing there, the other individual said something  
9 about the purpose of going over to the Wilkerson's. I left. That's all I heard of the conversation.  
10 I went back up to the front counter.

11 MJ: All right. Did you hear what Colonel Ostovich's response was?

12 MBR (Colonel Marks): I didn't hear him. All I heard was the words that the person said,  
13 and I didn't hear what was before that or what came after that.

14 MJ: All right. Thank you.

15 Trial and defense counsel, do either of you have any further questions of this member?

16 ATC: No, Your Honor.

17 CIV DC: No, Sir.

18 MJ: Thank you very much. You may be excused.

19 MBR (Colonel Marks): Okay, Sir.

20 [Colonel Marks left the courtroom.]

1 MJ: Trial and defense counsel, no objections of allowing Colonel Marks continuing to sit  
2 as a court member?

3 TC: No objection.

4 CIV DC: We concur.

5 TC: Your Honor, we do have a concern though. It sounds like Colonel Ostovich may  
6 have been discussing his testimony or his knowledge of the case in violation of the order, so we  
7 ask that he be brought in and questioned as to who he was talking to and what they were talking  
8 about.

9 MJ: All right. Is your preference at this point, since neither trial nor defense counsel has  
10 had an opportunity to interview him regarding this information, is your preference just to bring  
11 him at this point?

12 TC: Yes.

13 MJ: As opposed to an interview?

14 TC: And have the court – yes, and have the court ask the questions.

15 MJ: Bailiff, please bring in Colonel Ostovich.

16 [The bailiff left the courtroom and returned with Colonel Ostovich.]

17 MJ: Please come in and have a seat.

18 [Colonel Ostovich took the witness stand.]

19 MJ: And you're the same Colonel Ostovich that previously testified in this proceeding.  
20 Is that correct?

21 WIT: I am.

1 MJ: And I remind you that you are still under oath.

2 Since between the time that I temporarily released you and that you testified in this  
3 proceeding, and you coming into court today, have you discussed either your testimony or your  
4 knowledge about this case with anyone other than counsel, the accused, or this court?

5 WIT: Yes, I called my dad just to ask for some legal advice.

6 MJ: And when did this phone call happen?

7 WIT: It was yesterday.

8 MJ: Did you talk to anyone in the lobby yesterday?

9 WIT: Yes, I did.

10 MJ: All right, and tell me a little bit more about that, please.

11 WIT: I had a *Stars and Stripes* reporter who turned around and basically started talking  
12 to me while I was down in the lobby or walking back in from picking up some food.

13 MJ: And did you – and did you respond to this *Stars and Stripes* – substantively respond  
14 to that reporter?

15 WIT: No, I didn't. I basically excused myself and walked away.

16 [Pause.]

17 WIT: And, Judge, what she mentioned was that there had been a statement by Mr.  
18 Cusimano, the previous Director of Staff. She alluded that I had – that he had basically said that  
19 I lunged at him at a meeting at some point. I think the only thing I said to her was, "There was  
20 other people at that meeting who might have a different opinion."

21 MJ: You do have testimonial immunity in this case. Is that correct?

1           WIT: Yes.

2           MJ: Do you have any questions regarding the meaning of that testimonial immunity?  
3 The reason I ask is your comment earlier that you called your father for legal advice. Do you  
4 have any questions regarding the meaning or effect of your immunity?

5           WIT: No, I don't, and when I called my dad for legal advice, it was more so after seeing  
6 the *Stars and Stripes* reporter after hearing that there had been allegations that I lunged at  
7 someone.

8           MJ: Okay, so it was, at least in your understanding, it wasn't specifically related to your  
9 testimony in this case?

10          WIT: No.

11          MJ: All right, counsel, do you have any follow-up questions?

12          TC: No, Your Honor.

13          MJ: Defense Counsel?

14          CIV DC: No, Sir.

15          MJ: Thank you very much, Colonel Ostovich. I'm going to have you temporarily step  
16 down off the stand at this point. I do anticipate that we're going to be bringing you back in in  
17 front of the members to ask some additional questions as well.

18          WIT: Okay.

19          MJ: Thank you very much.

20          [The witness left the courtroom.]

1 MJ: All right, regarding Colonel Marks, just one thing that may not otherwise be clear, at  
2 least specifically regarding the members, is that many of the counsel have come into Aviano –  
3 flown into Aviano, both trial and defense counsel. The members are, obviously, not from  
4 Aviano. Many of the witnesses are not from Aviano. And, as a result – and I am not from  
5 Aviano – and so there are a fair number of witnesses and counsel that are in the on-base billeting  
6 area, and so as a result – I won't say as a result, but apparently at least on two occasions, the  
7 close proximity of the members to other individuals in this case has resulted in at least chance  
8 meetings or meetings such that we've discussed on the record.

9 MJ: Is there anything further, trial or defense counsel, that we or you would like to bring  
10 to the court's attention prior to us calling the members?

11 ATC: No, Your Honor.

12 CIV DC: No, Sir.

13 MJ: Call the members.

14 [The bailiff left the courtroom.]

15 (The Article 39(a) session terminated at 0819 hours, 2 November 2012.)

16 **END OF PAGE**

1 (The court-martial was called to order at 0820 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 All right, members, in regards to the questions that you have previously provided and that  
6 I've marked as appellate exhibits, first to Appellate Exhibit XXXI, which were several questions  
7 to Suzanne Berrong.

8 The first question: When you spoke to Exemption 6 around midnight on 23 March  
9 2012, was she slurring her words? Did it sound like she was crying?

10 If she was called to testify, Suzanne Berrong would testify that Ms. Exemption 6 was  
11 slurring her words and that it did not sound like she was crying, and this was around midnight of  
12 23 March of 2012.

13 As to the second question, "Do you consider Exemption 6 a truthful person?" the  
14 witness would say that she has no opinion.

15 Turning to Appellate Exhibit XXXII, a question to Mrs. Pone. "Did either of your boys  
16 mention a commotion in the Wilkerson house at three in the morning on 24 March of 2012?"

17 Mrs. Pone would say "No."

18 Question of Dr. Taylor, Appellate Exhibit XXXIII: "What would be the calculated blood  
19 alcohol for Lieutenant Colonel Wilkerson from midnight, 23 March 2012, through three in the  
20 morning, 24 March 2012, at hourly intervals?"

1 MJ: Dr. Taylor did not calculate this. In addition, when you have an opportunity to see  
2 my findings instructions, I think that will also potentially answer, at least in part, some questions  
3 of the members as well.

4 As to Colonel Ostovich and Ms. Exemp the intention is to call both of these witnesses  
5 and to ask the questions that the members would like to have these witnesses respond to.

6 We first call Colonel Ostovich to the stand. Bailiff?

7 [The bailiff left the courtroom and returned with the witness.]

8 MJ: Please come in and have a seat.

9 [The witness took the witness stand.]

10 MJ: Colonel Ostovich, I just remind you that you remain under oath.

11 I have several questions for you.

12 **COLONEL DEAN R. OSTOVICH**

13 was recalled as a witness, was reminded he had been previously sworn, and testified as follows:

14 **EXAMINATION BY THE COURT**

15 **Questions by the members (asked by the military judge):**

16 Q. First, once Suzanne Berrong mentioned to you, on 24 March, that Exemption went to  
17 the Clinic, did you mention that to Lieutenant Colonel Wilkerson?

18 A. I did not.

19 Q. Once you suspected the SARC report was the same events of that evening of 23-24  
20 March, did you mention that to Lieutenant Colonel Wilkerson?



1 A. And just can we go back one? I don't remember being told that she went to the  
2 Clinic. I mean that's – I don't remember that even occurred.

3 I remember that something occurred, that it was potentially a sexual assault in nature, but  
4 there wasn't a whole lot of details to it. I don't remember her mentioning anything to the effect  
5 that she went to the Clinic.

6 MJ: All right. Thank you.

7 Q. Turning then to that second question, once you suspected that the SARC report was  
8 the same events of that evening, did you mention that to Lieutenant Colonel Wilkerson?

9 A. No, I did not. I let the process go.

10 Q. All right, a related question: You mentioned you had a conversation with Suzanne  
11 Barron, in court, where she informed you that **Exemption** had made allegations of sexual assault  
12 by Lieutenant Colonel Wilkerson. When was this?

13 A. The best I can remember, it was in the day or the days after. I think it may have been  
14 on the 24<sup>th</sup>.

15 MJ: Trial counsel, do you have any follow-up questions of this witness?

16 ATC: No, Your Honor.

17 MJ: Defense?

18 CIV DC: No, Sir.

19 MJ: Members, does that answer your questions as to this witness?

20 That's an affirmative response.

21 Not subject to recall; is that correct, government?

1 ATC: That is correct, Your Honor.

2 MJ: And defense?

3 CIV DC: We concur.

4 MJ: You are being permanently excused, which means that it is not anticipated that your  
5 testimony will be needed anymore in this proceeding. However, while this case is ongoing, do  
6 not discuss your testimony or your knowledge of this case with anyone other than counsel or the  
7 accused or this court. You may step down.

8 [The witness left the courtroom]

9 MJ: Bailiff, please call Ms. Exemption 6 .

10 [The bailiff left the courtroom and returned with the witness.]

11 MJ: Ms. Exem<sup>tion 6</sup>, please come in and have a seat.

12 [The witness took the witness stand.]

13 MJ: And, Ms. Exemp<sup>tion 6</sup> I remind you that you are still under oath.

14 Bailiff, if you would please retrieve Defense Exhibit P from me and provide it to the  
15 witness.

16 [The bailiff complied.]

17 MS. Exemption 6

18 was recalled as a witness by the court and testified as follows:

19 **EXAMINATION BY THE COURT**

20 **Questions by the members (asked by the military judge):**

1 Q. Ms. Exem  
2 I've just provided you in Defense Exhibit P, can you identify which room, if any, that you slept  
3 in that night? And you can take your time to look through. And if you'd just indicate the page if  
4 you do see the room that you slept in that night.

5 A. [The witness reviewed the exhibit.]

6 Q. Do you see the room that you slept in that night?

7 A. I'm not sure exactly which room, but I know that I didn't sleep in any of these beds.

8 MJ: Okay, just one moment. Let me get my copy of the exhibit.

9 Q. All right, just so I can kind of go through with you, so page 1, you did not sleep in  
10 that bed; is that correct?

11 A. That's correct.

12 Q. Page 3, I believe, that bed does not look familiar; is that correct?

13 A. Ah, you know it looks familiar. It looks like maybe the one that their son or one of  
14 the boys was in, but I didn't sleep in that bed.

15 Q. And I apologize; that was actually a poor phrasing of my question, but that – so it  
16 looks familiar, but that does not look like the bed that you slept in that night?

17 A. That's right.

18 Q. Thank you. And the last page, page 12...

19 A. Uh-huh.

20 Q. ...does that look like the bed that you slept in that night?

21 A. Oh, no, definitely not.

1 MJ: Thank you.

2 Bailiff, if you will please just retrieve those pictures, and you can provide those back to  
3 the court reporter. Thank you.

4 [The bailiff complied.]

5 Q. Did you exit out the same door you entered into at the beginning of the night or out  
6 the kitchen door and down the stairs or something else?

7 A. You know, I don't know how many exit doors they have in relation to their house, so  
8 I can't tell you if it was exactly the same door that I came in as I went out. But I know I didn't  
9 go down any stairs; I went across a lawn and then there was a wall there. But I didn't go down  
10 the stairs.

11 Q. Where was – do you remember where the wall was to you as you exited the property?

12 A. Ah, I ran out the door. I remember – I know as far as I went – I went across – there  
13 was a lawn, and it wasn't too terribly far away. I mean I could – I walked down to it, and then it  
14 was low enough for me to sit up on and swing my legs over, and then drop down on the other  
15 side. But it wasn't – you know it wasn't right there, but it wasn't super far.

16 Q. Did you tell Master Sergeant Dunnivant that your belt and pants were open?

17 A. No.

18 Q. Did you say in the Article 32 hearing that the alleged incident was "...probably my  
19 fault"?

20 A. No, I didn't say that.

1 Q. Why didn't you leave the Wilkerson house when you were offered rides, if you were  
2 offered rides from various people, to include Major Goldsberry, Beth Exem , and Suzanne  
3 Berrong? And you can answer this to the best of your ability. If you need to clarify who you  
4 believe you were offered rides from, you certainly may do so.

5 A. Sure.

6 CIV DC: Your Honor, I think it should be Beth "Wilkerson," not Beth "Exemp  
7 tion 6"

8 MJ: Oh, okay. I see. I do. There is a typo here. Thank you very much. I appreciate  
9 that. I'll re-ask that question.

10 Q. Why didn't you leave the Wilkerson house when you were offered rides from various  
11 people, including Major Goldsberry, Beth Wilkerson, and Suzanne Berrong?

12 A. Okay. Major Goldsberry never offered me a ride home.

13 Beth Wilkerson – she did offer me a ride, but she was going to drop me off outside the  
14 gate. I didn't know where my shoes were. I wouldn't want to walk, in March, down the road,  
15 through the gate, and also I'd been drinking.

16 Suzanne – I felt really bad. You know I was upset; I called her; I woke her up. She was  
17 in bed. Beth was saying you know "You can stay here. You can stay here." After talking to  
18 Suzanne for a while, I just thought "I'm not going to make her get out of bed and drive all the  
19 way over to their house," and I didn't know how far it was, but Suzanne lives in Pordenone – and  
20 come pick me up, take me to the TLF, and then go back home in the middle of the night. So, it  
21 just seemed the easiest thing to do at that point.

MJ: Trial counsel, do you have any additional follow-up based on those questions?

1 ATC: No, Your Honor.

2 MJ: Defense counsel?

3 CIV DC: No, Sir.

4 MJ: Does that answer the members' questions?

5 That's an affirmative response from the members.

6 Subject to recall?

7 ATC: No, Your Honor.

8 CIV DC: No, Sir.

9 MJ: Thank you for your testimony. You are permanently excused, which means that it's  
10 not expected that your testimony will be needed further in these proceedings. However, while  
11 this case is ongoing, do not discuss your testimony or your knowledge of this case with anyone  
12 other than counsel, the accused, or this court. You may step down.

13 [The witness left the courtroom.]

14 MJ: All right, members, we will need a short recess outside of your presence to address a  
15 couple of administrative matters prior to me providing instructions to you in findings and  
16 proceeding to argument, and the remaining portion of this court-martial.

17 I, again, remind you that since you've not received either argument by counsel or the  
18 instructions on the law, this is not the opportunity to begin discussing testimony or deliberating  
19 on this case.

20 Counsel will remain.

21 Members, you are in recess.

1

(The members left the courtroom at 0835 hours, 2 November 2

2

**END OF PAGE**

1 (The court-martial was called to order at 0836 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 [The civilian defense counsel stood.]

6 MJ: Yes?

7 CIV DC: Yes, Sir, I have a question.

8 Based on her responses, we would like to recall Beth Wilkerson to the stand in rebuttal to  
9 state that the – to confirm the beds that were in the house, and to further state that no beds were  
10 moved or changed around from the occasion in question. So we would like to call Beth  
11 Wilkerson to rebut her testimony.

12 TC: We object. Both sides have closed. This is a member question. Mrs. Wilkerson has  
13 already made it perfectly clear; her testimony is that that was the bed that she slept in. By  
14 inference, it means it wasn't moved around. He has everything that he needs to do the argument.  
15 This would be a waste of the court's time at this point to bring her back in to testify to what she's  
16 already basically testified to.

17 CIV DC: The rules permit reopening a case, so if that's the issue, then I request to  
18 reopen for that purpose.

19 TC: While it does permit it, it's at your discretion, Your Honor. The evidence is before  
20 the members. She's already testified; she's already testified that was the bed that she slept in.  
21 Mr. Spinner could have asked that question of Exemption earlier, but he didn't.



1 MJ: Is Mrs. Wilkerson available?

2 CIV DC: Yes, Sir. I believe she's here right now, and it's just a couple of questions,  
3 Your Honor.

4 MJ: If you want to confirm that she is immediately available.

5 [The civilian defense counsel spoke with the defense paralegal, who left the courtroom.]

6 CIV DC: We have someone checking, Your Honor.

7 [The defense paralegal returned to the courtroom and spoke with the civilian defense  
8 counsel.]

9 CIV DC: Apparently she's here, Your Honor.

10 MJ: I will, since she is readily available, and it appears as though the questions the  
11 defense counsel are intending to ask are in direct response to a member question that followed  
12 the closing of the evidence, my intention is to allow the defense, effectively, to reopen for the  
13 limited purpose of asking Mrs. Wilkerson regarding those questions. Certainly, government, if  
14 you would like, you have the opportunity to provide rebuttal to this if you believe it is  
15 appropriate.

16 Is there anything further prior to calling the members?

17 CIV DC: No, Sir.

18 ATC: No, Your Honor.

19 TC: Your Honor, would it be appropriate to actually go over instructions now because I  
20 don't think this is really going to change anything, and then we don't have to go back in and out.

21 MJ: That's fine. Thank you. We can go ahead and do that.

1 MJ: I did provide a copy of the draft instructions to both trial and defense counsel last  
2 night via email. Have both trial and defense counsel had an opportunity to review those  
3 instructions?

4 ATC: Yes, Your Honor.

5 DC: Yes, Your Honor.

6 MJ: There has been one change to the instructions that I previously provided. I've now  
7 added that the government provided evidence of the accused's poor military character that I  
8 intend to put into the very end portion of the accused's character aspect of the instructions.  
9 Recognizing that addition, does either side have any objections to the instructions that I have  
10 provided?

11 ATC: The government does not, Your Honor.

12 DC: The defense does not, Your Honor.

13 MJ: All right, so do both trial and defense counsel specifically affirm that the  
14 instructions as provided are a correct statement of the law to the best of your understanding?

15 ATC: Yes, Your Honor.

16 DC: Yes, Your Honor, subject to we had previously objected to the wrongful sexual  
17 contact LIO, but in terms of the law, as given, no objections.

18 MJ: Thank you.

19 Are there any other instructions that the parties request?

20 ATC: No, Your Honor.

21 DC: No, Sir.

1 MJ: All right, regarding the lesser-included offense, whether or not wrongful sexual  
2 contact is a lesser-included offense, wrongful sexual contact is an offense if the contact was  
3 without the consent of the alleged victim. By definition, if an alleged victim is substantially  
4 incapable, the alleged victim cannot consent. See *United States versus Prather*, 69 MJ 338,  
5 CAAF 2011. In *United States versus Austin*, 69 MJ 214, CAAF held that aggravated sexual  
6 assault by bodily harm is an LIO of rape by force, reasoning that force must necessarily include  
7 an offensive touching as required by the aggravated sexual assault by bodily harm. See also  
8 *United States versus Aguilera*, 70 MJ 563, AFCA 2011. Applying the rationale of *Austin* to this  
9 case a similar conclusion is reached. Abusive sexual contact by incapable of appraising  
10 necessarily includes that the alleged victim did not consent. As such, I determine that wrongful  
11 sexual contact is an LIO of abusive sexual contact.

12 MJ: In addition, I determine that it was reasonably raised by the evidence, and so I do  
13 intend to provide that instruction.

14 Trial counsel, please mark the findings worksheet as the appellate exhibit next in order,  
15 show it to me and counsel. The appellate exhibit next in order should be Appellate Exhibit XL, I  
16 believe.

17 [The worksheet was so marked.]

18 ATC: I've had the court reporter mark it, Your Honor. The defense has also been  
19 provided a copy.

20 I'm handing the original of the worksheet to the military judge.

21 MJ: Defense counsel, do you have any objection to the findings worksheet?

1 DC: No, Your Honor.

2 MJ: All right, is there anything else that we need to take up or can take up before we call  
3 the members and have the testimony of Mrs. Wilkerson?

4 TC: Are we going to go straight from testimony to instructions?

5 MJ: We'll take, because I anticipate the instructions and argument may take some time,  
6 my intention is to take a short recess for counsel prior to the findings instructions. Am I  
7 answering your question?

8 TC: Well, what I was wondering, if you're ready to give instructions, that we could have  
9 the witness testify; provide the instructions; then take the recess at that point after the  
10 instructions. As we talked about in the 802, we need to get the audio set up – video set up.

11 MJ: That's fine. I'm prepared to provide the instructions as long as neither trial nor  
12 defense counsel would like a short recess prior to the reading of the instructions, since counsel  
13 has not yet had an opportunity even though the members have.

14 TC: The defense needs one but the government does not.

15 CIV DC: We're fine with whatever, Your Honor.

16 MJ: And what I'll do, we'll see how it develops, and if this is really as quick as counsel,  
17 at this point, anticipate it will be, I anticipate we will go ahead and begin instructions.

18 Bailiff, please call the members.

19 [The bailiff left the courtroom.]

20 (The Article 39(a) session terminated at 0845 hours, 2 November 2012.)

21 **END OF PAGE**

1 (The court-martial was called to order at 0846 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense, would you like to call one additional witness?

6 CIV DC: Yes, Your Honor. At this time the defense recalls Beth Wilkerson to the stand.

7 [The bailiff left the courtroom and returned with the witness.]

8 **MRS. BETH WILKERSON**

9 was recalled as a witness for the defense, was reminded she was under oath and testified as

10 follows:

11 **Questions by the trial counsel:**

12 Q. Are you the same Beth Wilkerson that testified earlier?

13 A. Yes, Sir.

14 Q. And I remind you you are still under oath.

15 CIV DC: Your Honor, may I retrieve Defense Exhibit P?

16 MJ: You may.

17 CIV DC: May I approach the witness?

18 MJ: You may.

19 **DIRECT EXAMINATION**

20 **Questions by the civilian defense counsel:**

1 Q. Ma'am, I'm providing to you Defense Exhibit P as in papa. Could you just  
2 acquaint yourself with that particular exhibit?

3 A. [The witness complied.] Yes, Sir.

4 Q. Now, can you, again, identify, which bed you took Exemption to on the night of the  
5 23<sup>rd</sup> of March 2012?

6 A. Yes, Sir. It's the bed on the last page.

7 Q. Can you hold it up and show it to the court members?

8 A. [The witness complied.]

9 Q. Now, let me ask you a question. Is that the same bed that was there that night?

10 A. Yes, Sir.

11 Q. Have you added any beds to your house since that night?

12 A. No, Sir.

13 Q. Now, there are three beds, I believe, depicted in that exhibit. Was there another bed  
14 in your house?

15 A. Yes, Sir.

16 Q. Whose bed was it?

17 A. It's my son, Exe .

18 Q. And your son, Exe was he in that bed the entire time from when Exemption arrived  
19 to the time she left your house?

20 A. Yes, Sir.

21 CIV DC: One moment, please, Your Honor.

1 CIV DC: May I retrieve the exhibit?

2 MJ: You may.

3 CIV DC: I'm returning Defense Exhibit P to the court reporter.

4 I have no other questions, Your Honor.

5 MJ: Government, anything further?

6 TC: No, Your Honor.

7 MJ: Members, any questions based on that?

8 And there is.

9 Colonel Stentz, once you've written out that question, bailiff if you could please retrieve  
10 the question and provide that question to the trial counsel?

11 [The bailiff complied. After counsel for both sides reviewed the exhibit, the bailiff  
12 handed it to the military judge.]

13 MJ: The question will be marked as Appellate Exhibit XLI.

14 **EXAMINATION BY THE COURT**

15 **Question by Colonel Stentz (asked by the military judge:**

16 Q. Is there any possibility that the lower bedroom furniture and or decorations were  
17 changed or moved or replaced since 23 March of 2012?

18 A. No, Sir.

19 Does that answer your question?

20 MBR (Colonel Stentz): [Nodded in the affirmative.]

21 MJ: Based on that, anything further, defense?

1 CIV DC: No, Sir.

2 Government?

3 TC: No, Your Honor.

4 And would you like to...

5 CIV DC: We release her again.

6 MJ: ...be permanently excused?

7 CIV DC: Permanently excused.

8 MJ: You are permanently excused, which means that it is not anticipated that your  
9 testimony will be needed any further in this case. Do not discuss, however, while this case is  
10 ongoing, your knowledge of this case or your testimony with anyone other the accused, counsel,  
11 or this court. You may stand down.

12 WIT: Okay. Thank you.

13 [The witness left the courtroom.]

14 CIV DC: And, Your Honor, do I need to say the defense rests, again or – we do rest if  
15 it's required.

16 MJ: Thank you.

17 Is there any rebuttal, trial counsel; any additional witnesses?

18 ATC: No, Your Honor.

19 MJ: Members of the court, when you close to deliberate and vote on the findings. By  
20 law, I'm required to give you your instructions orally on the record, in open session of court.

21 Assuming the technological support does not fail us, I will also be providing each of you



1 individual written copies of these instructions. I tell you this now not so that you will be less  
2 attentive as I give you your instructions, but so that you will have an idea as to how much not  
3 taking you feel is necessary.

4 MJ: I will first instruct you on the law applicable to the charges before you, then counsel  
5 will provide argument, and then finally I will provide you procedural instructions on conducting  
6 your deliberations and voting. I anticipate that we'll have a sort comfort recess before the  
7 findings argument portion.

8 Shortly after you close for your deliberations, I'll have the bailiff bring you the written  
9 instructions after I've corrected any typographical errors I might find as I read them to you.

10 Does any member have any questions before we begin?

11 Apparently not.

12 Members of the court, when you close to deliberate and vote on the findings, each of you  
13 must resolve the ultimate question of whether the accused is guilty or not guilty based upon the  
14 evidence presented here in court and upon the instructions which I will give you. My duty is to  
15 instruct you on the law. Your duty is to determine the facts, apply the law to the facts, and  
16 determine the guilt or innocence of the accused. The law presumes the accused to be innocent of  
17 the charges against him.

18 During the trial some of you took notes. You may take your notes with you into the  
19 deliberation room. However, your notes may not be read or shown to other court members.  
20 They are merely a memory jogger for you.

21 I will advise you of the elements of each offense alleged.

1 MJ: In the Specification 1 of Charge I, the accused is charged with the offense of  
2 Abusive Sexual Contact. To find the accused guilty of this offense, you must be convinced by  
3 legal and competent evidence beyond a reasonable doubt of the following elements:

4 (1) That at or near Roveredo in Piano, Italy, on or about 24 March 2012, the accused  
5 engaged in sexual contact, to wit: fondling Ms. Exemption 6 ' breasts with his hands;  
6 and

7 (2) That the accused did so when Ms. Exemption 6 was substantially incapable of  
8 appraising the nature of the sexual contact.

9 "Sexual contact" means the intentional touching, either directly or through the clothing,  
10 of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally  
11 causing another person to touch, either directly or through the clothing, the genitalia, anus, groin,  
12 breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any  
13 person or to arouse or gratify the sexual desire of any person.

14 "Substantially incapable" means that level of mental impairment due to consumption of  
15 alcohol, drugs, or other similar substance; while asleep or unconscious; or for other reasons;  
16 which rendered the alleged victim unable to appraise the nature of the sexual conduct at issue,  
17 unable to physically communicate unwillingness to engage in the sexual conduct at issue, or  
18 otherwise unable to make or communicate competent decisions.

19 There is evidence in this case that indicates that, at the time of the alleged abusive sexual  
20 contact, the accused may have been under the influence of alcohol. The accused's state of  
21 voluntary intoxication, if any, at the time of the offense is not a defense to this offense.

22 Nevertheless, you must consider all evidence in deciding whether the prosecution has  
23 proven the elements of the charged offense, beyond a reasonable doubt.

1 MJ: Lesser Included Offense – Wrongful Sexual Contact

2 The offense of wrongful sexual contact is a lesser-included offense of the offense set  
3 forth in Specification 1 of Charge I. When you vote, if you find the accused not guilty of the  
4 offense charged, that is Abusive Sexual Contact, then you should next consider the lesser-  
5 included offense of Wrongful Sexual Contact, in violation of Article 120. To find the accused  
6 guilty of this lesser offense, you must be convinced by legal and competent evidence beyond a  
7 reasonable doubt of the following elements:

8 (1) That, at or near Roveredo in Piano, Italy, on or about 24 March 2012, the  
9 accused engaged in sexual contact, to wit: fondling Ms. Exemption 6 ' breasts with his  
10 hands;

11 (2) That such sexual contact was without the permission of Ms. Exemption 6 and

12 (3) That such sexual contact was wrongful.

13 I have previously defined “sexual contact.”

14 “Wrongful” means without legal justification or lawful authorization.

15 “Without permission” means without consent.

16 The prosecution has the burden to prove lack of consent beyond a reasonable doubt.

17 Therefore, to find the accused guilty of the offense, you must be convinced beyond a  
18 reasonable doubt that, at the time of the sexual contact alleged, Ms. Exemption 6 ' did not  
19 consent.

20 The offense charged, Abusive Sexual Contact, and the lesser included offense of  
21 Wrongful Sexual Contact, differ primarily in that the offense charged requires, as an essential  
22 element, that you be convinced beyond a reasonable doubt that the contact occurred when Ms.

1 Exemption 6 was substantially incapable of appraising the nature of the sexual contact,  
2 whereas, the lesser offense of Wrongful Sexual Contact does not include such an element but  
3 still does require that you be satisfied beyond a reasonable doubt that the contact was wrongful  
4 and without the permission of Ms. Exemption 6

5 MJ: In the Specification 2 of Charge I, the accused is charged with the offense of  
6 Aggravated Sexual Assault. To find the accused guilty of this offense, you must be convinced  
7 by legal and competent evidence beyond a reasonable doubt of the following elements:

8 (1) That at or near Roveredo in Piano, Italy, on or about 24 March 2012, the accused  
9 engaged in a sexual act, to wit: digital penetration of Ms. Exemption 6 ' vagina; and

10 (2) That the accused did so when Ms. Exemption 6 was substantially incapable  
11 of appraising the nature of the sexual act.

12 "Sexual act" means the penetration, however slight, of the genital opening of another by a  
13 hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person  
14 or to arouse or gratify the sexual desire of any person.

15 "Substantially incapable" means that level of mental impairment due to consumption of  
16 alcohol, drugs, or similar substance; while asleep or unconscious; or for other reasons; which  
17 rendered the alleged victim unable to appraise the nature of the sexual conduct at issue, unable to  
18 physically communicate unwillingness to engage in the sexual conduct at issue, or otherwise  
19 unable to make or communicate competent decisions.

20 The "vulva" is the external genital organs of the female, including the entrance of the  
21 vagina and the labia majora and labia minora. "Labia" is the Latin and medically correct term  
22 for "lip."

1 MJ: The “genital opening” is the entrance to the vagina, which is the canal that connects  
2 the genital opening to the uterus.

3 There is evidence in this case that indicates that, at the time of the alleged sexual act, the  
4 accused may have been under the influence of alcohol. The accused's state of voluntary  
5 intoxication, if any, at the time of the offense is not a defense to this offense. Nevertheless, you  
6 must consider all evidence in deciding whether the prosecution has proven the elements of the  
7 charged offense, beyond a reasonable doubt.

8 In the Specification 1 of Charge II, the accused is charged with the offense of Conduct  
9 Unbecoming an Officer and a Gentleman. To find the accused guilty of this offense, you must  
10 be convinced by legal and competent evidence beyond a reasonable doubt of the following  
11 elements:

12 (1) That at or near Roveredo in Piano, Italy, on or about 24 March 2012, the accused  
13 wrongfully entered a bed occupied by Ms. Exemption 6 ;

14 (2) The accused was married;

15 (3) Ms. Exemption 6 was not the accused’s wife; and

16 (4) That, under the circumstances, the accused’s conduct was unbecoming an officer  
17 and a gentleman.

18 “Wrongful” means without any legal justification or excuse.

19 “Conduct unbecoming an officer and a gentleman” means behavior in an unofficial or  
20 private capacity which, in dishonoring or disgracing the individual personally, seriously detracts  
21 from his standing as a commissioned officer. “Unbecoming conduct” means misbehavior more  
22 serious than slight and of a material and pronounced character. It means conduct morally

1 unfitting and unworthy rather than merely inappropriate or unsuitable misbehavior which is more  
2 than opposed to good taste or propriety.

3 MJ: In the Specification 2 of Charge II, the accused is charged with the offense of  
4 Conduct Unbecoming an Officer and a Gentleman. To find the accused guilty of this offense,  
5 you must be convinced by legal and competent evidence beyond a reasonable doubt of the  
6 following elements:

7 (1) That at or near Roveredo in Piano, Italy, on or about 24 March 2012, the accused  
8 wrongfully engaged in sexual contact with Ms. Exemption 6, to wit: fondling her  
9 breasts with his hands;

10 (2) The accused was married;

11 (3) Ms. Exemption 6 was not the accused's wife; and

12 (4) That, under the circumstances, the accused's conduct was unbecoming an officer  
13 and a gentleman.

14 I have previously defined "wrongful" and "conduct unbecoming an officer and a  
15 gentleman."

16 "Sexual contact" is defined as it was in Specification 1 of Charge I. Specifically, it  
17 means the intentional touching, either directly or through the clothing, of the genitalia, anus,  
18 groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person  
19 to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or  
20 buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or  
21 gratify the sexual desire of any person.

22 In the Specification 3 of Charge II, the accused is charged with the offense of Conduct  
23 Unbecoming an Officer and a Gentleman. To find the accused guilty of this offense, you must

1 be convinced by legal and competent evidence beyond a reasonable doubt of the following  
2 elements:

3 MJ: (1) That at or near Roveredo in Piano, Italy,...

4 [Jet noise.]

5 MJ: ...on or about 24 March 2012, the accused wrongfully engaged in a sexual act  
6 with...

7 [Jet noise.]

8 MJ: ...with Ms. Exemption 6, to wit: digital penetration of her vagina;

9 [Jet noise.]

10 MJ: (2) The accused was married;

11 (3) Ms. Exemption 6 was not the accused's wife; and

12 [Jet noise.]

13 MJ: (4) That, under the circumstances, the accused's conduct was unbecoming an  
14 officer and a gentleman.

15 I have previously defined "wrongful" and "conduct unbecoming an officer and a  
16 gentleman."

17 "Sexual act" is defined as it was in Specification 2 of Charge I. Specifically, it means  
18 penetration, however slight, of the genital opening of another by a hand or finger or by any  
19 object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify  
20 the sexual desire of any person.

21 Other Instructions – Circumstantial Evidence

1 MJ: Evidence may be direct or circumstantial. Direct evidence is evidence which tends  
2 directly to prove or disprove a fact in issue. If a fact in issue was whether it rained during the  
3 evening, testimony by a witness that he or she saw it rain would be direct evidence that it rained.

4 On the other hand, circumstantial evidence is evidence which tends to prove some other  
5 fact from which, either alone or together with some other facts or circumstances, you may  
6 reasonably infer the existence or nonexistence of a fact in issue. If there was evidence the street  
7 was wet in the morning, that would be circumstantial evidence from which you might reasonably  
8 infer it rained during the night.

9 There is no general rule for determining or comparing the weight to be given to direct or  
10 circumstantial evidence. You should give all the evidence the weight and value you believe it  
11 deserves.

#### 12 Stipulations of Fact.

13 The parties to this trial have stipulated or agreed to the facts as set forth in Prosecution  
14 Exhibits 3 and 4. When counsel for both sides, with the consent of the accused, stipulate and  
15 agree to a fact, the parties are bound by the stipulation and the stipulated matters are facts in  
16 evidence to be considered by you along with all the other evidence in the case.

#### 17 Expert Testimony.

18 You have heard the testimony of Dr. Howard Taylor and Dr. Rex Frank. They are known  
19 as “expert witnesses” because their knowledge, skill, experience, training, or education may  
20 assist you in understanding the evidence or in determining a fact in issue. You are not required



1 to accept the testimony of an expert witness or give it more weight than the testimony of an  
2 ordinary witness. You should, however, consider their qualifications as experts.

3 MJ: When an expert witness answers a hypothetical question, the expert assumes as true  
4 every asserted fact stated in the question. Therefore, unless you find that the evidence  
5 establishes the truth of the asserted facts in the hypothetical question, you cannot consider the  
6 answer of the expert witness to that hypothetical question.

#### 7 Credibility of Witnesses.

8 You have the duty to determine the believability of the witnesses. In performing this  
9 duty you must consider each witness' intelligence, ability to observe and accurately remember,  
10 sincerity and conduct in court, prejudices, and character for truthfulness. Consider also the  
11 extent to which each witness is either supported or contradicted by other evidence; the  
12 relationship each witness may have with either side; and how each witness might be affected by  
13 the verdict.

14 In weighing any discrepancy by a witness or between witnesses, you should consider  
15 whether it resulted from an innocent mistake or a deliberate lie.

16 Taking all these matters into account, you should then consider the probability of each  
17 witness' testimony and the inclination of the witness to tell the truth.

18 The believability of each witness' testimony should be your guide in evaluating  
19 testimony and not the number of witnesses called.

#### 20 Prior Inconsistent Statement.

1 MJ: You may have heard evidence that prior to trial a witness or witnesses may have  
2 made a statement or statements that may be inconsistent with their testimony here in court.

3 If you believe that any inconsistent statement was made, you may consider the  
4 inconsistency in deciding whether to believe that witness's in-court testimony.

5 You may not consider the earlier statement as evidence of the truth of the matters  
6 contained in the prior statement. In other words, you may only use it as one way of evaluating  
7 the witness's testimony here in court. You cannot use it as proof of anything else.

8 For example, if a witness testifies in court that the traffic light was green, and you heard  
9 evidence that the witness made a prior statement that the traffic light was red, you may consider  
10 that prior statement in evaluating the truth of the in-court testimony. You may not, however, use  
11 the prior statement as proof that the light was red.

#### 12 Character of Accused to Show Probability of Innocence.

13 To show the probability of his innocence, the defense has produced evidence of the  
14 accused's good military character.

15 In rebuttal the prosecution has produced evidence of the accused failing to counsel other  
16 military members regarding wearing their seatbelt and vehicle safety on or about 23 March 2012,  
17 as well as evidence bad military character.

18 Evidence of the accused's character for good military character may be sufficient to  
19 cause a reasonable doubt as to his guilt.

1 MJ: On the other hand, evidence of the accused's good military character may be  
2 outweighed by other evidence tending to show the accused's guilt and the prosecution's evidence  
3 of the accused's poor military character.

4 "Have You Heard" Questions to Impeach Opinion.

5 During the testimony of several character witnesses, one or more of them were asked  
6 whether they were aware that the accused burned a couch in a restricted area of the flight line  
7 without authorization, intentionally peered over a bathroom stall at a female, sang sexually  
8 explicit songs at squadron functions, or was verbally abusive toward a subordinate. Those were  
9 permissible questions.

10 To the extent, however, that a witness testified that they were not aware of that conduct,  
11 the question does not constitute evidence of that conduct. In those situations, the question was  
12 permitted to test the basis of the witnesses' opinion and to enable you to assess the weight you  
13 accord their testimony. You may not consider the question for any other purpose.

14 To the extent that a witness answered that they were aware of such purported conduct,  
15 you may consider that witness' answer. In those situations, the purpose of the question was to  
16 test the basis of the witness' opinion, to enable you to assess the weight you accord to their  
17 testimony, and to rebut the opinion given. You may not infer from this evidence that the accused  
18 is a bad person or has criminal tendencies and that the accused, therefor, committed the offenses  
19 charged.

20 Witness Opinion as to Guilty or Innocence Not Permitted.

1 MJ: Only you, the members of the court, determine the credibility of the witnesses and  
2 what the facts of this case are. No witness – expert or otherwise - can testify that the alleged  
3 victim’s or accused’s account of what occurred is true or credible, that a witness believes the  
4 alleged victim, or that a sexual encounter occurred. To the extent that you believed that Special  
5 Agent (b)(7)(C) (b)(7)(C) another agent, or an expert witness stated that they believed the alleged  
6 victim or the accused, that a crime occurred, or that an agent or expert witness opined on the  
7 victim or accused’s credibility, you may not consider this as evidence that a crime occurred or  
8 evidence of the alleged victim or accused’s credibility.

9 As to any statements by a law enforcement agent, this was merely an investigative  
10 technique and did not constitute an opinion as to either the accused’s or Ms. Exemption 6 ,  
11 credibility, or as to whether a crime did or did not occur.

12 As to the testimony by any expert witness, their testimony did not constitute an opinion  
13 as to either the accused’s or Ms. Exemption 6 , credibility, or as to whether a crime did or did  
14 not occur. I have previously advised you regarding the use of such testimony and hypothetical  
15 questions.

#### 16 Witness Testifying Under a Grant of Immunity.

17 Colonel Dean Ostovich testified under a grant of immunity. This means that this witness  
18 was ordered to testify truthfully by the convening authority. Under this grant of immunity,  
19 nothing the witness said, and no evidence derived from that testimony, can be used against that  
20 witness in a criminal trial

1 MJ: If the witness did not tell the truth, the witness can be prosecuted for perjury. In  
2 determining the credibility of this witness, you should consider the fact this witness testified  
3 under a grant of immunity along with all the other factors that may affect the witness'  
4 believability.

5 Accused's Pre-Trial Statement to Investigators.

6 A pretrial statement by the accused has been admitted into evidence as Prosecution  
7 Exhibit 1 and 2.

8 You must decide the weight or significance, if any, such statements deserve under all the  
9 circumstances. In deciding what weight or significance, if any, to give to the accused's  
10 statements, you should consider the specific evidence offered on the matter, you own common  
11 sense and knowledge of human nature, and the nature of any corroborating evidence as well as  
12 the other evidence in this trial.

13 Accused's Election Not To Testify.

14 The accused has an absolute right to remain silent. You will not draw any inference  
15 adverse to the accused from the fact that the accused did not testify as a witness. The fact that  
16 the accused has not testified must be disregarded by you.

17 The accused has an absolute right to remain silent. You will not draw any inference  
18 adverse to the accused from the fact that the accused did not testify as a witness. The fact that  
19 the accused has not testified must be disregarded by you.

20 Spillover.

1 MJ: An accused may be convicted based only on evidence before the court not on  
2 evidence of a general criminal disposition. Each offense must stand on its own and you must  
3 keep the evidence of each offense separate. Stated differently, if you find or believe that the  
4 accused is guilty of one offense, you may not use that finding or belief as a basis for inferring,  
5 assuming, or proving that he committed any other offense.

6 If evidence has been presented which is relevant to more than one offense, you may  
7 consider that evidence with respect to each offense to which it is relevant. For example, if a  
8 person were charged with stealing a knife and later using that knife to commit another offense,  
9 evidence concerning the knife, such as that person being in possession of it or that person's  
10 fingerprints being found on it, could be considered with regard to both offenses. But the fact that  
11 a person's guilt of stealing the knife may have been proven is not evidence that the person is also  
12 guilty of any other offense.

13 The burden is on the prosecution to prove each and every element of each offense beyond  
14 a reasonable doubt. Proof of one offense carries with it no inference that the accused is guilty of  
15 any other offense.

16 You are further advised:

17 First, that the accused is presumed to be innocent until the accused's guilt is established  
18 by legal and competent evidence beyond a reasonable doubt;

19 Second, if there is reasonable doubt as to the guilt of the accused, that doubt must be  
20 resolved in favor of the accused, and he must be acquitted;

1 MJ: Third, if there is a reasonable doubt as to the degree of guilt, that doubt must be  
2 resolved in favor of the lower degree of guilt as to which there is no reasonable doubt; and

3 Lastly, the burden of proof to establish the guilt of the accused beyond a reasonable  
4 doubt is on the government. The burden never shifts to the accused to establish innocence or to  
5 disprove the facts necessary to establish each element of each offense.

6 A “reasonable doubt” is a conscientious doubt, based upon reason and common sense,  
7 and arising from the state of the evidence. Some of you may have served as jurors in civil cases,  
8 or as members of an administrative board, where you were told that it is only necessary to prove  
9 that a fact is more likely true than not true. In criminal cases, the government’s proof must be  
10 more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable  
11 doubt is proof that leaves you firmly convinced of the accused’s guilt. There are very few things  
12 in this world that we know with absolute certainty, and in criminal cases the law does not require  
13 proof that overcomes every possible doubt. If, based on your consideration of the evidence, you  
14 are firmly convinced that the accused is guilty of any offense charged, you must find the accused  
15 guilty. If, on the other hand, you think there is a real possibility that the accused is not guilty,  
16 you must give the accused the benefit of the doubt and find him not guilty.

17 Bear in mind that only matters properly before the court as a whole should be considered.  
18 In weighing and evaluating the evidence you are expected to use your own common sense, and  
19 your knowledge of human nature and the ways of the world. In light of all the circumstances in  
20 the case, you should consider the inherent probability or improbability of the evidence. Bear in  
21 mind you may properly believe one witness and disbelieve several other witnesses whose

1 testimony conflicts with the one. The final determination as to the weight or significance of the  
2 evidence and the credibility of the witnesses in this case rests solely upon you.

3 MJ: You must disregard any comment or statement or expression made by me during the  
4 course of the trial that might seem to indicate any opinion on my part as to whether the accused  
5 is guilty or not guilty since you alone have the responsibility to make that determination. Each  
6 of you must impartially decide whether the accused is guilty or not guilty according to the law I  
7 have given you, the evidence admitted in court, and your own conscience.

8 Prior to us hearing argument from counsel, we will have a short recess. I only remind  
9 members that this is still not the time to begin discussing this case or the evidence.

10 Members we are in recess.

11 (The court-martial recessed at 0918 hours, 2 November 2012.)

12 **END OF PAGE**



1 (The court-martial was called to order at 0938 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, at this time you will hear argument by counsel. You will hear an exposition of  
6 the facts by counsel for both sides as they view them. Bear in mind that the arguments of  
7 counsel are not evidence. Argument is made by counsel to assist you in understanding and  
8 evaluating the evidence, but you must base the determination of the issues in this case on the  
9 evidence as you remember it and apply the law as I instruct you.

10 Counsel may refer to instructions I have given you. If there is any inconsistency between  
11 what counsel have said about the instructions and the instructions which I gave you, you must  
12 accept my statement as being correct.

13 As the government has the burden of proof, trial counsel may open and close.

14 Trial counsel?

15 TC: Thank you, Your Honor.

16 Mr. President, members of the court. I'm going to say something that's uncomfortable,  
17 and it may be uncomfortable for you to hear. Somebody came into this courtroom and lied to  
18 you. Somebody lied. This is not a case where you can say "Well, maybe this person's mistaken,  
19 that person's mistaken, and I don't know what happened." That is not the case. You have (b)  
20 (b) (6) telling you that she woke up with that man's finger inside of her vagina, and then his wife  
21 had just walked in on them. And you have Beth Wilkerson saying it never happened. There can

1 be no mistake between those two scenarios. One of them must be a liar. It must be a lie. Your  
2 job in this deliberation is to determine who was lying. And once you determine who the person  
3 who came in here and committed perjury in this courtroom, who that person was, you know  
4 whether the accused is guilty or not guilty of this offense. It is that simple.

5 TC: Now the law understands that we cannot have a system where someone says x,  
6 someone says y, and we shrug our shoulders and say “Who am I to decide? Who am I to  
7 determine who’s telling the truth?” The law says we can’t have that system. Justice would come  
8 to a halt. That is why they’ve put on you a very firm duty. As the Judge instructed you, and I  
9 will repeat, you have a duty to determine the believability of the witnesses. That’s a heavy duty.  
10 When you go back in that deliberation room, you have a duty to find out who lied to you.

11 And the law also gives you guidance. It understands; the law is pure, it understands that  
12 there is no magic way that you can look at somebody and say “Oh, that’s a liar; that’s not a liar.”  
13 Or they shifted in their seat or maybe they looked away. The law understands that is a myth.  
14 The law tells you how you determine the believability of the witnesses. As the Judge instructed  
15 you, when you go back there and you’re figuring out who lied to you in this case, you should  
16 consider each witnesses’ intelligence, the ability to observe, accurately remember, sincerity and  
17 conduct in court, and very important, prejudices, character for truthfulness. Consider also to the  
18 extent which each witness is either supported or contradicted by other evidence. And very  
19 important, the relationship each witness may have with the other side, and also very important,  
20 how each witness may be affected by your verdict.

1 TC: The law is giving you guidance, and we're going to go through this now, and we're  
2 going to talk about the fact that we are dealing with people that the evidence will leave you with  
3 one inescapable conclusion, he lied to you.

4 At this time I'd like to show a portion of Prosecution Exhibit 2. We are going to go  
5 through a few clips. This would be Colonel Wilkerson's statements to the OSI.

6 [A portion of Prosecution Exhibit 2 was played.]

7 ACC: I felt like crap the next day, and would not have. I don't know why I felt, based  
8 on what I'd had to drink, I would have been – I ride bikes; I would have been able to go for a  
9 hundred miles normally, based on my training. That day, if I'd even looked at my bike, I would  
10 have either thrown up or fallen over.

11 SA (b) (7) (c) : Did, ah...

12 ACC: And I didn't even feel right driving on the base, so I'd been waiting.

13 SA (b) (7) (c) : So what we're trying to figure out is, you know, is it possible for you to  
14 have been to the point where you don't recall some things, and this could have happened, and,  
15 you know, having that kind of more than a hangover feeling, you know is it possible that the  
16 previous night's incidents were just blank; you know just something that you can't account for?

17 ACC: Well...

18 SA (b) (7) (c) : I mean that's what we're trying to do; we're trying to come up with a  
19 plausible.

20 ACC: Anything is plausible and possible when you consider alcohol, but I don't know –  
21 is my answer. But I will tell you is I felt unbelievably f'ed up the next day.

1 SA (b) (7) (c) : Uh-huh.

2 ACC: I don't know. I'm not alleging here. I don't know.

3 SA (b) (7) (c) : Yeah.

4 ACC: I don't, but I know I mentioned to my wife that, "I feel horrible."

5 SA (b) (7) (c) : Did you mention...

6 ACC: I did mention making breakfast, but I always – it's standard for me to make  
7 breakfast when people spend the night. Yes. I've done this a lot since my son was small. But  
8 when we have guest, I make breakfast. It's what I do.

9 SA (b) (7) (c) : Uh-huh.

10 ACC: I remember – I'll tell you what I remember – what first set me off was that  
11 morning the pancake mix was in a lower cabinet, and I almost fell over – forward as I went to go  
12 get it out of the cabinet. I was having trouble focusing.

13 SA (b) (7) (c) Okay. Uh-huh.

14 Now you say it was 9 o'clock it was, roughly, when you made breakfast?

15 ACC: Uh-huh.

16 SA (b) (7) (c) : Okay.

17 ACC: I wonder; I'm telling you right now, I know I sat in the outfield . We were playing  
18 baseball and I felt so frigging vertigoish I had to sit down.

19 SA (b) (7) (c) Uh-huh.

20 [Playing of Prosecution Exhibit 2 was stopped.]

1 TC: Members of the court, what you just saw there on four occasions was Colonel  
2 Wilkerson was putting in an excuse. "Something was wrong. I was f'ed up. If I even looked at  
3 my bike, I would have fallen over or thrown up. Vertigoish. Vertigoish. I just didn't feel right."  
4 That was the excuse he wanted to give the OSI in case they didn't believe him, in case they had  
5 the evidence that he didn't know about. In case there was some reason that someone could put  
6 him in bed with (b) (6), he had to come up with something. "I've been drugged." "I felt  
7 different that day." That's what he told Major Goldsberry at baseball. "I don't remember what  
8 happened the night before." Why would he do that? Why would he do that? Because he's  
9 trying to come up with an excuse; trying to come up with an excuse.

10 And how do we know? How does the evidence prove to you that he was lying about  
11 that? Well, you heard from Major Goldsberry. What was he doing when he was playing  
12 baseball? Major Goldsberry didn't talk about him sitting down in the outfield; he talks about  
13 him pitching; he talks about him batting; he talks about him fielding. He's out there with his son  
14 and the (b) (6) boys and Major Goldsberry's boy, and they're playing baseball. Vertigoish? He's  
15 pitching to kids with vertigo? It's a lie. The evidence shows you it's a lie.

16 You also have the testimony of his wife, where she had to admit that that day that he was  
17 fine. He was up early in the morning. He's making the brisket. He's making the ribs. He's  
18 making the special barbeque sauce. He's making breakfast. He's driving the kids out to play  
19 baseball. He goes over and sees his friend, Newbill – Colonel Newbill. She does not give you  
20 any verification whatsoever that he was vertigoish, f'ed up, that if he looked at his bicycle he'd  
21 fall over. Nothing. Nothing corroborates that. Nothing. It's because he lied. That's the only

1 thing the evidence can establish -- is that he lied. He lied because he had to come up with an  
2 alternate excuse in case somebody didn't believe him. It's the only reason to talk about this; the  
3 only reason. And the other good thing about this, is his good friend, Colonel Ostovich, comes  
4 over that morning at 10:30, and we know, we know from the admissions of Beth Wilkerson, that  
5 Colonel Ostovich was talking about his own criminal misconduct that night, with the accused.  
6 And Colonel Ostovich entered into an unprofessional relationship. And what are we're supposed  
7 to expect when Colonel Ostovich comes in here and testifies under a grant of immunity – think  
8 of that – the Vice Wing Commander of this installation is testifying under a grant of immunity.  
9 What a black eye? But this is the person we're supposed to accept his version that he didn't pass  
10 on, while he's talking about his own criminal misconduct with the accused, didn't pass on to  
11 him, "Hey, by the way, she's saying you did something too, dude," his best friend. And you've  
12 seen Colonel Ostovich. You've got a guy who was fired for unprofessional misconduct; who  
13 was a poor officer; and we're supposed to believe him? You're supposed to believe him? He's a  
14 poor officer.

15 TC: The bottom line – the bottom line is there is absolutely no evidence; there is  
16 absolutely no actions by that man sitting right there [pointing to the accused] that would show  
17 you that he really felt that he had been slipped something or that he was vertigoish. He's a  
18 fighter pilot – a fighter pilot – he – we can rely on our common sense and knowledge of the ways  
19 of the world. Fighter pilots have instant access to medical care – flight docs. His best friend is  
20 the Deputy Group Commander for the medical group. How easy would it be to call? "Man, I  
21 don't feel well. I feel like something has been slipped to me." There's no evidence he did

1 anything. And what did he do the next week – this pilot who has PRP responsibilities? He flies  
2 missions. His wife tells you he flies three missions the following week. And he doesn't know  
3 what's wrong with him and he's out flying missions? It's because he knew nothing was wrong.  
4 He knew it was a lie. He knew it was a lie because it was nothing but an alternate plan in case  
5 somebody didn't believe he really wasn't in that bed. It's an excuse.

6 TC: Next.

7 [A portion of Prosecution Exhibit 2 was played.]

8 ACC: They wanted to go wherever we were going. Okay?

9 SA (b) (7) (c) : What was – can you describe what their demeanors were like at the Club  
10 – the females?

11 ACC: Very much into us.

12 SA (b) (7) (c) : What do you mean by that, "...into us"?

13 ACC: More like they made it very clear that where were we going, what were we doing?  
14 And then Ostovich said, "Well, we're you know" – he said, "We're going out." And I knew full  
15 well we were going home.

16 SA (b) (7) (c) : Uh-huh.

17 Describe to me...

18 ACC: You want more timeline?

19 SA (b) (7) (c) : No – yes, I did, but more so still at the bar at the Club, did the girls – I  
20 mean were they giggly, did they seem very intoxicated? What were they doing?

1 ACC: Not anything that would have made me say I'm going to take that girl home and  
2 take advantage of her.

3 SA (b) (7) (c) : All right.

4 ACC: Ah, they were very giggle, very much into – I'm getting Colonel Ostovich in  
5 trouble – but very much into him.

6 SA (b) (7) (c) : Okay.

7 ACC: And they only wanted – they did keep asking me what my rank was.

8 SA (b) (7) (c) The age old question, right?

9 ACC: They did – and what I do and what my rank was. They did – I recall that now.  
10 I'm sorry, but I'm not trying to play into your thing of being targeted. I don't – but what I am  
11 saying is they did. I recall that specifically a few times, there when we were standing, which was  
12 right next to the – where they serve the food, on the enlisted side, next to the popcorn machine,  
13 right there. I'm positive, and I'll bet you Bear Goldsberry would recall that. Go ask him. He'll  
14 remember. I either – I can't be sure.

15 SA (b) (7) (c) : Well, okay. Well, then I'll – understand this isn't exactly.

16 ACC: It wasn't the girl that he was talking to – Colonel Ostovich. It was either Dawn or  
17 (b) (6) .

18 SA (b) (7) (c) : Okay.

19 ACC: I'm positive, without a doubt.

20 Ah, I don't remember – it was a Dawn, a (b) (6) and that other girl. Oh, well.

21 SA (b) (7) (c) : Okay. And what did you say to that question?



1 ACC: I didn't tell her.

2 SA (b) (7) (c) : You just shake it off?

3 ACC: Right.

4 SA (b) (7) (c) : Well, how about them just walking around. Are they stumbling or...

5 ACC: No. I mean they ran straight to us from the other side of the bar.

6 SA (b) (7) (c) : Okay.

7 ACC: I'd just say for the life of me, I don't know why they were hell-bent on wanting to  
8 come into my house.

9 SA (b) (7) (c) : Uh-huh.

10 ACC: Do I think they had a – no, I don't think they had a conspiracy agreement at all.  
11 I'm not saying that; I'm not alleging that at all. What I am saying is that they were definitely  
12 interested in – Colonel Ostovich is single – and they were very interested in him. They were  
13 very interested in going wherever we were going. I'm positive of that because I kept saying,  
14 "Look, we'll meet you wherever you guys are going." I had no intention of going out. I had no  
15 intention of doing anything that evening.

16 SA (b) (7) (c) : Uh-huh.

17 ACC: Except for helping my wife out.

18 SA (b) (7) (c) : Yeah.

19 [Playing of Prosecution Exhibit 2 was stopped.]

20 TC: Members of the court, again, he has a theme he's trying to get across. He had the  
21 theme of "something must have been slipped to me." Now he has the theme of "I didn't want to

1 have anything to do with them. These women were forcing themselves on us. Ran over to us.  
2 Ran over to us in the bar.” He says it there. He repeats it in Prosecution Exhibit 1, his statement  
3 to the OSI in written form. Again, he say, “They ran over to us.” He repeats it in Prosecution  
4 Exhibit 1, the 1168, the statement to the OSI, when he says, “Oh, they kept asking me my rank  
5 and position. I didn’t respond. I ignored them.” Like it would be something wrong if a fellow  
6 officer were to ask you your rank. “Do I call you ‘Sir’? What do I call you?” Something’s  
7 wrong with it? But the problem is there is not one witness, not one who came into this  
8 courtroom and corroborated what he just said. In fact, every one of the witnesses have said  
9 exactly the opposite, even his good friend, Major Goldsberry, the one that he said, “Well, I can  
10 guarantee a hundred percent Major Goldsberry will remember this.” He didn’t remember. Not  
11 Dawn Brock – told you that she did not ask him his rank or position nor heard anyone else. (b)  
12 (b) (6) told you that she did not ask him his rank or position or hear anyone else. Tanya Manning  
13 told you that she did not ask him his rank or position or hear anyone else. Colonel Ostovich, his  
14 good friend, told you he did not hear anybody ask about rank or position. And Major Goldsberry  
15 – Major Goldsberry, the one he says, “Guarantee, guarantee he’s going to support that,” says, “I  
16 didn’t hear anybody ask rank or position.”

17 You’ve got to ask yourself, why is he lying? Why does he have to lie about that?  
18 Because he wants to set up a story that these women were predators – predators. You had an  
19 opportunity to see Tanya Manning; you had an opportunity to see Dawn Brock; and you had an  
20 opportunity to see (b) (6) . Are any of you afraid of them? Would you be afraid to have  
21 them in your home? Would anybody be afraid to have them in your home? We’re talking about

1 three medical professionals; two officers; two physician's assistants; women in their 30s and 40s  
2 – successful women. He acts like they're some sort of groupies. This man wants you to smear  
3 them with innuendo. And you saw Dawn Brock; the woman was diagnosed with cancer, kidney  
4 cancer a few hours before. How devastating. Really, she was "giggly"? "Giggly"? He's lying.  
5 He's lying to you. That's what the evidence establishes. Nobody, nobody corroborates the  
6 statement that they "ran over together." He acts like their schoolgirls. "Oh, big officers." Come  
7 on. Come on. You heard how they went over. You heard how the interaction was.

8 TC: (b) (6) saw Major Goldsberry. She's waving at somebody else; Major  
9 Goldsberry thinks she's waving at him. They started talking. Dawn Brock tells you she went  
10 over independently, and then Tanya Manning joined. There was no group running over; there  
11 was no group, collective "Oh, gosh, look, we're in the presence of Colonel Ostovich, and we're  
12 in the presence of the IG." Come on. (b) (6) didn't even know who these people were.  
13 And there is absolute zero, zero evidence that the women were hell-bent on going wherever they  
14 went. (b) (6), Dawn Brock – they were surprised and upset that they were at his house.  
15 They thought they were going to a club. They thought they were going to a club. Nobody was  
16 forcing themselves onto that man at that – at any time. And, again, he acts like there is  
17 something wrong with officers socializing. He acts like there was something wrong. You'll see  
18 that.

19 Next, please.

20 [A portion of Prosecution Exhibit 2 was played.]

21 ACC: Let me make this very, very clear.

1 SA (b) (7) (c) : Yes?

2 ACC: I did not want anyone to come to my house. I know that I did not want these  
3 women to come to my house. I know my wife did not. And I know I tried to get them away.

4 SA (b) (7) (c) : Right

5 ACC: I was absolutely – it was horrible, but I know for a fact I would not put myself in  
6 this situation and I tried like hell, okay, that night to get people to leave.

7 [Playing of Prosecution Exhibit 2 was stopped.]

8 TC: “Put myself in this situation.” “Tried like hell.” Put myself into that situation; what  
9 situation? What situation? He’s a fighter pilot. Fighter pilots, as Mrs. Wilkerson told you,  
10 parties all the time. What situation? What situation? Think about this. “I know I didn’t want  
11 those women there. I know I didn’t want those women there.”

12 Let’s go back to the bar. Walk out of the bar; go to Colonel Ostovich’s car – a five-  
13 passenger car – seven people – a Lieutenant Colonel – fighter pilot, war veteran, IG – has the  
14 inability to say to these people “You know what, I’m going home. It wouldn’t be safe for  
15 everybody to get into this car.” He’s got a built-in excuse, but somehow he’s too shy to tell these  
16 women that they can’t come to his house – built-in excuse – “There’s too many people for the  
17 car. I’m sorry. Hey, Osto, can you drive me back to my house? And then you can come back  
18 and get these women.” He has a built-in excuse.

19 TC: But, despite the fact he doesn’t want these women in his car; despite the fact he  
20 doesn’t want to have anything to do with them, he decides to ignore his duties as an officer and  
21 allows seven people to pile into a car that is designed for five; to allow a psychologist to sit

1 between him and Colonel Ostovich on a console without a seatbelt, with seven people that have  
2 been drinking, drive through Italian streets at night. This is the former Safety Officer. This is  
3 the guy who has a bullet in his OPR saying how he enhanced seatbelt awareness – enhanced  
4 seatbelt awareness. He has a built-in excuse to say, “Don’t come. There’s not enough room in  
5 the car. You girls stay here.” That’s not my term; that’s his term. They’re women. “You girls  
6 stay here.” He has a built-in excuse not to bring those women home.

7 But beyond that, he is a grown man; he’s a fighter pilot, and he cannot stand up to these  
8 three women and say, “You’re not allowed to come to my house”? And the evidence shows you  
9 everything else. No one, not one single witness testified that when they arrived at the house that  
10 Colonel Wilkerson did anything, anything to stop the women from coming in. In fact, it is just  
11 the opposite, just the opposite. What did he do? He invited them into his house. He popped  
12 wine bottles, by his admission. He showed Dawn Brock around the house. In fact, she came out  
13 of the bathroom, and he’s like “Oh, you missed the tour. You missed the tour. Let me give you  
14 an additional tour.” He takes her down, shows her the wine cellar, shows her his bike collection.  
15 Where in there – where in there, as he’s showing her the wine cellar and the bike collection is he  
16 making it clear to her it was time to go; that she wasn’t supposed to be at his house, that he didn’t  
17 want her at the house? As Dawn is talking to (b) (6), and they’re talking about wine  
18 selections – and I’m not – I don’t have a wine cellar. She said a couple of names. They mean  
19 nothing to me. But when she said it to this man, “Oh, I’ve got that wine. I’ll go get it for you.”  
20 He runs down to the wine cellar; brings it up. “If that’s the wine you want, here you go.” Is that  
21 when he made it clear to her that she was supposed to leave? Is that when he made it clear to her

1 that he didn't want those women in the house? Is that how he lets you know "I didn't want those  
2 women in my house. I know I didn't want those women in my house." And he showed Tanya  
3 Manning; he gave her a tour of the house, too. Is that how he does it? Is that how he knows he  
4 didn't want those women in his house? Again, why? What's so evil about these women?

5 TC: Why is he so singularly determined to let the OSI know that he didn't want those  
6 women in his house? But for the fact that he put his finger in (b) (6) vagina, there was  
7 nothing wrong with what he had done up to that point. But for the fact that he sexually assaulted  
8 a sleeping woman, there was no reason to be concerned about the woman in his house; but for  
9 the fact that he's guilty, there was no reason for him to be lying about not wanting these women  
10 in his house.

11 Now, at some point, some point towards the end of the evening, somewhere around  
12 midnight, after Beth said it was time for the ladies to go, he does go to Goldsberry and Lowe and  
13 say, "All right, time to go." And they'd been there for two hours – two hours. Both Beth  
14 Wilkerson and the accused and every single witness makes it clear that it was just a normal  
15 gathering, people talking, people having a drink; no big deal.

16 Never does he make it clear to anyone that he didn't want those women in his house. He  
17 lied to you. That's the only conclusion that the evidence can lead you to.

18 TC: And as you do that, as you look at that when you go back to deliberate, if he's lying  
19 about the little things, if he's lying about the little things, then why would you believe him on  
20 anything? Why would you believe him on the most important question in this trial -- was he in

1 bed with (b) (6) ? There's no reason. Going back to what the law tells you about judging  
2 credibility – no reason to.

3 Now the defense would like to have you believe that Beth Wilkerson is the yardstick for  
4 truth in this case. She's the gold standard by which you should judge what happened in this case.  
5 As we think about Beth Wilkerson, think about the following:

6 Only Beth, and nobody else, only Beth says (b) (6) slept in that daybed; nobody else.  
7 Only Beth says (b) (6) left through the kitchen; nobody else. Only Beth says (b) (6)  
8 was up and down, up and down. She repeats it, but it's only Beth. Only Beth supports  
9 Wilkerson's claim that (b) (6) was very drunk. Only Beth. The defense's own expert, their  
10 expert, their expert – told you that (b) (6) was at most “buzzed.” Their own expert. And  
11 when they asked in cross-examination, they said (b) (6) description of how she was feeling  
12 that night is consistent with his scientific finding. There are only two people, two people who  
13 say (b) (6) were very drunk, him [pointing to the accused] and his wife. Why is it? Think  
14 to yourself – as yourself why is it? Why are they the only two saying (b) (6) was very  
15 drunk? Because that is what they wanted people to believe in case, in case, again, there's some  
16 sort of possibility someone will believe (b) (6). “We've got to discredit her. We'll call her  
17 ‘very drunk, erratic.’” The way Beth Wilkerson describes (b) (6), you think the woman  
18 could barely form two words together when she came in here to testify. You would expect  
19 slobber coming out of mouth. It's just not true. They want to discredit; they want to smear, but  
20 the problem is Dawn Brock doesn't describe her as drunk; Tanya Manning doesn't describe her  
21 as drunk; Dean Ostovich doesn't describe her as drunk. Nobody. (b) (6) doesn't describe

1 herself as drunk. Not a single witness described her as drunk, not even the defense expert.  
2 That's it. That's it. Beth. Remember, she didn't do that on direct examination. She stayed  
3 away from that because her prior statement didn't line up with their own expert. Prior statements  
4 were that she was very drunk. And she goes – and she makes the effort. “One last point, (b)  
5 (b) (6) was very drunk. And let me tell you how she was. She kept asking my name; couldn't  
6 remember who I was; didn't know the children.” No other witness comes close to corroborate  
7 that. This is the yardstick for truth. Only Beth supports her husband's claim that he never left  
8 the bed. No other witness; only Beth. And only Beth supports his claim that he didn't sexually  
9 assault (b) (6) .

10         So his defense comes down to Beth Wilkerson. Is she believable? Well, members, it is  
11 going to be indisputable to you that she lied repeatedly on the stand. She lied to you about the  
12 time she woke up on the 24<sup>th</sup> of March 2012. Remember back to what she said. “I woke up at  
13 9:00 when Jay lovingly brought me up a cup of coffee. Y'all remember that – 9 o'clock. She  
14 made it clear over and over – she woke up at 9 o'clock. There was no mistake; 9 o'clock.

15         Prosecution Exhibit 5 are the phone records of Beth Wilkerson. Up to this point they  
16 probably didn't mean a lot. But go back in deliberations; look carefully – page 16 of Prosecution  
17 Exhibit 5 – 6:59 that morning Beth Wilkerson makes a seven-minute phone call to telephone  
18 number (b) (6) . She then texted the same number at 7:11. On page 27, at 7:07 she  
19 receives a phone call for 60 seconds. At 7:09 and 7:12 she receives text messages. At 7:31 she  
20 receives another phone call. She lied to you. That is the only conclusion the evidence can bring  
21 you to. She lied about what time she woke up, and why would she have to do that? Why?



1 Why? I'm not talking about kitchen dishes being thrown at each other, but can you imagine the  
2 tension that must have been going on in that bedroom of theirs? "I caught you in bed with  
3 another woman. What the hell is going on?" I'm sure she was up really late like she said in her  
4 text. I'm sure she was not feeling well. She had caught her husband in bed with another woman.  
5 She knows that her entire life is potentially destroyed. But she acts like "Oh, I just got up at  
6 nine." And what did Jay say? Jay said, "Hey, you've got to wake up our guest so you can take  
7 her back to the base." She was up and she was on the phone. And why was she on the phone so  
8 early?

9 TC: She lied to the OSI about having the shoes. It's indisputable. She told a boldface  
10 lie; that's the only conclusion you can have as a result of the evidence. The OSI agent  
11 specifically refuted what she said. What does he have to gain by lying? That's a question to ask  
12 yourself. What does he have to gain by lying? Do you think this OSI agent is going to come in  
13 and commit perjury about a pair of shoes? He specifically asked Beth Wilkerson if she had the  
14 shoes, the same question, as you listen to this again when you go back into deliberations, as you  
15 see the entirety of Prosecution Exhibit 2 again – the same question they asked Colonel Wilkerson  
16 – "Do you know where the shoes are?" The same day, almost exactly the same time. You have  
17 the video of them asking him where the shoes are, and he says he doesn't know – he doesn't  
18 know. The OSI asked her the same question when they went to the house. "Where are the  
19 shoes?" "I don't know. I don't know." But on this witness stand, committed perjury and told  
20 you, "Oh, I offered the shoes to the OSI. Oh, here you go." No. She lied.

1 TC: She lied about asking Dawn Brock if her husband did anything. What a bizarre  
2 sequence of events. She gets in the car with Dawn Brock. She can tell Dawn Brock is upset.  
3 Yeah, no kidding – she’d been diagnosed with (b) (6) . I’m sure she is upset. What did she say?  
4 “Did anything happen? Did my husband do anything? Did my husband do anything?” Dawn  
5 Brock told you why those words meant something to her. She had never heard a spouse ask her  
6 that kind of question before. It had impact. It was unusual. “Did my husband do anything?”  
7 She said, “Oh, I asked her ‘Did Osto do anything.’” And then we get the rhyming thing –  
8 does “Osto” rhyme with “Bosco”? Okay, I don’t know if Osto and Bosco and Roscoe rhyme.  
9 They probably do. But I know Osto does not rhyme with “my husband.” Not even close.  
10 She also lied when she said Dawn Brock said, “You don’t know who you have in your  
11 house. You don’t know who you have in your house.” So what we’re supposed to believe from  
12 Beth Wilkerson, and this is an attempt to try to get to the point where you might believe that she  
13 was asking if Osto did anything – that Dawn Brock, who knows who Colonel Ostovich is, a  
14 fighter pilot, is in another fighter pilot’s house – the IG’s, and she’s going to say to the wife,  
15 “You don’t know who you have in your house.” Ridiculous. She lied about it. And when you  
16 talk about credibility of witnesses, remember that the law gives you that guidance; how will each  
17 witness be affected by the verdict? How does Dawn Brock get affected by this verdict? She has  
18 no dog in this hunt. She’s not friends with (b) (6) ; she not friends with the Wilkersons. She  
19 has no dog in this hunt. She’s just a nice, professional officer who came in, took an oath, and the  
20 evidence shows you was telling the truth.

1 TC: What does Beth Wilkerson have to gain by lying? She protects her lifestyle; she  
2 protects her son; and she doesn't have to have the embarrassment of being married to a sex  
3 offender.

4 She lied to her friend Anna Reed about what time she got up and why the barbeque was  
5 being canceled. That is a one hundred percent cold, admitted lie. Why does she lie to her friend  
6 Anna Reed about what time she went to bed? Why does she lie to her friend Anna Reed about  
7 how she was feeling? And it was descriptive – “Can't keep food down.” Just to cancel a  
8 barbeque? Just to cancel a barbeque? Maybe “I'm not doing it today. Sorry.” This woman with  
9 impeccable character for truthfulness lied to her friend about that. And what a coincidence, this  
10 woman that these people over here [referring to the spectator section] would say, “Oh, she's got  
11 this perfect character for truthfulness.” What a coincidence that the morning, within a few hours  
12 of catching her husband in bed with (b) (6), she has to lie, uncharacteristically lied to her  
13 friend about a barbeque. Why? Why?

14 She lied about not catching her husband sexually assaulting (b) (6). That's the only  
15 conclusion you can come to. Again, just like with Colonel Wilkerson, why do you need to lie  
16 about the little things? And if you lied about the little things, why would you ever think she  
17 wouldn't lie about the big ones?

18 And as we already argued, she lied about (b) (6) being very drunk. “One last thing,  
19 she was very drunk.” She apparently didn't get the memo; she apparently didn't get the memo.

20 [Jet noise.]

1 TC: There was a switch in plans. The case was no longer (b) (6) was very drunk;  
2 now we're going to say she's sober. She didn't get that when she...

3 [Jet noise.]

4 TC: She didn't get that when she was talking to the OSI. She didn't know that they were  
5 going to shift plans. They didn't know that Dr. Taylor was going to come in here and...

6 [Jet noise.]

7 TC: ...and corroborate (b) (6) testimony that she was not very drunk. She lied.  
8 That's the only thing the evidence can tell you.

9 [Jet noise.]

10 TC: Beth Wilkerson is the "she" of the "she said she said" that Mr. Spinner talked about  
11 in opening statements. This is what they want you to rely on when you go back in deliberations.  
12 An admitted liar; someone who committed perjury in this court. The evidence can only show  
13 you that one conclusion. That is the yardstick of truth for the defense.

14 And the sad thing is these two are married, and even when they are telling a story, they  
15 can't agree with each other. Beth clearly states that she goes into the (b) (6) room with (b) (6)  
16 (b) (6), doing this bandage thing. One of the (b) (6) boys says, "Oh, I need to talk to Mr. Jay."  
17 And so she goes and gets her husband; leaves (b) (6) in the room; brings him in. She stays in there  
18 – she stays in there and he tells the story – quick story – and then leaves. As you review  
19 Prosecution Exhibit 2, look how he describes that. "Oh, I went to the room on my own because I  
20 heard the (b) (6) boys wanted a story. (b) (6) follows me in. I read a story. It takes about 15  
21 minutes. They finally fall asleep. They don't even agree on that. Colonel Wilkerson as you'll

1 see, again, in Prosecution Exhibit 2 when you listen to it closely, how does he describe his wife  
2 the next morning? How does he describe her? “Beth was pissed off at me. Pissed off at me the  
3 next morning.” I’m sure she was. I believe that’s one of the few things that man has said that I  
4 believe. I’m sure she was pissed off the next morning. But Beth Wilkerson says, “No, I wasn’t  
5 mad at him.” And she admits if you go by his version of events, absolutely no reason to be mad  
6 at him. He’s done nothing wrong.

7 TC: Colonel Wilkerson: “I woke her up at 9:00...” – again, you’ll see this on  
8 Prosecution Exhibit 2 – “...woke her up at 9:00 and asked...” if he should prepare breakfast for  
9 the additional guest. He brought her coffee. The conversation is “Should I prepare breakfast for  
10 the additional guest?” Beth: “Yeah, he woke me up at 9:00,” which we know is a lie; not a  
11 doubt, and asked me about waking (b) up and taking her back to the base – nothing about  
12 breakfast. Colonel Wilkerson, as we’ve already seen, described himself as “f’d up, vertigoish,  
13 fall over if he looks at his bike.” Beth; “Full of energy – full of energy. Cooking brisket.  
14 Making barbeque sauce. Making the ribs. Up early to do that. Preparing breakfast. Taking the  
15 kids to play baseball.” They don’t agree.

16 Beth says she didn’t drive (b) home. Colonel Wilkerson tells Major Goldsberry, Beth  
17 did drive (b) home. They can’t even agree with each other. They can’t even agree with each  
18 other.

19 This is the Wilkersons’ story: The women come over, and force their way into our house.  
20 “You know I’m just an O-5, what am I going to do? I’ve got to pop open some bottles. I mean  
21 here’s these women here. I didn’t want them here, but I show them around the house – don’t

1 want to do it,” but that’s their story. (b) is aggressively booted out; you hear him say that over  
2 and over in Prosecution Exhibit 2. Told to leave in no uncertain terms – out, but is offered a ride  
3 at the same time. Aggressively booted out – “I want them out of here,” but “Hey, let me give  
4 you a ride. Let me give you a ride.” That’s nonsensical, no one says anything like that. And  
5 then good ole Beth feels bad. “Ah, geez, let me go look for her.” Drives around; doesn’t find  
6 her. Comes back; stays up to four in the morning just in case she does come back; goes to bed.

7 TC: Now her story is that despite the fact that these – and I don’t mean in any offense –  
8 but the “fragile” (b) boys are in the bedroom. “Miss Beth. Miss Beth.” The (b) (6) boys are in  
9 there. She doesn’t go upstairs and tell her husband “Hey, I’m leaving. It’s three in the morning  
10 and that woman, I just had to kick her out. I’m just going make sure she’s okay.” Nope, she  
11 doesn’t go tell him that. Stays up; comes back; stays up until four in the morning. Doesn’t go  
12 upstairs and say “You know, Jay, I’ve just been up for the last – until now – four in the morning  
13 dealing with this woman” – doesn’t say a word about that. Doesn’t say “I wonder if she’s okay.  
14 You know when I drove out there, it was 45 degrees,” as you have in the stipulation here. “She  
15 didn’t have any shoes on. I’m not going to say anything to Jay, the IG, part of the Wing  
16 leadership. I’m not going to say anything in here because, apparently, in Aviano we’re not  
17 concerned about safety,” so she’s not going to say anything about that.

18 Then she sleeps until 9:00. It’s a full night of sleep almost; never thinking “Gee, I  
19 wonder about that woman.” And she tells you they talk about it. You see in Prosecution Exhibit  
20 2 that they talk about “Man, this looks really bad. This looks really bad. We kicked a woman  
21 out in the middle of the cold night without shoes,” that they describe as “very drunk.”

1 Remember, as you go through Prosecution Exhibit 2, Colonel Wilkerson says “All three women  
2 were very inebriated.” Once again, nobody said this.

3 TC: And so they kick this drunk woman out at three in the morning. Yeah, that looks  
4 bad; that doesn’t look good, but we’ve talked about it and say “There’s no issue here; on with  
5 our lives. On with our lives.”

6 She, as we know, has an intimate relationship with members of the Medical Group. They  
7 go to Crete with members of the Medical Group. You have a letter from the Deputy Commander  
8 of the Medical Group. How hard would it be; how hard would it be? You’re an IG; you’ve done  
9 absolutely nothing wrong, but you’re still an officer in the United States Air Force. You’re still  
10 part of this Wing leadership. How hard would it be to pick up your phone and say “Hey, a  
11 fellow – former Deputy Group Commander. One of your people was over at my house last  
12 night. She left at three in the morning; walked out; no shoes; it’s cold. I just want to make sure  
13 she’s okay.” You know why he never made that call; because he is hoping like hell that he’s  
14 never going to hear about (b) (6) again. Doing absolutely nothing. Any responsible Air  
15 Force officer finding out those facts would make sure she was okay. You have been here. I  
16 know you are from Ramstein. Many of you may have been assigned here before. You know  
17 what the roads look like out there at night. There are no sidewalks. It’s dark; no streetlights. A  
18 woman as they describe as “very drunk” is supposedly wandering around out there in the middle  
19 of the night, and it’s...

1 CIV DC: Your Honor, I'm reluctant to object, but I do want to object. I don't – he's  
2 talking about their knowledge, potentially, of evidence that, as I recall, was not admitted in court,  
3 because I think there are street lights at night between where they live and coming here, so...

4 MJ: Just remember, members, that in making determinations in this case, you need to  
5 base your determinations on the facts as presented in court today, not on personal information  
6 you may or may not have about the driving conditions around Aviano – again, the evidence in  
7 court.

8 In light of that, counsel, you may continue.

9 TC: The evidence in court was from Colonel Ostovich who described that there are no  
10 sidewalks; it was dark at night. That is the evidence.

11 Would any one, any one, the former Safety Officer especially, ever think that was a good  
12 situation? No.

13 What else do they do after making absolutely no attempt? They cancel the barbeque.  
14 They cancel the barbeque. Isn't that odd? This has just been a normal night. The barbeque has  
15 been planned, and suddenly the barbeque is canceled. What a coincidence. What a coincidence.  
16 It just happens to be the night of the day there's an allegation that your husband has sexually  
17 assaulted a woman, that's the day you cancel the barbeque. Strange.

18 Beth doesn't go with her husband to her son – her only son – a son that took seven years  
19 to conceive – to his basketball luncheon. Strange. Why wouldn't she go? Why? She doesn't  
20 want to be around him, understandably.



1 TC: And then it's strange, too, that this woman, the "lost dog," as you see in the video  
2 that's how he refers to her. I'm not calling her a dog. "Lost dog. A lost dog," makes zero  
3 efforts to return her shoes. She's in Crete – she's in Crete with the Medical Group Deputy  
4 Commander's wife. She know she has the shoes. She tells you she found them the next day.  
5 "Hey, you know what's weird while we're sitting here in our hotel, just a couple of families,  
6 talking? It was really weird, a couple of weeks ago one of your PAs..." – or she thought nurse –  
7 "...came by our house, and she left some shoes. Could I leave the shoes with you and maybe  
8 you can find out who they belong to?" Best friends. Oh, no, they don't want to do anything like  
9 that because they know – they know they are doomed.

10 Members, it comes down to this: Which makes more sense; the IG's wife, the woman  
11 who has years and years of Air Force experience – a father, stepfather, first husband, second  
12 husband who understands how the Air Force process works; who, in supporting her husband,  
13 who knows he's part of the Wing leadership – that woman throws a woman out into the streets at  
14 3:30 in the morning or three in the morning – excuse me – a woman that she describes as "very  
15 drunk," a woman without shoes, when it's 45 degrees because she was walking around. And you  
16 saw (b) (6) . Would you be afraid of her? No. That that woman is going to risk her  
17 husband's career; throw her out. Throw her out. And do you really think, in that situation just  
18 described existed, if she really offered (b) (6) a ride at that time; that (b) (6) is going to  
19 say – there's been no commotion – walk out and doesn't have any shoes, and it's 45 degrees?  
20 And say "You know what, maybe I will take that ride." Do you really think she's going to turn  
21 down the ride? "I'm being forced out of the house, but you tell me I can have a ride. No, I think

1 I'll wander around this Italian village in the middle of the night, and I don't know where I am."  
2 It's ludicrous. So do we think that this perfect, model Air Force wife, threw out, for no reason,  
3 (b) (6) at three in the morning or the reality? She caught her husband in bed; she's angry;  
4 she's is hurt; she is frustrated. She feels like her life is coming to a place that she never thought  
5 it would be, and she throws her out in anger, in anger because, likely, when she walked in, she  
6 thought something consensual was going on. "What the hell are you doing with my husband?"  
7 That's who you throw out in the middle of the night. That's who you throw out in the middle of  
8 the night; you don't throw out the houseguest in the middle of the night.

9 TC: Now the defense, and the law allows them to do this, wants to distract you – "Over  
10 here" with good military character. "Over here; look at the shiny thing over here. He's a really  
11 great officer – great officer. Wouldn't do this. Wouldn't do this." I think one of the most  
12 important things, as General Zobrist said, was when he said, "You know, yeah, in my career I  
13 know officers who act different in front of superiors than they do with their subordinates." We  
14 all do. We all do. We all know the officer who puts on the face. We all know the officer who  
15 can make those above him think he's great when those below know he's not. But you know  
16 what, good military character is not something you get to check out from time to time. It's not  
17 like you can take your uniform off and say, "Oh, the military character is gone." It's constant, 24  
18 hours a day.

19 This man over here demonstrated repeatedly that he has failed in good military character  
20 – failed – from the admission of his Group Commander that he admitted peeking into a  
21 woman's stall as she was urinating; to the fact that he got in a car – we're talking about a former

1 Safety Officer, and it is disappointing that the Group Commander would not admit that a Safety  
2 Officer has a higher standard for safety, but, obviously, Colonel Walker has blinders. We're  
3 talking about a former Safety Officer – a former Safety Officer who is lauded for seatbelt safety  
4 – gets in that car and lets his Vice Wing Commander, who's been drinking, drive with seven  
5 people in a five-passenger car without seatbelts.

6 TC: Officership? Officership? Wing leadership, the second and probably like the fourth  
7 or fifth most important person on the base are violating the law, are violating safety protocol, and  
8 he has "great officership"? That's what he shows when he's not trying to impress. That's what  
9 he shows when it's about Colonel Wilkerson, not about impressing the boss.

10 As you look at those letters from the infamous General Ashy on down, many of them are  
11 just from family people. All right, General Ashy; he was able not to do something stupid in front  
12 of General Ashy on limited contact. Big deal. How does he act – how does he act when it's  
13 about Roscoe? That's the question. And what is it about Roscoe that a retired O-6 would come  
14 in here and tell you that he has poor military character? What is it that you would have a letter, a  
15 brave letter from a Captain, in face of General Ashy and the rest of them, saying "I know this  
16 guy; poor military character, unprofessional. Unprofessional." That's what they want to raise  
17 reasonable doubt on and not the facts of this case – the shiny object over here that's tarnished;  
18 tarnished by his conduct and tarnished by his reputation.

19 And we're close to the end. I know it's been a while.

20 So, on the one hand, we have what the evidence can only lead you to one conclusion, a  
21 lying Beth Wilkerson, a lying Colonel Wilkerson. On the other hand, we have (b) (6) . (b) (6) .

1 (b) (6) – well, let’s just talk about how she’s corroborated. She tells you she wasn’t hitting on  
2 Colonel Ostovich [sic]; every other witness said that, except for him. She tells you she was not  
3 hell-bent on being at his house; every other witness – she didn’t even think she was going to his  
4 house – every other witness says that except him. She was not asking him his rank or position,  
5 repeatedly; every other witness says that except him. She was not drunk; every other witness  
6 says that – every other witness says that, including the defense’s expert, except him and his wife.  
7 She went out in the front yard when she left the house, and she found a wall that she was able to  
8 sit down on, swing her legs over and drop over. And you heard we sent the alert photographer  
9 out there to go into the front yard, right in the front, a place with no bushes, no rosebushes, no  
10 trees – easily can sit down on the wall, swing her legs over and drop down.

11 TC: Now, if (b) (6) were lying about that, if she just made that up, how lucky was  
12 she, how lucky was she because as you look at the photographs they provided, you see these  
13 massive walls. That’s what they showed you – what they showed you. You see these massive  
14 walls, and they want you to believe she left through that gate by the massive walls. How lucky  
15 was (b) (6) that she told you, told the OSI that she walked out into the front yard, there was  
16 a place where the wall was only a few feet high, and she was able to sit down and swing her legs  
17 over? How lucky was she that that, in fact, existed – if she just lied about that, made that all up?  
18 She’d have to be the luckiest woman in the world. She’d never been in this house before; she’s  
19 never been to it again. She doesn’t even know where it is. It was dark. It was night. And she’s  
20 just lucky enough to tell you that her way of leaving the house is supported by the physical  
21 uncontroverted evidence that she could sit down on the wall, swing her legs over, and drop off,

1 when they wanted you to believe that the walls were these massive, four-foot tall walls that she  
2 couldn't get over. How lucky was she? She's not; she was corroborated.

3 TC: She's corroborated by what happened. If you believe these people, she has now  
4 walked out of this house on her own at three in the morning because she doesn't want to stay in  
5 bed, so "I'd much rather go out in the cold because I just don't want to stay in bed, so I'll walk  
6 out without my shoes, and I'm walking, stumbling through this, and I call my friend to come and  
7 get me," and she's able to act. She's the actress of the year, cry and demand. Sergeant  
8 Dunnivant tells you how emotional she was, how distraught she was, how upset she was. She  
9 tells you on the phone, and she tells you when she saw her in person. Corroboration.

10 Corroboration that emotional, visceral corroboration – tears. How she's corroborated by Major  
11 O'Keefe when she goes into see him, how he described her – "She looked like she had been  
12 crying." This is a nurse; this is a medical professional. "She looked like she was crying. Her  
13 eyes were puffy. It appeared like she had something traumatic happen to her. It appeared like  
14 she had something traumatic happen to her. The objective testimony of a medical professional.  
15 She's corroborated.

16 (b) (6) has absolutely zero motive to falsely accuse this man. It comes down to this:  
17 In order for you to believe (b) (6); in order for you to believe (b) (6) is falsely accusing  
18 this man of putting his finger in her vagina, in order for you to believe that, knowing that in order  
19 to do that she has to commit perjury, that she has to go through this process, that she has to  
20 destroy this man, destroy his wife, destroy his son, in order to believe that, you would have to

1 believe (b) (6) is pure evil – evil – the spawn of Satan would have to be (b) (6) for her,  
2 for absolutely no reason to falsely accused that officer of sexual assault.

3 TC: But in order to believe Beth Wilkerson is lying, all you have to do is believe she's  
4 protecting her son. That's all you have to believe. And when you go back and look at that  
5 evidence, and you look at the motives to lie and you look at the fact that you have definitive  
6 proof that Beth Wilkerson lied, there's only one conclusion you can come to, only one, that's he  
7 is guilty.

8 MJ: Defense, would you like to have a short recess?

9 CIV DC: Fifteen-minute, Your Honor.

10 MJ: We will be in recess.

11 (The court-martial recessed at 1046 hours, 2 November 2012.)

12 **END OF PAGE**

1 (The court-martial was called to order at 1111 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense, you may continue.

6 CIV DC: Thank you, Your Honor.

7 Colonel Stentz, members of the court. It's hard to believe, in some ways, that it's been a  
8 week since you first came into this room, and were selected to sit as the court members in this  
9 proceeding. Up until this point it has pretty much been the lawyers doing most of the work and  
10 the witnesses telling their stories, but now it's time for you to be prepared to go into the  
11 deliberation room to perform the most difficult task of this proceeding, and that is to deliberate  
12 and to vote on whether Lieutenant Colonel Jay Wilkerson committed the alleged offenses.

13 I told you during *voir dire* that I would be back, standing before you again. Well, I'm  
14 here. And I also told you that I would be asking you to return a finding of not guilty. And I do.  
15 And now it's my opportunity to bring all of the evidence together and to tell you why that is the  
16 only just outcome in this case.

17 Now, in every case I've been involved in, I always look for something that will distill the  
18 issues down to a very simple facts or understanding. And I really hadn't come to a conclusion  
19 on how I could do that before you right now until I heard the testimony of (b) (6) this  
20 morning. And then it just hit me. This case can be distilled down to this: An imaginary friend;  
21 an imaginary bed; and an imaginary sexual assault.

1 CIV DC: Now you may know what I'm talking about; you may not. But the imaginary  
2 friend, if you recall (b) (6), when she previously testified at the beginning of this week, she  
3 said that there was another woman in that house that night. And I was very careful to question  
4 her on this point. And she admitted that in previous statements and in her testimony here, she  
5 believed there was another woman there that night.

6 You only heard three women testify along with Beth Wilkerson, and so because the (b)  
7 children were there that night, we brought in Cheryl Pone and asked her, "Were you there that  
8 night when (b) (6) was there?" And she said, "No." So one of the things I challenge you  
9 on, when you go back to deliberate, is where did this imaginary friend come from, and what kind  
10 of imagination does (b) (6) have?

11 Based on court member questions, (b) (6) came back before you today to testify  
12 under oath yet again. Previously, she had not been shown any photographs of the beds that are in  
13 the Wilkerson home. And she'd been asked about this under cross-examination, and she had  
14 been asked – Beth Wilkerson had been asked to identify all the beds in the house. And so the  
15 defense provided you photographs, not of all the beds, but of three of the main beds in the  
16 evidence. We started out with the master bed, shared by Beth and Jay Wilkerson. We showed  
17 you another bed just down the hall from the kitchen, the bed occupied by the (b) boys that  
18 night. We showed you this bed [referring to page 12 of Defense Exhibit P], and today, (b)  
19 (b) (6), told you, under oath, looking at this picture, and I'm referring now to page 12 of  
20 Prosecution [sic] Exhibit P, was definitely not the bed where this incident occurred.



1 CIV DC: There was only one other bed that's not photographed, and that was the bed  
2 occupied by the Wilkerson's son. So I say to the government, where is the bed? Where did this  
3 purported offense occur? Where is the evidence of the bed that (b) (6) is talking about?

4 See, I was amazed as I listened to trial counsel's closing argument, and sat there for – it  
5 has to be at least 45 minutes, and I'm thinking "Okay, you're talking about Colonel Wilkerson –  
6 attacking him; you're talking about Beth (b) (6) [sic]; you're attacking her. Why aren't you  
7 talking about the bed where this incident allegedly occurred? And it's very simple why he  
8 wasn't talking about it. It's an inconvenient fact that (b) (6) cannot identify a bed.

9 Now I suggest to you that there's one reason why – well, there are multiple reasons,  
10 perhaps, but there are at least a few reasons why she cannot identify a bed. The key reason is  
11 that it didn't happen, that she has imagined, just as she has imagined a friend, just as she  
12 imagined this bed, she has imagined this sexual assault, for whatever reasons that we may never  
13 know.

14 But another reason is this – why she did not identify a bed, and in this one respect, I have  
15 to say that possible that (b) (6) is telling the truth. She said, "I didn't sleep in any of those  
16 beds." You know why she might be telling the truth? Because she didn't get in any bed that  
17 night. She did not go to sleep anywhere in the Wilkerson home that night, and that is why it is  
18 impossible for her to identify the bed.

19 When they get back up – when the government gets back up to argue, and I want to make  
20 this point right now, I don't get to stand before you again. This is my only opportunity to present  
21 an argument, and that's as it should be – the government has the burden of proof; they get to

1 come back up and rebut whatever I say. And it maybe that Colonel Christensen, when he comes  
2 back before you, brings up facts that he would not bring up in his original argument. I will have  
3 no opportunity to address those facts.

4 CIV DC: But what I can do is ask you to think critically and listen to anything new that  
5 he brings up, and just recognize that if Frank Spinner had a chance to come up here again and  
6 talk to you, what would he say in rebuttal?

7 Now I'm going to ask your indulgence. It's been a long week. These arguments are  
8 going to be long, but the fact is, I think I can sit down right now, based on what I just argued, and  
9 be confident that you would return a verdict of not guilty on all of the charges and specifications.  
10 I would be remiss, however, if I did not show how trial counsel has mischaracterized much of the  
11 evidence and has overstated, tried to oversell the case that he has been trying to feed you today.

12 We're not afraid of the facts in this case and the defense is not afraid. We're prepared to  
13 challenge the facts and the evidence and show why you should return a verdict of not guilty.

14 Now, I want to step back for a minute now and just say I disagree with sort of the premise  
15 that Colonel Christensen started out with. He seemed to be taking the position, well, if  
16 somebody is lying about something, then it happened, even though they deny it. So if Colonel  
17 Wilkerson is lying about what happened in his home, then this must have happened. And I'm  
18 thinking I had three teenage daughters, and they lied about a lot of things, but they didn't mean  
19 what they said was true, it just meant hey maybe they had a memory problem or they were  
20 protecting friends or one things or another, but just the fact that you say someone's lying doesn't  
21 mean the government's proved their case. And they make it – and Colonel Christensen made it

1 sound like, if I was listening to him correctly, that you can know who is lying in this case beyond  
2 a reasonable doubt.

3 CIV DC: Let me set up the logic this way: The government has to prove guilt beyond a  
4 reasonable doubt, as the Judge has instructed you. What is their evidence that there was a sexual  
5 assault in this case? Simply, the testimony of (b) (6) . That's it. So the way logic works for  
6 me is that means that it's not who was lying, it's do you believe (b) (6) beyond a reasonable  
7 doubt? You see you may think she might be telling the truth. I mean as all the witnesses walk  
8 into the courtroom, it's sort of a clean slate, and so what you're doing is you're hearing their  
9 testimony; they come in, under oath, they are subjected to cross-examination, but it's basically  
10 "Okay, we listen to the government's case; (b) (6) may be telling the truth. We're opened-  
11 minded; we'll wait until the end of the case until we resolve." Then the defense calls in Beth  
12 Wilkerson. She testifies under oath, and she says, "This is what happened that night. I did not  
13 catch my husband in the act of sexually assaulting (b) (6) ." And so you say, "Okay, well  
14 that, you know, that's under oath. It's reasonable. She's subject to cross-examination." And so  
15 as you sit there and look at their testimony, you have two people giving two contradictory  
16 versions, but Colonel Christensen was suggesting that you can actually determine which one is  
17 being truthful. And I submit that you may not be able to figure out which one is being truthful  
18 after you've considered all the evidence in the case.

19 So the issue isn't who's lying and who's being truthful. Here's the issue: are you  
20 convinced that (b) (6) is telling the truth beyond a reasonable doubt, and, at the same, are  
21 you convinced that Beth Wilkerson is lying beyond a reasonable doubt. That is the challenge

1 that you face, and the way our system of law works and the way the standard of proof works, it is  
2 that if you cannot decide whether one or the other – one is lying or telling the truth beyond a  
3 reasonable doubt, then you acquit. That’s the way it works. You just say “There’s insufficient  
4 evidence for us to resolve this dispute.”

5 CIV DC: Now let me put this another way. This is my logic, and I hope you find it’s  
6 reasonable. You do not have to believe Beth Wilkerson here. Now are you listening to me,  
7 members? You do not have to believe Beth Wilkerson beyond a reasonable doubt to acquit.  
8 You see, you do have to believe (b) (6) beyond a reasonable doubt to convict, but you do  
9 not have to believe Beth Wilkerson beyond a reasonable doubt to acquit because it’s called  
10 “reasonable doubt.” If you think that there is a reasonable basis to believe Beth Wilkerson, that  
11 equals reasonable doubt, and that means you must acquit.

12 So it is in that respect as I listened to Colonel Christensen’s argument that I take some  
13 issue with how he set up the logic tree in this case. So what I would like to do in the time that  
14 I’m about to take is walk through the evidence, and talk about why you cannot believe (b)  
15 (b) (6) beyond a reasonable doubt.

16 Now the first point that I want to make is the last point I think I made in cross-  
17 examination with (b) (6) – this was Moustache March or something to that effect, and it  
18 started the first of March, and we’re now to the 23<sup>rd</sup> of March. The uncontested evidence, the  
19 unrebutted evidence, the only evidence that you have is that Jay Wilkerson had a moustache. It  
20 was open and it was obvious and I would guess that it was probably ugly. (b) (6), when she  
21 describes in her testimony, this face that she – I would say now an imaginary face – that was six

1 inches from her face, when a bright light came on, put no facial hair on this man, who, in her  
2 testimony, she also thought was a Master Sergeant.

3 CIV DC: Six inches away; bright light; no facial hair. I think she may have even said in  
4 her testimony “Well, I just saw his face like from the nose up,” or something like that. Well,  
5 how convenient now because, probably, (b) (6) – she has since learned that he had a  
6 moustache, but you never put a moustache on the man that you claim was on top of you.

7 Another reason why she has no credibility, and this came from court member questions.  
8 Now the evidence was there, and apparently you all put it together, but Sergeant Dunnivant  
9 testified that (b) (6) told her that her pants were unbuttoned. What did (b) (6) tell you?  
10 She had a belt on; it was buttoned; and her pants were buttoned. Okay, well which was it? Were  
11 they unbuttoned or were they not unbuttoned? Was her belt buckled or was it not buckled?  
12 Those are the government’s witnesses; those aren’t defense witnesses. Those are the  
13 government’s witnesses who are contradicting each other, this (b) (6) of such great  
14 credibility, who has corroboration.

15 Another point, the rash. Three boys there that night; the Wilkerson’s son up in bed,  
16 asleep. And, of course, this was a contradiction, too. I think (b) (6) said she went up and  
17 saw him or something, but if you recall, Beth Wilkerson testified that he was asleep the whole  
18 night, that he never interacted with (b) (6), contrary to what (b) (6) said.

19 Well, let’s just skip by that for a minute because that’s just a contest between the two of  
20 them. Where is the evidence that any one of the children that night had any kind of rash? Mrs.  
21 Pone said her sons didn’t have any rash. The only real question was whether or not there was an

1 Ace bandage wrapped around one of her son's legs, and she confirmed that, in fact, that was the  
2 case. And Beth Wilkerson talked about how (b) (6) assisted her with rewrapping the  
3 bandaid – an Ace bandage around his leg. What did (b) (6) – because this is an important  
4 point because this is where Beth Wilkerson has corroboration, and (b) (6) has not only no  
5 corroboration, but it is inconsistent – the facts are inconsistent with what she said. And (b)  
6 (b) (6) said, "...had no recall of doing anything with an Ace bandage and the (b) (6) boy."

7 CIV DC: Now you know trial counsel wants to make a big deal out of the fact that when  
8 the Wilkersons were interviewed and there was an inconsistency where he said to the OSI that I  
9 think he read a story to the boys, and Beth Wilkerson said that he told a story to the boys. You  
10 know there are big facts and there are little facts. If they truly conspired to put together a story  
11 about what happened, then surely they would have agreed to tell the same story. What that really  
12 tells you is just that they – it's been weeks since that night; they're just trying to recall facts as  
13 best they can, and so it should come as no surprise because they didn't conspire and get together  
14 on their facts, that they would have a different recall about what happened on that point. But,  
15 trial counsel, I mean I'll give that one to you, okay. But here's the deal, where's the  
16 corroboration for (b) (6) on this rash? Why doesn't (b) (6), who is a PA, why doesn't  
17 she remember wrapping this Ace bandage around the (b) (6) boy's leg?

18 (b) (6) says, under oath, that at approximately 12:23 to 12:38 – something like that –  
19 about a 15-minute phone call that she's having with Suzanne Berrong, she says that Colonel  
20 Wilkerson joined Beth Wilkerson in the kitchen with her for coffee or tea or juice or something.  
21 Okay, government, I didn't hear you talk about Suzanne Berrong during your closing argument.

1 What does Suzanne Berrong say? Who does she corroborate? Does she corroborate Beth (b) (6)  
2 – I mean (b) (6) or Beth Wilkerson? Now I know you all remember this, and I don't have to  
3 remind you, but I'm going to nonetheless. Suzanne said toward the end of the conversation – the  
4 phone call – that (b) (6) starts talking about “the woman” or “the wife” being in the room, and that  
5 they're going to have some tea. (b) (6) makes no reference to “the man” or “the Master Sergeant”  
6 or “the husband.”

7 CIV DC: Beth testifies that it was just her and (b) (6); that she did come in on this phone  
8 call toward the end. So you have Suzanne Berrong, who's actually (b) (6)' friend,  
9 corroborating Beth Wilkerson, not (b) (6), (b) (6), as my recall is, claimed that she  
10 cried during this phone call with Suzanne Berrong. What does Suzanne say? This was one of  
11 your questions that was just answered this morning. “Nope, she wasn't crying.”

12 Now so you remember what (b) (6) was talking about in this phone call? And this  
13 goes to more than just an issue of corroboration; this goes to motive. The government has  
14 basically thrown the gauntlet down and said, “Okay, defense, why would this woman come in  
15 and lie about these things? (b) (6) wasn't interested in Colonel Ostovich. Dawn Brock  
16 wasn't interested in Colonel Ostovich. Only Tanya Manning was interested in Colonel Ostovich.  
17 And, Colonel Wilkerson, you're just making this all up when you said they weren't interested.”  
18 And that's what he says in his statement. If you go back and view the whole videotape, he didn't  
19 say who was after him, he just said “they” and there were three women.

20 But, government, you want some motivation? I'll give you some. (b) (6) said that  
21 she had been “fucking left.” “They fucking left me.” Who is she talking about? She's talking

1 about her girlfriends. (b) (6) was upset that Tanya Manning was "...going after Osto and  
2 was going to fuck him." Those are her words, not mine. And I take no pleasure in expressing  
3 those words in the courtroom before officers. I think you've heard those words before though.  
4 But what can you infer from those words? If (b) (6) wasn't interested in Osto, why did she  
5 care if Tanya Manning is going to fuck him? She's not interested. It doesn't matter. Right? So  
6 if it was the perception of Major Goldsberry, if it was the perception of Jay Wilkerson that  
7 "they" or "these women" were all interested in Osto, do you think there might be some basis for  
8 that perception – from (b) (6) ' own mouth?

9 CIV DC: That's why I maintain that (b) (6) never went to sleep that night. She was  
10 upset. She was abandoned by her friends. She knew that Tanya Manning went off with Osto.  
11 And her anger shows up in this phone call because we know that after this phone call of  
12 approximately 15 minutes, she drinks coffee and everything, and then she goes back down to the  
13 room. Now understand I say "goes back down," here's another contradiction. Beth Wilkerson  
14 say, "I took her down to the room" – the photograph, page 12 of Defense Exhibit P – "I took her  
15 down before the phone call to Suzanne Berrong. It was only when I heard the phone call in the  
16 kitchen that I came downstairs to find out what was going on. So, first of all, we know she's  
17 already, at least if you accept this testimony that that's what happened, we know that (b) (6)  
18 had been taken to a bed; that she had been left there; and that she – this anger that was boiling  
19 inside her percolated up to the point that she came to the kitchen and started the phone call.



1 CIV DC: Then they have tea. I submit only Beth and only (b) (6) have tea together for  
2 approximately 30-40-45 minutes, then Beth Wilkerson heads back up to bed; presumably, (b) (6)  
3 goes back down, only by Beth Wilkerson's testimony, to come back up at about 3 AM or 2:45.  
4 Now, we know that (b) (6) was still processing stuff and active at 0143 because of the text  
5 message that she sends to Dunnivant.

6 So just let me just sort of retrace this timeline a little bit here. By approximately  
7 midnight, everyone is gone. The testimony is that Colonel Wilkerson, shortly after that, goes to  
8 bed. Beth Wilkerson, by her testimony, takes (b) (6) down to the bedroom, page 12 of  
9 Defense Exhibit P. Then Beth Wilkerson eventually finds her way to bed. When she gets in  
10 bed, she's feeling some pain or something, and she asks Jay to go get some medication to help  
11 her, and he does that.

12 Now, in that house, at this point, the Wilkersons are in the master bedroom; their son is in  
13 his bed, which was upstairs also; the (b) (6) boys are in their bed. Presumably, (b) (6) is in  
14 the only other available bed in the house, unrebutted, un-contradicted by government evidence.  
15 She's getting angry. She comes up, she calls Suzanne Berrong. They have their phone call.  
16 Then they have tea and coffee for a little while. And then, now, Beth returns to bed to her  
17 sleeping husband, now, in bed. Everybody else is in bed asleep. Where does (b) (6) go? Well, it's  
18 reasonable to assume that she went back down to the only bed in the house that was available for  
19 her. And so she gets down – now, I don't know if she got down to send this text message to  
20 Dunnivant or she did it on the way down or how she did it. But she sends a text message to  
21 Danielle Dunnivant, "Please make any plans on your own for travel. Best of luck. Thanks" – all

1 typed correctly, spelled correctly, showing that (b) (6) is fully awake and is contacting her  
2 friend. Why doesn't she send a text, "Danielle, I'm really unhappy. I've lost my shoes; I'm at  
3 this house; come get me." You know one of the great puzzles – but that's at 0143 – so one of the  
4 great puzzles in this case, and the court members – you asked this question and I appreciate your  
5 attentiveness – one of the most puzzling questions in this case, and I don't think you can answer  
6 it; I don't think I can answer it; and I don't think trial counsel can answer it. But this one should  
7 puzzle you, and it's obvious by the questions that you ask, that even though you haven't been  
8 able to talk about it among yourselves, why doesn't, in the Berrong phone call, why doesn't (b)  
9 hand her phone to Beth? Suzanne is saying, "Give the phone to the wife. Where are you? I will  
10 come get you. I will come get you. I will come get you." And if I recall (b) (6) response, this  
11 morning, under oath, "Well, it was too much trouble to have Suzanne come get me." No, it  
12 wasn't too much trouble. Suzanne said, "I will come get you. Isn't that what friends are for?"

13 CIV DC: So, per Beth Wilkerson's testimony, when (b) (6) who did not give her the  
14 phone, and who said, "We're going to make some tea or have some tea," (b) (6) tells Beth  
15 Wilkerson that Suzanne lives in (b) (6) – forgive me if I butchered that name – says, "She  
16 lives in (b) (6)." And Beth is like "Well, that's only 10 or 15 minutes away." Okay, (b)  
17 you sit there, you drink tea, and y'all have coffee, and you talk. You sat there and talked for  
18 longer than it would have taken for Suzanne to be called back, to be told by Beth, "the wife,"  
19 where she lives so that Suzanne could come pick her up.

1 CIV DC: Now, I have no clue why (b) (6) did not want to give the phone to Beth  
2 Wilkerson. I have no clue why after Beth pointed out to (b) (6) that Suzanne was not very far  
3 away, (b) (6) didn't redial Suzanne. She knew Suzanne was awake. Why did she not do that?

4 So now I've gotten back into this timeline to where I want to be, and that is Suzanne [sic]  
5 goes to her imaginary bedroom because she couldn't identify it today, so she goes to some  
6 imaginary bedroom where some imaginary sexual assault occurs; right? Wrong. She goes to the  
7 actual bedroom that Beth had taken her to. She sends this text message, and then I submit this is  
8 what happened for the next approximate hour or so: She stewed; she did not sleep. She was still  
9 upset. She might have even been upset that Tanya Manning was fucking Colonel Ostovich and  
10 not her.

11 Tell me, and, obviously, this is a rhetorical question, but tell me that the evidence does  
12 not support what I have just laid out for you. Tell me that the government has disproved beyond  
13 a reasonable doubt what I have just laid out for you. Tell yourselves, when you get back in  
14 deliberations, Frank Spinner had it all wrong; the evidence goes against his argument. You see,  
15 trial counsel spent a good 45 minutes assonating and attacking my client's character and his  
16 wife's character. You notice he didn't spent that time arguing about the inconvenient facts in  
17 this case.

18 According to Beth Wilkerson, at approximately 2:45 in the morning, she's in bed. Her  
19 husband is in bed next to her. Her son is still in bed. The (b) (6) boys are still in bed. But what is  
20 weighing heavy on her that night? What is weighing heavy on her that night? These two (b) (6)  
21 boys, whose father had been killed in a car accident – he did not commit suicide, again, another

1 point of contradiction when you look for corroboration. (b) says she was told that he  
2 committed suicide, that their father committed suicide. We know that didn't happen. Cheryl  
3 Pone made that abundantly clear. Nonetheless, this is the first night these boys have been away  
4 from their mother since their father was tragically killed in an auto accident. The concern is that  
5 they will not be disturbed, that they will not be startled, that they will have this first night away  
6 from their mother since their father died, that they will have a good night, a good experience at  
7 the Wilkerson home, such that Cheryl can have peace of mind and Beth Wilkerson can have  
8 peace of mind.

9 CIV DC: You know, as I sat and listened to Col Christensen attempt to destroy the  
10 character of Beth Wilkerson and to say she's a liar and to destroy the character of Colonel  
11 Wilkerson and say that he's not good military character – he doesn't have it – I'm thinking about  
12 Cheryl Pone who picked this family as the place where she would let these boys stay in their first  
13 night, for over a year, away from her. She picked the Wilkersons. What does that tell you?  
14 Forget the OPRs; forget the General Ashy and other affidavits. Just forget them. Just focus on  
15 that decision by Cheryl Pone to say, "I am going to entrust my boys."

16 And so at 2:45 in the morning, what happens? Beth, who is sensitized because of those  
17 boys are there that night, hears creaking in the floorboards. We can't recreate that creaking. If  
18 you remember in my opening statement, I said, "You know, in this courtroom, it would be great  
19 if we had a video so we could know what happened that night." And if we had a video, we  
20 wouldn't be here, I suppose. But we don't have a video, and we don't have a sound machine,  
21 and we can't recreate the creaking of that floor. But do you think a mother who had the

1 responsibility that Beth Wilkerson had that night, you think she might have heard the creaking of  
2 the floorboard in her house, or is Colonel Christensen going to come up here and say “That was  
3 another lie”?

4 CIV DC: All I’m asking you is this: Does Beth Wilkerson’s testimony ring true with  
5 common sense? “I heard a creaking. I got up. I had just been up with (b) (6) . Is it the  
6 (b) (6) boys coming out of their room? Are they having a problem? What’s going on?” And she  
7 goes down to investigate. And where does she find (b) (6) ? In the (b) (6) boys’ room.” And  
8 I don’t remember the exact testimony, but it was either at the doorstep or in the room, but she  
9 found her in a place where, number one, she had no business; and, number two, she could  
10 potentially cause disruption, especially if she gets back on the phone with Suzanne Berrong  
11 talking about people fucking, again.

12 Now I ask you, does this picture make sense, that Beth Wilkerson would be upset? Does  
13 the picture that I have just set before you ring true that that would be Beth Wilkerson’s concern  
14 that night? Also, does it not make sense that at this point, at approximately 3 o’clock in the  
15 morning, after Beth Wilkerson has hardly gotten any sleep, that she would finally get mad at  
16 (b) (6) I know my wife; (b) (6) would have been out of there long before 3 o’clock in  
17 the morning. In fact, it would have been very clear to Frank “What’s this stranger doing in my  
18 house?” And this cuts against their argument as well. The trial counsel wants to use against the  
19 Wilkersons their kindness, their courtesy, their hospitality. You know you remember Beth, I  
20 think on cross-examination by the trial counsel, some issue came up about “lost dog.” And she  
21 had to clarify “I’m not the lost dog.” I think that’s what Beth said. The testimony was focusing

1 on the fact that she would rescue a lost dog. That's the kind of person Beth Wilkerson is. Beth  
2 Wilkerson is the kind of person who would take the (b) (6) boys in and know the heavy  
3 responsibility she carried that night. Beth Wilkerson is the kind of person who would take a lost  
4 dog in. Beth Wilkerson is the kind of person who would take (b) (6) , a total stranger,  
5 unknown to Beth, who manages to lose her shoes throughout the night, who offers to take her  
6 back, just like she took Dawn Brock back, who, nonetheless, prepares a bed for her and a place  
7 to sleep when everyone else has abandoned her – (b) (6) ' "friends." When we talk about  
8 character, that woman is full of character. And that's the woman that Colonel Christensen wants  
9 to tell you perjured herself on the stand. I'm offended, quite frankly. I usually don't get this  
10 excited.

11 TC: Objection. Personal opinion – what he thinks, Your Honor.

12 MJ: Refrain from making any personal opinions that he may argue, based on...

13 CIV DC: I can correct that, Your Honor.

14 It is offensive to any reasonable person that an argument would be made that Beth  
15 Wilkerson perjured herself on the stand. How's that? Not my personal opinion. It's an  
16 objective argument I'm making here. You should only have to deliberate for five minutes to  
17 come back with a finding of not guilty – five minutes.

18 Safety belts in a car – I'm starting to lose my mind sometimes when I'm in a courtroom.  
19 It's like is that on the charge sheet – a former Safety Officer – where's the charge sheet – that  
20 failed to enforce safety belt rules in a car. It's made to sound like he was the only officer in the  
21 car that night. I think they were all officers. Yes, tell you what, the defense concedes; find

1 Colonel Wilkerson guilty of not enforcing safety belt law and Colonel Ostovich's car that night.  
2 The government proved their case, but is that what this case is all about? Who was wearing  
3 safety belts? Or seat – I keep saying “safety belts” – seatbelts. I'm sorry. Do you see the  
4 absurdly of that kind of an argument in a serious trial about a sexual assault? And why is  
5 Colonel Wilkerson the only one responsible for that? And their wonderful Dawn Brock –  
6 Captain Brock, she's suffering – she just learned that day she was suffering from cancer. And  
7 now you have to – because poor Dawn Brock has now been told she's suffering from (b) (6) ,  
8 everything she says is true beyond a reasonable doubt. “Believe Dawn Brock; don't believe Beth  
9 Wilkerson. Dawn Brock is telling the truth. Beth Wilkerson is a liar.” If that is true, if my  
10 client is so culpable because he didn't enforce seatbelt law in Colonel Ostovich's car, well, who  
11 is Dawn Brock? She's an officer; she's a psychologist; she's a professional; she's the one that  
12 sits on the console without a seatbelt on. I mean I – if I could step out of my skin right now and  
13 hear myself arguing, I would say “Frank, you have totally lost it because you're arguing about a  
14 seatbelt and who's wearing a seatbelt in a car in such a serious case.”

15 CIV DC: Now, what does that tell you? It tells you how desperate the government is to  
16 get a conviction in this case, that they would take such a small thing and escalate it or elevate it  
17 to such a huge proportion. It really tells you how desperate they are to get a conviction on these  
18 facts.

19 So let me take you back to finding (b) (6) at the (b) (6) boys' bedroom door. Do you  
20 think Beth had had it with (b) (6) at that point? Is that reasonable? Do you think it was  
21 reasonable for (b) (6) to say, not because there was some sexual assault going on, but to say

1 “This is it, Ma’am. Get out of here or go to bed.” I’m surprised she even said “...or go to bed.”  
2 And I submit that you have a real difficulty here in figuring out how (b) (6) left that house.  
3 Here is where there is no dispute. This one will be an easy one for you, a no-brainer. (b) (6) left  
4 the house, okay? Did she go through the gate? Did she climb over the wall? How did she get  
5 there? Why has the government produced not a single picture of the yard? You know as I sat  
6 there listening to trial counsel’s argument, I thought “Well, that’s strange.” They take a  
7 photographer out to a wall. They don’t take (b) (6) out to the wall. They pick a place where  
8 they want the photographer to try something, but they don’t have the photographer take a picture  
9 of where it is that she’s doing it. And the photographer is just doing whatever the prosecutors  
10 tell her to do. And they hinge (b) (6) ’ credibility on that kind of evidence? I mean you see  
11 – I’m going to show you in a minute – we brought a videotape, and you’ve already seen it, but  
12 showing leaving the room where we think (b) (6) – used as the basis for allegations – we  
13 show how you had to go down a hall, how you had to turn and come up stairs – two flights of  
14 stairs – and that when you get to the end of those stairs, you’re met with a wall in front of you  
15 and you have to make a choice about which way to go.

16 CIV DC: Okay, government, where’s your video; where’s your photograph?

17 TC: Objection.

18 MJ: Overruled.

19 CIV DC: I can argue lack of evidence, Your Honor.

20 TC: The government does not have – I think that’s unfair, Your Honor.

21 MJ: You’ll have an opportunity to rebut. Overruled.



1 MJ: You may continue.

2 CIV DC: Here's what I will say about the wall: Based on Beth Wilkerson's testimony,  
3 (b) (6) went out a particular door. Once she went out that door, no one knows what path she  
4 took. Everyone agrees she left the house. Okay? So much for the wall and corroboration of

5 (b) (6) It's a nonissue.

6 Now here's another thing that I want you to puzzle over. Well, actually, let me get to that  
7 in a minute. Let me go back to Beth.

8 So here's Beth. They're at the door. She's basically saying "Either leave or stay." It's  
9 clear that (b) (6) is going to leave. In fact, one of the real interesting questions in the case, and this  
10 is where I don't remember the evidence, so I could have it wrong. I trust you, collectively,  
11 between the five of you to maybe see if you can recall where was (b) (6) purse at the time  
12 she left? You know it's one of those things where when you start thinking about it, if she took  
13 the purse down to the bedroom with her, does that mean that when she came up she brought it  
14 back up with her and she already had it? There's no indication that when Beth confronts her at  
15 this point that (b) (6) went back down or went back to a bedroom – pick a bedroom – the  
16 imaginary bedroom, okay. There's no evidence that she went to this imaginary bedroom and  
17 grabbed her purse. It appears that she had it with her. All she didn't have were her shoes. And  
18 so Beth, again, the government wants to say that Beth Wilkerson lacks character by letting this  
19 poor woman go out in the cold of the night. Well, I'm going to say this wasn't a poor woman;  
20 this was a 40-some-year-old woman. This was a woman who had a cell phone. This was a  
21 woman who was able to text or call whoever she wanted because we already know she had

1   texted Dunnivant once, and she had called Berrong, and I – I’m sorry, but the evidence does not  
2   show that she was helpless or incapable of taking care of herself, and, yes, she was sober at 0300  
3   in the morning. So we don’t even have a drunk wandering the streets. We have an adult woman  
4   who has a phone, who is sober, who leaves the Wilkerson home. And, yes, it’s cold. Well, too  
5   bad; so sad. You left. You could have stayed you know. But what does Beth do? Beth couldn’t  
6   jump in a car right away and drive her anywhere.

7           CIV DC: Now, I’ll say this: Beth would have just been in here – Beth would have been  
8   entitled at that point to say “Good riddance. Get out of my life. I hope I never see you again.  
9   Now, can I get some sleep tonight?” I think, I think – no, not “I think,” so I don’t have an  
10   objection. It seems to me that objectively, she would have been entitled to go back to bed and  
11   forget about (b) (6) (b) (6) is a big woman. She can take care of herself. Beth had  
12   already taken care of this lost dog long enough that night.

13           But what does she do? She does what you would expect a person of class to do. All  
14   she’s got is her sleep clothes on. She goes and gets a robe or something; gets her keys; gets her  
15   purse, and she jumps in a car, and she goes out driving, trying to figure out which way (b)  
16   (b) (6) would have gone, to help her. You see that shows the kind of character that Beth  
17   Wilkerson possesses, this purported “perjurer” as stated by the government. It’s the middle of  
18   the night. She’s exhausted. She’s hardly had any sleep. And what does the government attack  
19   her on? “Oh, you left the house. What if the (b) boys needed you?” “My husband’s there; he  
20   would have taken care of them. I was concerned about Beth [sic] (b) (6) at that point.” And she  
21   goes looking for her, but just doesn’t find her.

1 CIV DC: Does that story ring true? Does that sound just like something that an Air  
2 Force daughter, an Air Force Wife – two times, a woman what it means to be a commander’s  
3 wife, who knows that role, who has fulfilled that role – does that sound like what something that  
4 that kind of woman would do? As my grandson has told me on occasion, “Think about it.”

5 I’ve written down my in my – in the Air Force Inn, where I’m staying right now – I wrote  
6 this down as I reflected on this case this week, and I pulled up and threw it in my pocket and  
7 brought it with me this morning. You know what it says? “No good deed goes unpunished.”  
8 And we’ve all heard that. And I don’t want to make overly light. This is serious, talking about  
9 these sexual assault allegations. But when you look at what Beth Wilkerson did that night,  
10 here’s what she did: She knows, he knows that the (b) (6) boys are going to be there that night.  
11 They both know the significance of that. But because these are quality people, when they show  
12 up, when they come back from the concert, and when these people jump out of the Ostovich car  
13 – get out of the car – and I dispute what the government said – they said the evidence shows that  
14 Colonel Wilkerson invited them to stay; I don’t recall seeing any evidence of that. I think it’s  
15 more reasonable to assume that Colonel Ostovich decided that “Hey, let’s go in and have some  
16 wine.” Why? Because the Wilkersons are nice people; because they have wine. And, oh, by the  
17 way, do you remember this: (b) (6) said it was Baccarat crystal – another little dispute here.  
18 Well, the person who owns the crystal, what does she tell it was? Mikasa; not quite Baccarat.  
19 Again, another one of those imaginary things in (b) (6) head. But in any event – I digress –  
20 what happens is when they arrive there, because the Wilkersons are such gracious people, they  
21 bring them into their home; they offer them wine. I think they used to have something in the Air

1 force called the “no notice hospitality check.” I don’t know if the Air Force still does that  
2 anymore, but that’s the kind of people the Wilkersons are. Now let’s make clear there’s a reason  
3 why they came in Colonel Ostovich’s car; because he and Major Lowe and Major Goldsberry  
4 had met there earlier in the evening. There was only one reasonable way for Colonel Wilkerson  
5 to get home, is to come back with Colonel Ostovich. Why did Goldsberry and Lowe come back?  
6 Because that was their departure point. I forget exactly who, but, yeah, it was Goldsberry who  
7 had – his car was there. Those three did have to come back. Wilkerson wanted to come back to  
8 his home, so yes, it is correct, he wasn’t going to go bar-hopping with these women that night.  
9 And they testified that they thought they were going to a pub or some kind of bar-hopping. So  
10 this was not on Colonel Wilkerson’s radar screen that there was going to be a no-notice  
11 hospitality check at his home that night, knowing the (b) (6) boys were there. And you can only  
12 imagine that, yes, Beth would be a little upset, but because she’s courteous and because she’s a  
13 woman of such grace and kindness, she’s not going to openly display hostility for being there.  
14 But don’t you know she gave some looks to him like “Who are these women? What is going on  
15 here? Remember we have the (b) (6) boys. We don’t want a big thing tonight.” And so they do  
16 what’s reasonable; they provide them some wine, some drinks. They talk. But then a point  
17 comes – not from the very beginning, but a point comes when it’s like “Okay, time out. It’s time  
18 for them to go.” And of course Beth knew that Goldsberry and Lowe had their car there, so  
19 when it’s time for them to go, who do you think it’s time for who to go? The women.

20 CIV DC: And the evidence supports Beth on this point as well, that Brock – she made an  
21 offer to Brock and (b) (6) to give them a ride back. And just like at the end of the Berrong phone

1 call, another puzzling point. Why doesn't (b) (6) take up the offer because Beth is taking Dawn  
2 Brock back.? And (b) (6) – wouldn't it have been nice if (b) (6) had just gotten in the car with Dawn  
3 and the three of them had returned to the base? And then they could have walked together from  
4 the gate over to the TLF, where they were lodging in the main lodging. Why did (b) (6) – I  
5 mean she didn't know the Wilkersons. It's clear, at this point, I submit the evidence makes it  
6 clear that at this point Tanya was hooking up with Colonel Ostovich, so what does that make  
7 (b) (6) Odd woman out. So why is she sticking around? And so when the government  
8 says, "Why would (b) (6) make up these allegations?" The defense response: Why does  
9 she seem to want to stay at the Wilkerson house that night? Why does she turn down every  
10 opportunity that she's given to go back to the base? Why? And we will never know. I mean she  
11 can come up with an answer, but that doesn't mean that's why. It just means that she's providing  
12 an answer.

13 CIV DC: In any event, because the Wilkersons are nice people, they're not in the  
14 women's faces saying "You've got to leave. Get out of here." They're finding an opportunity  
15 and a way to enable them to leave. Goldsberry – I mean this may be a conflicting point – you  
16 know did Goldsberry offer them a ride or not or did Goldsberry say he wouldn't, and did Beth –  
17 did she think that Goldsberry offered them a ride? Again, they were interviewed some time later,  
18 but the fact of the matter is, Goldsberry didn't take (b) (6) back. It was Beth Wilkerson who  
19 offered to take her, who already showed the kind of woman she was by taking Brock back, and  
20 who was prepared to go search for (b) (6) later in the morning.



1 (The court-martial was called to order at 1226 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 MJ: Defense, you may continue.

6 CIV DC: Thank you, Your Honor.

7 Colonel Stentz and gentlemen, I was about to shift gears when we took a recess, so at  
8 least that was a good time to break.

9 Before I go into additional evidentiary issues, I want to address trial counsel's argument  
10 that (b) (6) would have to be evil, malicious, the devil, to make a claim like this and then to  
11 persist in the claim.

12 Now, let me just state right up front, she may be. I have – the evidence doesn't show  
13 whether she's evil or not. But the issue is not whether she's evil. And the issue is not for you to  
14 speculate why she may have made a certain claim, and then stuck to it. All we know is she's  
15 here; she testified; she's persistent in this claim. So the issue is not is she evil; the issue is not  
16 why has she persisted in her claim? People can persist in false claims, and they can persist to the  
17 very end. The challenge for you, though, is to look at the evidence and to see if the government  
18 has carried the burden of proof. And in that respect, the trial counsel said that basically all of the  
19 good character evidence that the defense presented to you should be discounted, as though to say  
20 the 20 years of Colonel Wilkerson's life do not matter, do not deserve merit in this case. People  
21 who have observed him over 20 years, who wrote his OPRs, people who provided those

1 character affidavits for you, they don't answer the question of whether this offense was  
2 committed, they just provide you information about the man.

3 CIV DC: Beth Wilkerson brought in witnesses – the defense brought in witnesses that  
4 attested to Beth Wilkerson's character for truthfulness. That doesn't tell you whether she's  
5 telling the truth right now or not. And to her credit, Beth Wilkerson, admitted that she told a  
6 white lie to a friend about canceling a barbeque. For some reason, she didn't want to explain  
7 more. Now let me also ask another rhetorical question. How much sleep had Beth Wilkerson  
8 gotten that night? I think maybe she had just hit a point that "Hey, we're going to cancel the  
9 barbeque." I don't want to tell my friend I'm too tired because this thing went on in my house  
10 last night. For whatever reason, she elected to tell a white lie. But that doesn't mean that she  
11 would come in and lie under oath to this court.

12 Now, conversely, what do you know about (b) (6) ' character?

13 TC: Objection. We're not allowed to present character evidence...

14 MJ: At this point I will overrule the objection, and I'll allow you to make arguments  
15 based on evidence that is before the court. And at that point, if you believe that this is somehow  
16 improper argument, I will address it at that point.

17 TC: Well, I do believe it's improper argument, Your Honor. I'd ask for a 39(a).

18 MJ: All right.

19 CIV DC: Well, I was just going to say there was no evidence.

20 TC: There is no rule of evidence which would allow me to put the equivalent of good  
21 military...



1 MJ: All right, let's stop. Stop. Stop. Stop.

2 All right, if we're talking about the law, we will talk about the law later, and if there is an  
3 instruction I believe is appropriate to give to the members about the law, I will provide it to the  
4 members. Right now you are arguing the facts and how the facts apply to the law, and if  
5 necessary, if there's some law that is provide that you are not expecting, and it's necessary that I  
6 give you the opportunity to argue that – we'll get down to that bridge if we ever get to it. But  
7 right now...

8 TC: I'd still request a 39(a) session.

9 MJ: That's fine.

10 Members, we are in recess.

11 (The members left the courtroom at 1231 hours, 2 November 2012.)

12 **END OF PAGE**

1 (The court-martial was called to order at 1232 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 TC: Your Honor, there is no rule of evidence that would allow me to present good  
6 character evidence of (b) (6) equivalent to good military character. It makes it sound like  
7 “because of a lack of, it must not be out there.” I think that is an unfair inference to leave with  
8 the members.

9 MJ: All right, and since we don’t know, obviously, at this point, what your argument was  
10 going to be, can you proffer for the court what your intended argument was going to be relevant  
11 to character of the alleged victim?

12 CIV DC: All I was going to say is there is no evidence before the court by which to  
13 resolve that question. That’s all.

14 TC: And I think – my problem with this, Your Honor, is it leaves the impression that I  
15 could do that.

16 CIV DC: I think, actually, he might have had the legal argument to present character  
17 evidence once the – he set up a conflict between Mrs. Wilkerson and (b) (6) and called Mrs.  
18 Wilkerson, basically, a liar, and so I’m – I don’t know if we want to go pull out some books and  
19 start citing law. They just never offered it.

1 MJ: I understand. Actually, very quickly, then, so what I'm hearing from the defense  
2 counsel is that it is your belief that that was – that character for truthfulness as to the alleged  
3 victim was something that the government could have offered?

4 CIV DC: Yes, Sir, and that that is at the heart of the government's argument is that one  
5 is lying or the other. That's at the heart of their whole argument.

6 MJ: Okay. Well, a couple of things, just kind of as we go forward, and I'm not saying  
7 that we're going to go down this road, but I just want to make sure that defense counsel feels  
8 comfortable – so, in light of this, defense, if you believe this is an issue, I've already opened –  
9 reopened to allow you to answer a couple of questions – is, based on that position, are you  
10 comfortable to reopen this hearing to allow the government to potentially put on evidence of the  
11 good character of the alleged victim? Is that what you're asking the court?

12 CIV DC: Yes, Your Honor. If they want to reopen their case in the middle of the  
13 defense counsel's argument and present witnesses of good character – on good character for  
14 truthfulness, I will not object. How's that?

15 MJ: Okay.

16 Government?

17 TC: Well, I think it's twofold, Your Honor. Character evidence or truthfulness, which I  
18 do not believe was – would have been admissible at the...

19 MJ: All right. I understand your position.

20 TC: Yes.

21 MJ: Defense counsel has said...

1 TC: Yes, I understand.

2 MJ: ...as to that, they're saying "Hey, if you've got something you want to offer as far as  
3 that, you can do it.

4 TC: Okay, we have good character for truthfulness, but he is talking character in general,  
5 and right after he talked about his client's alleged good military character. There is no military  
6 rule of evidence which would allow me to put on any character evidence other than character for  
7 truthfulness, and that's only if it's been attacked.

8 And there was no allegation or cross-examination on character for untruthfulness  
9 presented on the facts in this case.

10 MJ: All right. Here's my intention as we go forward: I will permit defense counsel to  
11 continue with their argument. Based on what that argument is, it may be necessary for me to  
12 provide additional law to the members regarding whether it would have been, at least in this  
13 court's determination, would have been permissible to offer similar evidence such as good  
14 military character or good civilian employee character, I guess if you want to say something  
15 similar along those lines.

16 Now as to truthfulness, the truthfulness of whether or not the alleged victim is truthful or  
17 not truthful, based on what the argument is, I certainly will give government an opportunity in  
18 light of defense's concession that they don't – that they believe it has been raised – that you can  
19 certainly have an opportunity to reassess after argument. My intention is not to stop argument at  
20 this point. If we go down that road, we can certainly address the parameters if we, in fact, do so.

21 Is there anything further before we continue with the members?

1 TC: No, Your Honor.

2 CIV DC: No, Sir.

3 MJ: Call the members.

4 [The bailiff left the courtroom.]

5 (The Article 39(a) session terminated at 1236 hours, 2 November 2012.)

6 **END OF PAGE**

1 (The court-martial was called to order at 1237 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order

4 The parties are present. The members are present.

5 Defense, you may continue.

6 CIV DC: Thank you, Your Honor.

7 What I would like to posit at this point is this: (b) (6) may have had some motivation  
8 that this court will never know – and why she made this claim and why she’s gone forward. So  
9 at this point I’m going to offer some thoughts on why she may have made this claim and told this  
10 story.

11 Now, understand that after she left the Wilkerson’s it’s approximately 3 AM in the  
12 morning. She ends up on the streets of – I think they said it was Roverado or something like that  
13 is the name of the community. She runs into some guys; apparently had some beer. Now, again,  
14 this is one of those inexplicable facts that I can’t explain. I’m not sure that it matters, but she has  
15 a beer. She says she’s thirsty. That’s hard to understand why she’s thirsty in terms of she’s just  
16 had some tea, I think, with Beth just a few hours earlier, and it’s middle of night and most people  
17 aren’t thirsty, and, even then, I don’t know why somebody would drink a beer. But she said she  
18 had some beer with these guys in the street at 3 AM or whatever in the morning.

19 She calls – she makes contact with Sergeant Dunnivant, who comes to pick her up. Now,  
20 she’s only been employed by the Air Force for a short period of time at this point. She was on  
21 the street, drinking beer at 3 AM in the morning, in the middle of nowhere. And she now,  
22 finally, calls a friend to come pick her up. She gives her a story, and it’s not even a consistent

1 story with what she testified to in court about the belt buckle thing. Well, what else does she do?  
2 She tells Sergeant Dunnivant, “Don’t tell anyone.” And even later on, as this things starts to go  
3 down the road and Suzanne Berrong gets involved, she goes to the Air Force and what does she  
4 file? A restricted report, saying that she didn’t want to pursue this further. So you’re here, you  
5 have a woman who tells the story to a friend and says, “Don’t tell anyone”; then files a restricted  
6 report, and it’s clear that she had to come up with some story as to why she was on the street in  
7 the middle of the night, but she was trying to keep that story from getting out further. What is  
8 the story she tells the SARC? “I passed out in the bed.”

9 TC: Objection, facts not in evidence.

10 CIV DC: I questioned her on this, Your Honor. Well, I understand. I understand the  
11 objection.

12 MJ: All right, and are you going to move on or discuss in some other way?

13 CIV DC: We talked about it as prior inconsistent statement.

14 MJ: Thank you.

15 CIV DC: She gives you one story and she gives an inconsistent story to the SARC,  
16 where she says she’s passed out. Now here’s how that works. That goes to her credibility about  
17 these allegations. She’s told different stories about what happened. In this court she said –she  
18 said that she was awake during part of this time, but to the SARC she said she was passed out.  
19 And, of course, then she modified the words “passed out” to mean “I was just sleeping.” So at  
20 this point she’s telling inconsistent stories even about what happened. Now who knows what  
21 happened? All we know is she’s told inconsistent stories. And, ultimately, how can you believe

1 her beyond a reasonable doubt when she's telling inconsistent stories about the very things that  
2 happened that night?

3 CIV DC: Was she concerned that if this got out to other people outside of a restricted  
4 report? When she originally made it, was she concerned that other people would think less of  
5 her? Was she concerned about her reputation? Was she concerned about whether this would  
6 have an impact on her employment? We simply don't know. We don't know how well she  
7 understood Air Force procedures, and, ultimately, it comes back that she can't file a restricted  
8 report; she can only file an unrestricted report. Well, what is she going to do now? She's now  
9 locked into her story in a restricted report. She's somewhat locked into the story that she told  
10 Dunnivant. Is she going to come to her employer now and say "Well, I lied about this. I didn't  
11 know that this was going to become a big issue." Or is she going to stick to her guns?

12 Now, see we can't answer that question with the state of the evidence. And we will never  
13 know for sure what motivates her or why she has made this claim or stuck to it. But we know  
14 that her story does not match Dunnivant's description. We know that she filed a restricted  
15 report. And then we know that this case only went forward after the Air Force came back and  
16 said, "You can only file an unrestricted report."

17 And there's one other point, since we're talking about Dunnivant. Do you remember  
18 what Dunnivant said she was told by (b) (6) that the wife was screaming? Now why is that  
19 important? Because if the wife was screaming, it would have awakened the (b) (6) boys, and we  
20 know from Mrs. Pone – Cheryl Pone that there was no commotion in the house that night, that  
21 they were not awakened by any screaming that night, of any sort.



1           CIV DC: We know that, if anything, the boys wanted to return to the Wilkerson home,  
2 and if there had been anything that would have caused discomfort for those boys, they would not  
3 have returned to that home. In fact, my recollection of the evidence is that Mrs. Pone said,  
4 “They wanted to go back to that house. In fact, they went back, I think, on Sunday when that  
5 was not the original plan.

6           Scientific evidence. Let’s talk about the OSI. They took no photos, even though they  
7 could have. They seized no evidence, even though they could have. And on this point about did  
8 Beth Wilkerson lie about whether she had the shoes or didn’t have the shoes, that’s a red herring.  
9 First of all there was a certain implicit assumption that trial counsel made that I want to dispel.  
10 The assumption is that an OSI agent tells the truth. Okay? You said that you would weigh the  
11 credibility of every witness regardless of their position. So the idea that an OSI agent always  
12 tells the truth; I question that assumption. You can question that assumption. Here’s what we do  
13 know about the shoes, and, quite frankly, the shoes don’t matter. They have no particular  
14 evidentiary value, but we know that Beth Wilkerson, at the Article 32 hearing, said that she had  
15 the shoes. And I asked the OSI agent, “Well, did you go collect the shoes?” You see if they had  
16 evidentiary value, and if that’s what really mattered, they could have collected the shoes. But I  
17 went even beyond that with the OSI agent. I said, “Well, did you have her put in her statement  
18 that she didn’t have the shoes?” And he said, “No.” You see, the evidence shows that Beth  
19 Wilkerson may well be truthful on this point and that the OSI agent may be wrong, because we  
20 know that the shoes were there; we know that she made them available for them to come pick up  
21 later. We know that she was cooperating, and we know that with respect to the OSI agent, it  
22 wasn’t that important because they didn’t seize any evidence anyway, and, oh by the way, if it

1 was that important, why didn't you incorporate it in her statement, which he did not? It would  
2 have settled the issue if he had just said, "You know what, you told me you don't have the shoes,  
3 let's put that down in your statement." It's that easy. End of problem. And to the extent that I  
4 even digress and go into that, is to let you see, again, that there's not an issue here.

5 CIV DC: If there is any question about the shoes, if you recall (b) (6) testimony...

6 [The VTC equipment chimed.]

7 MJ: Disconnect, please.

8 Do you need this?

9 CIV DC: I'm going to use it.

10 MJ: Oh, you are. Okay then, if you could just...

11 [The bailiff muted the VTC equipment.]

12 MJ: And that's apparently the television turned on in some way prior to us intending for  
13 it to turn on.

14 Thank you. You may continue.

15 CIV DC: The one thing that's strange about the shoes is (b) (6) talked like you  
16 know she tried to say she left the shoes at the door; that she doesn't typically wear shoes in the  
17 house. Beth Wilkerson testified that she was putting her shoes on and talking them off in  
18 various places, and that's why, ultimately, the shoes were lost, because they couldn't find them.

19 (b) (6) – my recall of her testimony is that she – they did not – a group of people did  
20 not look for her shoes. Major Goldsberry said, "We looked for her shoes." Again, that  
21 corroborates Beth Wilkerson and, again, it's contrary to what (b) (6) said. And I'm just  
22 going to say right now, because I've been arguing so long, I may have at some point said "Beth

1 (b) (6) ” or “(b) (6) Wilkerson.” I think you can track with who I’m talking about. So forgive me.  
2 If I’ve interchanged their names, I would apologize.

3 CIV DC: But is there any scientific evidence? I mean even the OSI agent acknowledged  
4 that “Yes, if someone puts their hand down a woman’s panties, that the transfer of skin can leave  
5 enough trace evidence that DNA techniques are sufficiently specialized that they could actually  
6 pick up DNA of someone else, but there appears to have been no attempt to seize any panties or  
7 any of (b) (6) clothes. And so what we’re left with is really – and it’s a credibility contest,  
8 as I said in my opening statement. And it’s – the problem is, even if you say, an I’m not  
9 conceding this, but even if say Lieutenant Colonel Wilkerson is a liar, then you’ve got to past  
10 Beth Wilkerson and say “Well, is she a liar, too, or not?” That’s why I said this is ultimately a  
11 she said she said case. That’s why this is a credibility case. That’s why I argue that you have to  
12 believe (b) (6) beyond a reasonable doubt, and believe that Beth Wilkerson is lying on the  
13 central issue beyond a reasonable doubt.

14 And so then you come back to the issue of how do you resolve who’s telling the truth and  
15 who is not telling the truth, and whether you can resolve it – whether you can resolve it beyond a  
16 reasonable doubt.

17 So the OSI election not to seize evidence means there is no evidence to help you resolve  
18 that conflict. Now the OSI did something else here that trial counsel did not comment on, but I  
19 want to comment on. If you feel you need to go back and watch the video, and the government  
20 was very selective in just taking a few spots in that video of the OSI interview, but if you – I  
21 maintain that you should go back and see – if you need that to resolve this case, which you do  
22 not, but go see the context in which all those statements were made. But here’s what you will

1 see throughout the videotape: Colonel Wilkerson is saying, “Go contact my wife. Go call my  
2 wife. Ask my wife.” And maybe he didn’t fully appreciate, but that’s exactly what the OSI was  
3 going to do – that that’s what they did. They contacted her while they’re interviewing him, and  
4 it makes sense as a technique of interrogation why they would do that because if you get the two  
5 parties talking at the same time, then they can’t get together to “cook the books” – tell the same  
6 story. And so the OSI does interview her. They do go to her house. She cooperates just like her  
7 husband cooperating, and she answers all the questions that they ask her. And what more – what  
8 more can you do? What more could he do than answer every question they asked? What more  
9 could she do than answer every question they asked? Fully cooperating throughout the entire  
10 investigation with the OSI – both him and her.

11 CIV DC: And so what you will see is as you watch that videotape, if you watch it again,  
12 is you will see in great part what he says happened or, conversely, what didn’t happen is  
13 consistent with what Beth Wilkerson, who is being interviewed independently, is saying what  
14 happened or what didn’t happen, and what they both say is that Jay Wilkerson never left the bed  
15 that night and got into any bed, real or imaginary, with (b) (6) .

16 All right, I am close to completing my argument. I do want to talk about our experts.  
17 Here’s the point of having the toxicologist and the psychiatrist testify. The challenge here that  
18 you face in performing your duties is assessing credibility, and so there are clear inconsistencies  
19 in (b) (6) ’ memory. There are clear inconsistencies in her statements; there are clear  
20 contradictions by other people, and so you’re faced with this problem of trying to figure out how  
21 do we know if she is truthful or not and if there is corroboration for what she has said. I mean  
22 that is the central challenge that you face. And so when you start trying to work that out, you’re

1 not only looking at the areas where she's contradicted by Beth Wilkerson, but you're also  
2 looking for those places where other people corroborate them. And the defense position is that  
3 the people who corroborate Beth, when the issue is hit head-on, are Suzanne Berrong – she  
4 corroborates Beth Wilkerson; she contradicts (b) (6) . When you look at Dunnivant, you  
5 have inconsistencies about whether the pants were buckled or buttoned, and then you have  
6 Dunnivant saying she was told that they were not, and that they were screaming. And so at every  
7 key point where you're having to resolve this credibility issue, you find there is evidence that  
8 supports Beth and is inconsistent with (b) (6) . Now the government tried to make a big issue about  
9 -- I think it's Prosecution Exhibit 5, the phone records. It sounded like trial counsel was saying  
10 "I got you, defense. There's this phone call. Beth testified that she was up at 9AM, and here's  
11 some phone calls and messages coming in and out of her phone before that at 07 whatever in the  
12 morning." You're free to go look at the records, but here's what the government did not ask  
13 Beth on the stand; they did not confront her with those messages.

14 CIV DC: Now, the state of the evidence is that Beth was at home before 0900. The state  
15 of the evidence is that Colonel Wilkerson was at home before 0900. Where is the evidence to  
16 back up the government's point that it was Beth on the phone and not Colonel Wilkerson?  
17 There's no evidence that he was not the one who answered her phone or did whatever. So you  
18 have to look for – sometimes the facts just aren't as simple as they're presented to you – just as  
19 simple as looking at a phone log to see what's on that phone log.

20 With respect to – and I had started going into the experts, and need to come back. Dr.  
21 Taylor, the point of his testimony was just to give you, as a panel, some idea of whether or not  
22 (b) (6) had passed out at any point, whether or not she was experiencing black-outs, and so

1 we needed to have an idea of how much she was affected by alcohol that night. What came out  
2 of all of that testimony – well, Dr. Taylor and then Dr. Frank building on that, was that there was  
3 no evidence that she would have been suffering from black-outs as an explanation for her lack of  
4 memory. There’s no evidence that she was, as the government has to prove when you say  
5 someone is substantially incapable of rendering consent, that this was because of alcohol. Now  
6 to the extent that there’s some question about how drunk she was or how intoxicated she was that  
7 night, earlier in the evening when the Berrong phone call took place, Suzanne Berrong says her  
8 speech was slurred, which could suggest to some degree that there was some level of  
9 intoxication. Furthermore, and this is what is interesting in the government’s argument, they say  
10 that – they attacked Colonel Wilkerson regarding being hung over the next day or how bad he  
11 was feeling or whatever. But then the government ignores the fact that (b) (6) was saying  
12 she felt drugged. She was saying she felt drugged. In fact, that’s why they ran those tests in  
13 toxicology. And on the one hand, they maintain that when the toxicologist said her eyes were  
14 puffy, well then you have to ask yourself “Well sure, she was up all night. When did she sleep?”  
15 We even know from the evidence that while she left at just after 3 AM, she was picked up by  
16 Dunnivant, at 4:04 she is texting Suzanne Berrong again. So I don’t exactly recall her testimony,  
17 so rely on your own memory of her testimony, but my recollection is that she said she got to the  
18 TLF or wherever she went to sleep, and she went right to sleep. Well, if she went right to sleep,  
19 why is she texting Dunnivant [sic] at 0404 in the morning? What you know from the evidence is  
20 that she did not get that much sleep that night. And so if her eyes are puffy, and if she was  
21 drinking to the amount that her speech was slurred, and if she’s saying she felt drugged, those –

1 all those could support the observations made by the toxicologist. So we ask you to consider that  
2 evidence as well.

3 CIV DC: I want to make just a few last comments, as trial counsel has argued, and I'm  
4 about to end my argument, I wanted to respond to some of the things that were said.

5 We're not saying that these women were predators. Colonel Christensen argued like we  
6 were saying those three women were predators. We're not saying they're predators. I mean  
7 here's the deal: You think they were chasing Colonel Wilkerson that night; were looking to get  
8 with him? Of course not. Colonel Wilkerson, as he said, just wanted to go home. Colonel  
9 Ostovich was the one that the women were interested in, and even though Captain Brock was  
10 upset with this news that she received, you have to ask yourself then why is she going out with  
11 these guys that night, apparently to go to a pub or whatever. If that's such bad news, why didn't  
12 she just stay in her TLF? Why is she going out? And is she so careless in who she elects to go  
13 out with? So the defense disputes this image that's been painted of Captain Brock is somehow  
14 innocent, and maybe that's just not the way it was, and that maybe she left and wanted to leave  
15 when she did because, clearly, by that point in the evening, Captain Manning was the one that  
16 was hooking up with Colonel Ostovich.

17 The other thing that, again, it's just something to put in your mind; I don't know if it has  
18 any weight or not, but it's up to you to decide. Captain Brock was in a visible position as a  
19 psychologist on Aviano Air Base. Think what it would be like for her to come in and testify in  
20 front of this base community that "I was chasing Colonel Ostovich that night." Okay, did the  
21 trial counsel go after her for not wearing a seatbelt? I mean she has been put in a very  
22 uncomfortable position coming into an open, public courtroom as a psychologist on Aviano Air

1 Base and having to admit her involvement in this evening's activities. So to the extent that she  
2 may be circumspect and very careful in what she says about her role that evening, it is  
3 understandable that she may have some things that she doesn't want to own up to herself. I only  
4 offer that for what weight you want to give it and what it's worth, but just, if the government is  
5 hanging their case on Captain Brock, there may be more to Captain Brock than what met and  
6 meets the eye.

7 CIV DC: Furthermore, Major Goldsberry corroborated that the next day Colonel  
8 Wilkerson did not feel good, so to the extent that anybody wasn't feeling good the next day, it is  
9 corroborated.

10 I did write down that if Colonel Wilkerson and Beth Wilkerson are guilty of anything, it's  
11 guilty of being nice to (b) (6). He's not guilty of sexually assaulting her. Trial counsel  
12 argued that Beth Wilkerson is not the gold standard for truth. Well, based on the evidence that  
13 you have, would you say that (b) (6) is the gold standard when it comes to memory and  
14 truth? I mean that argument cuts against their case; it doesn't help their case.

15 The trial counsel, toward the end of his argument, he said one thing that's based on (b)  
16 (b) (6) testimony really caught my attention, and so I made a note of it. He said, in his  
17 argument, "When she, Beth..." and he was referring to Beth Wilkerson, "...walked into the  
18 room where this sexual assault occurred..." and I wrote into my notes here -- "Into where? Into  
19 where?" -- because (b) (6) hasn't, in this courtroom, before you as members, under oath,  
20 identified what room this assault took place. She said it was definitely not the room that Beth  
21 Wilkerson said is where she took her to. So if -- I mean the government's case comes down to  
22 this one significant point. This had to occur somewhere in the Wilkerson home. It had to occur



1 in a bed in the Wilkerson home. And you had (b) (6) come in before you this morning, and  
2 she said it was definitely not the bed that, apparently up to this point, the government's case had  
3 suggested that it was in. So where did Beth "walk into," when the government makes that  
4 argument?

5 CIV DC: The government argued about consequences. Well the consequence – the  
6 Wilkersons have reason to lie because the consequences are going to be so bad for them. First of  
7 all, it's probably not something that Beth Wilkerson is proud of, but she has been married before.  
8 She has been divorced before. The idea that she would like if she actually caught her husband  
9 engaging in an act that's alleged here, that she would protect him is not supported by any  
10 evidence. If anything, a lot of women, I think common sense tells you, and your knowledge of  
11 the ways of the world, would consider castrating her husband, not you know lying for them. And  
12 this is clearly a woman who had choices, who had family, who had been divorced before, who  
13 knew that there were other options. So by the government trying to create this inference that the  
14 only choice is to lie for your husband to preserve your reputation or whatever, you have to ask,  
15 "Oh, does every wife lie for her husband if she catches them in something like this?" There's no  
16 evidence that she would lie to protect him.

17 Furthermore, what is the consequence if (b) (6) lied to you on the stand; perjures  
18 herself on the stand? See, how do you prove that she's lying? I mean the defense has no burden  
19 of proof. We don't have to prove she's lying. But what consequence does she face for  
20 perpetuating a lie? You see, there's no consequence that she faces because there's no way that  
21 the government can prove just the opposite of what they're trying to prove here, and that she's  
22 not telling the truth. That's the ultimate problem you have in a credibility contest; how do you

1 prove either way which one is telling the truth without objective evidence, scientific evidence, or  
2 corroboration of some point? You simply have no way to resolve that problem.

3 CIV DC: And so that basically brings us back to the bed. When trial counsel gets up  
4 here and argues again in a minute, you have to ask yourself, “Where did this occur?” Now the  
5 defense was built on the apparent claim by (b) (6) that she was in a bedroom a couple of steps  
6 just down the hall from the kitchen, a couple of steps down. The government has produced no  
7 evidence that such a bedroom exists. The only bedroom that would – and the only bed that was  
8 not being occupied that night – page 12 of Defense Exhibit P. And the whole point of these still  
9 photos is to show you that when you walk out of that bedroom, first of all, there’s no table lamp  
10 in that bedroom; there’s only an overhead light. When you turn the light on, it’s dim and  
11 becomes brighter. As you walk, you walk down a hall, and when you walk down that hall, you  
12 can’t get out of the house. Then you have to go up two flights of stairs, 17 steps, and at that  
13 point you hit a wall. That is wholly, inconsistent with Beth – with (b) (6) ’ description of  
14 how she left the house after the alleged assault occurred. She said she went down the hall, out  
15 the door – a door that was open, in fact, if I recall her testimony correctly.

16 I want to close by replaying for you – well, let me – I just saw a note and I want to make  
17 one other point, and this relates to what I said a minute ago. I want to go back just to Emily  
18 Ozgul’s testimony. Why did we bring her? Yes, character for truthfulness, but why did we bring  
19 her? She and her husband and others had been with the Wilkersons just a few weeks earlier. She  
20 had seen them interact as husband and wife. She saw their demeanor as husband and wife, and  
21 she described that for you. This incident occurs in March – 23<sup>rd</sup>-24<sup>th</sup>, and then just within a  
22 couple of weeks after that, the Ozguls, on the island of Crete for about a five-day vacation with

1 the Wilkersons. And she says she saw no change in there interaction or demeanor. And what  
2 does that tell you? Let's suppose the government is right. Let's suppose she did catch her  
3 husband in some kind of compromising position with another woman. Could they maintain a  
4 façade for five days with other couples while they're on a trip? Would that – common sense says  
5 that's going to have some impact on their relationship, and to someone who knew them well and  
6 had been with them in similar circumstances, that would be apparent. It is reasonable to  
7 conclude that with Emily Ozgul's background she would have seen those signs, whether they  
8 were subtle or otherwise. And so we offer that evidence because it has value to you in ultimately  
9 resolving the issues in this case, and we ask that you consider it.

10 CIV DC: But it's been a while since we have shown this video, and I want to close by  
11 showing it again.

12 This is the path that (b) (6) would have taken if she was in that bed and not some  
13 imaginary bed, that's depicted in page 12 of Exhibit P. Here's the path she would have taken,  
14 and I'm asking you, as court members, to ask yourselves and to discuss in deliberations, is it  
15 possible that she could have forgotten this path immediately after a sexual assault where she  
16 claims and where the evidence shows that she was sober, and didn't have any drugs through the  
17 testing the next day, should she have possibly, a woman who claims to have been traumatized,  
18 could she have possibly forgotten this path.

19 [Defense Exhibit Q, a video without sound of areas of the Wilkerson residence, was  
20 played for the court.]

21 CIV DC: I thank you for the time you've given me. Colonel Wilkerson, I know wanted  
22 me to say everything I could in his behalf. I'm going to close with this quote – with two quotes:

1 You heard them from (b) (6) today when she looked at the photos; she said, “I didn’t sleep  
2 in any of these beds.” And when asked about page 12, whether that was the bed where this  
3 occurred, of which this photo was taken, the response was, “Definitely not.”

4 CIV DC: Thank you.

5 MJ: All right, do you have rebuttal?

6 TC: [Nodded in the affirmative.]

7 MJ: Is it going to be a short rebuttal such that we can proceed?

8 TC: I believe it will be relatively short.

9 MJ: Then let’s go ahead and proceed at this point, assuming that the members do not  
10 need a recess prior to a short rebuttal.

11 And the members appear to be fine, so you may continue, trial counsel. Thank you.

12 TC: Let’s talk about the bed. The only person, the only person who says that (b) (6)  
13 was in that bed was Beth Wilkerson. As I talked about before, Beth Wilkerson is the gold  
14 standard of truth for the defense, but Beth Wilkerson is a liar, she cannot be trusted. (b) (6)  
15 said, “I wasn’t in that bed.” They want her as far – they want (b) (6) as far away from the  
16 accused as they possibly can. You see it through the video, when you watch it again, and I know  
17 you will, Prosecution Exhibit 2. He wants to make sure the OSI knows he is as far away from  
18 her as he physically can be. It’s a “red herring,” to use Mr. Spinner’s words, to say that that has  
19 to be the bed. What is important? What is important is that if (b) (6) was honestly lying,  
20 how easy would it be for her to say “Well, yeah, that’s the bed I was in. Absolutely. That’s the  
21 bed I was in. I remember walking down the hall.” Or she could have said, that’s the bed I was

1 in, but she's not going to come in here and commit perjury. She's not going to lie to fit Mr.  
2 Spinner's theory. She's not going to lie to fit Beth Wilkerson's theory.

3 TC: What's important? She is absolutely certain that the bed they want to place her in,  
4 and no one else but them, want to place her in that bed. It's not it.

5 Now as their own expert said, Dr. Frank, "It would be not unexpected ; it's exactly what  
6 you would expect if someone had been into a house like that, in that situation, they wouldn't  
7 remember the layout, they wouldn't remember rooms. That's anybody. That's anybody. And  
8 it's even more so after being sexually assaulted."

9 Now, there is a picture that you have been provided of a bed, that has a lamp, that (b) (6)  
10 (b) (6) shoes were found under. Here it is, a bed [holding up page 3 of Defense Exhibit P.]  
11 Now she's looking at pictures nine months later, being asked, "Do you remember?" But there is  
12 no doubt, her shoes were found under that bed with a lamp, the next day.

13 Now the defense – Mr. Spinner turned to me – looked right at me and said, "You want  
14 motive? You want motive?" Yes. Yes, I do want motive. And did you hear it from the  
15 defense? They had no burden, but he offered it up. What is his alleged motive? (b) (6) ,  
16 even though it's contrary to every witness that testified, his motive is that she wanted to have sex  
17 with Colonel Ostovich. Okay, let's just say that that is true. It's ridiculous. Even Colonel  
18 Ostovich testified that he thought it was Captain Manning and Captain Brock that were interested  
19 in him. He never said a word about (b) (6) . In fact, remember the testimony was that for  
20 almost the entire party, Colonel Ostovich and Captain Manning were out on the balcony, and  
21 (b) (6) was inside the house.

1 TC: Well, let's just say – let's just enjoy a visit into the imaginary world of the defense,  
2 and say that (b) (6) really did want to have sex with Colonel Ostovich that night. So she  
3 didn't get to have sex with Colonel Ostovich. Okay. I know. I know. I'll falsely accuse  
4 Colonel Wilkerson of sexually assaulting me. Does that make sense to anybody? Maybe she  
5 would falsely accuse Captain Manning of a crime; maybe she'd accused Colonel Ostovich of a  
6 crime if she really wanted to have sex with him and Captain Manning did, "But I think I'll really  
7 concoct a story and to really make it great, I'll say that the accused's wife is the one who walked  
8 in. And I'll do that to get back at Colonel Ostovich by falsely accusing Colonel Wilkerson of a  
9 crime." I mean it makes your head hurt to try to figure out that possibly could be motive. The  
10 second motive of why she would falsely accuse this man, go through the process, try to destroy  
11 him and his wife and his child, the second motive of that is because she had a beer? That's what  
12 he said, "She had a beer, and therefore, on a Saturday night – a Friday night, a 48-year-old  
13 woman had a beer, so in order to protect herself, she would have to falsely accuse him of a  
14 crime." Really? That's how pathetic that defense is. Really? There is absolutely zero motive,  
15 and it does come down to that last line, and you'd have to believe she's evil. Evil.

16 She is a 49 – now – -year-old physician's assistance, works for the United States Air  
17 Force. She's a medical professional, and yet, somehow, she apparently imagines things  
18 constantly, yet she's still allowed to practice medicine? There's no evidence. Zero evidence.  
19 Zero. It's the fantasy of Colonel Wilkerson hoping to escape responsibility. That is the only  
20 imagination.

21 Now the defense made a lot about two things – two things that they can point to – two  
22 things of everything that (b) (6) said, he talked about two things that are contradictory – two

1 things. One, is that (b) (6) told Sergeant Dunnivant her pants were unbuttoned – or buttoned –  
2 excuse me – and that Sergeant Dunnivant remembers her saying they were unbuttoned. And,  
3 two, that (b) (6) said that she passed out when she went to sleep. That’s it. Those are the  
4 only two.

5 TC: Now the law, as I told you, gives you instructions – gives you guidance, tells you  
6 how to judge credibility of the witnesses, and it say, “In weighing a discrepancy...” -- and this is  
7 what the judge has instructed you – “...by a witness or between witnesses, you should consider  
8 whether it resulted from an innocent mistake or deliberate lie.” In other words, the law  
9 understands that there are going to be discrepancies that are a result of mistake. The law  
10 understands that. Really, Sergeant Dunnivant, nine months after the facts, called in to testify  
11 about a time when she picked up (b) (6) and (b) (6) clearly has cried, clearly is  
12 distraught, and we can’t believe – we cannot believe that when (b) (6) was crying and  
13 telling her that her that pants were unbuttoned – buttoned – even I made a mistake – crying and  
14 telling her that her pants were buttoned, that Master Sergeant Dunnivant couldn’t have misheard  
15 and thought it was “unbuttoned”? Because, really (b) (6) is going to lie about something,  
16 that’s what she is going to lie about, whether her pants were unbuttoned or not. That’s  
17 ridiculous. The law recognizes mistakes. And not only that, not only that, their own expert, Dr.  
18 Frank, recognizes that. He talks about memory issues; “There are going to be memory issues.”  
19 We understand. That is ridiculous.

20 The second one is “passed out.” Again, their own expert says that “passed out” – we’ve  
21 all probably said it – passed out is a colloquial term; it’s misused. (b) (6) clearly told you  
22 that she didn’t mean that “I was passed out or unconscious.” I would venture to say many people

1 – most people in this courtroom, at one time or another, has said, “Man, I passed out last night  
2 and went to bed.” That doesn’t mean they thought they were unconscious. That’s the best –  
3 they’re grasping at straws, and hoping because (b) (6) said “passed out” in describing how  
4 she went to sleep, not while he was raping her – excuse me – sexually assaulting her – that that is  
5 why you should find him not guilty. That’s ridiculous. That’s ridiculous.

6 TC: Now the defense wants you to ignore, ignore the uncontroverted evidence you have  
7 before you that Beth Wilkerson has lied to you. They want you to – “Oh, it’s no big deal that she  
8 lied to her friend in great detail about a barbeque that she canceled.” Ignoring the fact that she’s  
9 lying to a friend about a barbeque that was scheduled that next day; lying about what she was  
10 doing at that time. It’s just not just a white lie. She could have just said, “I don’t feel well;  
11 canceled barbeque” or “Too busy; canceled barbeque.” But she went into details that were lies,  
12 admitted lies. The OSI – what Mr. Spinner is asking you to believe that the OSI agent has come  
13 in here and committed perjury; come in here and committed perjury for what purpose? What’s  
14 his motive? Again, go back to judging credibility of witnesses. What does that OSI agent get by  
15 coming in here and lying to you about what – if he wanted to lie about something – “Oh, yeah,  
16 Beth Wilkerson, I couldn’t believe it. She told me that he did it. She told me that she walked in  
17 on him.” He’s going to lie about the shoes? And when you watch Prosecution Exhibit 2, as I  
18 told you before, you will see the OSI asking Colonel Wilkerson the same exact question on April  
19 19<sup>th</sup> – “Do you know where the shoes are?” And you will hear the same answer Beth gave –  
20 “No.” She lied.

21 Phone calls; oh, now, now, even though it’s Beth Wilkerson’s phone, he was using it.  
22 There’s absolutely no evidence of that – zero – and if you look at his phone records, you will see



1 he was using his phone, too, that morning before 9 o'clock. Was he on both of them at the same  
2 time? Really? The evidence shows that she was up, and she was lying about it.

3 TC: And there's something else in those phone records. If you look at Prosecution  
4 Exhibit 5, then you will see on pages 28 to 32, there are dozens of texts between Beth Wilkerson  
5 and Colonel Wilkerson, and those texts occur, both times, when we know Colonel Wilkerson  
6 leaves the house around 11:30 timeframe when he, supposedly is playing baseball – text after  
7 text, and when he leaves later and goes to Newbills – text after text. And then when you look at  
8 page 17 to 21, you'll see dozens of texts between Beth Wilkerson and Colonel Wilkerson – the  
9 two times they're separated – text after text, and you can see that many of them are long texts,  
10 because as you see the zero – the texts that are all the same time -- there are multiple ones – that  
11 means that text is long and it's carrying over and being transmitted in pieces.

12 Why are they texting each other over and over that day? Why? Why did they cancel the  
13 barbeque that day? Why did he have to lie about how he felt that day? Why did he have to lie  
14 about not wanting the women there? And I never said; Mr. Spinner said it, but Colonel  
15 Wilkerson clearly tried to leave the impression to the OSI that there was something wrong with  
16 these women; that they were up to something. Why would he have to lie?

17 As you go back and you review Prosecution Exhibit 2 – and I'm about done – I want you  
18 to listen very carefully to when Colonel Wilkerson was first brought in and he's read his rights.  
19 Now, we have two words, two possibilities, one, a completely innocent man sitting there, not  
20 knowing what's going on; two, the guy who committed the offense. That's the only two  
21 possibilities. He's a Lieutenant Colonel; he's a Colonel select, and he's told by the OSI that  
22 “You are a suspect of violating Article 120, sexual assault.” No response. Zero. None. He's

1 expecting that. An innocent man sitting there, what would you expect of a Lieutenant Colonel or  
2 a Colonel select? “I was what? Who did that? What are you talking about?” Nope. And then  
3 they say, “We want to talk about the night of the Seether concert.” Now they haven’t said what  
4 the allegation is; who’s made the allegation. And if he’s innocent, why does he immediately, as  
5 you’re watching, focus on (b) (6) ? (b) (6) – but he doesn’t know her last name – focus  
6 on that girl (b) (6) ? And he hasn’t been told at this point that the allegation involves his wife  
7 walking in. And yet, repeatedly, before he’s ever told that Beth supposedly walked in, he  
8 repeatedly tells the OSI, “Talk to my wife, Beth. Talk to my wife, Beth. Talk to my wife, Beth.  
9 Talk to my wife, Beth.” Why was he focused on Beth? He doesn’t know. He does not know, if  
10 he’s innocent at that point, that the allegation is that Beth walked in. He’s saying that because he  
11 knows, he knows his wife is going to lie for him. And he knows that is what Beth Wilkerson is  
12 going to do.

13 TC: The imaginary friend – Colonel – excuse me – (b) (6) never said she had an  
14 imaginary friend. She said, I thought I was introduced to someone – another woman – I thought  
15 I was introduced. Again, perfectly consistent with what Dr. Frank says happens when you’re in  
16 that group dynamics, you’re going to get confused by things. She never said it was an imaginary  
17 friend. And confusion; let’s talk about confusion. It is again, as you listen to Prosecution  
18 Exhibit 2, there is a point when Colonel Wilkerson said, “I knew my wife would not be happy if  
19 I entered the home with four unknowns.” Four unknowns. Well, we know that Beth knew  
20 Lowe; we know that Beth knew Goldsberry; we know that Beth, obviously, knew her husband;  
21 and we know that Beth, obviously, knew Colonel Ostovich. So who was the fourth unknown?  
22 I’m not saying he made it up, but I’m saying it’s easy to make that kind of mistake. That’s not

1 the issue. That's a diversion. There is no imaginary friend. There is no imaginary bed. There is  
2 a bed her shoes were found under, that's right next to the hall that leads to the door that leads to  
3 the wall.

4 TC: The OSI; OSI's fault because when they found out about the allegation almost a  
5 month later, after consulting with their forensic consultant – scientific consultant, after talking to  
6 him, and he tells them, due to the passage of time, no reason to get bedding; no reason to get the  
7 underwear. After the passage of time, the expert, not Mr. Spinner, the expert says, “We wouldn't  
8 find anything of value.” The OSI has got nothing to hide. Again, a red herring.

9 The read versus tell; the only reason I brought that up is because it was inconsistent with  
10 what the two Wilkersons said, but the only reason I brought it up, if you go back to opening, if  
11 you took notes in opening, for some reason Mr. Spinner was making a big deal out of “read  
12 versus tell,” like (b) had done something.

13 Suzanne Berrong. All right, well, Suzanne Berrong did have an interest in Colonel  
14 Ostovich, and did date Colonel Ostovich, and you can judge her for yourself. But she actually is  
15 not corroborated by their evidence because we know the call was at 12:15, 12:30, 12:40  
16 timeframe – 12:23. And Suzanne described (b) as slurring her speech. But Dr. Taylor knew  
17 her BAC was not high at all at that point. I think it was .04 or something. There's absolutely no  
18 evidence that (b) was slurring her speech other than Suzanne Berrong. Again, maybe that was  
19 intentional on Suzanne's part; maybe it's just passage of time.

20 And crying? (b) (6) didn't say, “Hey, I was bawling my eyes out,” boohoo hoo hoo  
21 – nothing like that – shedding tears – I don't know how you hear tears over the phone. Then the  
22 fact that Wilkerson didn't open his mouth while (b) was on the phone proves Wilkerson wasn't

1 there? Seriously? And, again, if (b) (6) is going to be lying about this, if she's going to make up  
2 stuff, why would she put her assailant in the presence of his wife? If she's going to lie, you  
3 know tell the good lie, tell the big lie. Let's really do it. "He came in and he raped me." No one  
4 caught us." Why would you put an eye witness, why, if you're going to lie, why would you put  
5 an eyewitness in there to say you're wrong? And that is a very strong, compelling question. If at  
6 any time in deliberations you start to stray from the truth, and the truth being that the accused is  
7 guilty, go back and ask yourself that question. If she is going to lie, why put an eyewitness in  
8 there who can say she's wrong? Ludicrous.

9 TC: And now I am just about done.

10 Think about what (b) (6) did after she left that room. She walked out without her  
11 shoes, in the cold; immediately called and tried to get a ride; and when she's on the phone, she's  
12 crying – crying. Does that sound like somebody that wants to get Colonel Ostovich by falsely  
13 accusing Colonel Wilkerson? No. She tells Master Sergeant Dunnivant, "I don't want anybody  
14 to know about this. It's embarrassing." She's just been sexually assaulted. She's a 48-year-old  
15 woman and she's just been sexually assaulted, and she's confused. Think about this – confused.  
16 She is woken up from a dream with somebody's hand down her panties. And they act like she  
17 should be saying, "Okay, well, let me get notes about everything so I can explain this all later."  
18 You have all been taking notes throughout this trial – all of you – and doubtless, there is going to  
19 be times that even with the note taking, you will disagree with each other on what was said and  
20 who said it. Doubtless. You might have already seen it, and, yet, we want to have perfect recall  
21 without notes, without anything else. And so we get things like pants undone or done – a red  
22 herring. And then what does (b) (6) have to do? She has to admit that she drank a beer. No one –

1 we don't know who these GIs are that she ran into. No one knows who they are. They know  
2 they exist. Sergeant Dunnivant heard them in the background. But she actually admitted she had  
3 a beer. There is no eye witness that (b) had that beer other than (b) There's nothing wrong  
4 with drinking a beer, and she explained it – explained it in medical terms, too, that she felt like  
5 she was in shock; that her mouth was dry, that she felt parched. And defense counsel was like,  
6 “Oh, well why? She had tea two hours before.” She's just been sexually assaulted. She's in  
7 shock. And we're going to criticize her because she had beer?

8 TC: Then what did (b) have to do? She has to go into the Clinic. She's in shock; she  
9 doesn't know what happened. She's confused. She woke up with this man's hand in her pants.  
10 She said, “I just don't know. I just want to see if I've been drugged. I just don't feel right.”  
11 Now if she's lying, she knows the answer is going to be “no.” Why would she do that if she's  
12 lying? If she's lying, why would she get drug-tested? And then she has to make sure she tells  
13 the doctor – excuse me, the nurse “Don't tell anybody. I don't want anybody to know.” And she  
14 has to be so convincing that this trained medical professional says it was clear she'd been  
15 through trauma.

16 And then she has to go to see a psychologist, on her own, because she wants to talk about  
17 what she's been through. But it's purely a lie, but she's going to go and see a psychologist and  
18 relive these events purely to get Colonel Wilkerson because she didn't have sex with Ostovich.

19 And then she's encouraged to make the report to the SARC that she believes is restricted,  
20 and the defense acts like somehow our ability to make a restricted report as victims is something  
21 nefarious; the fact that we have a process out there that they can do this. She goes restricted.  
22 She doesn't know that she can't do an unrestricted, and when she finds out it's unrestricted, she

1 takes the weekend, she thinks about it. But remember what she has to do once she reports.  
2 Remember where it's going. She's told, and she knows that when it becomes unrestricted, the  
3 best friend of her assailant is the first person to find out – Colonel Ostovich.

4 TC: Think of the courage, courage it took at that point of her to come forward, knowing  
5 that she was involving the Vice Wing Commander, making allegations against a Lieutenant  
6 Colonel that was his best friend.

7 And I apologize; one last thing and then I'll quit. Look, the reason we talk about the  
8 seatbelts, the government did bring that up, because we knew the defense was going to put in the  
9 good military character defense. It isn't about the seatbelts *per se*, it's about the fact that he  
10 checked out on his officership that night; checked out. Just a sign; a sign to rebut, as the Judge  
11 instructed you, is to rebut the good military character defense. That's it. He checked out, and  
12 we've see other instances where he's checked out of that good military character. What we're  
13 telling you is to ignore it for this case because we can see that he only uses his good military  
14 character when it's to his benefit. That's the only time it matters.

15 Now, when you go back and deliberate, I know you will return a verdict of guilty. And  
16 the reason I know that is because as you sit here now, you know in your minds, you know in  
17 your hearts, and you know in your very soul that the Wilkersons lied. And you know in your  
18 hearts, and you know in your minds, and your very soul that (b) (6) told you the truth.

19 MJ: Members, as I have instructed you, argument is an exposition of the facts by counsel  
20 for both sides as they view them. Bear in mind that arguments of counsel are not evidence.  
21 Argument is made by counsel in order to assist you in understanding and evaluating the  
22 evidence.

1 MJ: In general, I will allow counsel to provide you their view, interpretations and  
2 recollections of the evidence and leave it to you to determine what the evidence did or did not  
3 show.

4 Ultimately, you must base the determination of the issues in this case on the evidence as  
5 you remember it and apply the law as I instruct you.

6 The following procedures will apply to your deliberations and must be observed: The  
7 influence of superiority in rank will not be employed in any manner in an attempt to control the  
8 independence of the members in the exercise of their own personal judgment. Your  
9 deliberations should include a full and free discussion of all the evidence that has been presented.

10 After you have completed your discussion, then voting on your findings must be  
11 accomplished by secret, written ballot, and all members of the court are required to vote.

12 The order in which the charges and specifications are to be voted on should be  
13 determined by the president subject to objection by a majority of the members. You vote on the  
14 specifications under the charge before you vote on the charge. If you find the accused guilty of  
15 any specification under a charge, the finding as to that charge must be guilty.

16 The junior member will collect and count the votes. The count will then be checked by  
17 the president who will immediately announce the result of the ballot to the members.

18 The concurrence of at least two-thirds of the members present when the vote is taken –  
19 and that would be all five of you – is required for any finding of guilty. Since we have five  
20 members, that means four members must concur in any finding of guilty.

21 If you have at least four votes of guilty as to any offense then that will result in a finding  
22 of guilty for that offense. If fewer than four members vote for a finding of guilty, then your

1 ballot resulted in a finding of not guilty, bearing in mind the instructions I just gave you about  
2 voting on the lesser included offenses.

3 MJ: You may reconsider any finding prior to it being announced in open court.  
4 However, after you vote, if any member expresses a desire to reconsider any finding, open the  
5 court and the president should announce only that reconsideration of a finding has been  
6 proposed. Do not state whether the finding proposed to be reconsidered is a finding of guilty or  
7 not guilty, or which specification and charge is involved.

8 I will then give you specific further instructions on the procedure for reconsideration.

9 As soon as the court has reached its findings, and I have examined the findings  
10 worksheet, the findings will be announced by the president in the presence of all parties. As an  
11 aid in putting your findings in proper form and making a proper announcement of the findings,  
12 the president may use the findings worksheet which the bailiff may now hand to the president.

13 [The bailiff complied.]

14 PRES: Thank you.

15 MJ: As indicated on the findings worksheet, the first portion will be used if the accused  
16 is either completely acquitted or completely convicted of the charges and specifications. The  
17 second portion will be used if the accused is convicted of some but not all of the offenses. Once  
18 you have finished circling what is applicable, please line out or cross out everything that is not  
19 applicable as well as everything that is in bold. The bold is merely directions to assist you in  
20 filling out the findings worksheet. We do this so that when I check your findings I can ensure  
21 that they are in proper form.



1 MJ: So there's two sections there; whichever section you ultimately don't use, based on  
2 your findings, you would effectively line through the others. You would also line through the  
3 bold. In that way it would just be the actual findings of the court as to each specification and  
4 charge.

5 The worksheet is provided only as an aid in finalizing your decision. The president will  
6 use this worksheet to announce the findings in open court.

7 Any questions about the findings worksheet at this time, Colonel Stentz?

8 PRES: No, Sir.

9 If, during your deliberations, you have any questions, open the court, and I will assist  
10 you. The Uniform Code of Military Justice prohibits me and everyone else from entering your  
11 closed session deliberations. As I mentioned at the beginning of the trial, you must all remain  
12 together in the deliberation room during deliberations. While in your closed-session  
13 deliberations, you may not make communications to or receive communications from anyone  
14 outside the deliberation room, by telephone or otherwise. If you have cell phones, if you have  
15 books, if you have any other items other than the evidence in this case, provide that to the bailiff  
16 and we'll put that outside of your deliberation room during the time that you are actually  
17 deliberating.

18 If you have need of a recess, if you have a question, or when you have reached findings,  
19 you may notify the bailiff, who will then notify me that you desire to return to open court to  
20 make your desires or findings known.

21 Further, during your deliberations, you may not consult the *Manual for Courts-Martial*  
22 *Courts-Martial* or any other legal publication unless it has been admitted into evidence.

1 MJ: Other than previously noted, do counsel – either trial or defense counsel request a  
2 39(a) or object to the instructions given or request additional instructions?

3 TC: No, Your Honor.

4 DC: No, Sir.

5 MJ: At this point, does any member of the court have any questions concerning these  
6 instructions, recognizing that I will provide a written copy of them to you? Any questions at this  
7 point?

8 A negative response from the members.

9 Now if it is necessary, your deliberations may be interrupted by a recess. However,  
10 before you may leave your closed session deliberations, you must notify us, we must come into  
11 the courtroom, formally convene and then recess the court. After the recess, we must reconvene  
12 the court, and formally close again for your deliberations.

13 Now, based on the length of both my instructions as well as argument of counsel, we are  
14 actually looking at a quarter to 2:00 at this point, and so, potentially, members may be thinking  
15 about what is going to be happening, what the options are for lunch. Now to the extent that you  
16 happened to bring lunch, you, obviously can eat that. But perhaps more importantly, the Legal  
17 Office will provide or will assist you in getting lunch into the deliberation room so that you can  
18 begin deliberating immediately if you would like. Perhaps, obviously, there's not funding for  
19 that, but as long as you're paying for it, we can assist in getting that food to you. The bailiff will  
20 work out that aspect of it.

21 Now, so with that in mind, Colonel Stentz – and you can kind of look to everyone else to  
22 make sure that someone else doesn't have anything else that will require a recess, do you desire,

1 as a group, a brief recess before you begin your deliberations or would you like to begin  
2 deliberations immediately?

3 [The president consulted with the other members.]

4 PRES: Immediately, Sir.

5 MJ: All right.

6 Members, you should have already Prosecution Exhibits 1 and 3 through 6. You also  
7 have Defense Exhibits A through P. There are two other exhibits, the CD of the interview as well as  
8 the video that was played during the defense counsel's argument.

9 Counsel, do we have the ability for the members to be able to view that back in the  
10 deliberation room if they would like?

11 ATC1: Yes, Your Honor.

12 MJ: What we'll end of doing, and I'll bring both – that would be Prosecution 2 as well as  
13 Defense Exhibit Q – I will have the bailiff bring back those two media documents as well as a  
14 computer or some other apparatus such that if it is necessary you may review those two  
15 documents as well. Now, at the end of the day then, you will have Prosecution Exhibits 1  
16 through 6 as well as Defense Exhibits A through Q. If for some reason you don't have one of  
17 those exhibits, just bring it to our attention and we'll ensure that we get them back to you.

18 Now both prosecution exhibits as well as defense exhibits are working copies which  
19 means that you may make notes on them as you go forward. Obviously the videos themselves, I  
20 don't anticipate that you'll be writing on them, but those are originals, but certainly the  
21 documents you have.

1 MJ: In addition, my findings instructions will be marked as the appellate exhibit next in  
2 order; that will be Appellate Exhibit XLII.

3 TC: And, Your Honor, we would request that we mark the videos I played in the closing  
4 argument as an appellate exhibit.

5 MJ: That sounds great. What we will end up doing is we'll have that – the  
6 demonstrative aid marked as Appellate Exhibit XLIII.

7 Members, you will not have that demonstrative aid; you will have the findings  
8 instructions. I've got copies for each of the members.

9 Bailiff, if you would please provide the findings instructions to the members.

10 [The bailiff complied.]

11 MJ: And, members, this also is a working copy for you, similar to the other exhibits that  
12 you have, such that you may make notes on it, write on it, whatever. You can consider it,  
13 effectively, note paper as you go forward.

14 All right, trial and defense counsel, is there anything further that we should discuss in a  
15 39(a) or otherwise prior to me closing the court and for the members beginning deliberations

16 TC: No, Your Honor.

17 CIV DC: NO, Sir.

18 MJ: The court is closed for deliberations. Members you may go and deliberate.

19 (The court-martial closed at 1352 hours, 2 November 2012.)

20 **END OF PAGE**

1 (The court-martial was called to order at 1353 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 There is one aspect – we can take a comfort recess before we get to the presentencing  
6 Article 39(a). But before we get to that, I did want to make it clear, there was a prior 802 a day  
7 and a half, two days ago. I had provided several versions of the findings instructions to – or  
8 potential findings instructions to both trial counsel and defense counsel. As part of that, my  
9 initial draft of instructions had, as to the Article 120 offenses, a specific instruction regarding the  
10 affirmative defense of consent as well as the affirmative defense of mistake of fact as to consent.  
11 During the 802, trial counsel and defense counsel, and I'm going to get your confirmation on  
12 this, but trial counsel and defense counsel averred to the court that neither trial nor defense  
13 counsel believed that either affirmative defenses were raised by the evidence, and that both trial  
14 and defense counsel requested this court not provide those two instructions regarding the  
15 defenses to the members.

16 First, trial and defense counsel, do you concur that as to my summary as well as that that  
17 was the intention of both trial and defense counsel?

18 ATC: Yes, Your Honor.

19 CIV DC: Yes, Sir.

20 MJ: What I will do as well, I will have a separate exhibit – it will be marked as the next  
21 in order. Specifically it will be the affirmative defenses as I originally provided it to trial and  
22 defense counsel. That will be the next appellate exhibit in order.

1 [The document would be marked as Appellate Exhibit XLIV.]

2 MJ: In addition, I understand that there is a fair amount of appellate discussion regarding  
3 burdens of proof as it applies to those affirmative defenses. I will provide the explanation of the  
4 court's opinion as to why the court drafted those in the way that I did. That will be the appellate  
5 exhibit next following the affirmative defenses.

6 [The document would be marked as Appellate Exhibit XLV.]

7 MJ: And I just want to confirm with defense counsel that the basis of your request not to  
8 instruct the members on those affirmative defenses was – I'm confirming that it was not based on  
9 what the burden was or was not, as drafted by this court. Is that correct?

10 CIV DC: Correct, Your Honor.

11 MJ: All right, counsel, we will – I understand that trial and defense counsel, obviously,  
12 we have not eaten as well, so we will be on recess for approximately an hour, and then at that  
13 point we'll go back on the record and begin some of the presentencing matters that we need to  
14 discuss.

15 Other than that, is there anything further that we need to discuss, trial and defense?

16 ATC: No, Your Honor.

17 CIV DC: No, Sir.

18 MJ: We are in recess.

19 (The Article 39(a) session terminated and the court-martial recessed at 1356 hours, 2  
20 November 2012.)

21 **END OF PAGE**

1 (The court-martial was called to order at 1508 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 During the recess, I did receive a questionnaire form from one of the members. That  
6 question will be marked as Appellate Exhibit XLVI.

7 The question is: Request to see the inside of the house.

8 Defense counsel, your position?

9 CIV DC: Well, first of all, Your Honor, as I understand, the rule is 921(b) that governs  
10 deliberations that permits members, I guess, to receive additional evidence at this stage, and that  
11 it's an exercise of your discretion whether to grant such a request.

12 Even though we made a motion before the trial for a court member viewing, we believe  
13 that at this stage of the proceedings where witnesses have been released, where closing argument  
14 had been made, and where the members are now in deliberations, that – and given that the state  
15 of the evidence now is that we've put in photographs, and we've put in a video tape, things have  
16 changed from when I originally made – well, the circumstances have changed from when I made  
17 that original request – which is all a long way of saying, Your Honor, we do not request a visit of  
18 the house and we, in fact, oppose a visit of the house at this time.

19 MJ: All right, so, basically, where we are in the proceeding, how the evidence has come  
20 out, at this point the defense – and I know I'm restating the same thing, but the defense is no  
21 longer requesting a viewing of the house by the members. That's your position, correct?

1           CIV DC: That's correct, Your Honor, and I was fully cognizant of the fact that at the end  
2 of the government's case, and even after the presentation of evidence, we could have renewed  
3 that motion, and so that was a conscious decision not to renew at that time. And now we're even  
4 – there's more water under the bridge now, and so we believe, if anything, this would be a waste  
5 of time, confusion of the issues, and, like I said, because witnesses have been permanently  
6 released, we're considered that this could generate a new series of questions and issues and...

7           MJ: And your reference to witnesses being released, just to your knowledge, are there  
8 witnesses that you believe are now unavailable, and it's that unavailability that's driving your  
9 position?

10          CIV DC: No. I'm just noting that as an additional factor that you should consider in  
11 exercising your discretion.

12          MJ: Thank you. I understand.

13          Government, your position?

14          TC: We join.

15          MJ: Lieutenant Colonel Wilkerson, when the members return from their deliberations, if  
16 you are acquitted of all charges and specifications, that will terminate the trial. On the other  
17 hand, if you are convicted of any offense, then the court will determine your sentence. During  
18 that part of the trial, you will have the opportunity to present evidence in extenuation and  
19 mitigation of the offenses of which you have been found guilty, that is, matters about the  
20 offenses or yourself, which you want the court to consider in deciding your sentence. In addition  
21 to the testimony of witnesses and the offering of documentary evidence, you may, yourself,  
22 testify under oath as to these matters, or you may remain silent, in which case the court will not



1 draw any adverse inference from your silence. On the other hand, you may make an unsworn  
2 statement. Because the statement is unsworn, you cannot be cross-examined on it. However, the  
3 government may offer evidence to rebut any statement of fact contained in an unsworn  
4 statement. The unsworn statement may be made orally, or in writing or both. It may be made by  
5 you or by your counsel on your behalf, or by both. Do you understand these rights that you  
6 have?

7 [The accused stood.]

8 ACC: Yes, Sir.

9 MJ: And thank you for standing. You may remain seated, although, actually at this point  
10 I don't have any additional questions for you, so thank you for standing.

11 MJ: Trial counsel, is the personal data on the first page of the charge sheet correct?

12 ATC: It is, Your Honor.

13 MJ: Defense counsel, do you concur?

14 [The accused and his counsel conferred.]

15 DC: Yes, Your Honor.

16 MJ: And, defense, has the accused been punished in any way prior to trial that would  
17 constitute illegal pretrial punishment under Article 13?

18 DC: No, Your Honor.

19 MJ: Is that correct, Colonel Wilkerson?

20 ACC: Yes, Sir.

21 MJ: Counsel, based on the information on the charge sheet, the accused is not to be  
22 credited with any days of pretrial confinement credit. Is that correct?

1 DC: Yes, Your Honor.

2 MJ: And trial counsel, do you concur as well?

3 ATC: Yes, Your Honor.

4 MJ: Counsel, do you have any documentary evidence on sentencing which could be  
5 marked and offered at this time?

6 ATC: Your Honor, the only document we're going to have in sentencing is the personal  
7 data sheet. However, we would request that we wait until sentencing and determine if that's not  
8 going to be entered until tomorrow, perhaps, in case we'd have to change the date on it.

9 MJ: Have you provided at least the draft personal data sheet to the defense for their  
10 review?

11 ATC: I believe we have, but I'm not sure, and I'm giving them another copy right now.

12 MJ: And that's fine. Just ensure that the defense has had an opportunity to review that  
13 such that any administrative matters can be taken care of prior to officially offering it to the  
14 court.

15 ATC: Yes, Your Honor.

16 MJ: Defense counsel, you certainly do not have to take this opportunity, but do you have  
17 any documentary evidence that you would like to have offered at this time?

18 DC: Not at this time, Your Honor.

19 MJ: Is there anything else by either side?

20 ATC: No, Your Honor.

21 CIV DC: No, Sir.

1 MJ: All right, before I go ahead and release you, that being the case, we'll go ahead – see  
2 if the members are at a breaking point such that I can bring them out and respond to their  
3 question.

4 [The bailiff left the courtroom.]

5 (The Article 39(a) session terminated at 1517 hours, 2 November 2012.)

6 **END OF PAGE**

1 (The court-martial opened at 1518 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, a member asked a question regarding whether the members would be able to  
6 see the inside of the house. You will not have an opportunity to personally view the inside of the  
7 house. However, after you have continued through your deliberation, and you've had an  
8 opportunity to view all the evidence as well as your notes, if you have a specific question  
9 regarding the house, certainly ask that question. And, again, I don't know what or to what extent  
10 the court will be able to answer that, but if you have any specific questions, certainly bring it to  
11 our attention so that we can best address that in this open forum.

12 Members, is there anything else that we need to discuss before I return you back to  
13 continue your deliberations?

14 A negative response from all the members. The court is closed for deliberations.

15 (The court-martial closed at 1519 hours, 2 November 2012.)

16 **END OF PAGE**

1 (The court-martial opened at 1745 hours, 2 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 President, has the court reached findings?

6 PRES: Yes, Sir.

7 MJ: And are those findings reflected on the findings worksheet?

8 PRES: Yes, Sir.

9 MJ: Please fold the worksheet in half, give it to the bailiff so that I may examine it.

10 [The president complied. The bailiff handed the worksheet to the military judge.]

11 [The military judge reviewed the worksheet.]

12 MJ: The findings worksheet is in proper form.

13 Please return it to the president.

14 [The bailiff complied.]

15 MJ: [To the president.] You may remain seated.

16 Defense counsel and accused please rise.

17 [The accused and his counsel stood.]

18 MJ: President, you may open that and you may announce the verdict of the court.

19 **FINDINGS**

20 **PRES: Lieutenant Colonel James H. Wilkerson, this court-**  
21 **martial finds you of all charges and their specifications: Guilty.**

22 MJ: Please be seated.

1 [The accused and his counsel sat.]

2 MJ: And, bailiff, you may please retrieve the exhibit.

3 [The bailiff complied.]

4 MJ: All right, before I put the members in recess, we are at about a quarter to six. My  
5 inclination at this point is to release the members for dinner, and then, potentially, if the  
6 members feel as though they're up for it, to – and then I've got to double check and make sure  
7 that we can do all the stuff that we need to do on our end as well – that we would continue,  
8 potentially, into the evening.

9 Before I talk from our logistics point of view whether or not we can continue, let me just  
10 as of the members, are you available, are you able to go forward tonight, assuming that the court  
11 can take care of everything else it needs to take care of?

12 PRES: Yes, Sir.

13 And I see an affirmative response from the members.

14 Understanding I have not yet had any further discussion yet with trial counsel and  
15 defense counsel, at least at this juncture, does either trial counsel or defense counsel request that  
16 I put them into a short recess before I release them for dinner or is an hour recess for dinner until  
17 approximately – I guess it would be – probably 7 PM is what we'd do. A short recess or...

18 CIV DC: Your Honor, one of the misfortunes of the military justice system...

19 MJ: Actually, why don't we go ahead and do this: Members, we're going to go ahead  
20 and put you into a short recess at this point, and then based on that, I'll bring you back in.

21 (The members left the courtroom at 1748 hours, 2 November 2012.)

22 **END OF PAGE**

1 (The court was called to order at 1749 hours, 2 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 All right, I just took form the start of your discussion that it sounded like we probably  
6 needed to have a little bit more discussion before I gave members a heads-up as to the way  
7 forward.

8 Defense counsel, first, what is your position/preference for whether to continue with the  
9 sentencing portion of this proceeding this evening?

10 CIV DC: Our preference is not to. Obviously, this is a devastating verdict for the family.  
11 I just feel that they need to absorb this.

12 MJ: And that's fine. You don't need to provide, at least to the court, you don't need to  
13 provide any additional justification. Based on the time where we are right now, it's ten till six.  
14 The pressing forward would be primarily if defense counsel and the government were available  
15 and able to do so.

16 And so based on the hour, my inclination, in light of that, is there any objection then to  
17 recessing until tomorrow morning?

18 ATC: No, Your Honor.

19 MJ: All right, as far as tomorrow morning, is there a preferred time tomorrow morning,  
20 defense counsel? Is 8:30 – would that be sufficient – a little bit earlier, a little bit later?

21 [The defense counsel conferred.]

22 CIV DC: Can we request 9:00, your honor?

1 MJ: Nine is fine. Would nine work for the government?

2 ATC: It would, Your Honor.

3 MJ: All right, I don't need to bring the members back on to let them know that they'll be  
4 in recess until 9:00 in the morning. I'll ensure that the bailiff notifies them, and we are in recess  
5 until 9:00 in the morning.

6 (The court-martial recessed at 1551 hours, 2 November 2012.)

7 **END OF PAGE**



1 (The court-martial was called to order at 0925 hours, 3 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members, at this time, we will enter into the sentencing phase of the trial.

6 All of the previously admitted exhibits as well as testimony are also for your  
7 consideration in sentencing portions as well.

8 Trial counsel, do you have anything to present at this time?

9 ATC: Your Honor, at this time government moves to admit into evidence what I've  
10 marked as Prosecution Exhibit 7 for Identification. It is a personal data sheet. It's two pages  
11 long, and it is dated 3 November 2012. The defense has been provided a copy.

12 Can I provide you a working copy, Your Honor?

13 MJ: Please.

14 ATC: I'm handing the military judge a working copy. I'm handing the original to the  
15 court reporter.

16 MJ: Defense, is there any objection?

17 DC: No objection, Your Honor.

18 MJ: And that is admitted.

19 ATC: Your Honor, I would request permission to publish copies to the members.

20 MJ: You may.

21 ATC: I'm publishing working copies to the members.

22 Your Honor, at this time the government calls (b) (6) to the stand.

1 [The bailiff left the courtroom and returned with the witness.]

2 (b) (6)

3 was recalled as a witness for the prosecution, was reminded she was still under oath, and testified  
4 as follows:

5 **DIRECT EXAMINATION**

6 **Questions by the assistant trial counsel (Captain Beliles):**

7 Q. You are the same (b) (6) who has already testified, correct?

8 A. Yes.

9 Q. And you understand you are still under oath?

10 A. Yes.

11 Q. Ma'am, would you please tell us how this sexual assault has impacted you?

12 A. Ah, ah, [weeping] I'm not myself anymore. I'm just different. I'm not who I was  
13 beforehand.

14 Q. How has this experience changed you?

15 A. You know, I'm just, ah – I still am myself and I'm just numb most of the time. I can  
16 do my job. I can be pleasant to people, but I'm not – I'm not normal, and I just want to be  
17 normal again.

18 ATC: Thank you, Ma'am.

19 No further questions, Your Honor.

20 MJ: Defense?

21 CIV DC: No questions, Your Honor.

22 MJ: Members, any questions of this witness?

1 [Negative response from the members.]

2 MJ: Thank you, you may step down.

3 [The witness left the courtroom.]

4 MJ: Government?

5 ATC: Your Honor, with that, the United States rests.

6 MJ: Defense, would you like a short recess or are you prepared to go forward?

7 CIV DC: We're prepared, Your Honor.

8 MJ: You may continue.

9 CIV DC: The defense calls Mrs. Angela Newbill to the stand.

10 [The bailiff left the courtroom and returned with the witness.]

11 **MRS. ANGELA NEWBILL**

12 was called as a witness for the defense, was sworn, and testified as follows:

13 **Questions by the assistant trial counsel (Captain Beliles):**

14 Q. Would you please state your name for the record?

15 A. Mrs. Angela Newbill.

16 Q. And where do you currently reside?

17 A. In (b) (6), Virginia.

18 ATC: Thank you.

19 Your witness.

20 CIV DC: Thank you.

21 **DIRECT EXAMINATION**

22 **Questions by the civilian defense counsel:**

1 Q. Ma'am, are you currently married?

2 A. I am.

3 Q. And who is your husband?

4 A. Raymond Newbill.

5 Q. What does he do?

6 A. Ah, right now he is at the Joint Staff in Suffolk, Virginia.

7 Q. Were you previously assigned here with him at Aviano?

8 A. We were. He was the Commander of the Comm Squadron.

9 Q. Now, do you know Lieutenant Colonel Wilkerson?

10 A. Yes.

11 Q. How is it that you know him?

12 A. Ah, they ended up moving right – their house was backed up to ours, so we were  
13 practically neighbors in Roverado.

14 Q. Okay, so did you know them before you were assigned to Aviano?

15 A. No.

16 Q. And so it was here where your family and their family got to know each other?

17 A. Yes.

18 Q. Could you sort of describe, briefly, for the members how it is you interacted with  
19 their family as families?

20 A. We traveled together. We went on the same vacations that the Ozguls went on with  
21 them. So we were in Germany, we were in Crete. We did shopping together. We did hanging  
22 out, eating at each other's house. My daughter, (b) (6), loved (b) (6), and we never – we would go

1 out and the kids thought it was not a fun dinnertime or something. (b) (6) would make (b)  
2 pizzas and just be there for him. And we were like family. They were our family away from  
3 home.

4 Q. Did you have some personal issues going on in your life – well, first of all, when did  
5 you move back to the States?

6 A. We left on June 23<sup>rd</sup>.

7 Q. And so had you experienced some personal family issues while you were here?

8 A. We did.

9 Q. Were Jay and Beth very supportive of you on those occasions?

10 A. So supportive.

11 Q. I just want to turn you to the 24<sup>th</sup> of March of this year. Do you recall that day?

12 A. Yes.

13 Q. Did you have a particular family crisis that day?

14 A. It was a crisis to me, so yes.

15 Q. Okay, in any event, had you been invited to go to the Wilkerson's for a barbeque that  
16 day?

17 A. Can I say something about what you just asked me?

18 Q. Yeah.

19 A. You said was I invited to the barbeque.

20 Q. Right. Were you aware that there was going...

21 A. It was "Let's get together and eat at Beth's house.?" Jay was going to grill and I was  
22 going to bring a side, and another couple was coming. It was a get-together, kind of.

1 Q. And is it correct to say that this was a typical Wilkerson event; that he liked to grill  
2 and barbeque and have people over, so it wasn't like some huge event or anything?

3 A. No. As the Comm Squadron Commander's wife, when we say we're going to have a  
4 barbeque, it's like for the whole squadron, and it's an event – a display. This was a get-together.

5 Q. In any event, did your family crisis that day mean that the barbeque couldn't take  
6 place?

7 A. I talked to Beth that day and said, "I'll still bring the sides. Raymond and I will not  
8 be coming, but if you still want to have people over, I will bring something over, but we will not  
9 be in attendance."

10 Q. Right, but at some point, was, to be clear, Jay required to come assist you with your  
11 family crisis?

12 A. That evening, Beth said, "Would it be better if maybe Jay spoke to Raymond?" And I  
13 said, "Oh, my goodness, that would be so great." And so he left his family; he dropped what he  
14 was doing; he left his wife with the boys; and he went to talk to Raymond and be supportive of  
15 Raymond.

16 Q. And so what is your opinion of the Wilkerson family based on your relationship with  
17 them?

18 A. They were the kind of people who treated us like friends and family, and we felt like  
19 we needed help, and they said, "You know what? We don't care that we're having people over.  
20 We don't care that we're already assisting the Pones, what can we do for you?" I mean that's  
21 just the kind of people they are. They would drop anything to do something for somebody else.

22 Q. And have you continued to interact with them even since you went back to the States?

1 A. Yes. They came to (b) (6) and stayed in our brand new home. And we weren't even  
2 moved in – and slept on the air mattress and hung out with us, and because we missed each  
3 other, and they were close by. And that's what friends and family do; they just stay in touch.  
4 You just don't dump each other.

5 Q. Now you know he's now been convicted of a sexual assault?

6 A. I do.

7 Q. Will you, nonetheless, stand by him and his family through this?

8 A. Absolutely one hundred percent.

9 CIV DC: No further questions, Your Honor.

10 MJ: Government?

11 ATC: No questions, Your Honor.

12 MJ: Members, any questions for this witness?

13 [Negative response from the members.]

14 MJ: You may step down.

15 [The witness left the courtroom.]

16 CIV DC: Your Honor, the defense calls Colonel Ozgul to the stand.

17 [The bailiff left the courtroom and returned with the witness.]

18 **COLONEL ENDER OZGUL**

19 was called as a witness for the defense, was sworn, and testified as follows:

20 **Questions by the assistant trial counsel (Captain Beliles):**

21 Q. Sir, could you please state your name and rank for the record?

22 A. My name is Ender Ozgul, rank of Colonel

1 Q. And could you please spell your last name, Sir.

2 A. O-Z-G-U-L.

3 Q. And you're stationed here at Aviano Air Base?

4 A. I am.

5 Q. And you know the accused in this case?

6 A. I do.

7 ATC: Thank you.

8 Your Witness.

9 CIV DC: Thank you.

10 **DIRECT EXAMINATION**

11 **Questions by the civilian defense counsel:**

12 Q. What is your current position?

13 A. I'm the Deputy Med Group Commander.

14 Q. And how long have you held that position?

15 A. Approximately a year and a half.

16 Q. Could you please provide the court members a thumbnail description of your Air  
17 Force career?

18 A. I started off as a general dentist at Tinker Air Force base; subsequently PCSed to  
19 Lackland Air Force Base where I was a – I'm a trained oral maxillofacial radiologist, so I  
20 became – got a position there as the Chief of Dental Processing as well as other factors.

21 Additionally, at that time I also was assigned as the consultant to the Surgeon General for oral  
22 maxillofacial radiology.



1           After my assignment to Lackland, I became the Chief of Dental Services at Cannon Air  
2 Force Base. I PCSed to Incirlik Air Force Base; was the Chief of Dental Services there. I then  
3 became the MDOS Commander – Medical Operations Squadron Commander, there.

4           From there I PCSed to McGuire Air Force Base where I was the Dental Squadron  
5 Commander. From McGuire, Air War College Student, and from Air War College, I came here.

6           Q. Now, of course you know Lieutenant Colonel Wilkerson, obviously that's why you're  
7 here, correct?

8           A. Yes, Sir.

9           Q. And you've actually sat through and watched some of these proceedings?

10          A. Yes, Sir.

11          Q. You're not here to testify as a commander, are you?

12          A. No, I'm not.

13          Q. Why are you here to testify?

14          A. As a friend.

15          Q. How did you get to know Colonel Wilkerson? How did that come about?

16          A. I got to know him through, quite honestly, the Operations Group Commander. We've  
17 been stationed – this is our third assignment together, and this...

18          Q. Who is that by name?

19          A. Colonel David Walker.

20          And we met through, basically, a professional relationship in terms of he started off as  
21 the Deputy OG; I was the Deputy Med Group commander. We have the Counsel of Deputies.

1 We would meet routinely to discuss matters of the Wing. And then subsequently, I would say a  
2 few months later, we started interacting socially as families.

3 Q. Now when you say “families,” are you talking about your family, the Walker family,  
4 and the Wilkerson family?

5 A. The Wilkerson family and some others as well.

6 Q. It is interesting, nonetheless, that you’re from the med group side of the house and  
7 he’s an F-16 fighter pilot in that community. Is that sort of different?

8 A. It is a little different. However, I think why it happened was we lived in the same  
9 neighborhoods. Well, I lived in the same neighborhood with the Walkers in Cannon. We were  
10 neighbors. We got to know each other through tight Air Force community, barbeques, as well as  
11 dinners and everything like that. So we got to know the Walkers that way, and then we  
12 integrated here at Aviano as such.

13 Q. And so over time, did you actually develop you own friendship with the Wilkersons,  
14 apart from the Walkers?

15 A. Absolutely.

16 Q. And so can you just describe for the court members, over the time that you’ve been  
17 assigned here together, the types of things that you all did as families – the interactions that you  
18 had?

19 A. Mainly – the most interaction we had was as families. I have three boys; he’s got a  
20 little son. (b) and my boys hit it off well. They play video games together. We would go on  
21 family vacations together, whether it was to Garmisch, Crete, BKK, which is Bad  
22 Kleinkirscheim in Austria. And as couples, we’d go out to dinner. Whenever we would go out

1 to dinner as couples, sometimes (b) would come over and, basically, our boys would babysit and  
2 they'd play video games as well. So it was a lot of family interaction or couples' interaction.  
3 We would also go to winery tours, olive oil making tours, as well as other things. Had planned  
4 on – we went antiquing as well.

5 Q. Now, did this relationship even continue after these allegations came forward?

6 A. Yes. We went antiquing about a week and a half ago – two weeks ago.

7 Q. And what have you observed in terms of how the Wilkersons have handled  
8 themselves, even after formal charges were brought against him?

9 A. They were the same couple – loving, caring. They cared about (b) incredibly. We  
10 had fun; we played cards; you know just typical family stuff. It was all the same.

11 Q. Now, what have you observed in particular in terms of his relationship with his son?

12 A. Oh, it's tight. It's a typical father-son relationship. They play baseball. In fact,  
13 sometimes when we're out, (b) would be giving a call asking for advice, and he'd be sitting  
14 there going – telling him, as well as Beth – they'd talk to (b) whenever we'd be going out. We  
15 went to BKK – I'm sorry, not BKK – BKK was hiking trips – Garmisch, Piancavallo  
16 snowboarding. He'd take my boys – he taught my boys how to snowboard, (b) in tow, and (b)  
17 learned with my boys – snowboarding. So it was all about (b) and you know basically having  
18 him with outdoor sports, you know baseball, whatever it is, he was there.

19 Q. Now you understand that the members are about to deliberate? Well, first of all, you  
20 understand he's now been convicted of a sexual offense?

21 A. I do understand.

22 Q. Sexual assault?

1 A. I do understand.

2 Q. And understanding that you cannot recommend any particular sentence to the  
3 members, do you have a request for them?

4 A. I do have a request. I request that you consider the family, and I do request that you  
5 consider leniency.

6 CIV DC: No further questions at this time.

7 MJ: Government?

8 ATC: No questions from this witness, Your Honor.

9 MJ: Members, any questions for this witness?

10 [Negative response by the members.]

11 MJ: You may step down.

12 [The witness left the courtroom.]

13 DC: Your Honor, the defense calls Lieutenant Colonel Paul Wilkerson.

14 [The bailiff left the courtroom and returned with the witness.]

15 **LIEUTENANT COLONEL PAUL E. WILKERSON**

16 was called as a witness for the defense, was sworn, and testified as follows:

17 **Questions by the assistant trial counsel (Captain Beliles):**

18 Q. Sir, would you please state your name and rank for the record?

19 A. Paul Edward Wilkerson, Lieutenant Colonel, US Air Force.

20 Q. And where are you currently assigned, Sir?

21 A. Nellis Air Force Base, Nevada.

22 Q. And you are the brother of the accused?

1 A. That is correct.

2 DC: Good morning, Sir.

3 WIT: Good morning.

4 **DIRECT EXAMINATION**

5 **Questions by the defense counsel:**

6 Q. Now the members might have seen you a little bit in the back during these  
7 proceedings, but can you please tell them a little bit more about yourself, like you just did?

8 A. Okay. Thanks.

9 I graduated from the Citadel in '95, and upon graduation I came in the Air Force as an  
10 admin officer. I went to Saint Louis, where I was an Inspector General Assistant, and I did that  
11 for two years. I cross-trained into battle management training at Tyndall Air Force Base, then  
12 moved up to Robbins, where I flew on JSTARS for four years; went to Iceland for two; back to  
13 JSTARS again – another four years, where I was dual-qualified and held every position in the  
14 aircraft, and you know there was nothing more that I could do there.

15 Then I went to Ramstein where I was at the NATO Air Component – A5 Plans – and did  
16 a lot of Afghanistan air planning work. And, currently, I am the Joint Test Director of a OSD  
17 sponsored counter UAB, figuring out how we're going to defeat the low, slow, small threat.

18 Q. And, Sir, how much total time then do you have active duty in the Air Force?

19 A. About 17 years now.

20 Q. Could you please tell the members why you joined the Air Force?

21 A. My brother is my hero. I look up to him, and I've always looked up to him. He is the  
22 main reason why I joined the Air Force. Because of his role model and his leadership, and he is

1 the one person that made me do this. I'm not saying he "made me do it," I'm saying I did it  
2 because of the honor and integrity that he exhibited. I wanted to be that, I wanted to be part of  
3 that. And this organization gives that.

4 So at this point the world is upside down.

5 Q. And why is that?

6 A. Well, because my role model, who I still believe he is the man he is sitting there – I  
7 don't want to get you in trouble or him in trouble by going the wrong direction with this.

8 Q. That's okay.

9 A. The bottom line is...

10 Q. Let's move on.

11 A. Okay.

12 Q. You said he's your role model. Talk a little bit about growing with him and how he  
13 became your role model.

14 A. When we were kids, we – Jay was a huge swimmer and very much into the  
15 competitive swimming realm. And I swam some, too, but in reality I was you know little  
16 brother, hanging out, doing other type of events. Waterskiing competitive, too – he skis well, I  
17 think I ski better. Fishing, at this point now we're older. My father you know was doing more  
18 with us with fishing and hunting. We used to go offshore fishing all the time and stay out all day  
19 and then come back with a boatload of fish. It was nothing but – we bonded. You know every  
20 time I get an opportunity to spend time with my brother, I'm so excited, I'm so happy because  
21 my career field – my career is 180 out from his, and yet, you know I get to see him now. I just  
22 hope I get to see him a lot more.

1 Q. Have you been able to spend time together with your families?

2 A. Yes. Pretty much every vacation that we do at Wrightsville Beach, he'll bring his  
3 family, Beth and (b) (6), and then I have two kids, (b) (6) and (b) (6). All of our family is quite  
4 competitive. So you know they'll all get together and we play well, and really enjoy  
5 everybody's company. And being around each other is you know the one time – the one thing  
6 that I look for every year, and I didn't get to do it this year. This is the first time I've seen him in  
7 about two years.

8 Q. Have you had an opportunity to pray together based on where we are right now?

9 A. Yes. Yes. I've been praying a lot. As a matter of fact, this morning he said, "I'm  
10 looking for God's grace." And I was like "Do you remember that from confirmation when you  
11 know the whole grace thing and what it means?" And he's kind of in shellshock. And I said,  
12 "Well grace is God's love given freely." And I thought about that then at the time, and I'd like  
13 to relay to the panel members, you know please love this man. He is human.

14 Q. Sir, understanding, again, you can't recommend any sentence to the members...

15 A. I'm sorry.

16 Q. ...what do you want to say to them?

17 A. Humility, please. This is broken; give it back so I can put it together.

18 DC: Thank you, Sir.

19 Nothing further.

20 MJ: Government?

21 ATC: No questions, Your Honor.

22 MJ: Defense, nothing further from this witness; not subject to recall?

1 DC: Correct, Your Honor.

2 MJ: You may step down and return to the galley area.

3 WIT: Thank you, Your Honor.

4 [The witness took a seat in the spectators' area.]

5 MJ: Defense, anything further?

6 [The defense counsel conferred.]

7 DC: Your Honor, could we request about a five-minute recess?

8 MJ: We'll be in recess for five minutes.

9 (The court-martial recessed at 0950 hours, 3 November 2012.)

10 **END OF PAGE**

11



1 (The court-martial was called to order at 1000 hours, 3 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Defense?

6 DC: Your Honor, at this time Lieutenant Colonel Wilkerson would like to make an  
7 unsworn statement to the court.

8 MJ: Proceed.

9 **LIEUTENANT COLONEL JAMES H. WILKERSON,**

10 the accused, stood before the members and made the following unsworn statement:

11 Colonel Stentz, members, I am standing here in front of you asking for your help. I am  
12 not here to talk about your verdict, nor am I here to comment on anything related to the past few  
13 days. Instead, I am here to tell you a little about myself, my career, and my family.

14 My wife, Beth, and I met in 1992 (weeping) when I was a young Lieutenant, waiting to  
15 go to pilot training and at the time working in the Supply Squadron at Langley Air Force Base,  
16 Virginia. Beth was working in the same squadron as a secretary and going through an amicable  
17 divorce from her husband who was a fighter squadron commander. Since then, we have all  
18 stayed in touch.

19 Beth is our true family matriarch. As you already know, she comes from a career  
20 military family; her father is a two-time Silver Star recipient, and was, unfortunately killed in an  
21 F-100 crash over Lake Superior when she was six years old. Her mother remarried – another  
22 fighter pilot – who went onto serve two tours in Vietnam as an F-4 pilot. He eventually retired

1 as well from a successful military and airline career. He now manages “Freedom Flight,” a non-  
2 profit group of retired military and airline pilots who perform in the Conroe, Texas, area for  
3 fallen military heroes and local civic organizations. Our son calls himself the “Assistant  
4 Director” and flies in his grandfather’s back-seat whenever we’re visiting.

5 Beth and I married in 1996, just before I was selected to transition to the B-52. This  
6 aircraft was not my first choice, but I dedicated myself to being the best B-52 pilot possible.  
7 After a few years of flying the “Buff,” I was selected to transition to the F-15. I was ecstatic;  
8 flying fighters was my childhood dream. Retraining was not difficult, as my motivation to excel  
9 was fueled by years of wonder and excitement. Even though I found myself in a game of “catch-  
10 up,” I remained undeterred. Going to work was an absolute joy and I soon found myself on level  
11 ground with my peers. In the end, I have considered myself extremely lucky and honored to  
12 have led men and women in combat. I have also taken tremendous pride in developing strong  
13 officers and aviators. I collectively called them “my kids,” and celebrated their triumphs along  
14 with them.

15 Our son, (b) (6), is the apple of our eye and the single-best thing Beth and I have ever done.  
16 His name is actually shortened from his first and middle names – (b) (6) – as he is named  
17 for my father and Beth’s step-father. We could think of no better way to honor our family with a  
18 combined name as (b) (6) is the product of their help. This may sound silly, at first, but it took us  
19 quite a long time to have (b) (6). He is the result of eight long years of infertility work, of ups and  
20 downs, and general desire to raise a child. On our third and final In Vitro attempt, (b) (6) “took,”  
21 and was born in 2003. He is now (b) (6) years old and he remains firmly affixed at the center of  
22 our world. While he has no clue what Beth and I are going through at the moment, he has been

1 an amazing strength for us at times when the emotional burden took its toll, without having any  
2 knowledge that he's helped. This is something I never expected to learn from my own child, but  
3 I am thankful I have.

4 Throughout my military career, I've had strong support from Beth and (b) (6). Through  
5 countless deployments, combat rotations through the desert and even during two separate remote  
6 assignments, my family has been my rock. And they learned very early how to deal with  
7 separation and that tears shed on the way out were often replaced with joy on the way back. But,  
8 somehow the separation made us stronger, and it is through this strength that we are dealing with  
9 our current situation.

10 I've always portrayed a positive outlook on the Air Force and championed the cause,  
11 even when I saw the "system" make a poor decision in a specific circumstance or a career. And,  
12 as a former fighter squadron commander, I took great pride in handling personal situations with  
13 benevolence and compassion.

14 [Weeping.] I am now in the position of having to ask you for your compassion and  
15 consideration as you undertake the very serious task of determining my punishment.

16 If I am left in a position to retire, so as to provide for my family, I will immediately do so  
17 following these proceedings. As you determine my sentence, please keep in mind that I now  
18 have a felony conviction and have to register as a sex offender – two life sentences.

19 I have no idea where this chapter in my life will end, or when, but I can only hope that  
20 somehow my family and I will put the pieces of our lives back together. All I can ask and beg of  
21 you is that you do not rip my family apart.

22 Thank you, and I wish you the best.

1 [The accused returned to his seat.]

2 MJ: Defense?

3 DC: Your Honor, at this time we'd like to offer some documentary evidence.

4 MJ: You may.

5 DC: The originals are with the court reporter, and copies have been provided both to  
6 yourself, the military judge, and to trial counsel.

7 Defense Exhibit AE for identification is an unsworn statement, four pages. Defense  
8 Exhibit AF for Identification is nine pages of photographs, and Defense Exhibit AG for  
9 Identification is a retirement chart, and we would offer those now into evidence.

10 MJ: Any objection?

11 ATC: No objection, Your Honor, assuming the rules are relaxed.

12 MJ: And you are requesting relaxation of the rules?

13 DC: Yes, Your Honor.

14 MJ: They are admitted – AE, AF, and AG. Would you like to provide them to the  
15 members?

16 DC: Yes, please, Your Honor.

17 MJ: You may do so.

18 DC: Thank you.

19 [The exhibits were so published.]

20 MJ: Defense?

21 DC: We rest, Your Honor.

22 MJ: Is there any rebuttal from the government?



1 (The court-martial was called to order at 1011 hours, 3 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 [The defense counsel stood.]

6 MJ: Defense?

7 DC: Your Honor, at this time we would seek merger of the charges for purposes of  
8 sentencing, under RCM 906(b)(12).

9 MJ: Government, your position

10 ATC: Your Honor, the government concurs that all of the specifications should be  
11 merged into the aggravated sexual assault charge.

12 MJ: Based on that counsel, what do you calculate to be the maximum sentence based on  
13 the findings of the court?

14 ATC: Thirty years confinement, Your Honor, and a dismissal from the service, as well as  
15 forfeitures, obviously.

16 DC: Your Honor, we concur, but we ask that the court consider a fine as well.

17 MJ: You are asking for an instruction on fine as well?

18 DC: Yes, Your Honor.

19 MJ: Thank you.

20 All right, I concur, based on the merger of those charges, the maximum sentence is 30  
21 years, dismissal, total forfeitures, and a fine.

1 MJ: Counsel, does the sentencing worksheet at this time, does it include the potential for  
2 a fine or do you need an opportunity to make that amendment?

3 ATC: Your Honor, we need an opportunity to make that amendment.

4 MJ: Before you do that – well, first of all, the sentencing worksheet will be the appellate  
5 exhibit next in order. That will be Appellate Exhibit XLVII. And if you haven't already done  
6 so, if you could, during the break, while you're making that change, just ensure that the defense  
7 has had an opportunity to look at it and there's no other areas that there might be some objection  
8 with. I, obviously, will discuss that on the record once you have an opportunity to correct that.

9 All right, counsel, I intend to give the standard sentencing instructions. There was a  
10 reference in the unsworn statement to the accused's belief that he would have to register as a sex  
11 offender. I intend to advise on that. I will provide a written copy of my instructions during the  
12 recess to both trial and defense counsel. I just tell you that letting you know that my attention is  
13 to address that, and then after I've addressed it, I certainly will hear any objections or positions  
14 from trial or defense counsel regarding that portion.

15 Other than that portion, it is the standard instructions. Do you counsel have any requests  
16 for any special instructions in this case?

17 ATC: No, Your Honor.

18 [The defense counsel conferred.]

19 DC: No, Sir.

20 MJ: We will be in recess.

21 (The Article 39(a) session terminated at 1014 hours, 3 November 2012.)

22 **END OF PAGE**

1 (The court-martial was called to order at 1045 hours, 3 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Trial counsel, have you provided a copy of the sentencing worksheet or allowed the  
6 defense counsel to review the sentence worksheet?

7 ATC: We have, Your Honor.

8 MJ: Please provide the sentence worksheet to me.

9 ATC: Yes, Your Honor.

10 I'm handing the military judge Appellate Exhibit XLVII.

11 MJ: Is there any objection, defense, to the sentencing worksheet?

12 CIV DC: No, Sir.

13 MJ: During the recess, I provided a copy of my intended sentencing instructions to both  
14 trial and defense counsel. Are there any objections from trial or defense counsel to these  
15 instructions?

16 ATC: There are none, Your Honor.

17 CIV DC: We concur, Your Honor.

18 MJ: Is there anything else we need to discuss prior to calling the members?

19 ATC: No, Your Honor.

20 CIV DC: No, Sir.

21 MJ: Call the members.

22 [The bailiff left the courtroom.]



1

(The Article 39(a) session terminated at 1047 hours, 3 November 2012.)

2

**END OF PAGE**

1 (The court-martial was called to order at 1048 hours, 3 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The parties are present. The members are present.

5 Members of the court, I am about to give you instructions and the law you must follow  
6 when you are about to deliberate and vote on the sentence. Once again, I will provide you these  
7 instructions in writing, so I ask that you simply listen to them at this point and not attempt to  
8 copy them down verbatim, although you are certainly free to take notes as you see fit.

9 I will first instruct you on the law applicable to the charges before you, then I'll provide  
10 your procedural instructions on conducting your deliberations and voting. Shortly after you  
11 close for your deliberations, I will have the bailiff bring you the written instructions after I've  
12 corrected any typical errors I might find as I read them to you.

13 Members, do you have any questions before we begin?

14 Negative response from the members.

15 Members of the court, you are about to deliberate and vote on the sentence in this case. It  
16 is the duty of each member to vote for a proper sentence for the offenses of which the accused  
17 has been found guilty. Your determination of the kind and amount of punishment, if any, is a  
18 grave responsibility requiring the exercise of wise discretion. Although you must give due  
19 consideration to all matters in mitigation and extenuation, as well as to those in aggravation, you  
20 must bear in mind that the accused is to be sentenced only for the offenses which he has been  
21 found guilty.

1 MJ: The offenses are one for sentencing purposes. Therefore, in determining an  
2 appropriate sentence in this case, you must consider the offenses as one offense.

3 You must not adjudge an excessive sentence in reliance upon possible mitigating action  
4 by the convening or higher authority.

5 A single sentence shall be adjudged for all offenses of which the accused has been found  
6 guilty.

7 The maximum punishment that may be adjudged in this case is: forfeiture of all pay and  
8 allowances; confinement for 30 years; and dismissal from the service.

9 The maximum punishment is a ceiling on your discretion. You are at liberty to arrive at  
10 any lesser legal sentence.

11 In adjudging a sentence, you are restricted to the kinds of punishment which I will now  
12 describe or you may adjudge no punishment. There are several matters which you should  
13 consider in determining an appropriate sentence. You should bear in mind that our society  
14 recognizes five principal reasons for the sentence of those who violate the law. They are  
15 rehabilitation of the wrongdoer, punishment of the wrongdoer, protection of society from the  
16 wrongdoer, preservation of good order and discipline in the military, and deterrence of the  
17 wrongdoer and those who know of his crimes and his sentence from committing the same or  
18 similar offenses. The weight to be given any or all of these reasons, along with all other  
19 sentencing matters in this case, rests solely within your discretion.

20 Reprimand: This court may adjudge a reprimand, being in the nature of a censure. The  
21 court shall not specify the terms or wording of any adjudged reprimand.

1 MJ: Restriction: This court may adjudge restriction to limits for a maximum period not  
2 exceeding two months. For such a penalty, it is necessary for the court to specify the limits of  
3 the restriction and the period it is to run. Restriction to limits will not exempt an accused from  
4 any assigned military duty.

5 Confinement: As I have already indicated, this court may sentence the accused to  
6 confinement for 30 years. A sentence to confinement should be adjudged in either full days, full  
7 months, or full years; fractions, such as one-half or one-third, should not be employed. So, for  
8 example, if you do adjudge confinement, confinement for a month and a half should instead be  
9 expressed as confinement for 45 days. This example should not be taken as a suggestion, only  
10 an illustration of how to properly announce your sentence.

11 Forfeitures: This court may sentence the accused to forfeit all pay and allowances. A  
12 forfeiture is a financial penalty which deprives an accused of military pay as it accrues. In  
13 determining the amount of forfeiture, if any, the court should consider the implications to the  
14 accused of such a loss of income. Unless a total forfeiture is adjudged, a sentence to a forfeiture  
15 should include an express statement of a whole dollar amount to be forfeited each month and the  
16 number of months the forfeiture is to continue. The accused is in pay grade O-5 with over 20  
17 years of service, the total basic pay being \$8199.30 per month.

18 This court may adjudge any forfeiture up to and including forfeiture of all pay and  
19 allowances.

20 Effect of Article 58b: Any sentence which includes either confinement for more than six  
21 months or some amount of confinement along with a dismissal will require the accused, by  
22 operation of law, to forfeit all pay and allowances during the period of confinement. However, if

1 the court wishes to adjudge any forfeitures of pay and/or pay and allowances, the court should  
2 explicitly state the forfeiture as a separate element of the sentence.

3           58b and Impact on Family: The trial or defense counsel may make reference to the  
4 availability or lack thereof of monetary support for the accused's family members. Again, either  
5 confinement for more than six months, or some amount of confinement along with a punitive  
6 discharge, in such a case the accused will then forfeit all pay and allowances due to him during  
7 any period of confinement.

8           However, when the accused has dependents, the convening authority may direct that any  
9 or all of the forfeiture of pay which the accused otherwise by law would be required to forfeit be  
10 paid to the accused's dependents for a period not to exceed six months. This action by the  
11 convening authority is purely discretionary. You should not rely upon the convening authority  
12 taking this action when considering an appropriate sentence in this case.

13           Fine: This court may adjudge a fine either in lieu of, or in addition to, forfeitures. A  
14 fine, when ordered executed, makes the accused immediately liable to the United States for the  
15 entire amount of money specified in the sentence.

16           In your discretion, you may adjudge a period of confinement to be served in the event the  
17 fine is not paid. Such confinement to enforce payment of the fine would be in addition to any  
18 other confinement you might adjudge and the fixed period being an equivalent punishment to the  
19 fine. The total of all confinement adjudged, however, may not exceed the maximum  
20 confinement for the offenses in this case.

21           Punitive Discharge: The stigma of a punitive discharge is commonly recognized by our  
22 society. A punitive discharge will place limitations on employment opportunities and will deny

1 the accused other advantages which are enjoyed by one whose discharge characterization  
2 indicates that he has served honorably. A punitive discharge will affect an accused's future with  
3 regard to his legal rights, economic opportunities, and social acceptability.

4 MJ: In addition, a punitive discharge terminates the accused's status and the benefits that  
5 flow from that status, including the possibility of becoming a military retiree and receiving  
6 retired pay and benefits.

7 This court may adjudge a dismissal. You are advised that a sentence to a dismissal of a  
8 commissioned officer is, in general, the equivalent of a dishonorable discharge of a  
9 noncommissioned officer or an enlisted Airman. A dismissal deprives one of substantially all  
10 benefits administered by the Veteran's Administration and the Air Force establishment. It  
11 should be reserved for those who, in the opinion of the court, should be separated under  
12 conditions of dishonor after conviction of serious offenses of a civil or military nature warranting  
13 such severe punishment. Dismissal, however, is the only type of discharge the court is  
14 authorized to adjudge in this case.

15 No Punishment: Finally, if you wish, this court may sentence the accused to no  
16 punishment.

17 Other Instructions – Matters to Consider: In determining the sentence, you should  
18 consider all the facts and circumstances of the offenses of which the accused has been convicted  
19 and all matters concerning the accused whether presented before or after findings. Thus, you  
20 should consider the accused's background, character, service record, combat record, all matters  
21 in extenuation and mitigation, and any other evidence he presented. You should also consider  
22 any matters in aggravation.

1 MJ: Accused's Unsworn Statement Election: The court will not draw any adverse  
2 inference from the fact that the accused has elected to make a statement which is not under oath.  
3 An unsworn statement is an authorized means for an accused to bring information to the  
4 attention of the court, and must be given appropriate consideration. The accused cannot be  
5 cross-examined by the prosecution or interrogated by court members or me upon an unsworn  
6 statement, but the prosecution may offer evidence to rebut statements of fact contained in it. The  
7 weight and significance to be attached to an unsworn statement rests within the sound discretion  
8 of each court member. You may consider that the statement is not under oath, its inherent  
9 probability or improbability, whether it is supported or contradicted by evidence in the case, as  
10 well as any other matter that may have a bearing upon its credibility. In weighing an unsworn  
11 statement, you are expected to use your common sense and your knowledge of human nature and  
12 the ways of the world.

13 The accused's unsworn statement included the accused's personal belief that he would be  
14 required to register as a sex offender. An unsworn statement is a proper means to bring  
15 information to your attention, and you must give it appropriate consideration. Your deliberations  
16 should focus on an appropriate sentence for the accused for the offenses of which the accused  
17 stands convicted. However, as a general evidentiary matter, evidence regarding possible  
18 registration as a sex offender and the consequences thereof, would be characterized as a  
19 collateral consequences, and thus inadmissible outside of the context of an unsworn statement.  
20 This is so because, one, your duty in sentencing is to adjudge an appropriate sentence for this  
21 accused, under these facts, in accordance with my instructions. Possible collateral consequences

1 of the sentence, beyond those upon which you are instructed, other than mentioned above, should  
2 not be a part of your deliberations.

3 MJ: Two, as to sex offender registration requirements, they may differ between  
4 jurisdictions such that registration requirements, and the consequences thereof, are not  
5 necessarily predictable with any degree of accuracy.

6 Three, whether or not the accused will be or should be registered as a sex offender is not  
7 a decision before you.

8 In short, after due consideration of the unsworn statement and my prior instructions  
9 regarding the nature of an unsworn statement, the consideration and weight you give the  
10 reference is up to you in your sound discretion. Your duty is to adjudge an appropriate sentence  
11 for this accused in accordance with these instructions.

12 During argument, counsel may recommend that you consider a specific sentence in this  
13 case. You are advised that the arguments of trial [sic] counsel and their recommendations are  
14 only their individual suggestions and may not be considered as the recommendation or opinion  
15 of anyone other than such counsel.

16 Trial counsel?

17 ATC: Thank you, Your Honor.

18 Colonel Stentz, members of the panel, good morning.

19 No one is above the law, not you or I, not the Commander in Chief of the Armed Forces,  
20 not an Airman Basic, and not Lieutenant Colonel James Wilkerson.

21 ATC: In the early morning hours of 24 March 2012, (b) (6) was stumbling  
22 around in the darkness in Roverado in Piano with no shoes, without her sweater, in 45 degree



1 weather, crying, confused and distraught because she had just been sexually assaulted by  
2 Lieutenant Colonel James Wilkerson. And then she had been thrown out into the darkness, not  
3 even knowing where she was. And what had she done to deserve that? Nothing, except to be  
4 abandoned at a house at a location which she did not know, by the Vice Wing Commander of  
5 this base.

6 ATC: Members, the appropriate sentence in this case is at least five years confinement  
7 and a dismissal from the service.

8 When you're considering, members, how serious this crime is, when you're considering  
9 how serious the crime is that Lieutenant Colonel James Wilkerson committed, look at how  
10 important it was to him; look at what he risked to try to fulfill his selfish sexual appetite. He  
11 risked everything, members. He risked his entire world just to go down there in that room to  
12 (b) (6) He risked his career – almost 21-years of service. He risked his reputation.  
13 He risked the respect of all those people sitting back there in that courtroom. He risked his  
14 marriage. He risked (b) (6) respect. And he risked his retirement. And he was willing to risk all  
15 of that in order to commit this crime.

16 When you're considering how significant this crime is, when you're thinking about how  
17 serious this crime is, think about what he was willing to risk to commit it.

18 He went all in, and he lost. He got caught. And now he's asking you to give it all back  
19 to him, despite the fact that he was the one who acted self-destructively. He was the one who  
20 risked everything.

1           ATC: Members, the evidence showed that Mrs. Beth Wilkerson came into this  
2 courtroom and tried to manipulate the outcome of this court-martial. When you're thinking  
3 about whether or not she deserves that retirement, ask yourselves "Does she deserve it after she  
4 did that?"

5           The accused talked about collateral consequences of sex offender registration in his  
6 unsworn statement, and the military judge just instructed you those are collateral consequence  
7 and thus inadmissible outside of that context, and you should not be considering them in your  
8 deliberations. They are not punishment; they are not a punishment of this court-martial. The  
9 only possible consideration members, the government submits that you should be considering  
10 when you're thinking about sex offender registration is whether or not a registered sex offender  
11 should be walking around as a retiree of the United States Air Force.

12           Ultimately, members, we are here because of (b) (6) . We're here because  
13 she had the courage, the conviction, and the commitment to the truth to come forward. Despite  
14 the fact that the first person who was going to get that unrestricted report was Colonel Ostovich,  
15 the best friend of the accused, she still stood up and spoke the truth, and then suffered through  
16 the hell that she was put through by Colonel Wilkerson; the isolation that she's had to suffer  
17 through because of that sexual assault. She's why we're here today. She did nothing wrong  
18 except serve her country. She came here to work for the United States Air Force as a contractor,  
19 to serve in the medical clinic as a medical provider, a medical professional, and look at what she  
20 got in return.

21           What is striking, members, about Colonel Wilkerson's actions on the night of 23 March  
22 and the early morning hours of 24 March of 2012, is the hubris, the arrogance. You saw it in that

1 videotape with OSI on 19 April 2012. The hubris that led him to commit this crime in the same  
2 home with his son, under the very same roof with the (b) boys there, in the very same home  
3 with his wife. He couldn't restrain himself.

4 ATC: Well, members, the time for honoring himself is at an end today. Thank God that  
5 Beth caught him in the act. Thank God.

6 Members, the accused came in here and gave you an unsworn statement. What's  
7 remarkable about this is the complete absence of any remorse whatsoever in that statement;  
8 complete absence of a single apology to (b) (6). Members, he asked for  
9 compassion in this statement. Where's the remorse? Where's that apology?

10 And at the end of that statement, he asked you to not rip his family apart. He asked you  
11 to not rip his family apart. Members, you will not be ripping his family apart; Lieutenant  
12 Colonel James Wilkerson ripped his family apart on 24 March 2012 because he wasn't thinking  
13 about that; he wasn't thinking about (b) on 24 March 2012; he wasn't thinking about Mrs. Beth  
14 Wilkerson. He should have been, but he wasn't. He was thinking about himself.

15 He ripped his family apart, and he ripped (b) (6)' life apart. He put her  
16 through the agony and isolation she's had to go through since March 24<sup>th</sup> of 2012. This is only  
17 the beginning for her to restore that sense of normalcy to her life that she talked about on the  
18 stand this morning as she talked about, that's all she wants, she just wants that sense of normalcy  
19 back.

20 Members, when you're thinking about the appropriate sentence in this case, when you're  
21 thinking about what is the proper punishment for the accused, remember that it cannot said – it  
22 cannot be said that Lieutenant Colonel Wilkerson got away with a slap on the wrist. It must not

1 be said. It must not be said that we as an Air Force did not take this crime seriously. It must not  
2 be said that we turned a blind eye to the crimes of Colonel Wilkerson.

3 Thank you.

4 MJ: Defense?

5 DC: Thank you, Your Honor.

6 Colonel Stentz, members, there are no winners here today. There have been no winners  
7 throughout this week; there have been no winners throughout the past seven months. This has  
8 been an unfortunate experience for everybody involved. For that, there are no winners. It's been  
9 an emotional day, an emotional week, and emotional seven months for everybody involved.

10 Your job is now to decide on an appropriate sentence, taking into account not just the  
11 aggravating circumstances, but mitigating and extenuating circumstances as well, just as the  
12 military judge instructed. Your job is to now decide on an appropriate punishment that is no  
13 more than absolutely necessary, that serves a purpose. Again, consider the aggravating  
14 circumstances, but consider Colonel Wilkerson as a whole person, one that recognizes his 44  
15 years and his over 20 years of honorable service. I say "over 20 years of honorable service"; he  
16 reached his 20-year mark about a month before this incident.

17 Captain Beliles just stood up and recommended at least five years of confinement, but he  
18 didn't tell you why five years confinement is necessary. So ask yourself when you go back  
19 there, why five years of confinement is necessary; why do we need to warehouse somebody who  
20 has otherwise shown a remarkable life, a remarkable career? A career that includes over 280  
21 hours of combat flight. You can look at the rest of his career through his PDS, his OPRs.

1 Remember, you're to consider the whole person, and consider the effect of the punishment you  
2 decide will have.

3 DC: Members, as you think of that whole person, this was one night. I'm not saying it  
4 was a good night; I'm not saying it was right night, but it was one night out of 20 years of  
5 service, a night out of over 240 months of honorable service, and that's what you're here to  
6 weigh – one night, 240 months – more than that, actually. That's why I say you're supposed to  
7 remember the mitigating circumstances as well.

8 Now you'll understand – trial counsel pointed out – Colonel Wilkerson didn't make an  
9 apology. Like I said, from the start this has been an emotional day, and emotional 24 hours.  
10 There is a lot going on in his life, there is a lot going through his head. But as you go back there  
11 and you consider a punishment that does no more than necessary, the judge instructed you of  
12 different things that you can consider, one of which is rehabilitation potential. Members, this  
13 incident occurred over seven months ago. Prior to this, there was nothing else. As you consider  
14 your punishment and the options available to you, remember it's for a purpose; the purpose to  
15 rehabilitate as well. And he has shown you an outstanding, amazing service history career, and  
16 that tells you a lot about what is rehabilitation potential is. Ask yourself why five years is  
17 necessary to rehabilitate somebody. Why is five year – "...at least five years" is what the trial  
18 counsel said – is necessary? What is that going to do? What is that going to do for him? What  
19 is that going to do for everybody involved?

20 Members, at some point the Wilkersons need to rebuild their life. He'll need to provide  
21 for his family again, provide for his son. What does warehousing him for five years do to that

1 ability to provide for his family; to raise his son; to raise and be with his brother and their  
2 family? What does five years do? It does nothing.

3 DC: You've also heard about a fine; that's a possibility. We ask that you consider that,  
4 not as an alternative to punishment, but something that you can consider as well as a tool  
5 available to you because that's what these punishment options are. They're all tools available to  
6 you, tools available to rehabilitate; tools available for specific deterrence. What the judge says,  
7 "specific deterrence" means ensuring this doesn't happen again.

8 And I take you back to what we provided you during the findings case; the letters from  
9 people who know him best; people who came up and testified before you about the Colonel  
10 Wilkerson that they know; the Colonel Wilkerson that they've spent countless hours, countless  
11 days, months and years with. Hopefully, you get to see through them the Colonel Wilkerson that  
12 they know, and ask yourself why is five years necessary to specifically deter him? What is that  
13 going to do?

14 You heard protection of society as another one. It's been seven months – over seven  
15 months since March. What is five years going to do when there has been nothing in the last  
16 seven months, not a peep?

17 Members, trial counsel talked about his wife, Beth, and his family. He talked about his  
18 son. His son didn't have any part of this. As you go back and consider the tools available to  
19 you, consider the effect your sentence has on everybody involved; everybody and what purpose  
20 that you're sentencing him for. What purpose is a dismissal? What purpose is at least five years  
21 confinement? And if you can't understand what purpose that's going to serve, what that amount

1 of confinement is going to do to benefit him, then why are you going to give it? That's why I  
2 asked you from the start, decide on a sentence that's necessary.

3 DC: Members, you've seen from the exhibits the retirement that Colonel Wilkerson  
4 stands to lose. That's brought to your attention so you can weigh the effects of any punishment  
5 that you decide. Weigh the balances and the effects of a dismissal and their ability in the future.  
6 Weigh the effects of what combining a dismissal and confinement does. And, again, if you can't  
7 decide and see that it's absolutely necessary, why are you going to do it?

8 I'm not standing in front of you saying he shouldn't be punished for what you found him  
9 guilty of. I'm not saying that all. There is an appropriate punishment in there somewhere. It's  
10 your job to look at his service, look at his family, to look at what he's done for the Air Force for  
11 over 20 years, and look at what he's capable of contributing to society in the future.

12 All we ask is that when you go back to that deliberation room with all the information  
13 you've been provided, remember that there are no winners here, but what there needs to be is an  
14 appropriate sentence, one that, again, balances everything you've heard, but one that also takes  
15 into account the people that had nothing to do with this, their future, their lives, and everything  
16 that he worked for.

17 Thank you.

18 MJ: Government, is there rebuttal?

19 ATC: There is none, Your Honor.

20 MJ: When you close to deliberate and vote, only the members will be present. I remind  
21 you that you all must remain together in the deliberation room during deliberations. I also  
22 remind you that you may not allow any unauthorized intrusion into your deliberations. You may

1 not make communications to or receive communications from anyone outside the deliberations  
2 room, by telephone or otherwise. Should you need to take a recess or have a question, or when  
3 you have reached a decision, you may notify the bailiff, who will then notify me of your desire to  
4 return to open court to make your desires or decision known.

5 MJ: Your deliberations should begin with a full and free discussion on the subject of  
6 sentencing. The influence of superiority in rank shall not be employed in any manner to control  
7 the independence of members in the exercise of their judgment. When you have completed your  
8 discussion, then any member who desires to do so may propose a sentence. You do that by  
9 writing out on a slip of paper a complete sentence. The junior member collects the proposed  
10 sentences and submits them to the president, who will arrange them in order of their severity.  
11 You then vote on the proposed sentences by secret written ballot. All must vote; you may not  
12 abstain. Vote on each proposed sentence in its entirety, beginning with the lightest, until you  
13 arrive at the required concurrence, which is two-thirds or four members. A sentence which  
14 includes confinement in excess of ten years requires the concurrence of three-fourths which, in  
15 this case, is also four members.

16 The junior member will collect and count the votes. The vote is then checked by the  
17 president who shall announce the result of the ballot to the members. If you vote on all of the  
18 proposed sentences without arriving at the required concurrence, you may then repeat the process  
19 of discussion, proposal of sentences and voting. But once a proposal has been agreed to by the  
20 required concurrence, then that is your sentence.

21 You may reconsider your sentence at any time prior to its being announced in open court.  
22 If after you determine your sentence, any member suggests you reconsider the sentence, open the



1 court and the president should announce that reconsideration has been proposed without  
2 reference to whether the proposed rebalot concerns increasing or decreasing the sentence. I will  
3 give you specific instructions on the procedure for reconsideration at that time if it arises.

4 MJ: As an aid in putting the sentence in proper form, the court may use the sentence  
5 worksheet, Appellate Exhibit XLVII, which the bailiff will now hand to the president.

6 [The bailiff complied.]

7 MJ: Extreme care should be exercised in using this worksheet and in selecting the  
8 sentence form which properly reflects the sentence of the court. If you have any questions  
9 concerning sentencing matters, you should request further instructions in open court in the  
10 presence of all parties to the trial. In this connection, you are again reminded that you may not  
11 consult the *Manual for Courts-Martial* or any other publication or writing not properly admitted  
12 or received during this trial. These instructions must not be interpreted as indicating an opinion  
13 as to the sentence which should be adjudged, for you alone are responsible for determining an  
14 appropriate sentence in this case. In arriving at your determination, you should select the  
15 sentence which will best serve the ends of good order and discipline, the needs of the accused,  
16 and the welfare of society.

17 MJ: When the court has determined a sentence, the inapplicable portions of the sentence  
18 worksheet should be lined through. When the court returns, I will examine the sentence  
19 worksheet, and the president will then use that worksheet to announce the sentence.

20 Counsel, do either trial or defense counsel object to the instructions as given or request  
21 other instructions?

22 ATC: No, Your Honor.

1 CIV DC: No, Sir.

2 MJ: Do the members of the court have any questions at this time?

3 That's a negative response from the members.

4 It's the same system as to deliberations on findings, which means that when you're in  
5 deliberations, if you desire a recess, we will need to recess those deliberations, come in here,  
6 give you a recess, and then come back in here so I can officially put you back into deliberations.

7 As with what we did with findings deliberations, we are at about 1125 – around  
8 lunchtime – the same circumstance regarding eating, that if we can bring food in for you in the  
9 same way that we did yesterday so that you can continue to deliberate rather than taking a brief  
10 recess to eat.

11 The sentencing instructions will be marked as Appellate Exhibit XLVIII.

12 Bailiff, if you will please provide a copy – these five – of instructions to the members,  
13 please?

14 [The bailiff complied.]

15 MJ: All right, members, those are copies for your use, which means that you may write  
16 whatever notes that you want as to those findings instructions. In addition, all of the exhibits that  
17 you have, and you should have Prosecution Exhibits 1 through 7. All of those are working  
18 copies for you, with the exception of the CD, Prosecution Exhibit 2. In addition, as to defense  
19 exhibits, you have working copies of A through P; you have a video, which is Q, and then you  
20 also have Defense Exhibits AE, AF, and AG. If for some reason you either can't find them or  
21 believe you don't have any of those exhibits that you expect to have and that I listed, please let  
22 me know and we'll be sure to get another working copy back to you.

1  
2  
3  
4

MJ: The court is closed. The members are excused to begin deliberations.

[The court-martial closed at 1127 hours, 3 November 2012.)

**END OF PAGE**

1 (The court-marital was called to order at 1128 hours, 3 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order.

4 The parties are present. The members are absent.

5 Defense counsel, have you advised the accused orally and in writing of his post-trial and  
6 appellate rights?

7 DC: Yes, Your Honor, and he has a copy in front of him right here.

8 MJ: Thank you.

9 Those post-trial – and a copy – it’s actually a copy – I believe the original – is it the  
10 original or a working copy that’s been provided to the court. The original is with the court  
11 reporter.

12 MJ: Thank you. The court does have a working copy. That will be marked as the  
13 appellate exhibit next in order which will be Appellate Exhibit XLIX.

14 All right, Colonel Wilkerson, if you can look to page 4 of that document, is that your  
15 signature on that document?

16 ACC: Yes, Sir, it is.

17 MJ: Defense Counsel, is that also your signature on the document?

18 DC: Yes, Your Honor.

19 MJ: Colonel Wilkerson, did your defense counsel...

20 [The accused started to stand.]

21 MJ: ...and you may remain seated.

22 Did your defense counsel explain your post-trial and appellate rights to you?

1 ACC: Yes, Sir.

2 MJ: Do you have any questions about your post-trial and appellate rights?

3 ACC: No, Sir.

4 MJ: Which counsel will be responsible – and this is to the defense counsel – which  
5 counsel will be responsible for post-trial actions in this case and upon whom is the staff judge  
6 advocate's post-trial recommendation to be served?

7 DC: Captain Martin, Your Honor.

8 CIV DC: If I may add, Your Honor, Captain Martin is going to be separating from the  
9 Air Force at the end of December, so if it is not served before he separates, then I would like it to  
10 be served on me.

11 MJ: All right. Thank you.

12 And what is the date, again?

13 DC: Sir, my anticipated separation date is 28 December of this year.

14 MJ: Okay. Thank you.

15 All right, Mr. Spinner, if you can just ensure that the Legal Office has your – the best  
16 information in which to serve this information on you if that is, in fact, needed. All right?

17 CIV DC: Yes, Sir.

18 MJ: Is there anything else?

19 ATC: No, Your Honor.

20 DC: No, Sir

21 MJ: This Article 39(a) session is terminated to await the members' sentence.

22 (The Article 39(a) session terminated at 1129 hours, 3 November 2012.)

1 (The court-martial opened at 1413 hours, 3 November 2012.)

2 **PROCEEDINGS OF THE COURT**

3 MJ: The court is called to order.

4 The members are present. The parties, with the exception of Captain Beliles, are present.

5 President, has the panel reached a sentence?

6 PRES: Yes, Sir, we have.

7 NOTE: If the president indicates that the members are unable to agree on a

8 MJ: And is that sentence reflected on the sentence worksheet?

9 PRES: Yes, Sir.

10 MJ: Please fold it in half, provide it to the bailiff so that I can inspect it.

11 [The president complied. The bailiff handed the worksheet to the military judge.]

12 MJ: It is in proper form.

13 Bailiff, please return it to the president.

14 [The bailiff complied.]

15 MJ: [To the president.] You may remain seated.

16 Defense counsel and accused, please rise.

17 [The accused and his counsel stood.]

18 MJ: You may announce the sentence of the court.

19 **SENTENCE**

20 **PRES: Lieutenant Colonel James H. Wilkerson, this court-**  
21 **martial sentences you to be confined for one year and to be**  
22 **dismissed from the service.**

23 MJ: Please be seated.

1 [The accused and his counsel sat.]

2 MJ: Plaintiff – bailiff – excuse me – please retrieve the worksheet from the president.

3 [The bailiff complied.]

4 MJ: Members of the court, before I excuse you, you should know that a very important  
5 right held by each of you as court members is the right to the privacy of your deliberations. You  
6 were encouraged in those deliberations to speak openly in a full and free discussion of the issues  
7 in this case. Now that your duties are at an end, you should not be subject to criticism by  
8 command authority or anyone else for views that you may have expressed. Thus, in the event  
9 that you are asked about your service in this court-martial, I remind you of the oath you took.  
10 Essentially, that oath prevents you from discussing your deliberations with anyone, to include  
11 stating any member’s opinion or vote, unless ordered to do so by a court. You may, of course,  
12 discuss your personal observations in the courtroom and the process of how a court-martial  
13 functions, but not what was discussed during your deliberations.

14 Finally, you should not be departing the deliberation area with any of your notes or any  
15 of the other matters related to this case, so for any of your notes, if you can just put those upside  
16 down, facing down in the middle of the table, and then I will ensure that those are shredded  
17 without anyone looking at them. You also have two exhibits that were not – the two video  
18 exhibits – the two CDs. Just put those back to the side. I’ll have the court reporter go back and  
19 pick up those two original exhibits.

20 Thank you for your attendance and your service.

21 Counsel and the accused will remain. Members, you are excused.

22 (The members left the courtroom at 1415 hours, 3 November 2012.)

1 (The court-martial was called to order at 1416 hours, 3 November 2012.)

2 **ARTICLE 39(A) SESSION**

3 MJ: The court is called to order

4 The parties who were present when the court just recessed are again present. The  
5 members are absent.

6 Are there any additional matters to take up before I adjourn the court? Defense?

7 CIV DC: No, Sir.

8 MJ: Government?

9 ATC1: No, Your Honor.

10 MJ: This court is adjourned.

11 (The court-martial adjourned at 1417 hours, 3 November 2012.)

12 **END OF PAGE**



**AUTHENTICATION OF RECORD OF TRIAL**

**in the case of**

***UNITED STATES v. LIEUTENANT COLONEL JAMES H. WILKERSON***

**TRIAL COUNSEL'S CERTIFICATE OF REVIEW**

In accordance with RCM 1103(i)(1)(A), MCM (2012), I reviewed the Record of Trial in the above-referenced case and determine it to be accurate and complete.

(b) (6)

7 Dec 12

DATE

VY S. NGUYEN, Captain, USAF  
Assistant Trial Counsel

**DEFENSE COUNSEL'S EXAMINATION OF RECORD**

I examined the Record of Trial in the above-styled case in accordance with RCM 1103(i)(1)(B), MCM (2012).

(b) (6)

7 Dec 12

DATE

JEFFREY S. MARTIN, Captain, USAF  
Defense Counsel

**AUTHENTICATION OF RECORD**

I examined the Record of Trial in the above-referenced case and find that it accurately reports the proceedings. I authenticate the Record of Trial in accordance with RCM 1104, MCM (2012).

(b) (6)

10 Dec 12

DATE

JEFFERSON B. BROWN, Colonel, USAF  
Military Judge

26 FEB 2013

ACTION

DEPARTMENT OF THE AIR FORCE, HEADQUARTERS THIRD AIR FORCE (USAFE),  
RAMSTEIN AIR BASE, GERMANY (APO AE 09094-3270)

In the case of LIEUTENANT COLONEL JAMES H. WILKERSON III, (b)(6), United States Air Force, 31st Operations Group, Aviano Air Base, Italy, the findings of guilty and the sentence are disapproved. The charges are dismissed.

(b) (6)

CRAIG A. FRANKLIN  
Lieutenant General, USAF  
Commander