

In the Matter Of:

JOE HOLCOMBE vs UNITED STATES OF AMERICA

5:18 CV 00555 XR

JAMES HOY

January 07, 2020



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FOR THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO
DIVISION
- - -
JOE HOLCOMBE, ET AL, :
Plaintiffs, :
vs. Case No. 5:18 CV 00555 XR :
UNITED STATES OF AMERICA, :
Defendant. :
- - -

VIDEOTAPED DEPOSITION OF JAMES HOY

- - -
Tuesday, January 7, 2020
Nine o'clock a.m.
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215

- - -
Reported by:
Laura S. Benton

1 APPEARANCES:

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6 On behalf of the Plaintiffs,

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23 On behalf of the United
24 States Air Force,

ALSO PRESENT VIA TELEPHONE: Jamal Alsaffar, April
Strahan, Justin Beemerath, Steven Handler

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TUESDAY MORNING SESSION
January 7, 2020
9:00 a.m.

- - -

STIPULATIONS

- - -

It is stipulated by and between counsel for the respective parties herein that this Videotaped Deposition of James Hoy, a Witness herein, called by the Plaintiffs under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualifications of the Notary is waived.

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1 P R O C E E D I N G S

2 - - -

3 James Hoy

4 being by me first duly sworn, as hereinafter
5 certified, testifies and says as follows:

6 EXAMINATION

7 BY MR. WEBSTER:

8 Q Can you state your full name for the record.

9 A James Francis Hoy.

10 Q Mr. Hoy, my name is Jason Webster and we met
11 just a few minutes before this deposition.

12 A Yes.

13 Q And you understand, sir, that you just took an
14 oath to tell the truth here in this deposition?

15 A I do.

16 Q He would assume, Mr. Hoy, you understand why
17 you are sitting here today; is that correct?

18 A Yes.

19 Q That's because you were the special agent or
20 one of the special agents who investigated Kelley
21 for some crimes he committed back in 2011, 2012.

22 A Yes.

23 Q You understand that I represent certain
24 families that -- and these lawyers on the phone and

1 sitting over next to me, Mr. LeGrand, represent
2 certain families who have filed a lawsuit against
3 the United States government as a result of Devin
4 Kelley killing their loved ones in a church in
5 Sutherland Springs, Texas?

6 A Yes.

7 Q Have you ever given a deposition before today?

8 A Not like this.

9 Q I guess it's fair to say you have given
10 statements because you were interviewed twice, I
11 believe, with regard to the investigation by the
12 government into what was going on with the Air
13 Force, right?

14 A Yes.

15 Q Sometimes I don't ask very good questions. If
16 you don't understand my question, would you let me
17 know and I'll be happy to rephrase it?

18 A Yes.

19 Q It kind of goes the same way. If I ask you a
20 question and you give me an answer, I would assume
21 that you understood my question; is that fair?

22 A Yes.

23 Q Now, this isn't a marathon either, and so I'm
24 not here the punish you. I'm not here to keep you

1 too long. You are uncomfortable as the rest. If
2 you need to take a break at any time, or go to the
3 restroom. If you need something to eat, let me know
4 and I'll be happy to take a break.

5 A Yes. Thank you.

6 Q The only caveat on that would be if you -- if
7 I have a question pending, I would like for you to
8 answer the question and then we take a break, is
9 that fair?

10 A Yes.

11 Q Sometimes -- you have got Austin here -- I
12 don't remember your last name.

13 MR. FURMAN: Furman.

14 BY MR. WEBSTER:

15 Q Mr. Furman here, and he's acting as your
16 lawyer here today, is that true?

17 A Yes, sir.

18 Q It's -- he may object from time to time. And
19 if he does, I would ask that you wait until he makes
20 the objection and then answer the question, and I'll
21 try not to talk over you. If you will wait for me
22 to ask a question and then you answer it so this
23 nice lady can take it down, because she's got a
24 transcript that you will be able to read and approve

1 later on. I would ask that you do that.

2 So if you say something like huh-uh
3 or uh-huh, and I ask you is that a yes or no, I'm
4 not being rude, sir. I'm going to ask you for -- to
5 say those things so she has it on the transcript.
6 Fair enough?

7 A Yes, sir.

8 Q First off, sir, can you tell me what your job
9 title is right now as we sit here today?

10 A I'm a special agent with the Air Force office
11 of special investigations.

12 Q Where, sir, are you currently located? Where
13 are you working?

14 A Wright-Patterson Air Force Base.

15 Q Where is that?

16 A Dayton, Ohio area.

17 Q How long have you been stationed there in
18 Dayton, Ohio?

19 A Approximately a year and a half.

20 Q Can you tell us what a special agent does?

21 A Special agent is an investigator for the Air
22 Force. We use specialized techniques to investigate
23 crimes.

24 Q Okay. I want to start off, sir, by thanking

1 you for your service. And the families and the rest
2 thank you for your service.

3 I understand from reading some of the
4 testimony and documents in this case that you
5 were -- joined because of 9/11?

6 A Yes.

7 Q Can you tell us why you decided to join the
8 Air Force?

9 A I worked in law enforcement prior to 9/11, and
10 after the events of 9/11, I felt a duty to also do
11 my career in law enforcement but to serve the
12 country at the same time. So I transitioned into
13 the military in law enforcement.

14 Q All right. Again, thank you for your service.

15 When I say the word "service," what
16 does that mean to you?

17 A Sacrifice.

18 Q Who do you serve when we say service?

19 A The public, people of the United States. The
20 constitution.

21 Q And the citizens of the United States?

22 A Yes.

23 Q Is part of your job, sir, as a special agent
24 also to protect the public?

1 A It is.

2 Q How through a special agent, sir, can you tell
3 me you try to protect the public?

4 A By finding the truth and doing my best to hold
5 those accountable.

6 Q When you say "those accountable," are those
7 folks that have committed crimes in the military,
8 correct?

9 A Yes.

10 Q Unfortunately, there is some folks that join
11 the military but don't follow the rules and they
12 break the law just like folks in the public, right?

13 A That's correct.

14 Q And when they break the law, it's your job as
15 a special agent to go in and prove up the case
16 against them and hold them accountable if they are
17 guilty, is that right?

18 A To clarify, it's my job to check the facts,
19 find to truth and provide that information to judges
20 or a legal team to hold those people accountable.

21 Q You testified earlier that you were in law
22 enforcement, is that correct?

23 A Yes.

24 Q Tell me a little bit about yourself. Where

1 did you grow up?

2 A I grew up in southern California.

3 Q Where did you go to high school?

4 A Chella Valley High School.

5 Q Where is that?

6 A About an hour, two hours, southeast of Los
7 Angeles.

8 Q What year did you graduate high school?

9 A 2000.

10 Q How old are you as you sit here today?

11 A Thirty-seven.

12 Q How many years have you been in the Air Force?

13 A Approximately 17 and a half years.

14 Q When you got out of high school in 2000 what
15 did you do at that point?

16 A I went to work for Indio police department,
17 Indio, California.

18 Q Tell me about your training at the Indio
19 police department. What -- how did you become a
20 police officer? I assume you took training.

21 A I was not a police officer.

22 Q What did you do for the Indio police
23 department?

24 A I was considered community service officer, a

1 non-sworn position.

2 Q Were you going to college at the time?

3 A I was taking some college courses at the time.

4 Q Tell me about your police background prior to
5 joining the Air Force.

6 A It consisted of some part-time law enforcement
7 academy training as a reservist, like a night
8 school. And my duties at the Indio police
9 department were more of parking enforcement, code
10 enforcement administrative stuff. Not criminal
11 enforcement, if that makes sense.

12 Q When you did -- I guess when you were working
13 at the Indio police department -- did I pronounce
14 that right?

15 A Yes.

16 Q Did you do any bookings of anybody that was
17 arrested?

18 A No, sir.

19 Q Did they ever teach you how to do fingerprint
20 or fingerprint cards or electronic fingerprint
21 analysis when you were at the Indio police
22 department?

23 A The fingerprint training we had was just
24 limited to the physical collection of someone's

1 prints. I don't recall having training on a
2 specific database or booking.

3 Q So what you would see is them rolling folks'
4 fingers on the ink and on the pad and teaching you
5 how to do it properly to get the entire print on the
6 card?

7 A Yes.

8 Q As far as any administrative activities
9 related to that, you had no training in the Indio
10 police department?

11 A It was not part of my duties and I had no
12 official training on a system or database or a way
13 to do it.

14 Q Okay. How long did you work for the Indio
15 police department?

16 A I joined the police department as an employee
17 in June of 2000, and worked up until I enlisted in
18 the Air Force in May 2002.

19 Q So you were almost two years?

20 A Yes, sir.

21 Q Did you have the same title when you were
22 there the entire time?

23 A I believe so. Community service officer was
24 my title.

1 Q During that time, did you go to any type of a
2 police academy?

3 A Yes. Just the night school, part-time academy
4 for reserve training. I wouldn't consider it a
5 police academy.

6 Q Would the night school and courses that you
7 were taking allow you to obtain certification as a
8 police officer?

9 A It allows you to obtain certification that is
10 a level three reserve officer in California under
11 the POST police officer standard and training
12 system. It does not train you to be a certified
13 police officer, it just allows you to perform some
14 functions if you were hired on as a reserve, which I
15 was not.

16 Q During those times that you took the night
17 school classes, did that have anything to do with
18 fingerprint submission or administrative duties as
19 it relates to arresting someone that you can recall.

20 A Not that I recall.

21 Q Okay. I want start off by asking you: What
22 did you do to prepare for your deposition today?

23 A I didn't prepare as far as going over any
24 documents, other than talk with my attorney.

1 Q I'm not going to ask you what -- I don't want
2 to know any conversations you had with your
3 attorney. It's your testimony here under oath that
4 you did not review any documentation, correct, in
5 preparation of your testimony today?

6 A Other than what I did with my attorney.

7 Q What documents did you look at with your
8 attorney? I'm not asking for conversations. I'd
9 simply like to know what documents you reviewed with
10 your attorney.

11 MR. FURMAN: I can read off the Bates
12 numbers. Would that be helpful?

13 MR. WEBSTER: I want the testimony from
14 him, please.

15 BY MR. WEBSTER:

16 Q Tell me what documents you recall reviewing in
17 preparation for your testimony with your lawyers.

18 A I recall reviewing interview item of myself as
19 part of -- I think the investigation that the Air
20 Force OSI did. I recall reading a snippet from the
21 DODIG's report, and I recall reading an affidavit
22 that I had sworn to in regard to the Kelley case.
23 Various internal data page notes. Give me a second.
24 I'm trying to remember.

1 Q Take your time.

2 A That's what comes to my mind right now.

3 MR. WEBSTER: Can you please read those
4 Bates numbers in for me?

5 MR. FURMAN: CDI interview, USA 15547
6 through 51. The search warrant affidavit, USA
7 13789, dash, 90. The internal data pages, USA
8 13569 through 79. There was also the IDP
9 review notes, which is Bates number DODIG 10075
10 through 89. He reviewed the checklist from the
11 control file; Bates number is 411 through 412.
12 There was the investigative plan for the
13 criminal file, USA 14094 through 97. The Devin
14 and Tessa Kelley fingerprint cards, USA 13769
15 through 80. And there was an email from the
16 mother of Tessa Kelley that has been produced.
17 I only have an internal Bates number. I can
18 give you a copy of that. It has been produced.

19 MR. WEBSTER: Is that all of the
20 documents?

21 MR. FURMAN: Yes, correct.

22 BY MR. WEBSTER:

23 Q Your lawyer gave us a list of the documents
24 you reviewed. Does that refresh your recollection

1 as far as you can remember, the ones that you looked
2 at?

3 A Yes.

4 Q Prior to ever hearing about this -- let me ask
5 you this: Prior to meeting with your lawyers, did
6 you review any documentation on your own?

7 A No.

8 Q Back when -- I want to talk about this event,
9 the Kelley shootings occurred in November of 2017.
10 Where are you when you first heard about that?

11 A I was in Kandahar, Afghanistan.

12 Q What were you doing in Kandahar, Afghanistan?

13 A I was the superintendent of an expeditionary
14 team. Our job was to conduct counterthreat
15 operations and force protection for the base.

16 Q During that time, when you first heard about
17 this shooting in Texas, how did you become notified
18 it was Kelley and someone that you may have known?

19 A I first saw the headlines. I didn't initially
20 recognize the name. I saw a message from -- at
21 least one or two people that I knew from Holloman
22 Air Force Base at the time that sent me messages
23 saying, do you remember this person? And I didn't
24 initially.

1 And then I -- from talking
2 remembered, this was someone that I interviewed, and
3 it came together.

4 Q And you brought us some documentation here
5 today that kind of documents those conversations,
6 correct?

7 A Yes, sir.

8 --O--

9 (Deposition Exhibit 1 marked.)

10 --O--

11 BY MR. WEBSTER:

12 Q I'm going to show you Exhibit 1 to your
13 deposition, which is the first one, and we will
14 identify it as a one, two -- five-page document.
15 And it starts off with Matt at the top, is that
16 fair?

17 A Yes.

18 Q Who is Matt?

19 A Matt is Matthew Taylor. He was not a special
20 agent, but he was a security forces member that was
21 assigned to Detachment 225 to work specifically with
22 drug enforcement related cases.

23 Q Detachment 225, can you tell us what that was?

24 A It was the OSI unit that was assigned to

1 Holloman Air Force Base that would have investigated
2 the Devin Kelley case.

3 Q Just so everybody knows, the judge and jury in
4 this case, the OSI is what?

5 A Air Force Office of Special Investigations.

6 Q Detachment 225, what is your understanding as
7 Detachment 225's responsibility at Holloman Air
8 Force Base?

9 A Our responsibility was to identify,
10 neutralize, and deter crimes against the Air Force.
11 Essentially conduct criminal investigations and
12 counterintelligence investigations in support of the
13 Air Force and DOD.

14 Q Go back for a minute to Exhibit 1 in front of
15 you. It says -- his name is Matthew Taylor,
16 correct?

17 A Yes.

18 Q How long did y'all work together?

19 A Worked for at least two years, maybe more.

20 Q Y'all still friends?

21 A Yes.

22 Q You still friends as you sit here today?

23 A Yes.

24 Q Where is Matthew Taylor working right now?

1 A I think he works in Moore, Oklahoma.

2 Q Is he still in the armed forces?

3 A No. He retired a few years ago.

4 Q Did you work hand in hand with Matthew Taylor
5 for approximately two years?

6 A At least a year. I mean, we worked in the
7 same unit. I worked with him maybe for a total of a
8 year on cases.

9 Q If you look at Exhibit 1 at the top, I would
10 assume the right-hand side where the blue is are
11 your text messages?

12 A That's correct.

13 Q Had you talked to Matt on the phone before
14 this text message started?

15 A No.

16 Q When you text him you say, did I know the
17 shooter? Was that one of our cases? How would he
18 know what you were talking about? You see there at
19 the top?

20 A I could have seen something on another
21 messaging system. This is all I could find. I
22 don't know how it was initiated. The conversation
23 initiated at some point on 6 November.

24 Q Did you primarily speak with Matt via text

1 message?

2 A That was Facebook Messenger. That was my
3 means of communicating when I was deployed.

4 Q Absolutely. You were not calling from
5 Kandahar, Afghanistan on a phone, it would have to
6 have been Facebook Messenger.

7 A Yes.

8 Q You probably had some messaging prior to this,
9 right, to set up the conversation, did I know the
10 shooter? Was that one of our cases?

11 A It might have been that I saw him or someone
12 post something on their social media account, and I
13 might have reached out to him and said, did I know
14 the shooter? I don't know specifically why I sent
15 that message.

16 Q Matt responds, it was one of our cases, you
17 should have known him. You were still the
18 superintendent.

19 A Yes.

20 Q Obviously, Matt remembered this guy, correct?

21 A Yes.

22 Q And once you started thinking about it, were
23 you able to have an independent recollection of
24 Kelley?

1 A Sort of. I mean, this -- at that point, it
2 happened several year ago. It was still in the
3 process of coming back, remembering it.

4 Q Then you write Spice. What does that mean?

5 A Spice is a controlled substance.

6 Q Spice is -- okay.

7 A So we, Matt Taylor and I had run many cases --
8 it's a synthetic marijuana. Regarding Spice, when I
9 first heard the name Devin Kelley I thought maybe
10 this was a subject from one of our drug cases
11 together.

12 Q You were still the superintendent. What does
13 he mean by superintendent?

14 A So superintendent is a title for the senior
15 enlisted agent at a detachment or as an OSI unit.
16 That was not my official title, because I was too
17 junior in rank to hold that time. It's an Air Force
18 enlisted force structure nuance.

19 My title would have been the
20 noncommissioned officer in charge. But everyone
21 referred to me as a superintendent. That's a common
22 title for that position.

23 Q What were your job responsibilities as a
24 superintendent at that time?

1 A As a superintendent, primary responsibility
2 were to direct the daily operations, ensure criminal
3 investigations were proceeding as they should. And
4 also had administrative duties as far as case
5 reviews.

6 Q Was part of your job responsibilities to
7 ensure that you complied with DOD regulations?

8 A Yes.

9 Q Were part of those also to ensure you were
10 complying with AFOSI regulations in the Air Force?

11 A Yes.

12 Q Not only were you -- were you working your own
13 caseload at that time?

14 A When I moved into that position -- I didn't
15 hold that position my entire time there. I was no
16 longer a lead agent on investigations, because I had
17 more of an overall management job. I did provide
18 support to other investigations, but I was not the
19 lead manager on any one case.

20 Q Would you agree that you were overworked in
21 that capacity at Detachment 225?

22 MR. FURMAN: Objection; form. You can
23 answer.

24 THE WITNESS: I experienced a very high --

1 a very overwhelming workload at that time, yes.

2 BY MR. WEBSTER:

3 Q Would you agree with me, sir, when you took
4 over as superintendent or even when you came to
5 Detachment 225 as a special agent that you didn't
6 feel like you had been properly trained by the Air
7 Force?

8 MR. FURMAN: Objection to form. You can
9 answer.

10 THE WITNESS: When I got there, I didn't
11 know what I didn't know. When I got there, I
12 didn't know if I was prepared or not for what I
13 would experience in the year to come. In
14 hindsight, I don't think I was fully prepared
15 for that.

16 BY MR. WEBSTER:

17 Q You would agree with me as we sit here today
18 it's the Air Force's responsibility to train you to
19 be able to do your job?

20 MR. FURMAN: Objection to form. You can
21 answer.

22 THE WITNESS: Yes.

23 BY MR. WEBSTER:

24 Q Would you agree with me, Mr. Hoy, as an

1 individual who has joined the Air Force to defend
2 our country and the rest, that's something you
3 depended on the Air Force to do so you could do your
4 job to the best of your ability?

5 A Yes.

6 Q Would you agree with me, sir, that the
7 training, especially with respect to the
8 administrative duties at Detachment 225, was lacking
9 in 2011 and 2012 when you dealt with the Kelley
10 case?

11 MR. FURMAN: Objection; form. You can
12 answer.

13 THE WITNESS: I don't know if I would use
14 the word extremely lacking. It was lacking.
15 There was not emphasis put on training to a
16 certain standard when it came to administrative
17 procedures.

18 BY MR. WEBSTER:

19 Q And part of those administrative procedures
20 that were lacking, would you agree with me, had to
21 do with the submission of fingerprint cards to the
22 FBI?

23 A Yes.

24 Q In fact, when you got there at Detachment 225,

1 Mr. Hoy, no one specifically sat you down and taught
2 you how to submit fingerprints, did they?

3 A I'm trying to recall. I'm sure I received
4 some form of on-the-job training on it. I don't
5 remember -- I don't remember it being a formal
6 training. I'm sure I was walked through it the
7 first time we had someone that needed to be
8 criminally booked.

9 Q But there was no emphasis placed by at least
10 your -- no emphasis placed upon -- on submission of
11 fingerprints to the FBI by your command when you
12 first came to Detachment 225 in 2010, 2011?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: Not specifically that I
15 recall.

16 BY MR. WEBSTER:

17 Q You had no specific training where you sat
18 down and took a course with anyone as it related to
19 fingerprint submissions to the FBI, correct?

20 A Had no specific training on how we in OSI and
21 in that detachment submitted fingerprints. Training
22 was more general -- in general how fingerprints are
23 taken and submitted.

24 Q Back in 2011 -- let me ask you this: Did they

1 give you training on when fingerprints should be
2 submitted to the FBI?

3 MR. FURMAN: Objection to form.

4 BY MR. WEBSTER:

5 Q Do you understand my question?

6 A I do. I'm trying to recall. Can you ask me
7 again?

8 Q Absolutely.

9 Can you tell me during the training
10 when you got to Detachment 225 and you were a
11 special agent, did anyone give you any specific
12 training as it related to when you would submit
13 fingerprints cards to the FBI?

14 A Someone may have. I don't recall what the
15 training was and how it was presented to me.

16 Q Did anyone sit down and give you training when
17 you got there as a special agent at Detachment 225
18 as to why you submitted fingerprint cards to the
19 FBI?

20 A I don't recall.

21 Q Do you know as you sit here today, January 7,
22 2020, why you as special agent in Detachment 225
23 would have submitted fingerprints cards to the FBI?

24 A Yes.

1 Q Can you explain to us why you do that.

2 A You submit fingerprints cards to the FBI so
3 there is a national record that shows what the
4 person was indexed for and what the disposition of
5 the case against him was. So it's a searchable
6 record by any law enforcement person.

7 Q So part of it was -- is your understanding now
8 as you sit here today that if you believe there to
9 be probable cause that a crime has been committed,
10 assault, which qualifies under the index -- are you
11 with me, why would you submit the fingerprints under
12 that scenario to FBI?

13 MR. FURMAN: Objection to form. You can
14 answer.

15 THE WITNESS: Is your question do I
16 understand if someone was assaulted, why
17 fingerprints would be submitted to the FBI?

18 BY MR. WEBSTER:

19 Q Yes.

20 A Yes.

21 Q Why?

22 A It shows a record of the offense they were
23 convicted of or that was adjudicated.

24 Q But it's not only convicted or adjudicated, it

1 would also be charged with, correct?

2 A Yes.

3 Q And the reason you -- that you do that is
4 to -- because it is a risk to the public, not only
5 the folks on the base, but others, if those folks
6 get out and go commit other crimes, you need that in
7 the database so the other governmental agencies
8 would know he has been charged with the crime?

9 A It establishes a criminal record.

10 Q Right. So once you submit the cards to the
11 FBI, it goes into a national database. And so if
12 someone were picked up for -- let's assume -- let me
13 re-ask the question.

14 Assume with me -- and we will use
15 Kelley -- that Kelley had the same exact facts and
16 his fingerprints -- as we sit here today -- start
17 off with this -- as we sit here today, we know that
18 Kelley's fingerprints were never submitted at all to
19 the FBI, correct?

20 MR. FURMAN: Objection to the form.

21 THE WITNESS: That's my understanding.

22 BY MR. WEBSTER:

23 Q Prior to November of 2017, correct?

24 MR. FURMAN: Same objection. You can

1 answer.

2 THE WITNESS: Prior to that -- after
3 November '17, I learned they were never
4 submitted.

5 BY MR. WEBSTER:

6 Q Right. And so I want you to assume with me
7 that prior to November 2017 Kelley's fingerprint
8 cards were submitted to the FBI. Even after his
9 conviction, and he has been convicted of assault,
10 you would agree with me as you sit here today he
11 would not be able to purchase a firearm?

12 MR. FURMAN: Objection to form. You can
13 answer.

14 BY MR. WEBSTER:

15 Q If, indeed, the FBI registered his fingerprint
16 cards in the NCI database as convicted of a felony
17 assault, he would not be able to buy a firearm in
18 the general public in America, correct?

19 MR. FURMAN: Same objection.

20 THE WITNESS: I'm assuming he would not be
21 able to purchase a firearm from any, I guess,
22 vendor that is participating in background
23 checks.

24

1 BY MR. WEBSTER:

2 Q Correct. Meaning he would not legally be able
3 to go into a store, such as Academy, and buy a
4 firearm?

5 A That's my understanding.

6 Q The reason those fingerprints are recorded is
7 more than that, in that -- assume with me that
8 Kelley submitted the fingerprints cards or they were
9 submitted and he had a felony on his record in the
10 NCIS's database. He then drives down to New
11 Braunfels and he commits another crime, he robs a
12 store and kills somebody. If the fingerprints are
13 in the NCIS's database, when he's charged with that
14 crime that investigator will then know that he has
15 been convicted of a felony in the Air Force?

16 A In the NCIC database, right.

17 Q If the Air Force doesn't put those in there
18 and he going out and commits the exact same crime,
19 it then would have shown, at least at this time with
20 no fingerprints that he is not a convicted criminal
21 correct?

22 MR. FURMAN: Objection to form.

23 BY MR. WEBSTER:

24 Q The database.

1 MR. FURMAN: Objection.

2 THE WITNESS: There would be no
3 information available.

4 BY MR. WEBSTER:

5 Q They would not be able to punish him or
6 enhance his punishment or know that he was a prior
7 felon?

8 MR. FURMAN: Objection.

9 THE WITNESS: Yes.

10 BY MR. WEBSTER:

11 Q Would you agree with me, sir, that based on
12 that information when the Air Force does not
13 properly train you or give you orders to submit
14 those fingerprints to the FBI so they can be placed
15 in the NCIS database, that that creates an
16 increased -- substantial increased harm to the
17 public, because now you are allowing a guy who has
18 been convicted of a felony to not only be able to
19 buy weapons, but to commit other crimes without even
20 keeping him in jail?

21 MR. FURMAN: Objection to form.

22 THE WITNESS: Trying to figure out how to
23 answer your question. It was kind of
24 long-winded. Can you break it down for me,

1 please?

2 BY MR. WEBSTER:

3 Q Let me break it down for you.

4 We are assuming -- would you agree
5 with me sir, when you did not submit a felon's
6 fingerprints in the Air Force, you did not submit a
7 felon's fingerprints to the NCIS database, that that
8 creates an increased risk of harm to the public in
9 general?

10 MR. FURMAN: Objection to form. You can
11 answer.

12 THE WITNESS: In general.

13 BY MR. WEBSTER:

14 Q And it creates an increased risk of harm
15 because that person, it doesn't show up in any other
16 system, at least in public life, outside of the
17 military that you are a convicted felon?

18 A Yes.

19 Q That allows you to continue to operate as just
20 a normal individual citizen with all of the rights
21 of any of the others, correct?

22 MR. FURMAN: Objection; form.

23 THE WITNESS: Essentially.

24

1 BY MR. WEBSTER:

2 Q But when you submit those fingerprint cards in
3 there, it takes away his right to vote, correct?

4 MR. FURMAN: Objection to form.

5 BY MR. WEBSTER:

6 Q Do you know that?

7 A I'm assuming it is.

8 Q You know felons cannot vote?

9 A Yes.

10 Q It takes away his right to legally purchase
11 firearms?

12 A Yes.

13 Q And it also subjects him to further punishment
14 if he commits another crime?

15 A Yes.

16 Q You would agree with me here as a special
17 agent it is in your best interest to protect the
18 public from an increased risk of harm to submit the
19 fingerprint cards so if he commits another crime, he
20 gets punished for it?

21 A Yes.

22 Q And it keeps him from being an increased harm
23 to the public, because then he can't buy a gun and
24 go kill people, correct?

1 A Yes.

2 Q At least buy a gun legally.

3 A Yes.

4 Q Going back for a minute to Exhibit 1. It
5 says -- you asked Spice. And then it says, no, he
6 was convicted of domestic violence. Did I read that
7 correctly?

8 A Yes.

9 Q Beat his wife and convicted -- beat his wife
10 and kid, convicted in 2012 so I'm guessing it
11 happened in 2011.

12 Did I read that correctly?

13 A Yes.

14 Q Your response was, I remember now, Castillo
15 and I did his subject interview.

16 A Yes.

17 Q As soon as he brought up the domestic violence
18 and the kid, you remembered it?

19 A I remembered who he was talking about.

20 Q Why did that trigger your memory?

21 A It narrowed down the cases that I remembered
22 running at that time, and --

23 Q I'm sorry, I didn't mean to interrupt you.

24 A Said he beat his wife and kid. I recalled the

1 name Kelley associated with the abuse of a child.

2 Q It says, I remember now, Castillo and I did
3 it -- Bustillo. That was your commander?

4 A I was correcting -- auto correct.

5 Q Was it -- did this stand out in your mind
6 because he had been hitting and punching a child?

7 MR. FURMAN: Objection; form. Foundation.

8 BY MR. WEBSTER:

9 Q I mean, you remember that, right?

10 A What stood -- well, cases involving children
11 normally stand out in my mind. This stood out
12 because the child was removed from the home, and
13 this was my first experience being involved when a
14 child was removed from the family and seeing the
15 emotions. It stood out in my mind.

16 Q When you -- you took the child away based upon
17 your recollection of the documents and the rest
18 because not only had this baby's clavicle been
19 fractured, but his head had been fractured also?

20 MR. FURMAN: Objection to form.

21 THE WITNESS: Child, Youth and Family
22 Services make the decision to take the child.

23 BY MR. WEBSTER:

24 Q It says, we took the kid and the mom was

1 crying hysterically. That's something that you
2 don't normally forget.

3 A I said we as in -- I guess we, law enforcement
4 in general. The decision would not been ours to
5 take the kid. It would have been CPS, essentially.
6 They call it Child, Youth and Family Division, I
7 think, in New Mexico.

8 Q And then on -- the next message on here,
9 insane. Matt says, insane. I have been trying to
10 follow the news on it. Guess it was a dispute with
11 the mother-in-law and he went to kill her at the
12 church.

13 A Yes.

14 Q Were you reading the news on it also at that
15 point?

16 A I was reading some of the news, the
17 highlights.

18 Q And then it says, fucking A, he was fucking
19 crazy. Did I read that correctly?

20 A Yes.

21 Q What you remembered back on November 6, 2017,
22 the day after this incident happened, that you
23 remember fucking A, he was fucking crazy?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: My responses after this are
2 emotional responses from learning that I
3 interviewed someone that turned out to be a
4 mass murderer. A lot going through my mind,
5 and started texting stuff. And I'm
6 recalling -- not a psychologist. I don't know
7 if this guy is crazy. I remember from
8 interviewing him that he didn't seem right.
9 And I remembered there being control issues
10 where he, I believe, had a camera watching his
11 spouse, Tessa, at the time. Things stuck out
12 in my mind that this guy was not normal.

13 BY MR. WEBSTER:

14 Q You knew -- when you thought back here in
15 November 2017, you remember from interviews he was
16 not right, correct? He was dangerous.

17 MR. FURMAN: Objection to form.

18 THE WITNESS: There was something not
19 right about him.

20 BY MR. WEBSTER:

21 Q I mean, if he's threatening his wife with a
22 gun and watching her with a webcam and beating up a
23 kid, there is -- he's a dangerous person, isn't he?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: I mean, those were my
2 thoughts then. There was something off with
3 him, he was a dangerous person.

4 BY MR. WEBSTER:

5 Q When we say "dangerous person," we are talking
6 about back in 2011, 2012, when you were dealing with
7 Devin Kelley, that's when you knew he was dangerous
8 and crazy?

9 A I didn't know he was dangerous and crazy. I
10 knew he exhibited behaviors that were not normal, I
11 guess, for a normal law-abiding citizen. And it's
12 hard to say that he stood out among other offenders
13 that we had. There were other people that -- we
14 investigated murder cases, people that we knew were
15 violent at the time. Speculation then was there was
16 something off with this person.

17 Q Five years later, you remember him being very
18 crazy --

19 MR. FURMAN: Objection.

20 BY MR. WEBSTER:

21 Q According to your -- you said he's fucking
22 crazy. You remembered that in 2017.

23 MR. FURMAN: Objection.

24 THE WITNESS: That's how I responded to

1 it.

2 BY MR. WEBSTER:

3 Q The next part Matt writes, holy crap. Really?
4 What a psycho. Correct?

5 A Yes.

6 Q You wrote back, we should have taken him out
7 back and shot him when we had the chance.

8 A Yes.

9 Q You are saying that because you knew back in
10 2011, 2012, how dangerous he was?

11 MR. FURMAN: Objection to form.

12 MR. WEBSTER: You, as a special agent in
13 the Air Force.

14 MR. FURMAN: Objection.

15 THE WITNESS: No way of knowing that back
16 then. I did not know that back then. Writing
17 this at that time in 2017 it was an emotional
18 response thinking that this guy killed a bunch
19 of people and he was in our interview room
20 prior to that.

21 BY MR. WEBSTER:

22 Q Did you go back and watch your video of your
23 statement?

24 A Which video?

1 Q The video of your statement when you -- the
2 first statement you gave. They videotaped your
3 interview. I don't know if you call it a statement,
4 they did an interview of you the very first time
5 after the event occurred, the Air Force.

6 A November of 2017?

7 Q I think so.

8 A I did not go back and view that.

9 Q Do you remember saying something to the effect
10 that this was very bothersome to you, you may have
11 contributed to this incident?

12 A I might have said that. I don't remember.

13 Q If the video testimony that -- we don't have a
14 transcript of it. If it says that in the first -- I
15 believe it's 1600 on the videotape. It says, I feel
16 terrible because I -- we may have contributed to
17 this incident, would you have any reason to deny
18 that?

19 A To deny --

20 Q That you said it?

21 A No.

22 Q Do you still feel that way today?

23 MR. FURMAN: Objection to the form.

24 THE WITNESS: The way I felt then in

1 November until today, I became -- I joined law
2 enforcement to help people and save lives.
3 Knowing someone crossed paths with myself and
4 my organization and ended up taking lives is --
5 goes against why I became -- joined law
6 enforcement.

7 Q Were you finished?

8 A I was going to continue and say that if my
9 organization had done something or missed something
10 that could have contributed to something bad
11 happening to another person, I do feel terrible
12 about that.

13 Q That happened here, didn't it?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: It appears so.

16 BY MR. WEBSTER:

17 Q Because Kelley, as you probably know and have
18 read, was able to walk into Academy, pass a
19 background check, and buy an AR-15 that killed 26
20 people in a church.

21 A That's what I heard.

22 Q The Air Force did not properly train you, sir,
23 did they, in order for you to know why you were
24 submitting those fingerprints in 2011, 2012, so he

1 would be listed in the NCIS database with the FBI
2 and unable to buy a firearm at the time, correct?

3 MR. FURMAN: Objection; form. You can
4 answer.

5 THE WITNESS: In hindsight, we could have
6 had more thorough training and emphasis on the
7 criminal booking process and timelines of when
8 things should be submitted.

9 BY MR. WEBSTER:

10 Q As we sit here today on January 7, 2020, and
11 you found out what happened with this incident in
12 November of 2017, every case you have worked on
13 since that you have had fingerprints underneath the
14 DOD regulations and the Air Force regulations, you
15 have always submitted those fingerprints cards every
16 time now, haven't you?

17 A Since --

18 Q After this event occurred.

19 A I definitely had more heightened attention to
20 detail to the processing, criminal booking.

21 Q Meaning -- when we say heightened to detail
22 you make sure on every single case you work on as a
23 special agent that those fingerprints are submitted
24 properly to the FBI, be it either electronically or

1 fingerprints cards. You make sure they are listed
2 and sent off as your job responsibility, correct?

3 A Yes.

4 Q The Air Force did not make that clear to you
5 or train you specifically prior to November of 2017
6 on how to do that properly and why you are doing it,
7 did they?

8 MR. FURMAN: Objection to the form.

9 THE WITNESS: The training that we get
10 today is a lot more thorough and clear than it
11 was then for sure.

12 BY MR. WEBSTER:

13 Q Tell me about the training -- what do they do
14 now?

15 A Various training, computer database training
16 programs. There is PowerPoint presentations, there
17 is on-the-job training that specifically goes into
18 how they should be entered into a database, what
19 coordination should be made with the legal office
20 and when they should be submitted and how you should
21 verify before a case is archived that they are
22 properly submitted.

23 Q There is very acute attention to detail under
24 the Air Force regulations to make sure that you, as

1 a special agent, and other special agents, submit
2 those to every database you are supposed to put it
3 in?

4 A Yes.

5 Q That would include the NCIS, right?

6 A NCIC.

7 Q NCIC. I'm terrible with acronyms. That would
8 be -- you know, have extreme emphasis on making sure
9 before each case is closed and even during the case,
10 after you find probable cause to put those in the
11 NCIC database so the public knows that this
12 individual has been charged with a felony crime or
13 one on the index, assault or murder or whatever it
14 is, so that is recorded in the proper places so the
15 American public knows about it, correct?

16 A Yes.

17 Q That was not emphasized at all prior to
18 November of 2017, correct?

19 A It was --

20 MR. FURMAN: Objection to form.

21 THE WITNESS: It was trained on. But it
22 was not emphasized even close to the magnitude
23 it is today.

24

1 BY MR. WEBSTER:

2 Q When you say it was trained on, that was some
3 on-the-job training you had when you showed up as a
4 special agent?

5 A Yes.

6 Q It was trial by fire, or they kind of dropped
7 you in the grease and you learn as you go?

8 MR. FURMAN: Objection to form.

9 THE WITNESS: I was trained by agents that
10 were still being trained themselves, if that
11 makes sense.

12 BY MR. WEBSTER:

13 Q Looking back, sitting here today, that was not
14 the best way to protect the public from an increased
15 risk of harm with that type of training?

16 MR. FURMAN: Objection to form.

17 THE WITNESS: It was not effective
18 training.

19 BY MR. WEBSTER:

20 Q It was not effective in protecting the public
21 from an increased risk of harm, correct?

22 MR. FURMAN: Same objection.

23 THE WITNESS: Essentially, yes.

24 MR. WEBSTER: Can we take a quick break.

1 (Pause in Proceedings.)

2 BY MR. WEBSTER:

3 Q Mr. Hoy, we are back on the record. You
4 understand you are still under oath?

5 A Yes.

6 Q Real quick in general, would you agree with me
7 that special agents, when they are not properly
8 trained by the Air Force, that can lead to
9 operational failures in criminal investigations?

10 MR. FURMAN: Objection; form.

11 THE WITNESS: Yes.

12 BY MR. WEBSTER:

13 Q Would you agree with me that when you have
14 operational failures in criminal investigations,
15 that that not only leads to an increased risk to Air
16 Force members and the general public, in general,
17 that they may be subjected to an increased risk of
18 harm?

19 MR. FURMAN: Objection; form.

20 THE WITNESS: Probable.

21 BY MR. WEBSTER:

22 Q More likely than not?

23 MR. FURMAN: Objection to form.

24 THE WITNESS: Sure.

1 BY MR. WEBSTER:

2 Q Now, if you look on -- go back to Exhibit 1 we
3 were talking about here. You should have taken him
4 out back and shot him when we had the chance. Wish
5 it was that easy. Makes you kind of sick inside
6 knowing we know a mass murderer?

7 A Yes.

8 Q I understand. You were upset about the
9 situation. It's a bad deal, right?

10 A Yes.

11 Q And what the Air Force could have trained you
12 to do at that time is taken out his ability to
13 legally buy a firearm, correct, back in 2011, 2012?

14 MR. FURMAN: Objection; form.

15 THE WITNESS: They could have equipped us
16 with fingerprinting machines that worked and
17 given us proper training to utilize the
18 machines. Probably would have been correctly
19 indexed.

20 BY MR. WEBSTER:

21 Q When we go back to indexing, did you
22 understand -- take your mind back to 2011, 2012 as a
23 special agent. Had anybody told you exactly why you
24 indexed those fingerprints to the FBI?

1 A My understanding in hindsight of indexing
2 is -- wasn't that clear then. At that time, I
3 assumed that putting them in our database, that it
4 communicated with whatever system that people were
5 indexing.

6 Q When we say database, that's the --

7 A I2MS.

8 Q It was -- is that yes?

9 A Yes.

10 Q I guess back in 2011, 2012, you thought when
11 you put these things in the system of the I2MS, that
12 uploaded with the FBI and every over governmental
13 agency, is that what you are testifying to?

14 A I didn't know for sure. I assumed some
15 official record was transmitted from that.

16 Q Is it safe to say as you sit here today back
17 in 2011, 2012, you didn't understand the actual
18 submission process and exactly what was it was for
19 at that time?

20 A Yes.

21 Q You didn't know that it kept people from
22 buying firearms, correct, when you submitted it to
23 the FBI?

24 A I knew that if it's properly submitted to the

1 FBI it would -- I didn't know, I guess, the
2 processes we were doing was not doing that, if that
3 makes sense.

4 Q Were you not properly trained that, hey -- you
5 didn't understand the gravity of the fact if you
6 didn't send the fingerprints in, it was not going to
7 the FBI?

8 A Yes.

9 Q And then when you go back to 2011, 2012, I
10 have read in some stuff that you were proud that
11 y'all put that guy in jail for a year?

12 A Yes.

13 Q That's something that you wanted to do at that
14 time?

15 A Yes.

16 Q If we go back to Exhibit 1, I have been
17 dealing with them here too, but we call them
18 terrorists.

19 A Yes.

20 Q Truthfully, Kelley was a domestic terrorist,
21 wasn't he?

22 MR. FURMAN: Objection to form.

23 THE WITNESS: One could make that
24 interpretation of a terrorist.

1 BY MR. WEBSTER:

2 Q The next part it says, damn terrorist,
3 Bustillo said to pull up I2MS and review the case.
4 He is curious if he was part of it or not, LOL. At
5 that point in time, y'all remembered this guy and
6 you wanting to know what work you did on the file,
7 right?

8 A Yes.

9 Q It says, yep, he and I did the interview --
10 abuse interview. Were you able to there in
11 Afghanistan, get into the I2MS system and review the
12 file?

13 A No.

14 Q How did you figure that out?

15 A From my memory.

16 Q Oh. Once you started talking about it, you
17 remembered everything -- it jogged your memory?

18 A Some things started to come to my memory.

19 Q When you were at Detachment 225, how many
20 criminal investigations do you believe you did?

21 A The whole time I was there? I don't know.
22 Between 40 to 80.

23 Q Okay.

24 A That's a guess.

1 Q How many criminal investigations do you think
2 you had done prior to 2017?

3 A Prior to 2017?

4 Q Hundreds?

5 A Hundreds.

6 Q And Kelley stood out in your mind after this
7 incident?

8 A After we figured out who he was.

9 Q It says, Does Bustillo have a Facebook
10 account? And he wrote, no. You say, I have been
11 trying to get in touch with him.

12 A Uh-huh.

13 Q Were you trying to get in touch with him
14 because you all were friends?

15 A Yes. I was holding the job that he had
16 previously had in Kandahar, Afghanistan.

17 Q I guess if you wanted to talk to him, it would
18 be nice to talk to him about what was going on in
19 Afghanistan also?

20 A Yes.

21 Q Did you guys get confessions? Vince wants to
22 know. And he sent you his contact information?

23 A Matt Taylor sending me Vince Bustillo's
24 contact information.

1 Q I think we did to some extent. He broke his
2 two-year-old son's collarbone and assaulted his wife
3 with a firearm from my recollection. Tell him to
4 check his email.

5 A Yes.

6 Q Did you have any email conversations --

7 A That was that one.

8 Q These are the ones that you had with Mr.
9 Bustillo?

10 A No.

11 Q Did you talk to him on the phone after this
12 email?

13 A No.

14 Q It says here at the bottom, holy shit,
15 something. And then it has an arrow down. Do you
16 recall what you are talking about at that point?

17 A Double-check email -- I think it says I'll
18 text him or call him or something like that.

19 Q That was the end of the conversation that you
20 could find on Facebook?

21 A Yes.

22 Q There was no other conversations that you had?

23 A Relating to this. We talked periodically
24 throughout the years.

1 Q I guess if we go back up to where he wrote, he
2 broke his two-year-old adopted son's collarbone and
3 assaulted his wife with a firearm, do you see that?

4 A Yes.

5 Q You knew in 2017, the day after this incident
6 happened, that he had -- you recalled specifically
7 from your own recollection that he was using
8 firearms, correct?

9 A From the interview that I remember conducting
10 with Bustillo, I don't think firearms came up at
11 that point. After the interview we were trying to
12 figure out how these injuries happened to -- I think
13 the kid's name was J. Later on, as that
14 investigation progressed, I believe Yonatan Holz was
15 the base agent. I remember there being information
16 about him -- someone making a complaint about him
17 threatening, I think, Tessa with a firearm.
18 That's -- that text is me summing up in my mind what
19 I remember from the other case as I recall it.

20 Q When you prepared yourself for the -- when you
21 prepared yourself for your deposition today, how
22 much of this -- if you look to your right, this is
23 the I2MS -- a printout. Have you seen this?

24 A I have seen some of it.

1 Q I know you didn't read every word. You read
2 different parts of it?

3 A Yes.

4 Q When you reviewed this, did you see anything
5 that appeared to be incorrect or wrong or something
6 that was not right in it?

7 A This is the original investigation against
8 Kelley that 225 did?

9 Q Yes.

10 A From the stuff I looked at, I don't recall
11 right now if I saw inconsistencies.

12 Q I'm going to mark as an exhibit to your
13 deposition USA 00013393 through -- I don't know.
14 It's a large stack of documents -- the I2MS file.
15 Take the rubber band off it and I'm going to ask you
16 questions about your investigation back in 2011.

17 A Okay.

18 Q Do you recall when you first got the call that
19 there had been something that happened? How did you
20 learn there was a problem with Devin Kelley?

21 A I vaguely remember there being a report,
22 either from the hospital or from Child Youth Family
23 Division indicating there were injuries to the
24 child, and I guess those injuries didn't make sense.

1 Their report was potential child abuse.

2 Q Did that come from the doctor? Were they at
3 Providence Hospital in El Paso?

4 A May have been.

5 Q Look at page 13411. That's it. It should
6 start off with Dr. Harwood. Do you see that?

7 A Yes.

8 Q And it says -- if you look down to the middle,
9 this was the complaint that was taken by -- it was
10 an interview of Captain Jeremy S. Harwood. Is that
11 part of the base? Is that someone that is an
12 enlisted person in the Air Force?

13 A When I see captain, I'm assuming that's an
14 officer in the Air Force.

15 Q Victim was seen at the emergency room at
16 William Beaumont Army Medical Center, El Paso,
17 Texas, for vomiting and diarrhea? It's about the
18 fourth line down.

19 A Yes.

20 Q If you drop from there it says, Dr. Harwood
21 noticed bruising on the left side of victim's face.

22 A Yes.

23 Q This would have been where y'all -- they were
24 doing an interview to determine what has happened to

1 J at that point in time?

2 A Yes.

3 Q If you look at the bottom, Dr. Harwood viewed
4 a copy of the victim's CAT scan and identified fluid
5 collection consistent with a small left frontal
6 subdural hemorrhage? Do you know what that is?

7 A I know it's an injury below the surface of the
8 head.

9 Q That's from something hitting this baby in the
10 head?

11 MR. FURMAN: Objection to form.

12 THE WITNESS: Yes.

13 BY MR. WEBSTER:

14 Q It says, an abdominal ultrasound and skeletal
15 survey identified a right clavicle fracture in the
16 medial one-third area.

17 A Yes.

18 Q When you are reviewing this, does that give
19 you -- that gives you concern there has been an
20 injury to a child?

21 A Yes.

22 Q It's not usually consistent with a child
23 falling down as an investigator, right?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: Yes.

2 BY MR. WEBSTER:

3 Q Specifically when that child is only -- I
4 think at that point, ten or 11 months old?

5 A I think what stands out is kids can obtain
6 injuries for various reasons, but the absence of an
7 explanation for the injury is what stood out as
8 something we needed to inquire further on.

9 Q During that time, once y'all kind of
10 interviewed -- in the process you interview the
11 doctors, or when there is a complaint like this,
12 what are the next steps you take in an investigation
13 as a special agent once you have a complaint from a
14 doctor like this?

15 A One of the next steps is to consult with what
16 we call forensic science consultant. That's a
17 person with knowledge and expertise on, I guess the
18 physiologies and biology of injuries and someone
19 that can speak and interpret the doctor's records
20 for us.

21 Q Do you -- at what point in time do you
22 determine you are going to interview the parents?

23 A For this case? In my recollection, we didn't
24 have a lot of information to go on, outside of what

1 the doctor said, the report. So the next -- I don't
2 remember if maybe we interviewed someone else at
3 that time. But the next logical step was to talk to
4 the people that had access to J, the parents.

5 Q They relayed, I'll represent to you that the
6 only two people that had access to the child at that
7 time was Devin Kelley and his mother, T. Kelley.
8 I'm forgetting -- Tracy?

9 MR. FURMAN: Tessa.

10 BY MR. WEBSTER:

11 Q The only people that had access to the child
12 at that point in time would be Kelley or Tessa,
13 right?

14 A I believe so.

15 Q Now, when y'all go and do these interviews,
16 say you are going to do an interview of Kelley, can
17 you explain the process or how y'all do it? Because
18 I saw in here they take smoke breaks and things like
19 that, correct, while you are doing the interview.
20 Do you recall that?

21 A The process we go through of doing an
22 interview?

23 Q Yes.

24 A In this case, Kelley was a member of the

1 military, so he is subject to code. If we suspect
2 him of any crime, we read him his Article 31 rights,
3 and that requires us to do a subject interview. We
4 create a log of that interview, and take breaks,
5 potentially take notes of how the interview
6 transpires.

7 Q Do you take notes of the physical
8 characteristics of things going on of the suspect?

9 A That's something that is not uncommon. I
10 guess it's the preference of the note taker.

11 Q As a special agent, did the Air Force ever
12 train you that when you are interviewing subjects,
13 you may want to write down what is going on with the
14 person, their physical characteristics and that type
15 of thing? That helps you determine probable cause,
16 doesn't it?

17 MR. FURMAN: Objection to form.

18 THE WITNESS: I guess all of your
19 observations are valid. Which observations you
20 choose to write down, I guess that's situation
21 dependent. Those observations could help when
22 you compile it if you are requesting or
23 articulating probable cause for an affidavit or
24 something.

1 Q When you were taught to do these types of
2 interviews, did they teach you to watch for physical
3 characteristics and mannerisms and things?

4 A Yes.

5 Q Why did they teach you those things?

6 A Those are body language, baseline indicators
7 that could potentially show that someone is
8 frustrated or maybe showing deception in their
9 answers.

10 Q When you were interviewing Devin Kelley and
11 Tessa Kelley, you were trying to determine the
12 truth?

13 A Yes.

14 Q Part of that would be, did someone abuse this
15 child, right?

16 A Yes.

17 Q If you go to page 13664 -- it's pretty far
18 down. Let me know when you are there. I'm going to
19 jump around a little bit. That's not my fault; the
20 file comes as it is. It should say interview
21 record.

22 A Yes.

23 Q June 9, 2011, correct?

24 A Yes.

1 Q And that -- this is your handwriting, isn't
2 it?

3 A No.

4 Q I'm asking because it says principal
5 interviewer S.A. Vince Bustillo. Do you see that?

6 A Yes.

7 Q It says special agent James Hoy, as the
8 assistant. Do you recall this?

9 A Yes.

10 Q And on the second page here, it's signed by --
11 whose handwriting is this, if you know?

12 A It looks like Vince Bustillo's handwriting.

13 Q Y'all are friends, and you recall his type of
14 handwriting, right?

15 A I mean, I wouldn't recognize it in a lineup.
16 I think this is his handwriting.

17 Q Fair enough. He signed the page, the next
18 page, right?

19 A Yes.

20 Q If you look on the side here, it kind of
21 gives -- you see where it says JFH?

22 A Yes, those are my initials.

23 Q What does that mean? When you are initialing
24 over here it says, at 2128 hours, SA Vince H.

1 Bustillo read the suspect his or her rights
2 according to Article 31 UCMJ, Assault of Violation
3 of Article 128, UCMP was being investigated. Do you
4 see that?

5 A Yes.

6 Q Were you the actual person -- when you initial
7 it, are you the actual person reading the rights?

8 A It's initialing verifying that happened at
9 that time.

10 Q Is that your handwriting with the initials?

11 A Yes.

12 Q So if we keep going down here, it kind of goes
13 through everything -- it's a checklist of what you
14 are supposed to do to preserve the rights and those
15 types of things?

16 A Essentially, yes.

17 Q If you go down to page 13664, pertinent
18 details and specific requests. Do you see that?

19 A Yes.

20 Q During this time you are asking questions to
21 elicit responses to determine whether or not you
22 have probable cause to arrest Kelley, right, or
23 Tessa Kelley?

24 MR. FURMAN: Objection.

1 THE WITNESS: We are asking questions to
2 try to figure out the truth.

3 BY MR. WEBSTER:

4 Q If you believe there is probable cause to
5 arrest them, you are going to do that?

6 MR. FURMAN: Objection to form.

7 THE WITNESS: An arrest works differently
8 in the military.

9 BY MR. WEBSTER:

10 Q Explain what would happen if you believed
11 there was probable cause.

12 A If we believe there was probable cause that
13 he -- I guess committed the crime, assault, normally
14 coordinate with our legal office. I don't remember
15 if they were present, or -- at that time. And we
16 would normally criminally book them. That day we
17 criminally book them is considered the arrest date.

18 Q Okay. When you criminally book them, do they
19 go to jail?

20 A No.

21 Q They are released back on the base?

22 A In the military you are considered under some
23 type of control. They are released to the control
24 of their unit, unless they are an immediate threat

1 and have to be put in confinement. The most common
2 thing is they get released back to the care of their
3 unit.

4 Q If you look here at the pertinent details and
5 specific requests, is this your handwriting here on
6 the corner on the left-hand side?

7 A Events? That does not look like my
8 handwriting.

9 Q Do you see where it says provided with food,
10 2030, accepted food?

11 A Yes.

12 Q It says escorted outside at 2046, tobacco
13 break?

14 A Yes.

15 Q That y'all gave him a smoke break?

16 A Yes.

17 Q It says y'all escorted him to interview room.
18 And then, stated he felt sick and vomited, do you
19 see that?

20 A I do.

21 Q That's not normal, is it?

22 MR. FURMAN: Objection to form.

23 THE WITNESS: I wouldn't say it's -- I
24 have seen it happen a few times before to

1 people that are usually on the verge of
2 confessing. Sometimes they vomit before then.
3 It has happened one or two times.

4 BY MR. WEBSTER:

5 Q Because they are so nervous and upset about
6 what is happening to them, they know they are going
7 to be charged with a crime that they get physically
8 ill?

9 MR. FURMAN: Objection to form.

10 THE WITNESS: I don't know particularly
11 why. I'm assuming in those cases that's true.

12 BY MR. WEBSTER:

13 Q As you sit here today, do you have any
14 independent recollection of Mr. Kelley having to go
15 to vomit?

16 A I don't remember that. Reading it now I'm
17 trying to remember. And I vaguely remember having a
18 trash can in the room near him. Until now, it
19 didn't stand out.

20 Q It says, SA Holz asked suspect if he wanted us
21 to call a doctor. Suspect said no, let me try to
22 throw up one more time. And he was okay?

23 A Yes.

24 Q He was even -- he was not complaining that he

1 was -- he was not complaining he was suffering from
2 some virus. You knew at that point in time, this
3 guy was having a problem as a special agent with
4 this interview?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: We suspected that.

7 BY MR. WEBSTER:

8 Q Did you believe when you finished the
9 interview -- he requested legal counsel at 2331 and
10 terminated the interview on the next page?

11 A Yes.

12 Q At 2331, would you agree with me based upon
13 your interview and your review of the file in
14 preparation for your testimony that you had probable
15 cause at that point in time to suspect Kelley had
16 committed assault on a child?

17 MR. FURMAN: Objection; form.

18 THE WITNESS: I don't recall what exact
19 statement or admissions he gave at that time.
20 So I don't recall if we were still in the phase
21 of trying to determine which -- whether it was
22 Tessa or Kelley who was the perpetrator, the
23 person that assaulted J.

24

1 BY MR. WEBSTER:

2 Q Did you -- when you did the investigation, do
3 you recall whether or not you actually took a look
4 at baby J?

5 A Whether I looked at baby J?

6 Q Yes.

7 A I'm trying to remember. I may have seen baby
8 J in the hospital. I don't recall -- it doesn't
9 stick out in my memory.

10 Q I'm wondering -- go to page 13755. If you
11 look, you can see on the baby's face bruising there.
12 Can you see it above the ruler?

13 A I think so.

14 Q And then more specifically, if you go to page
15 13760. Are you there?

16 A Yes.

17 Q Okay. You can actually see if you look with
18 me where it looks like a handprint has come across
19 that baby's face?

20 A Yes.

21 Q So that to you, as a special agent, was clear
22 that someone had slapped that baby when you looked
23 at the pictures or when you did the investigation,
24 correct?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: We suspected that J
3 sustained a slap from a hand in the face.

4 BY MR. WEBSTER:

5 Q How many times have you investigated a mother
6 who is beating -- abusing their child since you have
7 been a special agent, if you can recall?

8 A I don't recall right now an investigation.

9 Q It's fair to say it's very rare?

10 MR. FURMAN: Objection to the form.

11 BY MR. WEBSTER:

12 Q At least in the military that you see women
13 abusing their child?

14 A In my experience, I have not investigated
15 cases of women abusing their child.

16 Q As part of the process when they were
17 interviewing, I see they were measuring the bruises?

18 A Yes.

19 Q Do you compare those to hand size? Is that
20 the reason you are measuring them?

21 A I think the reason is -- multiple reasons.
22 You want to establish a scale on how big the injury
23 is so you could compare it to other things like a
24 hand. I think in this case, you were concerned

1 about a ring on a hand. And a lot of this was under
2 the advice of our forensic science consultant, what
3 pictures should be done in order to get the best
4 evidence that you could compare potential objects
5 that could have caused injury.

6 Q If we set the scene of what was going on when
7 you interviewed Kelley, you knew, because you had
8 seen the child when y'all went to the hospital, that
9 they -- the baby had slap prints on the face, right?

10 A Yes.

11 Q You knew that he had a subdural hematoma as a
12 result of hitting his head, correct?

13 A Yes.

14 Q And that he had a broken collarbone?

15 A Yes.

16 Q You would have known those things prior to
17 walking into the interview with Kelley, am I right?

18 A Yes.

19 Q As part of your special -- part of this, did
20 y'all remove the child there at the hospital?

21 A We -- I guess OSI -- we wouldn't remove any
22 child that would not be in our purview unless we are
23 overseas in some jurisdiction and were the only
24 people that could. So that -- this case would have

1 had a joint component with the child protective
2 service agency. They would make the decision to
3 remove that and rely on information they collected
4 as well as information we collected to make that
5 decision.

6 Q When was the child removed?

7 A From my memory, I thought it was that night.

8 Q At the hospital, correct?

9 A It might have been at the hospital. I think
10 we might have informed them that night that the
11 child was removed, they wouldn't be getting the
12 child back that night.

13 Q Because you stated earlier in Exhibit 1 when
14 we were talking about the text message, you talked
15 about, we took the kid and the mom was crying
16 hysterically.

17 A Yes.

18 Q It was you -- it was child protective
19 services, but you had made the decision to take the
20 baby away, or the group had?

21 MR. FURMAN: Objection.

22 THE WITNESS: Child Protective Service
23 make the decision based on the information they
24 had and the information we shared with them.

1 BY MR. WEBSTER:

2 Q Would you agree with me removing the child was
3 a decision that was made because the child was
4 endangered at that time, or y'all believed that to
5 be?

6 A For the abundance of safety.

7 Q Right. As you stood there and saw the baby
8 with the injuries they had, the cracked skull,
9 collarbone, slap on the face, bruising that looked
10 like a handprint, from what the doctor told you, you
11 would agree with me you had a reasonable belief that
12 a crime had been committed on this child?

13 A I don't recall being in the emergency room.

14 Q Let me rephrase it.

15 At some point that night when the
16 child was removed, after all of the injuries that
17 you had seen as a special agent along with
18 Mr. Bustillo, would you agree -- believe that --
19 even after you interviewed and saw Devin Kelly
20 throwing up in the trash can and asking for a
21 lawyer, would you agree with me at that point you
22 had a reasonable belief that a crime had been
23 committed?

24 MR. FURMAN: Objection to form. You can

1 answer.

2 THE WITNESS: We believed a crime had been
3 committed, and we were in the process of trying
4 to determine who committed it. It was -- we
5 suspected it was Kelley based on how the
6 interviews went. At that point, there was
7 still questions unanswered, you know. Could it
8 have been both of them? One of them? Was one
9 covering up for the other one?

10 BY MR. WEBSTER:

11 Q And does it make more sense -- you understood
12 when you do the interview, you would ask Kelley, is
13 this your biological son?

14 A I think we asked that.

15 Q He told you no?

16 A Correct.

17 Q Why would you ask that?

18 A From training that I recall, people are most
19 likely to inflict injuries on kids that are not
20 their biological children. I think that's based on
21 research.

22 Q You knew that same day that you believed that
23 a crime had been committed on June 9, 2011?

24 A That he was not the biological father?

1 Q Yes. Do you believe on June 9, 2011 you had
2 probable cause to believe that Kelley had committed
3 assault on a child?

4 MR. FURMAN: Objection to form.

5 THE WITNESS: It's hard to remember. I
6 know we suspected him. Did we feel strongly
7 that we had gone from a reasonable belief to
8 probable cause? I don't recall if we were
9 there yet. We could have been.

10 BY MR. WEBSTER:

11 Q Okay. Do you normally fingerprint folks that
12 you don't have probable cause for?

13 A Sometimes.

14 Q Can you give me circumstances in which you
15 would fingerprint someone who you feel you don't
16 have probable cause, but you fingerprint them
17 anyway?

18 A Yes. The -- I don't know if it was a standard
19 operating procedure, but the practice that we had at
20 Detachment 225, and I think this happened other
21 places in OSI, was if you read someone their Article
22 31 rights, you were going to collect their
23 fingerprints. Your decision to submit the
24 fingerprints could come later if you had probable

1 cause established. If you didn't, those
2 fingerprints would stay in a file.

3 Q If you go flop it back up and drop down to the
4 exhibit and go to 13418, please. Okay. Now, this
5 is on June 9, 2011, and this is a report of
6 investigative activity. Do you see that? And
7 this -- is this what you type up as a synopsis of
8 your interview of Kelley?

9 A This would be a narrative, I guess, synopsis
10 of our interview.

11 Q It says at the top, on June 9, 2011, Special
12 Agent Vince Bustillo and Special Agent James Hoy
13 interviewed the subject?

14 A Yes.

15 Q And it says, subject went to Article 31 rights
16 advisement. Subject Devin Kelley waived his rights
17 and provided the following information.

18 Did I read that correctly?

19 A Yes.

20 Q His Article 31 rights are basically your
21 constitutional rights?

22 A Miranda rights. It's stated different
23 terminology. It's the same thing.

24 Q You are advising him that you are questioning

1 him on whether or not he has committed a crime?

2 A Yes.

3 Q It says, subject D. Kelley -- Devin Kelley,
4 right?

5 A Yes.

6 Q -- denied striking the victim or having
7 knowledge of subject T. Kelley striking victim.
8 He's denying he ever hit baby J, or that T.
9 Kelley -- his wife stuck him too?

10 A Yes.

11 Q Subject D. Kelley stated I know, she, subject
12 T. Kelley, didn't hit him. She loves him too much.
13 Do you see that?

14 A I know she -- subject T. Kelley, didn't hit
15 him. She loves him too much.

16 Q Does that give you any indication thinking
17 back as a special agent that you are probably
18 dealing with the individual that hit the child as
19 being Kelley?

20 A It does give us suspicion that it's
21 probably -- he is probably the perpetrator.

22 Q And it says, subject D. Kelley has never
23 observed subject T. Kelley hit victim, and subject
24 T. Kelley never said anything or gave any indication

1 that she would have hit the victim, right?

2 A Yes.

3 Q Y'all were asking questions at that point in
4 time going, have you seen her hit her? And he, at
5 least according to this, denied she would ever hit
6 her child.

7 MR. FURMAN: Objection to form.

8 THE WITNESS: He was denying she injured
9 the child.

10 BY MR. WEBSTER:

11 Q During this time, he is throwing up?

12 A I don't remember specifically.

13 Q According to your notes, the notes of the
14 interview, he's throwing up in the trash can in the
15 interview room.

16 A According to the notes.

17 Q And then it says, only subject -- if you go
18 down the next sentence, subject D. Kelley did not
19 spend very much time with victim. Only subject D.
20 Kelley and subject T. Kelley had direct access to
21 the victim. Do you see that?

22 A Yes.

23 Q That limits your suspects very easily?

24 A Yes.

1 Q Mom and Kelley telling you in the interview
2 room while vomiting off and on she would never hit
3 her child, she loves him too much?

4 A Yes.

5 Q Now look at the next sentence. It says,
6 subject D. Kelley's mother, Rebecca Ann Kelley, was
7 with the victim at GCRMC. Subject D. Kelley denied
8 his mother caused the injury to victim and stated my
9 mom has never been on the base.

10 A Yes.

11 Q Y'all were saying, did your mom hit the baby?

12 A We were trying to eliminate or confirm her as
13 a potential suspect.

14 Q Did that kind of rule her out as a suspect at
15 that point?

16 A According to him.

17 Q Were you able to rule her out as a suspect?

18 A I believe throughout the case we ruled her
19 out.

20 Q Sure. It says, subject D. Kelley claimed he
21 did not know how victim sustained the injury to his
22 head.

23 A Yes.

24 Q He's saying, I don't know how that happened?

1 A Yes.

2 Q Which is typical for someone who has committed
3 a crime?

4 MR. FURMAN: Objection to form.

5 THE WITNESS: People that are being
6 untruthful or denying the accusations against
7 them.

8 BY MR. WEBSTER:

9 Q A lot of times it's, I don't know what
10 happened?

11 A Yes.

12 Q That's a way as a special agent and
13 investigator, you realize, if you don't know how it
14 happened, you probably did it, correct?

15 A That's an assumption.

16 Q It says, subject T. Kelley first observed the
17 injuries to victim's face on June 8, 2011 while
18 driving with subject D. Kelley to GCRMC. His wife
19 is the one that brought up the injuries to the
20 baby's face, right, to him?

21 A Yes.

22 Q And then is that -- how does that play into
23 your investigation as the determination of probable
24 cause?

1 A It gives us more reason to suspect that he was
2 the one that caused the injury to J.

3 BY MR. WEBSTER:

4 Q He didn't point out the injuries. She did,
5 right?

6 A That's a logical assumption, right.

7 Q According to your notes?

8 A Yes.

9 Q Or the notes of Mr. Bustillo's investigation
10 that you were sitting in on?

11 A Yes.

12 Q It says, subject D. Kelley suggested victim
13 received the injury from falling on the floor. Do
14 you see that?

15 A Yes.

16 Q That's a big red flag, isn't it?

17 MR. FURMAN: Objection to form.

18 BY MR. WEBSTER:

19 Q As a special agent?

20 A It didn't seem plausible.

21 Q Right. Because the baby -- babies fall; that
22 happens.

23 A Yes.

24 Q They don't have a subdural hematoma normally

1 or a broken clavicle?

2 A Not common injuries for a regular fall.

3 Q Or even in -- while crawling or playing in his
4 crib. That just doesn't happen.

5 A That didn't make sense to us.

6 Q It says, subject D. Kelly claimed victim was
7 shy of anyone except subject T. Kelley but was okay
8 with subject D. Kelly as long as subject T. Kelley
9 was nearby. Do you see that?

10 A Yes.

11 Q Does that refresh your recollection at least
12 when you finished the interview on June 9, 2011 that
13 you believed you at least had probable cause that
14 Kelley that committed assault according to the index
15 of the DOD regulations?

16 MR. FURMAN: Objection to form.

17 THE WITNESS: Reading this now, I believe
18 we had information to suggest probable cause
19 that he was likely the person that caused the
20 injuries based on all this. Going through
21 this -- processing this information at the time
22 with everything going on, I believe he was a
23 prime suspect, and I believe we were still
24 working toward collecting really good probable

1 cause, building the probable cause against him
2 so we would get the good affidavit and run a
3 solid case. It's hard for me to speculate what
4 our thoughts were going through it. In
5 hindsight, I mean, the information is stacked
6 up suggesting he's the one that committed the
7 assault.

8 BY MR. WEBSTER:

9 Q You know you had an interview with the
10 inspector general on Monday, June 11, 2018. Do you
11 remember that?

12 A Yes.

13 Q And in that interview, did you take an oath to
14 tell the truth?

15 A Yes.

16 Q And you -- back then, would you agree with me
17 that probably your remembering what happened with
18 Kelley was more fresh on your mind than as we sit
19 here today?

20 A In the June 2018 interview?

21 Q Yes, sir.

22 A I would not say any more or less fresh.

23 Q It's about the same?

24 A Probably.

1 Q Did you tell those investigators you told them
2 the truth on everything you could remember?

3 A Yes.

4 Q They typed up an official transcript of this.
5 Have you read this?

6 A I think I read parts of that.

7 Q When you read the transcript, was there
8 anything in there you disagreed with?

9 A I remember a statement that says I believed at
10 the time there was probable cause. I believe I made
11 that statement in hindsight. Looking back at the
12 totality of everything, I believed there was
13 probable cause.

14 When I made the statement, I had not
15 had the opportunity to review anything, any of these
16 documents. So exactly where in time we were on
17 believing we had probable cause, now being refreshed
18 my answer is a little different. Because I believe
19 we were working toward probable cause, but I
20 couldn't say we definitively at that moment in time
21 felt we had everything.

22 MR. LeGRAND: Can we go off the record for
23 a second?

24 (Pause in Proceedings.)

1 MR. LeGRAND: Can we request both defense
2 counsel and plaintiff's that baby J's name be
3 removed from the record?

4 MR. FURMAN: We need to mark it as -- we
5 can do that on the transcript.

6 MR. WEBSTER: I'm sorry. I don't know if
7 the kid's name is J.

8 THE WITNESS: The child, just say the
9 child?

10 MR ALSAFFAR: This is Jamal. Can y'all
11 hear me? We don't need -- we will not need to
12 mark this deposition as confidential. The
13 court reporter can redact the name, leaving the
14 initial. We are not going to mark it
15 confidential. Just redact the name and initial
16 only. Is that fair?

17 MR. FURMAN: That's fine.

18 MR ALSAFFAR: I just wanted to make it
19 clear.

20 BY MR. WEBSTER:

21 Q I was asking you questions about that. You
22 gave an audio transcription of your interview with
23 the inspector general on Monday, June 11, 2018 that
24 we were talking about?

1 A Yes.

2 Q On page 22, line 7, the question by Special
3 Agent A-L-E-M-A-N -- does that sound familiar?

4 A I think so.

5 Q Question, do you believe you had probable
6 cause for the offense which Kelley committed during
7 the first subject interview. The one that you were
8 in on June 9, 2011. Answer, we did. That was your
9 answer.

10 A Yes.

11 Q Do you still stand by that today?

12 A Looking back on it, I believe we had probable
13 cause.

14 Q The next question, he asks, you did believe
15 you had it for Article 128 assault? And your
16 response was, for assault, it was based on the, you
17 know, review of the injuries of the child, and I
18 don't remember what happened in the other witness
19 interviews, but I believe we had a reasonable belief
20 he struck his child when we did the interview.

21 Do you have any reason to disagree
22 with that as you sit here today?

23 MR. FURMAN: Can I provide the witness
24 with a copy of it?

1 MR. WEBSTER: Absolutely. Page 22 of the
2 statement.

3 MR. FURMAN: Do we need to mark it as an
4 exhibit?

5 --O--

6 (Deposition Exhibit 2 marked.)

7 --O--

8 BY MR. WEBSTER:

9 Q It's Bates label 15727 at the top, line 7. I
10 want you to read through the bottom of the page and
11 tell me when you are finished.

12 A Okay.

13 Q It says -- the next question it asked after it
14 says -- the answer for assault on line 19 says,
15 uh-huh. At this point, did a Holloman Air Force
16 Base SJA agree that probable cause existed to
17 believe Kelley committed the offense of assault?
18 What is SJA?

19 A Staff judge advocate.

20 Q What do they do?

21 A It's a lawyer for the Air Force, the
22 government. It's normally I guess chief military
23 justice. So they are leading the criminal
24 investigations on base.

1 Q They are prosecutors?

2 A Yes.

3 Q Answer, I believe so. I don't remember who
4 that was. I'm trying to think, I don't remember if
5 that was Captain Spencer or not. That was one name
6 I remembered toward the end of my time there.

7 A Yes.

8 Q Did you often consult with the SJA as to
9 whether you had probable cause?

10 A Yes.

11 Q Do you recall specifically in Kelley's case on
12 June 9, 2011 contacting the acting base SJA and
13 agreeing that probable cause existed to believe he
14 committed a crime?

15 MR. FURMAN: Objection to form.

16 THE WITNESS: I don't have a memory of it.
17 I'm not saying it did or didn't happen. I'm
18 not sure.

19 BY MR. WEBSTER:

20 Q Do you agree with me this memory was closer in
21 time?

22 A Chronologically it is.

23 Q Was it your normal practice to call the SJA
24 and talk to them and say, hey, I think we have

1 probable cause here?

2 A Yes.

3 Q If you said, hey, I have probable cause, what
4 would the SJA say? Once you explained the facts --
5 I would assume you explain the facts?

6 A Yes.

7 Q Tell them what is going on. And then what
8 would the SJA normally do at that point?

9 A The SJA might discuss elements of proof for
10 whatever article that we were investigating to make
11 sure we captured those elements. And they might
12 advise us on other offenses that we should be
13 questioning or advising the subject on their rights
14 for those other offenses. It's common now that they
15 would tell us if they, I guess, agree that there is
16 probable cause for the offense that was being
17 investigated. I don't remember if that was always a
18 common thing or not.

19 Q Has it changed with respect -- training
20 changed on how you interact with the SJA as a
21 special agent?

22 A Yes. There is more formalized and documented
23 process on the communication with SJAs with regard
24 to probable cause.

1 Q Because probable cause triggers a chain of
2 events of investigation that you have a
3 responsibility under the DOD instructions and the
4 Air Force, correct?

5 A Yes.

6 Q Can you tell the judge and the jury what
7 the -- what chain of events that triggers when you
8 determine as a special agent probable cause, now,
9 after November 2017?

10 A When we have probable cause that a person
11 committed an offense, they are indexed for that
12 offense that is going in the national database. And
13 that index is there throughout the investigation
14 until a final disposition is made and adjudicated so
15 the trial take place and a person is convicted or
16 not.

17 Q Do you know much about civilian law
18 enforcement? Do you know how the process works if
19 you are a civilian? Say a suspect gets arrested for
20 murder, and -- let's do assault on a child, okay?
21 And they can get out of jail on bail. You are
22 fingerprinted and that type of things.

23 A Yes.

24 Q Once they are in jail, they have a hearing, an

1 arraignment, and they could be placed on -- bond out
2 and get out of jail, right?

3 A Yes.

4 Q Do you know whether or not you are allowed --
5 when you are charged with a felony crime if you are
6 allowed to be in possession of a firearm?

7 A I don't know for certain what the guidance is.
8 I believe, speculating, there is a entry made in the
9 national indexing -- NICS or whatever it is -- that
10 indicates that you are being investigated for a
11 crime and you cannot then purchase a firearm for a
12 specified amount of time, unless it's been
13 determined -- a final disposition. If you are
14 convicted at that time, it would be indefinite or --

15 Q You understand now after November of 2017 that
16 the process that you are doing is mirroring what it
17 is in the civilian world. You are placing on notice
18 that Kelley cannot run off the base and buy a
19 firearm while he's indicted for a felony, correct?
20 That's why you submit the prints to the FBI.

21 A Yes.

22 Q So because if he would have drove across to El
23 Paso, Texas and wanted to buy a handgun and had the
24 money, but the fingerprints aren't in the database,

1 he can buy it, correct?

2 A He can legally buy one.

3 Q As long as he lies on 4473?

4 A Yes.

5 Q What y'all are doing is protecting the public
6 from an increased risk of harm by submitting those
7 fingerprints when you believe probable cause exists
8 for an arrest?

9 MR. FURMAN: Objection.

10 THE WITNESS: Essentially.

11 BY MR. WEBSTER:

12 Q On June 9, 2011, I don't know if I got an
13 answer to the question. After reviewing the
14 statements and the rest, do you believe on June 9,
15 2011 you had probable cause against Devin Kelley?

16 MR. FURMAN: Objection to form. Asked and
17 answered.

18 THE WITNESS: I believe on June 9, 2011 we
19 were working toward probable cause based on the
20 facts. And it's not -- I guess a legal opinion
21 that we for sure had probable cause, but we
22 believed that Devin Kelley likely was the
23 person that injured the child.

24

1 BY MR. WEBSTER:

2 Q But you, at least according to your testimony
3 on 6/11/2018, you talked with the base SJA and
4 believed there was probable cause to exist that
5 Kelley committed the offense of assault?

6 MR. FURMAN: Objection to form.

7 BY MR. WEBSTER:

8 Q On page 15727.

9 A I believe I probably talked to the SJA. I
10 don't remember talking to SJA.

11 BY MR. WEBSTER:

12 Q You should have, correct?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: It was normal practice to.

15 BY MR. WEBSTER:

16 Q Now you do it every time?

17 A Yes.

18 Q Now, I want to go to -- go back to Exhibit 2,
19 the big stack. It's blank on the bottom. I'm going
20 to the fingerprints cards, and it's Bates labeled
21 13776.

22 A Is that near the top?

23 Q It's way down toward the bottom. If you go to
24 13769 and you turn to it. Are you there?

1 A Yes.

2 Q Now, can you tell us -- tell the judge and
3 jury, what exactly is this?

4 A It's a FD-249, the fingerprint card. What we
5 use to capture fingerprints during criminal booking.

6 Q This would have been on 6/9 of 2011, correct?

7 A Yes.

8 Q It says, this is being taken by Yonatan Holz,
9 right?

10 A Yes.

11 Q You are still friends with him, aren't you?

12 A Yes.

13 Q In fact, there is another text message set
14 that you brought here today where y'all discussed
15 Devin Kelley, correct?

16 A Yes.

17 Q Because Yonatan remembered Kelley also,
18 correct?

19 A Yes.

20 Q We will get to that in a minute. But go back
21 to here. Was he -- did he work under you? Were you
22 his superintendent -- I'm sorry?

23 A I was his noncommissioned officer -- I was his
24 supervisor.

1 Q Bustillo was there and he was your boss,
2 right?

3 A Yes.

4 Q Was he trying to help you with the
5 fingerprints -- was Yonatan helping you with the
6 fingerprint card?

7 A I believe so. It was kind of an all-hands
8 effort.

9 Q So is this his handwriting that you can
10 remember on the fingerprint card?

11 A I'm assuming. It's not mine.

12 Q I mean, the person that was officially taking
13 the fingerprints, that is usually the person that
14 writes on a card?

15 A Right. It's not uncommon for us to pre-fill
16 out cards for each other. The handwriting as I see
17 here does not look like mine.

18 Q It says date of offense, 6/8/2011.

19 A Yes.

20 Q Place of birth, Texas USA?

21 A Yes.

22 Q It has -- I can't make out the first part. I
23 don't know what that first word is. Marks -- scars,
24 marks, tattoos, amputations. Right calf he had,

1 quote, CNH with alpha and omega on there?

2 A I think that is what it says.

3 Q Right shoulder back, dove coming out of the
4 clouds. This would be the documentation of Kelley's
5 tattoos?

6 A I believe so.

7 Q Okay. If you look back at the other pages,
8 those are of Ms. Kelley, Tessa Kelley?

9 A Can I make a clarifying statement on this --
10 13776? Place of birth and country of citizenship, I
11 don't think those are my marks. But they -- it
12 could have been. And I only say that because if I
13 would have noticed it was missing at some point
14 later, I may have wrote that.

15 Q Does that look like your handwriting?

16 A Could be. I wanted to clarify that those two
17 boxes are similar enough to my handwriting it could
18 be. Everything else I have seen on this form is not
19 mine.

20 Q Back in June of 2011 and the year of 2012, you
21 reviewed these fingerprint cards in the file, right?

22 A Yes.

23 Q So if you -- if you drop down after that, it
24 says charge or citation, violation of Article 128G

1 UCMJ, assault of a child the age of 16, right?

2 A Under the age of 16.

3 Q So at least according to this fingerprint
4 card, when they are filling it out, they are
5 charging him with a crime. When I say "they,"
6 Special Agent Bustillo, Special Agent Holz and
7 Special Agent hoy have determined they are going to
8 charge him or cite him with violation of Article
9 128G, UCMJ, assault of a child under the age of 16.

10 A That's what we suspect him of. It's likely,
11 based on the consultation with the SJA, is what we
12 believe they would be charging him for since we
13 don't charge.

14 Q That's June 9, 2011?

15 A Yes.

16 Q On the next page it shows Mr -- that's when
17 you have the actual fingerprints, correct?

18 A Yes.

19 Q Let me ask you this: When you are
20 fingerprinting them at this time, are you telling
21 them that you are charging them with this? Do you
22 say, I'm fingerprinting you because we are going to
23 charge you with assault of a child under the age 16?

24 A Normally they know what they are being

1 suspected of. Before questioning starts we have to
2 read them their Article 31 rights. We tell them,
3 you are suspected of and give them the offense. We
4 tell them up front what they are being suspected of
5 when it starts. I don't know if a conversation
6 happened that said, you are being booked for what we
7 told you you were suspected of or it was implied.

8 Q It's kind of like you are being arrested,
9 isn't it?

10 MR. FURMAN: Objection to form.

11 THE WITNESS: Yes.

12 BY MR. WEBSTER:

13 Q You don't arrest folks without probable cause?

14 MR. FURMAN: Objection; form.

15 BY MR. WEBSTER:

16 Q At least not if in civilian world?

17 MR. FURMAN: Objection.

18 THE WITNESS: It works differently in the
19 military. When you are read your right and
20 criminally booked, it's viewed as a form of
21 arrest in the military system.

22 BY MR. WEBSTER:

23 Q To that point, you would agree with me when
24 you are fingerprinting him, Mr. Hoy, that you had

1 probable cause to arrest Kelley based upon your
2 investigation?

3 MR. FURMAN: Objection to form.

4 THE WITNESS: That's tough to answer.

5 Because these are hard copy cards, we could
6 collect these cards and then not submit them
7 until we believed we had probable cause to
8 arrest. It's an administrative procedure to
9 collect the fingerprints. So we could take
10 them that day believing we have probable cause,
11 but we could -- the practice then is take them,
12 and if probable cause is determined later, they
13 would be submitted. That's how things were
14 done then.

15 BY MR. WEBSTER:

16 Q When you talked to the investigators before
17 there was a lawsuit involved, you told them you did
18 have probable cause on June 9, 2011.

19 MR. FURMAN: Objection to form.

20 THE WITNESS: I believed that --

21 Q You believe that sitting here today, don't
22 you?

23 MR. FURMAN: Objection to form. Let the
24 witness finish his answer.

1 THE WITNESS: I believe that the totality
2 of the circumstances as we understand it now,
3 we had probable cause.

4 BY MR. WEBSTER:

5 Q Okay. Now, if we go back a few pages to
6 13769. See that?

7 A Yes.

8 Q How many sets of fingerprints did you normally
9 take when the machine was not working in June 2011?

10 A The machine never worked. We always took two.

11 Q You did two sets of fingerprint cards on both
12 hands?

13 A Yes.

14 Q Why would you take two sets of cards?

15 A One card stays in the case file and the other
16 card gets mailed in.

17 Q So the judge understands, when you are doing
18 the fingerprint cards at the fingerprint station, is
19 this self-addressed envelope that doesn't require
20 postage sitting right next to the case file? Or
21 where did you find these in the office at Detachment
22 225?

23 A I don't remember where we kept them. They
24 were readily available somewhere.

1 Q It was easy to find this, correct?

2 A I think so. I don't think it was hard to
3 find.

4 Q It would be easy for you to -- let me ask you
5 this: Based on your training today, if you had to
6 use a fingerprint card such as what we have in the
7 file -- assume with me that the electronic scanning
8 is broken.

9 A Uh-huh.

10 Q Based on your training and what you know
11 today, what did you do next once you fingerprint the
12 individual and have probable cause?

13 A In that scenario, we are using hard copy
14 prints. Based on my understanding of our policy
15 today, we would consult with our legal office. If
16 they agree based on the information we collected we
17 had probable cause, we would submit those at that
18 point. But that -- the most recent policy I have
19 seen, that could even now happen at the very end of
20 the case as far as submitting for indexing.

21 Q When you say "submitting," all you have to do
22 is put the card and one set of the fingerprints,
23 which are labeled 13771 and then 13773 into this
24 self-addressed mail envelope and mail it to the FBI,

1 correct?

2 A Yes.

3 Q You don't have to add any of the letters, you
4 don't have to explain the charges or anything, you
5 just have to send that to the FBI, correct?

6 A Yes.

7 Q If there is a problem the FBI would have in
8 June of 2011 with your fingerprint cards they would
9 contact you guys?

10 A Yeah, they would get ahold of us through our
11 headquarters or some means to ask.

12 Q Regardless, that would have sent these -- when
13 you mail it off to the assistant director, Criminal
14 Justice Information Services for the Federal Bureau
15 of Investigation in Clarksburg, West Virginia, stick
16 it in the mail at Detachment 225, it goes straight
17 and is cataloged sometime in the near future into
18 the NCIC database, correct?

19 A Yes.

20 Q And then that, in turn, alerts that he had
21 been charged with a felony crime under the index of
22 the DOD descriptions and would not allow anyone to
23 purchase a firearm and would put the public in
24 general on notice, correct?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: That's essentially my
3 understanding.

4 BY MR. WEBSTER:

5 Q All right. You would agree with me that the
6 indexing and filing of these fingerprints in June of
7 2011 was a mandatory DOD instruction?

8 A I believe.

9 Q But you were not trained by the Air Force, you
10 or the other special agents that were there,
11 including Yon, your friend, the other --

12 A Agent Holz.

13 Q He was not trained or advised by the Air Force
14 at that time it was mandatory for that to be done on
15 June 9, 2011?

16 MR. FURMAN: Objection to form.

17 THE WITNESS: Are you saying it had to be
18 sent out on June 9, 2011?

19 BY MR. WEBSTER:

20 Q Yes. Once you had probable cause and you
21 charged them with a crime, would you agree that the
22 DOD instructions at that point you were not trained
23 by the Air Force to know you needed to send those in
24 immediately?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: Without seeing -- if the DOD
3 instructions say that, how clear that was for
4 Agent Holz, I don't know.

5 BY MR. WEBSTER:

6 Q How clear was it for you?

7 A My understanding then was we would submit them
8 out the next business day. If this happened at
9 night, it's not going to get in the mail that night.
10 They would go out within the next business day if we
11 had probable cause to send them out.

12 Q That was your practice as an agent; that was
13 your understanding?

14 A Yes. They would go out the next business day
15 if it was determined that there is probable cause.
16 Even then, the process on it was not clear.

17 MR. WEBSTER: Let's take a break for a
18 minute, please.

19 (Pause in Proceedings.)

20 BY MR. WEBSTER:

21 Q Agent Hoy, we took a break. Are you ready to
22 proceed?

23 A I am.

24 Q I was asking you about the submission of

1 fingerprints earlier. Why were those fingerprints
2 not submitted on June 9, 2011?

3 A I do not know.

4 Q Was it your practice for you to submit them as
5 soon as you found probable cause?

6 A I'm not sure what the practice was. I
7 remember sending them out as soon as possible.

8 Q Should it have been submitted?

9 A Should it have been submitted?

10 Q Yes.

11 A I believe it should have been submitted.

12 Q At some point during this process?

13 A Yes.

14 Q Based upon your review of the file and the
15 rest, looking back in your current training, if you
16 knew what you know -- knew now -- what you know now
17 you knew then -- based upon your training and
18 knowledge as we sit here today on January 7, 2020,
19 is it your understanding that those fingerprints
20 should have been immediately or should have been
21 submitted on June 9, 2011?

22 MR. FURMAN: Objection to form.

23 THE WITNESS: The fingerprints should have
24 been submitted as soon as possible.

1 BY MR. WEBSTER:

2 Q It's your understanding as we sit here today
3 that the fingerprints for Kelley were never
4 submitted?

5 A Right.

6 Q Even after probable cause, right, they were
7 never submitted?

8 A It's my understanding.

9 Q Even after he was convicted of a crime?

10 A That's what I have been told.

11 Q After he was discharged for bad conduct in the
12 military?

13 A It's my understanding.

14 Q As things started moving forward with respect
15 to Kelley and you started working on his case, you
16 realized this was a very disturbed individual,
17 didn't you?

18 MR. FURMAN: Objection to form.

19 THE WITNESS: In hindsight he was a very
20 disturbed individual. Going through the case,
21 there was an instance that came up where we
22 knew we were dealing with someone that had
23 behavioral issues, control issues, aggressive
24 tendencies.

1 BY MR. WEBSTER:

2 Q To use your own words, he was fucking crazy?

3 MR. FURMAN: Objection to form.

4

5 THE WITNESS: That's what I said in that
6 text. That's not an official, I guess --

7 BY MR. WEBSTER:

8 Q I understand. It's you being real, correct?

9 A Looking back on him, he's not normal.

10 Q You knew in the -- when you started
11 interviewing him, I knew he was crazy or there was
12 something wrong with him.

13 A Something was wrong with him.

14 Q He was mentally unstable?

15 MR. FURMAN: Objection.

16 THE WITNESS: I don't know if I could -- I
17 have the credentials to say someone is mentally
18 unstable. He said things and had behaviors
19 that concerned myself and our team.

20 BY MR. WEBSTER:

21 Q We agreed earlier that had the fingerprints
22 been mailed in the envelope on June 9 or even June
23 10, at that point in time the FBI, assuming they
24 recorded them and indexed them properly, he would

1 not have been able to purchase a firearm from
2 anyone, correct? They would have to do an NCIC
3 database check, and it would show he had a felony
4 pending, correct?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: I believe it's fair to say
7 that.

8 BY MR. WEBSTER:

9 Q Now, you are aware -- and I'm going to show
10 you Exhibit 3 to your deposition.

11 --O--

12 (Deposition Exhibit 3 marked.)

13 --O--

14 BY MR. WEBSTER:

15 Q This is Exhibit No. 2 in Spencer's, Exhibit 3
16 to yours. This is the official inspector general's
17 report of investigation in the United States Air
18 Force as failure to submit Devin Kelley's criminal
19 history information to the Federal Bureau of
20 Investigation. You reviewed this prior to your
21 coming here today, correct?

22 A Only the page that we went over earlier.
23 That's the only page I think I looked at. Maybe one
24 other page.

1 Q I want you to go to page 31 of the document,
2 Bates 5284.

3 A I'm on page 31. It starts out on each
4 occasion.

5 Q I want to see if we can get agreement with
6 what they put in here, and what y'all would have
7 known as the special agents at the Air Force base,
8 okay?

9 If you look at the top it says, on
10 each occasion because no prohibiting information was
11 in any of the three systems searched by NICS to
12 include the submission of fingerprints to the FBI,
13 the FFL was notified the sale could proceed. Do you
14 see that?

15 A Yes.

16 Q Now, he is -- at this point in time, Kelley
17 has been charged with the crime, right, on
18 February 12, 2012?

19 A Yes.

20 Q Okay. But he is able to on that date, if you
21 see at the top of the document, first on February
22 12, 2012, Kelly purchased a European American Armory
23 Windicator, 38 special revolver, from the HAFM base
24 exchange. Do you see that?

1 A Yes.

2 Q If those fingerprints had been in the NCIC
3 database, he would have been turned down on the 4473
4 when the FFL did the background check on the base,
5 right?

6 A Yes.

7 Q He's trying to acquire weapons on the base,
8 right, after he has been charged with a felony
9 crime?

10 MR. FURMAN: Objection; form.

11 THE WITNESS: Based on the timeline, yes.

12 BY MR. WEBSTER:

13 Q All right. And during this time, not only had
14 he been -- during the time of 2012, you became aware
15 as part of your investigation that he was making
16 threats to kill everybody in his unit?

17 MR. FURMAN: Objection to form.

18 BY MR. WEBSTER:

19 Q Do you recall that?

20 A Not specifically.

21 Q Okay. But you knew he made threats to kill
22 people, right?

23 MR. FURMAN: Objection to form.

24 THE WITNESS: I remember him threatening

1 Tessa.

2 BY MR. WEBSTER:

3 Q Are you aware as you sit here today that he
4 threatened to kill -- be glad I don't have a
5 shotgun. I would kill everybody in my unit.

6 A Sounds familiar.

7 Q That's pretty alarming, isn't it?

8 MR. FURMAN: Objection; form.

9 THE WITNESS: Yes.

10 BY MR. WEBSTER:

11 Q Are you aware when he was in a behavioral
12 unit, in a mental institution that he was looking up
13 body armor and handcuffs and things of that nature
14 in order to commit a mass murder?

15 A I was not aware of that.

16 Q If you go secondly on here, second, on April
17 12, 2012, roughly two months later, Kelley purchased
18 a Sig Sauer P250, a nine-millimeter semiautomatic
19 handgun from the HAFB base exchange. He completed
20 the ATF forms H4473 and completed the required NICS
21 check on that same day. Do you see that?

22 A Yes.

23 Q Once again, because there has been no
24 fingerprints submitted by Detachment 225, he is able

1 to purchase another handgun on that date?

2 A Yes.

3 Q Does it give you alarm as you sit here today?

4 A Yes.

5 Q If you keep going, not only after that because
6 they didn't have any, he purchased weapons again on
7 December 22, then again on June 26, 2015. He
8 purchased a Ruger GP100 357 Magnum -- once again on
9 June 27 2015, after being convicted of -- he's been
10 convicted on both in 2014 and 2015, still is
11 convicted of a felony, buys a Ruger GP100 Magnum 357
12 handgun.

13 A Yes.

14 Q Passes the background check there also?

15 A Yes.

16 Q On April 7, 2016, he purchased the AR-556 from
17 Academy Sports and Outdoors in San Antonio, Texas.
18 Do you see that?

19 A Yes.

20 Q If you look at the Form 4473 that we have in
21 this case -- do you know what the Form 4473 is?

22 A From seeing the form number, I'm assuming it's
23 a firearm form that verifies one's legal ability to
24 purchase a firearm.

1 Q Do you carry a gun?

2 A Yes.

3 Q Have you purchased your own weapons in your
4 life?

5 A Yes.

6 Q You understand there is a firearm form you
7 have to fill out from the Bureau of Tobacco and
8 Firearms in order to purchase a gun?

9 A Yes.

10 --O--

11 (Deposition Exhibit 4 marked.)

12 --O--

13 BY MR. WEBSTER:

14 Q I'll show you Exhibit 4 to your deposition.
15 So even when Kelley -- the Air Force knew or should
16 have known -- I would assume the Holloman Air Force
17 Base exchange, that's a gun store on the base; is
18 that correct?

19 A Yes.

20 Q And a -- is it controlled by the military, the
21 Air Force?

22 A I think it's a contracted or private vendor.
23 I'm not sure. It's on the base. It might fall
24 under the base exchange under a contract.

1 Q Did they ever coordinate with you guys when
2 you were a special agent in June 2011, did the HAFB
3 base exchange notify anybody from the Detachment 225
4 or the JAG office that, hey, there is a guy over
5 here buying firearms that has been charged with a
6 crime? Was there -- were you able to work together
7 or get information that way?

8 A Right now, I don't remember communications
9 with them. That's not -- that wouldn't be out of
10 the ordinary. If someone bought a suspicious amount
11 of weapons or a large amount of something they might
12 contact us. I don't remember.

13 Q In June of 2011, would you agree with me there
14 had been multiple shootings on base all over the
15 country before? You were aware that these types of
16 events could happen as a special agent?

17 A Are you talking about mass shootings in
18 general in the country? Yes, I was aware that was
19 an ongoing incident that happens in America.

20 Q And it was happening well before 2011?

21 A Yes.

22 Q That was something that the Air Force should
23 be on the lookout for, particularly with someone
24 that might threaten mass shootings, would you agree

1 with me? Meaning the special agent, if you heard
2 someone say, I will come back and kill everybody in
3 my unit, you would report that and try to do
4 something about it?

5 A Yes.

6 Q At no point in time during your investigation
7 of Kelley or your review of the file, did anyone
8 refer him for a mental health evaluation that you
9 can recall?

10 A I think it happened; I don't recall.

11 Q Is your office -- as special agent, are you
12 able to order or get someone to order a mental
13 health evaluation?

14 A No. The person that does that is the person's
15 commander. They might order it based on their
16 observations or information they got from us or any
17 law enforcement entity.

18 Q It's available for you as a special agent to
19 reach out to his commander?

20 A Yes.

21 Q You can tell them, hey, this guy is crazy,
22 off, or having issues. I think you should refer him
23 to the mental health evaluation and he can make his
24 own determination?

1 A Yes.

2 Q Do you know whether or not there is anyone in
3 the Air Force that is responsible for reporting
4 individuals who have been put into a metal health
5 evaluation and then kept there and not able to
6 release themselves -- involuntarily committed?

7 MR. FURMAN: Objection.

8 THE WITNESS: What was the original
9 question?

10 BY MR. WEBSTER:

11 Q Let me -- you realize under 4473 -- you see
12 where it says, have you ever been adjudicated
13 mentally defective or have you ever been committed
14 no a mental institution? Do you see that?

15 A Yes.

16 Q What I'm asking: In you have someone like
17 Kelley who has been committed to a mental
18 institution -- because he was. You are aware of
19 that, right?

20 MR. FURMAN: Objection?

21 THE WITNESS: I believe so.

22 MR. FURMAN: Facts not in evidence.

23 BY MR. WEBSTER:

24 Q Assume with me that Kelley was admitted in

1 April, May, 2012 to a mental institution. Is there
2 anyone on the base who is responsible for reporting
3 that to NCIC so they cannot purchase a weapon?

4 A I don't know.

5 Q If there is -- is there a process -- if a
6 commander decides to refer to a mental health
7 evaluation and during that they are involuntary
8 committed?

9 A Yes.

10 Q Who would then notify in the Air Force the
11 NCIC or FBI that that person had been committed so
12 they cannot purchase a firearm?

13 A I don't know.

14 Q You don't have any idea about that?

15 A Nowadays, current policy, I believe we have
16 someone that has ability to update NICS in our
17 headquarters, and I think now, at the current time,
18 if we become aware of that, we could communicate
19 that to that person and they would put it in the
20 system. Back then, I would not have known.

21 Q There was no process that you are aware of as
22 a special agent today back in 2011 that would notify
23 NCIC or the database that they had been committed to
24 a mental institution?

1 A Not process I was aware of.

2 Q That's disturbing, isn't it?

3 MR. FURMAN: Objection to form.

4 THE WITNESS: In hindsight, it's not good.

5 BY MR. WEBSTER:

6 Q Would you agree with me that if -- assume with
7 me that Kelley had been committed to a mental
8 institution in May, May, June of 2012. When he got
9 out, according to 4473 and your reading of it, he
10 shouldn't have been able to buy a firearm?

11 MR. FURMAN: Objection; form.

12 THE WITNESS: Based on the facts, I don't
13 believe he should have been able to purchase
14 firearms.

15 BY MR. WEBSTER:

16 Q The United States Air Force would have been
17 aware that he was committed to a mental institution?

18 MR. FURMAN: Objection to form.

19 THE WITNESS: When he purchased the
20 firearm on this date?

21 BY MR. WEBSTER:

22 Q Being the Air Force, you are always under a
23 certain control?

24 A Yes.

1 Q If he was committed to a mental institution in
2 April, May of 2012, the Air Force would have known
3 about that?

4 A Someone would know that, yes.

5 Q His commander or whoever -- his unit
6 commander, whomever, someone someplace would know he
7 is where he is, right?

8 A Yes.

9 Q Now, from what you have read in the paperwork,
10 what is the difference between a bad conduct
11 discharge and a dishonorable discharge?

12 A I couldn't speak --

13 Q If you know.

14 A There is a difference in the classification of
15 your discharge, the benefits that you would get. I
16 believe one or the other would prevent you from --
17 speculating -- from purchasing a firearm, but I'm
18 not sure.

19 Q I'm asking because it says here under G, have
20 you been discharged from the armed forces under
21 dishonorable conditions?

22 A Yes.

23 Q Is bad conduct considered dishonorable
24 conditions?

1 MR. FURMAN: Objection.

2 BY MR. WEBSTER:

3 Q If you know.

4 A I know it's other than honorable conditions.

5 BY MR. WEBSTER:

6 Q We know at least according to this
7 paperwork -- assume with me this is the exact same
8 form -- I know it has not changed -- that you would
9 have filled out in February of 2012 or that Kelley
10 would have filled out in February 2012, April 2012
11 when he was on base there. Assume with me it's the
12 same form. He would have had to have lied on this
13 at that time, right?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: If this is the form he
16 filled out and these are his answer, he's not
17 being truthful.

18 BY MR. WEBSTER:

19 Q Assume -- if you write yes in anything from B
20 all the way to L, you are denied the purchase of a
21 firearm automatically. Did you know that?

22 MR. FURMAN: Objection to the form.

23 THE WITNESS: I believe so. I'm not very
24 familiar with this form.

1 BY MR. WEBSTER:

2 Q Okay. Do you see B here at the top under A?
3 B, do you see it?

4 A Yes.

5 Q Are you under indictment or information in any
6 court for a felony or any other crime for which the
7 judge could imprison you for more than one year?

8 A Yes.

9 Q If he filled that out in April 2012, he would
10 have had to lie if he checked yes, right?

11 MR. FURMAN: Objection to form.

12 BY MR. WEBSTER:

13 Q If he checked no, he would have lied?

14 MR. FURMAN: Same objection.

15 THE WITNESS: No is incorrect. It's a
16 lie.

17 BY MR. WEBSTER:

18 Q Exactly. So Kelley lied to the Holloman Air
19 Force Base exchange and the Air Force would have
20 known that when he purchased those weapons in 2012?

21 MR. FURMAN: Objection to form.

22 THE WITNESS: You are saying he lied on
23 the form and someone from the Air Force would
24 have known?

1 BY MR. WEBSTER:

2 Q Absolutely they would have. He bought them
3 from the Air Force Exchange Base, two guns, while
4 you knew this guy was crazy -- the Air Force knew he
5 was crazy -- having all these issues, he purchased
6 two weapons on the base and knew he lied on the
7 firearms transaction record form.

8 MR. FURMAN: Objection; form.

9 BY MR. WEBSTER:

10 Q He would have had to lie on it.

11 A I'm not disputing -- I guess the part I'm
12 wrapping my head around is who in the Air Force
13 would know he lied on this form?

14 Q You would have known, right?

15 MR. FURMAN: Objection to form.

16 THE WITNESS: If I know he filled out the
17 form.

18 BY MR. WEBSTER:

19 Q Do you know if anyone else in your Detachment
20 225 knew he was trying to purchase firearms?

21 A I'm not aware.

22 Q Would that cause you major concern sitting
23 here today if someone in Detachment 225 knew he had
24 purchased firearms while he was under indictment for

1 a felony?

2 A That would be a major safety concern.

3 Q Tell me what you would do if you found that
4 out. If you found out that Kelley in February of
5 April of 2012 was purchasing firearms from the HAFB
6 base exchange, first in 2011 -- 2012, what would
7 have been the processes you would go by? What would
8 you do in 2012?

9 A I would probably contact his commander and try
10 to get him into some type of pretrial confinement if
11 he was under investigation at the time to ensure the
12 safety of the base and -- that way, he would be
13 removed from access from weapons. And I would
14 inquire into how he was able to legally purchase
15 weapons. We were probably operating under the
16 assumption he couldn't legally purchase weapons, not
17 understanding that he was not indexed at the time.

18 Q Now you know that this scenario, based upon
19 the changes that have been made by the Air Force and
20 your training you have as we sit here today on
21 January 7, 2020, this scenario under February 12,
22 April 12, December 22, June 22 and April 7 and
23 October 18 would never had happened according to the
24 IG report, because he would not be able to buy guns?

1 MR. FURMAN: Objection.

2 THE WITNESS: Under the current policy, if
3 he was correctly indexed he would not be able
4 to legally purchase firearms under this
5 scenario.

6 BY MR. WEBSTER:

7 Q When you do not submit those fingerprints and
8 he's able to purchase guns like you see on page 31
9 of the report on these various dates, that increases
10 a risk of harm to everybody on the base and everyone
11 in the public, doesn't it?

12 MR. FURMAN: Objection to form.

13 THE WITNESS: Based on Kelley and what we
14 know is true about him, yes, there is a threat
15 to the public.

16 BY MR. WEBSTER:

17 Q Now, I want to go back -- put those away for a
18 minute. I would like to go back to the big stack of
19 documents you have here on Exhibit -- I2M whatever
20 file. I forget the number.

21 MS. SANDERS: Exhibit 2.

22 BY MR. WEBSTER:

23 Q Let's go back to that for a minute. I want to
24 ask you questions about some of the things in here,

1 about what you knew and when, all right? If you
2 don't mind, go to page 13789. This would be a memo
3 you did on June 17, 2011 -- it's an affidavit,
4 correct?

5 A Affidavit for search and seizure, yes.

6 Q Did you believe -- there was no doubt you had
7 probable cause on this date?

8 A Do you mind if I read it?

9 Q No, go ahead. I want to talk to you about
10 this affidavit for just a second.

11 In your -- if you go to the first
12 page, 13789 of your affidavit, and you go down one,
13 two, three, four -- four lines up from number 11
14 from the bottom, it starts with Dr. Harwood advised
15 that the bruising was not present on 6 June '11 when
16 he examined the victim. He is saying, I have looked
17 at this baby, and the baby didn't have any bruising
18 then.

19 A Yes.

20 Q He told you, according to your testimony or
21 your affidavit, Dr. Harwood opined the injury was
22 consistent with a slap.

23 A Yes.

24 Q Do you believe that gives you probable cause

1 to believe that baby was slapped by Devin Kelley?

2 MR. FURMAN: Objection to form.

3 BY MR. WEBSTER:

4 Q On June 17, 2011?

5 A The statement gave us reasonable belief the
6 child was slapped, and based on the interview that
7 would have happened on 9 June of Tessa and Kelley,
8 at this point, the person we believed was likely
9 responsible for the slap would have been Kelley.

10 Q If you go down -- it starts on 11, the results
11 of the CT scan show the child sustained a subdural
12 hematoma to the left frontal skull. Dr. Harwood
13 opined the injury could have been caused by a fall
14 or a severe blow to the child's head.

15 A Yes.

16 Q Subject one and two denied striking victim,
17 but could not provide a viable explanation for the
18 victim's injuries. That's very suspect, right?

19 A Yes.

20 Q Okay.

21 A It puts suspicion on both of them.

22 Q And it says, in view of the related facts, I
23 believe probable cause existed to search and/or
24 seize subject one and two's wedding rings for

1 analysis by USA CIL in an effort to determine the
2 source of the victim's injuries.

3 A Yes.

4 Q You believed at that point in time -- probable
5 cause is probable cause, isn't it?

6 MR. FURMAN: Objection to form.

7 BY MR. WEBSTER:

8 Q Meaning you have probable cause at this time
9 that would subject you under the DOD instructions
10 that you are aware of today to send those
11 fingerprints in to the FBI at that time?

12 MR. FURMAN: Same objection.

13 THE WITNESS: It's a different question.
14 On this affidavit I felt there was probable
15 cause to basically get an authorization,
16 considering their fourth amendment rights to go
17 in and seize their property, that that could be
18 evidence of a crime.

19 BY MR. WEBSTER:

20 Q Had they been charged with a crime on that
21 date?

22 A They would have been interviewed on 9 June
23 prior to that for Article 128.

24 Q Y'all started doing more thorough

1 investigation after this time by interviewing
2 certain witnesses in his family, right?

3 A I believe so.

4 Q Or witnesses or people he had had contact
5 with, is that correct?

6 A I believe so.

7 Q Would you agree with me, Special Agent Hoy,
8 during those times when y'all did these, some
9 astonishing facts about his behavior came out that
10 you don't normally see in a criminal investigation?

11 MR. FURMAN: Objection to form.

12 THE WITNESS: I don't recall the specific
13 interviews. I do recall -- like, for example,
14 the -- I don't know who told us about the
15 webcam -- I don't know if we saw it or someone
16 else told us about it -- but I do remember
17 observations or facts being brought up about
18 Kelley that were concerning.

19 BY MR. WEBSTER:

20 Q Go to page 13641, please. This says
21 interviewer, Special Agent James Hoy. That's you,
22 right?

23 A I don't why know they put S. Hoy there.
24 That's not my middle initial.

1 Q Did you write this?

2 A That's not my handwriting.

3 Q Somebody else was taking notes?

4 A It was likely Denise Madison.

5 Q If you go to the next page, this is at 5:30 in
6 the afternoon for civilians, 17:30?

7 A Yes.

8 Q You would have been asking questions of Kelley
9 on that day, right? I don't see Bustillo on this.

10 A This was -- that was -- that must have been
11 around this same time.

12 Q This is June 9, 2011?

13 A Yes.

14 Q Do you know that -- did you ever -- do you
15 remember asking specific questions yourself of
16 Kelley?

17 A I don't remember what questions I asked.

18 Q And then if you turn over to the next page,
19 13642, do you see where it says SA Hoy on the left,
20 and there is an arrow in the middle of the page?

21 A Yes.

22 Q It says -- it's blacked out. Baby J has
23 bleeding on the brain caused by an injury.

24 A Yes.

1 Q Would that be you saying that?

2 A It could be.

3 Q Okay. He says -- there is a response, honest
4 to God, me or Devin have never laid a hand on J.

5 A I see that.

6 Q When it gets down here, did you strike J in
7 the face? Is that correct? Do you see that?

8 A Yes.

9 Q This was -- actually, it says sponsor is Devin
10 Kelley but the interviewee is Tessa Kelley. Did you
11 interview her?

12 A Based on the notes I did.

13 Q It says, did Devin strike baby J on the face?
14 And the answer was, no, sir. Is that correct?

15 A The person taking the notes wrote no, sir.

16 Q At 18:15, T. Kelly, we are going to have to
17 stop here. That does that mean? They requested a
18 lawyer?

19 A I don't know what that means.

20 Q Just -- it was time to stop something?

21 A Maybe she was emotional. I don't know.

22 Q I want you to go to page 13662, please. This
23 is a memorandum for 49 Logistics Readiness SQ dated
24 June 15, 2001.

1 A Yes.

2 Q Is that your signature?

3 A Yes.

4 Q Honestly, what is this for? What does this
5 letter do?

6 A This letter is an official notification to the
7 commander of the subject that their member is under
8 investigation. And it lifts the case number before
9 that and lets them know of actions they should take
10 or shouldn't. It's basically telling them to not
11 reassign or order any type of investigation or take
12 any official action undergoing -- against someone
13 undergoing an AFO-assigned investigation or
14 coordinating with OSI.

15 Altering them we have a case going
16 on. Don't allow them PCS, don't do your own
17 inquiry. We have the primacy on investigating.

18 Q I guess what I'm asking for is: When you say
19 TS -- I don't know what this letter does. Explain
20 it in layman's term on what happens when you send
21 this to their commander?

22 A You are telling them their member is under OSI
23 investigation, and do not let them be reassigned to
24 another base. Do not take any administrative action

1 against them. Do not let them go on leave without
2 coordinating it. We have an investigation, you
3 should coordinate with us before you take action
4 with this member.

5 Q On June 15, 2011, according to this letter,
6 was Devin Kelley allowed to leave the base?

7 A That's up to his unit. I believe he was. I
8 don't believe he was put under any type of
9 restrictions to his liberty.

10 Q Please coordinate any TDY. What does that
11 stand for?

12 A Temporary duty. If he was sent somewhere
13 else.

14 Q Or leave request concerning this individual.
15 What type of leave request?

16 A If they are going to take time off from work
17 and leave the area, it's telling them to coordinate
18 with our office.

19 Q He would be able to work and do his job, but
20 he is not allowed to be transferred or to do any
21 special missions?

22 A Without coordinating with us. He wouldn't be
23 allowed to be reassigned to another base and
24 shouldn't be allowed to do temporary duty somewhere

1 else or take leave without them coordinating that
2 with our office.

3 Q Do you send these letters out when you don't
4 have probable cause?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: We send them out any time we
7 open an investigation to anyone. They get a
8 letter to their commander.

9 BY MR. WEBSTER:

10 Q What percentage of the time, if you know -- or
11 can you tell me how many times you have ever sent
12 this letter when you didn't have probable cause?

13 A I don't know that I can answer that.

14 Q Can you think of appear -- one instance in
15 your career where you have sent a letter like that
16 and you didn't have probable cause?

17 A It's a routine administrative communication
18 that is going to happen every time a case is opened
19 to let them know, so --

20 Q This letter should have been like the
21 fingerprint when you had probable cause back in June
22 2011, right?

23 MR. FURMAN: Objection to form.

24

1 BY MR. WEBSTER:

2 Q This is something that you should have done.
3 This is just like the fingerprints.

4 MR. FURMAN: Objection to form.

5 THE WITNESS: As far as --

6 BY MR. WEBSTER:

7 Q The fingerprints should have been sent out?

8 A Yes.

9 MR. WEBSTER: Let's break for lunch.

10 (Pause in Proceedings.)

11 BY MR. WEBSTER:

12 Q Special Agent Hoy, we are back on the record.

13 A Yes.

14 Q Thinking about your testimony, is there
15 anything you would like to change?

16 A No.

17 Q Okay. All right.

18 I want to go back to -- if you flip
19 over and start from Exhibit 2 -- that's the one you
20 have in your hands, the large one. I'm going to
21 give page numbers that I would like to talk to you
22 about, okay?

23 A Okay.

24 Q The first page is 13432, please. 13423, I'm

1 sorry. This is on June 24 of 2011. You are still a
2 superintendent at that point in time, correct?

3 A I might have been gone by then.

4 Q On June 2011? I thought you left in
5 June 2012.

6 A Correct.

7 Q Just making sure. So it says on June 24,
8 2011, Special Agent Yonatan Holz, and individual
9 Dwayne Harris interviewed subject Tessa K. Kelley,
10 subject D. Kelley's sister, civilian Cassandra
11 Stocksdale. Did I read that right?

12 A Yes.

13 Q It says reported subject T. Kelley had been a
14 victim of domestic abuse by subject D. Kelley on
15 June 23, 2011.

16 A Yes.

17 Q At least -- it say subject T. Kelley was
18 visibly distraught but did not answer most of
19 Special Agent Holz's questions. Subject T. Kelley
20 provided no pertinent information toward this
21 investigation. At this point in time, would you
22 agree with me as superintendent and over Special
23 Agent Holz that Detachment 225 of the Air Force knew
24 as of June 24 you had a belief that he was beating

1 his wife at that time?

2 MR. FURMAN: Objection to form.

3 BY MR. WEBSTER:

4 Q Or that she was a committing being a victim of
5 domestic abuse by Kelley on June 24, 2011?

6 MR. FURMAN: Same objection.

7 THE WITNESS: I would agree that on 24
8 June '11 someone made a report that Kelley was
9 abusing Tessa Kelley.

10 BY MR. WEBSTER:

11 Q If we go to the next page I would like for you
12 to see, page 13427. This is -- can you tell us what
13 this is, sir?

14 A Witness interview of Master Sergeant Jason
15 Williams.

16 Q February 28, 2012?

17 A Yes.

18 Q At that point in time, there is -- you were
19 still superintendent, correct?

20 A Yes.

21 Q Still would have been reviewing these files on
22 a regular basis?

23 A Yes.

24 Q And at that point in time can you see where it

1 says Master Sergeant Jason Williams provided a
2 signed -- on February 28, 2012, Master Sergeant
3 Jason Williams provided a signed sworn written
4 statement, attached?

5 A Yes.

6 Q And it says subject D. Kelley related to
7 Bizzack that subject T. Kelley left a note at the
8 residence and he could not find her. Williams
9 explained that later in the day he was notified by
10 security forces that subject T. Kelley reported she
11 was a victim of an assault by subject D. Kelley. Do
12 you see that?

13 A Okay.

14 Q All right. And here we have is, is that you
15 have subject T. Kelley, Tessa Kelley, the wife,
16 that's reporting she was the victim of an assault by
17 D. Kelley?

18 A Yes.

19 Q Were charges brought against Devin Kelley for
20 that abuse?

21 A I don't recall. Normally when we have an
22 ongoing investigation and during the investigation
23 more charges come up, we report those to our
24 servicing legal office. And the command is made

1 aware of it -- by command, I mean Devin Kelley's
2 leadership. In this case, that is his first
3 sergeant, and the determination is -- they are going
4 to add charges on to the existing pending trial.
5 And the decision is usually made between legal and
6 the commander on whether some type of base
7 restrictions or confinement should take place.

8 Q The acts of violence reported by Ms. Kelley or
9 anyone, those are reported to leadership in the Air
10 Force?

11 A Yes.

12 Q These are on notice of what is going on with
13 Kelley's behavior, correct?

14 A Yes.

15 Q Go to page 13429, please. This is another
16 statement, I believe, given by whom, if you can
17 tell?

18 A By Jason Williams.

19 Q This is the same question, right?

20 A This is the attached statement.

21 Q It says, if you look in the middle of this to
22 try is speed things along, Tessa informed me she was
23 in fear for her life, and I informed her not to
24 worry, the commander will issue a no-contact order

1 on her husband. Do you see that?

2 A Yes.

3 Q Do you know whether or not there was a
4 no-contact order ever issued?

5 A I don't recall.

6 Q In your review of the file, have you ever seen
7 a no-contact order?

8 A I don't remember.

9 Q Who would issue a no-contact order?

10 A It would come from the -- Kelley's commander.
11 It he would be -- they are done verbally and
12 written.

13 Q Would those be put into this database, the IT
14 database?

15 A If we were given a copy of it, it would be
16 normal that we would get a copy of it. If we have
17 had a copy of it, it would be put into a database.

18 Q If it's not in here, it probably didn't
19 happen?

20 A If a no-contact order is not uploaded? I
21 wouldn't agree with that.

22 Q It could be verbal?

23 A Or just not uploaded.

24 Q Do you know what the DOD or Air Force codes or

1 rules say with regard to no-contact orders? Are
2 they suppose to be issued in writing?

3 A I don't know what they say. I know that they
4 can be issued verbally, and typically followed up in
5 writing.

6 Q If you look to the last sentence, I then
7 informed A1C Kelley of his Article 31 rights before
8 questioning him about the assault and he asked for a
9 lawyer. Do you see that?

10 A I do.

11 Q He was asking for a lawyer after his wife had
12 reported he had been beating her, correct?

13 A Yes.

14 Q Go to 13433, please.

15 A Okay.

16 Q This is an interview of Brandon Pizacco?

17 A Yes.

18 Q By Special Agent Holz and Special Agent
19 Bankhead?

20 A Yes.

21 Q On May 1, 2012, would you have been their
22 superintendent?

23 A Yes.

24 Q Were you aware that they went to Round Rock,

1 Texas to do an interview of Brandon Pizacco?

2 A I don't recall it. Sometime in between the
3 beginning of January and May I attended professional
4 military education and would have been gone for six
5 weeks sometime in that -- I don't remember the exact
6 date. I don't know if I was here or gone during
7 this time frame.

8 Q Okay.

9 A I may have been here. I'm not sure.

10 Q Okay. It says subject -- hang on a second. B
11 Pizacco believes subject D. Kelley was still too
12 immature to be raising victim.

13 A Yes.

14 Q Subject D. Kelley lived in a fantasy world and
15 talked about living in a nine-bedroom house. Did
16 you ever hear when you were interviewing him or
17 reviewing the file that he had illusions of living
18 in a nine-bedroom house or acquiring things that
19 there was no way he would ever be able to afford?

20 A I don't recall that.

21 Q It says, B. Pizacco thought subject D. Kelley
22 did not have a clear picture of the real world. It
23 says, B Pizacco thought subject D. Kelley was
24 arrogant and did not have a good relationship with

1 subject T. Kelly. We can all agree on that. At
2 least as of May 2012, we know they didn't have a
3 good relationship?

4 A Yes.

5 Q Subject D. Kelley controlled subject T. Kelley
6 so she would not have free or alone time to tell
7 people about the ongoing abuse by subject D. Kelley.

8 A Yes.

9 Q That's kind of classic as you have learned in
10 your training how about abuse works, correct?

11 A Yes.

12 Q And that is kind of a telltale signature sign
13 of a violent, non-stable person, isn't it?

14 MR. FURMAN: Objection to form. You can
15 answer.

16 THE WITNESS: I believe so. I don't know
17 definitively. I'm not an expert.

18 BY MR. WEBSTER:

19 Q It says, subject T. Kelley was scared of
20 subject D. Kelley and kept going back to him because
21 she felt she would lose victim, her child?

22 A Yes.

23 Q On one occasion, subject D. Kelley grabbed and
24 yanked subject T. Kelley's hair?

1 A Yes.

2 Q So we have evidence here from Brandon Pizacco
3 of him committing assault again on his wife?

4 A Yes. Testimony from Pizacco, yes.

5 Q Subject D. Kelley repeatedly struck subject T.
6 Kelley in the stomach and kicked her. Subject D.
7 Kelley attempted to waterboard subject T. Kelley on
8 at least one occasion. Pizacco described the
9 waterboard method as subject D. Kelley pushing
10 subject T. Kelley's head under the faucet and
11 turning on the water. Those are all acts of
12 violence, correct?

13 A Yes.

14 Q And then he says B. Pizacco thought subject
15 abused victim because he becomes frustrated with
16 victim and was not ready for fatherhood. Then you
17 have subject T. Kelley told Pizacco in February of
18 '12 subject D. Kelley was intoxicated at a hotel
19 room in El Paso, Texas. Subject D. Kelly became
20 emotional and locked himself in the bathroom.
21 Subject began crying and stating, I'm sorry J, I'm
22 sorry, J. B. Pizacco thought subject D. Kelley was
23 apologizing to victim for physically abusing him.
24 Do you see that?

1 A Yes.

2 Q That corroborates the stories and evidence you
3 have as of May 2012 for the felony charges against
4 Devin Kelley, correct?

5 A Yes.

6 Q Those are reports of acts of violence that the
7 Air Force knew of at least as early as 2012 while
8 charges were still pending against Devin Kelley,
9 correct?

10 MR. FURMAN: Objection to form.

11 THE WITNESS: Essentially, yes.

12 BY MR. WEBSTER:

13 Q At this point in time -- if you go to 13438,
14 this is a interview of D. Kelley on May 3, 2012?

15 A Right.

16 Q This is where -- you still would have been
17 superintendent at that time, correct?

18 A Yes.

19 Q And you were over Special Agent Holz and
20 Special Agent Bankhead, who were doing the
21 interview?

22 A Yes.

23 Q She signed a sworn written statement that
24 contains the information that we are going to talk

1 about, correct?

2 A Yes.

3 Q If we start down here, subject T. Kelley
4 previously suspected. It's the fifth line down.

5 A From the top?

6 Q Yes, sir. It says subject T. Kelley
7 previously suspected? Subject T. Kelley previously
8 suspected subject D. Kelley of injuring victim but
9 did not know for sure, because she had never
10 witnessed abuse.

11 A Yes.

12 Q Subject T. Kelley began suspecting subject D.
13 Kelley when he began physically, verbally and
14 mentally abusing her. So she is now coming forth at
15 this point in time on May 3, 2012 and admitting he's
16 been physically, mentally, and verbally abusing her?

17 A Yes.

18 Q D. Kelly struck, kicked and choked subject T.
19 Kelley, also pulled subject T. Kelley's hair out on
20 multiple occasions. Subject D. Kelley told subject
21 T. Kelley he would kill her if she went to police or
22 told anybody about the abuse performed by subject D.
23 Kelley on subject T. Kelley. That's classic
24 domestic violence, correct?

1 A Yes.

2 Q Those are all acts of violence that as of
3 May 3, 2012 the Air Force was on notice of, that
4 Devin Kelley -- that she was at least reporting to
5 the Air Force that Devin Kelley is repeatedly
6 committing against her, right?

7 A Yes.

8 Q It says subject D. Kelley stated if the cops
9 show up at my door I will shoot them, do you see
10 that?

11 A Yes.

12 Q That is a very concerning statement as a
13 special agent?

14 A Yes.

15 Q If you had read this in the report on May 3,
16 2012, would you have had him locked up?

17 MR. FURMAN: Objection to form.

18 THE WITNESS: It's not up to me.

19 BY MR. WEBSTER:

20 Q Would you have recommended it?

21 A Yes.

22 Q It says, subject D. Kelley told subject T.
23 Kelley my work is so lucky I do not have a shotgun,
24 because I would go in there and shoot everyone. Do

1 you see that?

2 A Yes.

3 Q Now, Kelley is threatening a mass shooting,
4 isn't he?

5 A Yes.

6 Q When he says "my work," he's talking about the
7 Air Force, right?

8 A I would believe so.

9 Q At least as of May 2, 2012, based upon Tessa
10 that Kelley's statement the Air Force was on notice
11 that he was threatening -- Kelley was threatening to
12 commit mass murder, correct?

13 A Yes.

14 Q If you drop down, do you see the last blacked
15 out marks on the document?

16 A Yes.

17 Q It states, subject D. Kelley blamed ticket on
18 subject T. Kelley. He pulled his gun out and placed
19 the muzzle against subject T. Kelley's temple and
20 stated, do you want to die? Subject T. Kelley
21 pushed the gun away and cried. Subject D. Kelley
22 proceeded to put the gun in his mouth. Did I read
23 that correctly?

24 A Yes.

1 Q And this was -- if you go back up -- I should
2 have started earlier, and I apologize -- this was on
3 April 23, 2012 when she's reporting this happened,
4 right?

5 A Yes.

6 Q Subject D. Kelley fully confessed to subject
7 T. Kelley three weeks ago, April 23, when subject D.
8 Kelley and subject T. Kelley drove to El Paso, Texas
9 to pick up subject D. Kelley's mother, Rebecca
10 Kelley. It goes through. It was around late April,
11 2012?

12 A Yes.

13 Q Why did Kelley have, if he's under the control
14 of the Air Force and under felony charges,
15 possession of a gun?

16 MR. FURMAN: Objection to form.

17 THE WITNESS: I do not know.

18 BY MR. WEBSTER:

19 Q Do you think it could be those two guns that
20 he purchased earlier that year that we talked about
21 earlier, on April 12 -- or February 12 or April 12,
22 2012 from the Air Force base exchange?

23 MR. FURMAN: Same objection.

24 THE WITNESS: That's probable.

1 BY MR. WEBSTER:

2 Q At that point in time, did anyone from the
3 special investigation or special agent's office go
4 issue an order to go take or seize the weapons that
5 he had in his possession?

6 A I don't recall what actions our office took
7 around that time. I was doing turnover and was
8 getting ready to leave and turning things over to
9 Lyle Jenkins. Some of the operational decisions, I
10 don't have direct recollection of what we decided to
11 do.

12 Q If that were done, how would it be done? If
13 you wanted to go -- is that not something as a
14 special agent sitting here today and you read that,
15 that he has a gun in his possession, would you not
16 go get it? Would you follow an order or seek out
17 the JAG officer to do something and say listen, this
18 guy is carrying a gun around, not only here but on
19 the base -- is carrying a gun. What do we need to
20 do with this? And seize his weapon?

21 A You are asking me what I would have done?

22 Q Yes.

23 A I would have coordinated with the base
24 commander, to include the legal office, and we would

1 have had a high risk for violence meeting and came
2 up with the plan on what to do with Devin Kelley for
3 the safety of the base.

4 Q At this point in time when you are reading
5 these things or know of this on May 3, 2012, does
6 this cause a high alert? What was the thing you
7 called it?

8 A High risk for violence meeting.

9 Q Would you agree with me as of May 3, 2012 he
10 was a high risk for violence?

11 A Yes.

12 Q So the Air Force knew that he could commit a
13 mass shooting, didn't they?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: I believe there is clearly
16 evidence that suggests he could do a mass
17 shooting, and that was reported.

18 BY MR. WEBSTER:

19 Q Would you agree with me if you have
20 knowledge -- if the Air Force has knowledge that
21 someone like Kelley, at least as of May 3, 2012 has
22 knowledge that he could commit a mass shooting, they
23 should do everything in their power to make sure
24 that man does not get a gun?

1 A Yes.

2 Q If you don't do that, if the Air Force does
3 not do those things to ensure that a person such as
4 Kelley, who is threatening mass shootings, doesn't
5 do things they need to do to keep a gun out of his
6 hand, that is an increased risk of harm to the
7 public, isn't it?

8 MR. FURMAN: Objection to form.

9 THE WITNESS: Yes.

10 BY MR. WEBSTER:

11 Q It's also -- when somebody in May -- as early
12 as May 3, 2012, when he is reporting to Special
13 Agent Bankhead and also to Special Agent Holz, that
14 he is thinking of -- would like to get a shotgun,
15 and -- I want to make sure I get it right -- my work
16 is so lucky I do not have a shotgun, because I would
17 go in there and shoot everyone. If he later on
18 commits a mass shooting with firearms that he
19 bought, it's foreseeable to the Air Force that this
20 would have happened, that this could have happened?

21 MR. FURMAN: Objection to form.

22 THE WITNESS: Just to clarify, this is
23 Tessa Kelley communicating or relaying threats
24 that he made to her.

1 BY MR. WEBSTER:

2 Q That's alarming, isn't it?

3 A Yes.

4 Q Normal people, sane individuals, do not
5 threaten to go to work with a shotgun and kill
6 everybody they work with?

7 A Yes.

8 Q My question is simple: It's foreseeable to
9 the Air Force, based on that knowledge, that later
10 on if Kelley has a shotgun or any gun, he could
11 commit a mass shooting?

12 MR. FURMAN: Same objection.

13 THE WITNESS: It's foreseeable.

14 BY MR. WEBSTER:

15 Q I would like for you to turn to 13451, sir. I
16 want to ask you a couple of questions. This is on
17 June 8, 2012, correct?

18 A Yes.

19 Q This is a subject interview, and it looks like
20 Special Agent Greg Harper and Special Agent Clinton
21 Mills interviewed subject Devin Kelley. Do you see
22 that?

23 A Yes.

24 Q Were you still there on June 8?

1 A I might -- I think it was still in the area,
2 but I was out processing.

3 Q Did you know Gregory Harper and Clinton Mills?

4 A Yes.

5 Q Did you work with them?

6 A Yes.

7 Q You are familiar with these two individuals?

8 A Yes.

9 Q Do you see where it drops down here, it says
10 they -- on June 8, 2012, Special Agent Gregory
11 Harper and Special Agent Clinton Mills interviewed
12 subject D. Kelley. Subsequent to rights advisement,
13 subject D. Kelley provided the following information
14 verbally. Subject D. Kelley wanted to talk about
15 things but could not due to his legal counsel
16 request.

17 Subject D. Kelley stated something
18 tragic happened and he wanted to kill himself.
19 Subject D. Kelley's comments were vague. And then
20 it says subject D. Kelley escaped from the Peak
21 Mental Hospital, Santa Teresa, New Mexico, because
22 he was planning to go to New Braunfels to plan a
23 suicide.

24 Now, were y'all aware that he was in

1 the Peak mental institution?

2 A I don't remember these details of the case.

3 Q When you say "escaped," does that mean to you
4 that he was confined there?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: This way it's written, if
7 someone said escaped, I would conclude that
8 they were held there.

9 BY MR. WEBSTER:

10 Q Was the Peak mental hospital part of the Air
11 Force?

12 A I don't believe so. I think it was a civilian
13 hospital.

14 Q It says, subject D. Kelley made a confession
15 video on his own free will. We are going to talk
16 about that in a minute. You knew that he made a
17 confession video?

18 A I heard about that.

19 Q Did you ever watch it?

20 A I don't remember watching it.

21 Q During the time also, if you go to page 13455,
22 Officers Holz and -- is still working this case as
23 of June 12, 2018, right?

24 A Yes.

1 Q And he interviewed a woman by the name of AL?

2 A That's what it says.

3 Q And specifically, I wanted to go down to --

4 MR. FURMAN: Off the record for a second.

5 (Pause in Proceedings.)

6 MR. WEBSTER: We will agree to redact it
7 back to AL, the initials AL as the victim. Is
8 that okay? No problem.

9 BY MR. WEBSTER:

10 Q Specifically, on this complaint by AL, I just
11 wanted to point out as of June 18, 2012 that once
12 again, Kelley would have -- if you read over this
13 statement, had nonconsensual sexual -- sex with AL;
14 is that correct, according to the statement?

15 A I will have to read this. I'm pretty sure I
16 had departed the area for my next assignment on this
17 date. I'm vaguely familiar with the interview. I
18 think it's because someone was updating me on the
19 case when I left.

20 Q It's safe to say that the Air Force knew at
21 that point in time in June 18, 2012 that Kelley --
22 there was a female by the initials of AL reporting
23 forced or nonconsensual sex or basically rape?

24 A That is what it appears to be reporting in

1 this telephonic interview.

2 Q If you go to 13457, this is an interview of
3 KL, another female who made complaints about
4 Kelley -- I'll represent to you made complaints
5 about Kelley. And I -- basically, go through this.
6 We don't have to read every single word. If you
7 look in the middle, there is a part that says, AL
8 felt her relationship with subject D.Kelley was
9 sexually and emotionally abusive. Do you see that?

10 A Yes.

11 Q So this is another complaint by another female
12 that puts the Air Force on notice of him committing
13 sexual abuse against women, correct?

14 A Yes.

15 Q If we go to the next one, 13459, the date of
16 this is June 26, 2012. This is another victim by
17 the name of -- the initials AD. And if you look in
18 the middle it says, subject D. Kelley forcefully
19 took AD's sexual virginity. Do you see that?

20 A I do.

21 Q AD is basically complaining of rape at this
22 point and putting the Air Force on notice that
23 Kelley has now had another woman come forward who
24 has complained of rape via telephonic interview,

1 correct?

2 A Yes.

3 Q If you look at the next page, 13461. This
4 is -- this is an interview of JL, correct?

5 A Yes.

6 Q And it says -- if you look here, this is
7 pretty quick. It says, Lavine is not subject D.
8 Kelley's friend but knew him from school and through
9 what other people said about subject D. Kelley.
10 Lavine heard subject D. Kelly treated people wrong,
11 especially girls when he dated in the past. Subject
12 D. Kelley has been messed up since the sixth grade.

13 Did I read that correctly?

14 A Yes.

15 Q It says, Lavine defined messed up as someone
16 who has sick thoughts and treats people badly.
17 That's consistent with what we have gone over,
18 correct?

19 MR. FURMAN: Objection to form.

20 THE WITNESS: Same types of statements.

21 BY MR. WEBSTER:

22 Q Absolutely. He is confirming -- this is
23 another independent witness confirming what these
24 other people are telling him, correct?

1 A Yes.

2 Q You have -- it says Lavene stated subject D.
3 Kelley physically and sexually abused his
4 ex-girlfriends. And he lists the other victims that
5 we talked about just a few minutes ago, correct?

6 A I believe so.

7 Q So as of -- this is corroboration as of June
8 26, 2012 that -- once again, corroboration of these
9 other women who have come forward that D. Kelley has
10 sexually -- physically sexually abused them?

11 A These are multiple telephonic reports of
12 sexual assaults and abuse.

13 Q When you were a special agent, when you got
14 your special agent training, do they teach you how
15 to figure out who is a serial rapist?

16 A How to figure out a serial rapist?

17 Q Yes?

18 A Raping more than one person probably makes you
19 a serial rapist.

20 Q This looks like he is raping more than one
21 person, doesn't it?

22 A I can see how that's inferred. We take these
23 as allegations that have to be tested and
24 investigated thoroughly. That's alarming that you

1 have this many people saying he sexually assaulted
2 them.

3 MR. FURMAN: We have feedback on the
4 phone. Please make sure your phone is on mute.

5 MR. WEBSTER: There is a lot of
6 duplication in y'all's paperwork.

7 BY MR. WEBSTER:

8 Q Let's go to 13543, please. All right. Now,
9 April 30 of 2012 you weren't preparing to go -- to
10 close and leave at the point, were you?

11 A This is that time period where I may or may
12 not have been gone for training.

13 Q When you were superintendent, were you
14 reviewing these case files on a weekly basis?

15 A When I was getting into the -- I left in July,
16 so probably May and April I'm starting to transition
17 those responsibilities over to Lyle Bankhead. I may
18 have still been doing some, but I was taking a step
19 back and teaching him how to do that.

20 Q Do you recall when this confession video was
21 brought in? Do you have any independent
22 recollection that you had a confession -- D.
23 Kelley's confession video on April 27, 2012?

24 A I remember hearing about a confession video.

1 I don't know -- I don't remember seeing it. I'm
2 wondering if I was not there.

3 Q If you take a look at this, this is by Special
4 Agent Holz again, right?

5 A Yes.

6 Q It's pretty astonishing that a confession
7 video comes in?

8 A It is. Not normal.

9 Q Is this the only one in your career you have
10 had?

11 A I have heard of this before. We have seen
12 something like this before.

13 Q But you, specifically, on a case that you
14 worked on, have you ever had this?

15 A Not a confession video that I can recall.

16 Q Here it said -- if you look here in the part
17 it says, the confession video revealed the following
18 information. Subject D. Kelley hit victim multiple
19 times but did not tell anybody because his lawyers
20 instructed him to keep silent. Do you see that?

21 A Yes.

22 Q Subject D. Kelley would get frustrated with
23 victim and would push, strike and slap victim.
24 Subject T. Kelley was unaware of the physical abuse

1 performed by subject D. Kelley on the victim. This
2 had to be -- does this pretty much -- case closed,
3 he's going to get a conviction when you receive
4 something like this?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: I think that's outside of my
7 expertise to answer.

8 BY MR. WEBSTER:

9 Q How did the Air Force use this confession
10 video where he's admitting to beating on baby J?

11 A I don't know. I imagine as an exhibit in
12 court. That's my speculation. I was not there for
13 that.

14 Q Have you ever read his specific statement?

15 A I don't remember it.

16 Q They actually -- is it usually the Air
17 Force's -- if they receive some kind of videotape
18 confession that they do a transcription of it?

19 A I think so.

20 Q If we go to the next page, 13544, this is kind
21 of -- this was produced to us, and I would assume
22 this would be his confession, right?

23 A It seems to start out identifying himself with
24 his social security number.

1 Q My name is Devin Kelley, social security
2 number, driver's license number, date of birth, et
3 cetera, right?

4 A Yes.

5 Q It says, so in serving something, I was the
6 one who hit baby J. It does not say baby, but J, so
7 we keep it consistent. Tessa did not know. I was
8 told by my lawyers not to say anything, that if I
9 said anything I would lose my child, which then we
10 would lose baby J anyways, which inevitably ended up
11 being the wrong choice.

12 Did I read that correctly?

13 A With the exception of the baby part.

14 Q If you go to line 18, it says -- at the last
15 part, I mean it, just -- it just tears me up inside
16 of me. You know, I have been suicidal. It was done
17 at the peak and nobody really knew why I was
18 suicidal.

19 Did I read that correctly?

20 A Yes.

21 Q So at least the Air Force, as of April 30,
22 2012, is being provided with a statement saying he
23 is suicidal, correct?

24 A Is this the date of this document?

1 Q That's the date of when they received this
2 document review of Kelley's confession videotape on
3 April 27, 2012. I guess they received it and it
4 took them a couple of days to get to it?

5 A Yes.

6 Q That's fair enough. It goes on -- if you go
7 to page 2, talks about like on line 4 it says, I got
8 frustrated with him, I slapped him across the face.
9 Tessa was not in the room. That's him admitting in
10 this video that he is assaulting the child, right?

11 A Yes.

12 Q If you go to the next page, on page 13546, on
13 page -- starts on line 6 with, it's unfortunate.
14 It's unfortunate to let them know I was a sinner.
15 I'm not putting the blame on my experience. I have
16 a problem. I have a problem controlling my
17 emotions. Do you see that?

18 A Yes.

19 Q That would also put the Air Force on notice
20 that that is consistent with what we have seen in
21 the rest of the file, he has a severe problem with
22 controlling his emotions, wouldn't you agree?

23 MR. FURMAN: Objection to form.

24 THE WITNESS: It's consistent with the

1 investigation.

2 BY MR. WEBSTER:

3 Q If you go to line 20, my wife was my best
4 friend. I hurt her and my son. Baby J is the
5 person I love most in the world. I hurt him.
6 Nothing makes up for that. And then it puts in
7 crying. Would that be at this point in the video,
8 he's confessing, he's crying at that point in time?

9 A With the word crying in -- I'm assuming he was
10 crying during the video.

11 Q I'm asking because that's an indication of
12 mental instability, isn't it?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: I don't know that to be
15 true.

16 BY MR. WEBSTER:

17 Q You are a special agent and watching this.
18 The guy is saying these things. Do you think that
19 kind of led you to believe as a normal special agent
20 in the Air Force that this guy has major mental
21 health problems?

22 A To me --

23 MR. FURMAN: Objection to form.

24 THE WITNESS: -- it would be an indicator

1 of some type of emotional issue. I'm not an
2 expert to say if it is or not.

3 BY MR. WEBSTER:

4 Q If you go to the next page, 13547, on line 3
5 where it starts he diagnosed, it says there, he
6 diagnosed me with one thing, and I definitely know
7 that I have a lot more problems than that. Sorry,
8 indicating he's crying again. Basically, his
9 diagnosis was horseshit, didn't mean anything. He's
10 admitting at least to the Air Force here in this
11 confession that he has a lot more problems than just
12 one thing that he was diagnosed with.

13 MR. FURMAN: Objection to form.

14 THE WITNESS: He appears to be admitting
15 different problems that he has.

16 BY MR. WEBSTER:

17 Q If you go to 13550, line 19. I -- this is
18 really embarrassing for me, because the whole --
19 then it says unintelligible -- child beater and wife
20 beater. That's him admitting, at least on page
21 13550, lines 19 and, 20 that he's a child and wife
22 beater?

23 A That's what it looks like, yes.

24 Q Now, if you go to page 8 on 13551, it says --

1 on line 19, he was sitting down. Do you see that?

2 A Yes.

3 Q He was sitting down and his eyes rolled back
4 in his head and the ambulance came and apparently he
5 had a seizure. He's talking about baby J there,
6 right?

7 A I think so.

8 Q The next sentence, you would be sitting there
9 thinking in your brain at that moment it's out of my
10 control. This kid is going to die because I lost my
11 self-control.

12 A Yes.

13 Q The next page says, I lost my military bearing
14 and it's not funny and it's not cute and it's just
15 intolerable. What is military bearing? Do you know
16 what that means?

17 A Your military bearing is keeping your
18 professional composure, restraint.

19 Q He's admitting he lost his?

20 A That's what it appears. It says, sometimes
21 you just say no. You got -- you got to say no.
22 Just like you -- you saying just say no. Sometimes
23 your mind is going to talk you into doing something
24 and, I mean, um, you know, lions -- the ability of

1 lions, you know, they come into a herd and they come
2 and in and then they kill the babies to this mother
3 and then they reproduce with the mother so that that
4 way, the mother has her kids instead of, you know,
5 somebody else's kids.

6 A Yes.

7 Q That's boggling-mind crazy, isn't it?

8 MR. FURMAN: Objection to form?

9 THE WITNESS: That is very strange.

10 BY MR. WEBSTER:

11 Q If -- as special agent reviewing this file,
12 would that give you serious cause for concern for
13 this man's ability to commit violence?

14 A This would immediately have me request
15 consultation by a psychologist to put a professional
16 opinion on what I believe is very odd behavior.

17 Q If you go to the next page, 13553, it says on
18 line 14 -- if you start at the end of line 14, it
19 says, I don't think adults change. I don't think
20 people change. I believe in miracles. I believe in
21 angels and I believe in demons, but I think for most
22 people they are going to be who they are and live
23 their lives out, but based on the choices they make,
24 they are wife beaters, they are probably going to be

1 beat their next wife. If they are a child beater,
2 they will probably beat their own child. It's not
3 that they don't love them. It's just -- it's
4 complicated. Do you see that?

5 A Yes.

6 Q That's him admitting he's never going to
7 change, right?

8 MR. FURMAN: Objection to form.

9 THE WITNESS: It could be inferred by what
10 he's saying.

11 BY MR. WEBSTER:

12 Q At least at this point in time, the Air Force
13 would be on notice as a result of his own statement
14 that he was going to continue to commit acts of
15 violence, at least according to what he is saying in
16 this video?

17 MR. FURMAN: Objection to form.

18 THE WITNESS: I mean, one could get that
19 from reading that. Can we take a quick
20 bathroom break?

21 MR. WEBSTER: Absolutely, go for it.

22 (Pause in Proceedings.)

23 BY MR. WEBSTER:

24 Q All right. Special Agent Hoy, we are on page

1 13977, which is an affidavit of Randall Taylor, a
2 special agent there at Detachment 225. Do you see
3 that?

4 A Yes.

5 Q Did you know Randall Taylor?

6 A Yes, he was special agent in charge during the
7 last part of my assignment.

8 Q Were you still considered a superintendent at
9 that point?

10 A In 8 June? I was the outgoing. You had Lyle
11 Bankhead doing the same duties as well. I was the
12 outgoing, and he would have been the -- gaining the
13 new superintendent.

14 Q This is -- he gives an affidavit here with the
15 background of the investigation. Do you see that
16 right before number 4? Kind of the same form you
17 all give. It said -- if you drop down here to where
18 it starts with on 7 June '12.

19 A Yes.

20 Q The Holloman Air Force Base, New Mexico, base
21 exchange notified AFOSI, Detachment 225, that
22 subject called and placed an order around 1400 hours
23 on June 7, 2012 for a Diamondback DB9 semiautomatic
24 nine-millimeter handgun. Does subject mean Kelley?

1 A Yes.

2 Q At this point, and if we talk about this, the
3 Holloman Air Force Base New Mexico base exchange is
4 the same area we were talking about, the same place
5 that he had purchased a gun on February 12, 2012 and
6 on April 12, 2012 that we reviewed earlier.

7 A I believe so.

8 Q Here we have on the 7th of June, roughly two
9 months before, he had purchased two guns, correct,
10 that we talked about?

11 A Yes.

12 Q But here, he's calling and trying to order
13 another gun, right?

14 A Yes.

15 Q What changed when you were the superintendent
16 prior to June 2012 that all of a sudden the Holloman
17 Air Force Base, New Mexico base exchange would call
18 you and say, this guy ordered a gun?

19 MR. FURMAN: Objection to form.

20 THE WITNESS: I do not know. I don't
21 remember this call.

22 BY MR. WEBSTER:

23 Q Let me ask you this: Should Randall Taylor at
24 that point in time, would he have followed up with

1 the base exchange and asked him, has he ordered any
2 other guns you might have?

3 MR. FURMAN: Objection to form.

4 A I don't know what his actions would be.

5 BY MR. WEBSTER:

6 Q You were the superintendent while this was
7 still going down, or at least before this. What
8 would you have done in that situation?

9 MR. FURMAN: Objection to form.

10 THE WITNESS: It will be logical to go to
11 the weapons counter at the base exchange and
12 conduct an inquiry on what his activities were
13 there.

14 BY MR. WEBSTER:

15 Q Would you ask, how is he being able to buy a
16 gun?

17 A That might be one of my questions.

18 Q If they said, well, he passed the background
19 check, would that raise your red flag as a special
20 agent in the Air Force?

21 A I would wonder how he was allowed to purchase
22 a firearm.

23 Q Would that have led you to the point to go
24 back and look at the fingerprint cards and see why

1 they weren't submitted to the FBI so that he would
2 be put in the NCIC database and be flagged as
3 someone who cannot purchase a gun?

4 MR. FURMAN: Objection to form.

5 THE WITNESS: I think in hindsight, it
6 would be a logical step to figure out why he is
7 allowed to purchase guns when we have an open
8 investigation on him for assault.

9 BY MR. WEBSTER:

10 Q He was charged with a felony at this point,
11 right?

12 A Yes.

13 Q He should not be able to purchase a gun,
14 correct?

15 MR. FURMAN: Objection to form.

16 THE WITNESS: I believe so. I don't know
17 if he was formally charged at that point, but
18 he shouldn't have been able to buy a gun.

19 BY MR. WEBSTER:

20 Q It says, subject informed the BX employee he
21 would pick the weapon up on June 14, 2012. So would
22 Randall Taylor be doing an interview of the BX
23 employee? Would you expect him to do a formal
24 statement by that employee?

1 A I think that's a logical step.

2 Q It says, the telephone number on the order
3 form matches the number on the Samsung smartphone
4 seized from subject and likely contains evidence
5 indicating it was used to facilitate the order.

6 So he's tying it back to, Kelley is
7 still trying to purchase weapons at this point in
8 time, knowing he shouldn't be able to on the Air
9 Force base?

10 A That's what it appears.

11 Q Then it says, that same night, subject, that
12 being Devin Kelley, fled from the Peak Behavioral
13 Health Services in El Paso, Texas, where he was
14 undergoing treatment. While inpatient status at
15 Peak, subject was categorized in the maximum risk
16 range for violence and control issues, stress and
17 coping.

18 Subject also indicated he had
19 thoughts of killing himself. Subject was found and
20 apprehended by the Sunland police department at a
21 Greyhound bus station in El Paso, Texas on June 7,
22 2012. Do you see that?

23 A Yes.

24 Q Here is my question to you: If we go back, it

1 says, while in-patient status at Peak, subject was
2 categorized as the maximum risk range.

3 A Yes.

4 Q If Devin Kelley was there voluntarily, why
5 would they go and apprehend him and put him back in
6 inpatient therapy at Peak?

7 MR. FURMAN: Objection to form.

8 THE WITNESS: Is someone suggesting he was
9 there voluntarily?

10 BY MR. WEBSTER:

11 Q Oh, yeah.

12 A I'm not aware of that.

13 Q You believe he was there involuntarily, right?

14 A From reading this statement.

15 Q Do you know -- are you familiar with the DOD
16 instruction on mental incapacitation when you
17 request a mental health examination?

18 A The exact DOD instructions? I don't believe
19 so.

20 --O--

21 (Deposition Exhibit 5 marked.)

22 --O--

23 BY MR. WEBSTER:

24 Q I'll show you what we will mark as Exhibit

1 Number 5 to your deposition. These are the -- I'll
2 make the representation to you that these are the
3 Department of Defense Instruction 6490.1, mental
4 health evaluations of members of the armed forces.
5 I will tell you I believe from my searching that at
6 the time in 2012 this was the most up-to-date
7 version I could find and it was once again amended
8 on March 4, 2013. And the reason I ask this is
9 because -- I'll go to the page I want to talk to you
10 about. If you go to page 11.

11 A Okay.

12 Q It says under 6.3.2.1, the commanding officer
13 shall refer a service member for an emergency mental
14 health evaluation as soon as practical in accordance
15 with reference A in this instruction whenever a
16 service member by actions or words, such as actual,
17 attempted or threatened violence, intends or is
18 likely to cause serious injury to himself, herself,
19 or others and when the facts and circumstances
20 indicate that the service member's intent to cause
21 such injury is likely and when the commanding
22 officer believes that the service member may be
23 suffering from a severe mental disorder. Did I read
24 that correctly?

1 A Yes.

2 Q Would you agree with me that that is
3 absolutely, based upon what we have seen, for -- as
4 of June 12, 2012 -- June 8, 2012, that is exactly
5 the problems you are having with a guy like Kelley?

6 MR. FURMAN: Objection to form.

7 THE WITNESS: The facts presented seem to
8 meet the intent of this section.

9 BY MR. WEBSTER:

10 Q So if you look here on page 13 at the bottom,
11 it says at 6.4.3.4 it says, the decision to admit a
12 service member for an in-patient mental health
13 evaluation or treatment rests solely with the mental
14 health care provider who has approved hospital
15 admitting privileges. In cases of deployed units or
16 isolated geographic locations where no mental health
17 providers are available, a physician, if available,
18 or a non-physician provider present shall take
19 actions and make recommendations to the service
20 member's commanding officer to protect the service
21 member's safety and that of the service member's
22 unit and their potential victim until such
23 evaluation can be conducted.

24 That to me means in June of 2012 --

1 tell me if you disagree -- he was involuntarily
2 committed based upon his apprehension and being
3 brought back to Peak. He was not able to leave,
4 correct? He was involuntarily there at the mental
5 facility.

6 MR. FURMAN: Objection to form.

7 THE WITNESS: I don't know the exact
8 circumstances that got him there. It appears
9 there was a lot of concerns, and it makes sense
10 to me that he would have been admitted against
11 his -- directed to go there against his will
12 and stay there.

13 BY MR. WEBSTER:

14 Q I'm asking because, if you go back to 4473
15 that we talked about earlier, the firearms form --
16 remember that one? Exhibit 4 right there. If you
17 go back to that, at least in June of 2012, if he's
18 being involuntarily committed, that would fall under
19 F: Have you ever been committed to a mental
20 institution and should have been reported to the FBI
21 NCIC database, right?

22 A What is your question?

23 Q It should have been reported that he went to a
24 mental health facility, that he was committed to

1 one?

2 MR. FURMAN: Objection to form.

3 THE WITNESS: I guess based on the intent
4 of what I'm reading, it sounds like he should
5 have been.

6 BY MR. WEBSTER:

7 Q Should have been reported to the NCIC?

8 A Right.

9 MR. FURMAN: Objection to form.

10 BY MR. WEBSTER:

11 Q The Air Force never trained you on that when
12 you are investigating crimes, did they? When you
13 are dealing with an individual or service member who
14 has been committed to a mental health facility while
15 you are investigating them for a crime they
16 committed, they never told you to report that to the
17 FBI NCIC database. They never trained you on that,
18 correct?

19 A I don't recall receiving training on that
20 during that time.

21 Q Would you agree with me that's probably a good
22 idea to keep firearms out of people's hands who are
23 both suicidal, could be mass murderers and the rest
24 who are involuntarily committed to a mental health

1 facility while in the military.

2 A I would agree with you.

3 Q If you go to page 13983, please. I have a
4 question: If you look at the date at the top -- you
5 are on the right page. It says to Andy Baker. On
6 the right it says April 26, 2011.

7 A Yes.

8 Q I think that that's an error. I want to point
9 that out. Because if you look down it says number
10 1, participated in presentencing screening at COPE,
11 Inc. on April 2, 2012. Do you see that?

12 A Yes.

13 Q The reason I'm saying that is because I think
14 they got the date wrong at the top. Because this
15 says April 2, 2012. And this is a report. It was
16 probably April 26, 2012 when they were writing this.

17 A Yes.

18 Q Would you agree with me that's probably right?

19 A I would agree with you that's probably right.

20 Q Participated in presentencing screening at
21 Cope, Inc on April 2, 2012. What is a presentencing
22 screening?

23 A I don't know exactly what that is.

24 Q As a special agent involved in finding the

1 truth and investigating cases, do they require
2 that -- is there sometimes when someone is going to
3 be found guilty of domestic violence, do they send
4 them to a presentencing screening?

5 A I'm not familiar with that term.

6 Q How does this document get in the file, into
7 the I2MS database?

8 A It's my first time seeing this document.

9 Q On April 2, 2012 you were still the
10 superintendent over this file, correct?

11 A I was still assigned there. I don't know if I
12 was reviewing this file at that time.

13 Q Have you ever seen anybody refer to a
14 presentencing screening at Cope, Inc. by the JAG
15 office or special agent's office at Detachment 225?

16 A Not from my recollection. We don't handle a
17 lot of domestic violence cases. Those are --
18 depending on -- during that time, mostly handled by
19 security forces.

20 Q I'm wondering how the documents got in his
21 file if it was not required by the Air Force.

22 A I'm not following.

23 Q Somebody sent this to you guys at the -- at
24 Detachment 225, didn't they?

1 MR. FURMAN: Objection to form.

2 BY MR. WEBSTER:

3 Q Look at the -- see the received 5/1/2012,
4 10:00 a.m. at the very bottom of the fax
5 confirmation?

6 A Looks like it was faxed to our office.

7 Q My question to you is, as a member of the
8 special agent's office, why is Cope sending Devin
9 Kelley's medical records and when it says
10 presentencing screening and you have Donna Lawrence,
11 a domestic violence specialist, sending a report to
12 your office, don't you think that that was because
13 he was referred for a mental health evaluation?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: I think that could be
16 implied.

17 BY MR. WEBSTER:

18 Q I'm just asking. I'm just trying to figure
19 out the process. I don't understand, as the special
20 agent on the file and you are responsible for
21 putting all this information in the I2MS database
22 and it came to your office, why no one knows on
23 April -- anything about the presentencing screening
24 and a mental health evaluation.

1 MR. FURMAN: Objection to form.

2 THE WITNESS: I'm not familiar with this
3 document.

4 BY MR. WEBSTER:

5 Q Are you familiar with any time anyone had a
6 mental health evaluation being put into the I2MS
7 database?

8 A I don't remember a specific instance right
9 now.

10 Q Do you think that someone referred him, maybe
11 the base commander referred him for a mental health
12 evaluation while the charges were pending?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: That's my assumption.

15 BY MR. WEBSTER:

16 Q That would be something you would expect to
17 happen when you are dealing with somebody with the
18 history and background of Kelley?

19 A Yes.

20 Q Okay. So when you look down here, the client
21 is recommended to seek a mental health evaluation,
22 that is based upon -- probably what they are saying
23 up here, a presentencing screening before he gets
24 put in jail?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: I'm assuming.

3 BY MR. WEBSTER:

4 Q If you go to the next page -- and I can't
5 read -- 13984 -- just real quick. On both of these
6 when this comes in on April 2 -- on April 26, 2012,
7 he has on his control scale maximum risk range he's
8 risk percentile 98?

9 A Yes.

10 Q It says, this person's scale score is in the
11 severe problem risk range. That means he has a huge
12 self-control problem, right?

13 MR. FURMAN: Objection to form.

14 BY MR. WEBSTER:

15 Q Do you know?

16 A I know what is written here.

17 Q It says violence scale maximum risk range,
18 risk percentile, 93. This person's response pattern
19 on the violence scale is in the high risk, 90th to
20 100 percentile range. You would absolutely agree
21 with that, right?

22 MR. FURMAN: Objection to form.

23 THE WITNESS: Based on the facts collected
24 in the investigation, I think that's probable.

1 BY MR. WEBSTER:

2 Q Y'all put him into the high risk response --
3 high for violence team, right? What is it called?

4 A When I was answering that question, I said
5 that's the step I would have taken. I don't know if
6 that happened.

7 Q If you go to page 013988. It's on the
8 left-hand side again.

9 A Is it the next page?

10 Q No, not quite. It goes through the testing
11 after you see the questions that Kelley answered.
12 13988. DVI, dash, SF real large on it.

13 Just real quick, if you look at this
14 Bates label, it shows a number of domestic violence
15 arrests: Not applicable. Number of assaults, not
16 domestic violence arrests: Not applicable. He's
17 lying there, isn't he?

18 MR. FURMAN: Objection to form.

19 THE WITNESS: He's not admitting that he's
20 committing violence against at least Tessa.

21 BY MR. WEBSTER:

22 Q But I'm asking this: Number of domestic
23 violence arrests. He has been arrested at this
24 point for domestic violence?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: At this point he would have
3 been arrested for assault.

4 BY MR. WEBSTER:

5 Q The Air Force knew he was being, at least
6 based upon the applications for his firearms that he
7 purchased and the information that we see when he
8 has to answer questions, that he lies repeatedly
9 with regard to his answers and responses to the
10 testing that he is undergoing?

11 MR. FURMAN: Objection to form.

12 BY MR. WEBSTER:

13 Q And in the Form 4437 that he filled out.

14 MR. FURMAN: Same objection.

15 THE WITNESS: His answers conflict with
16 the information that we collected in our case.

17 BY MR. WEBSTER:

18 Q I'm talking about the 4473 at the Holloman Air
19 Force Base. He was lying on those and also lying to
20 the people that were doing his mental health
21 evaluation.

22 MR. FURMAN: Objection to form.

23 THE WITNESS: It would appear so.

24

1 BY MR. WEBSTER:

2 Q Go to 13991. Peak Behavioral Services, LLC --

3 A Yes.

4 Q Are they a third-party contractor that
5 provides mental health service for the Air Force?

6 A I think so. I don't know the exact answer.

7 Q I'm asking because this is in the I2MS file.
8 And you have a guy by the name of Xavier Alvarez,
9 Director of Military Affairs, at the bottom.

10 A Yes.

11 Q It says here -- what I want to show you is it
12 says on June 7, 2012 at approximately 22:35, nurse
13 on unit informed staff that a code 3, elopement, had
14 been called on to military unit, reference Devin
15 Kelley. At the time, all directors and CEO were
16 notified as well as border patrol, Sunland Police
17 Department and El Paso Police Department.

18 So basically, what they are saying
19 here is that he has a code three, he left the
20 facility -- elopement means to leave or escape?

21 A I believe so.

22 Q They notified everybody, border patrol, the
23 Sunland police department, the El Paso police
24 department?

1 A Yes.

2 Q He is not supposed to be out?

3 A Yes.

4 Q So that is once again more evidence that he
5 was involuntarily committed at Peak Behavioral
6 Health Services?

7 MR. FURMAN: Objection to form.

8 THE WITNESS: I believe that's implied.

9 BY MR. WEBSTER:

10 Q It says, currently, a detailed history of
11 computer and Adult 3 was conducted as well as a
12 thorough investigation with other service members.
13 And it says, the computer results show that DK had
14 been searching weapons, body armor and transport to
15 San Antonio and lodging?

16 A Yes.

17 Q That's kind of a big deal to be looking at
18 weapons and body armor, isn't it?

19 A It's a flag for sure.

20 Q That's consistent with what he told the Air
21 Force and the fact that he had ideas of committing
22 mass murder, didn't he?

23 A That would go together with that.

24 Q Have you seen any pictures from the shooting?

1 A I have not.

2 Q Are you aware when he walked into the church
3 in November of 2017 that he was wearing full body
4 armor?

5 A I don't remember if I read that in a media
6 report or not.

7 --O--

8 (Deposition Exhibit 6 marked.)

9 --O--

10 BY MR. WEBSTER:

11 Q I'll show you Exhibit 6 to your deposition.
12 I'll represent to you that's a picture of Kelley on
13 the day he committed these murders. That's him in
14 the church. Can you see how he has the body armor
15 on?

16 A It looks like -- I'm assuming.

17 Q Tactical vest and face mask?

18 A I think so.

19 Q He is carrying an AR-15?

20 A It looks like it.

21 Q On that date that he's carrying that AR-15,
22 that's the one he purchased at Academy. Are you
23 aware of that?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: I'm not aware.

2 BY MR. WEBSTER:

3 Q I'll represent to you that's the one he
4 purchased. Because his background check came up
5 incomplete. Did you know that? His background
6 check came up clean that he had never been convicted
7 of a felony, or number two, ever put into a mental
8 facility, right?

9 A Yes.

10 Q That's because the Air Force -- the reason he
11 has that gun in his hands is because the Air Force
12 failed to properly train you, Mr. Hoy, and those
13 other special agents to properly put the
14 fingerprints in and report him to the NCIC, FBI
15 database to keep him from being able to purchase a
16 weapon of that caliber, correct?

17 MR. FURMAN: Objection to form.

18 THE WITNESS: I would say that he should
19 have been indexed and he was not indexed. I
20 think there is more to do than just training.
21 I'm not sure the circumstances exactly led to
22 it. I believe it was everyone's intention that
23 he should have been indexed and thought he was,
24 but he wasn't.

1 BY MR. WEBSTER:

2 Q When everybody at the Air Force knows that he
3 has threatened mass shootings, threatened the lives
4 of his girlfriend -- other women, threatened the
5 life of his co-workers, committed acts of violence
6 against all these different women, raped women,
7 according to the information in the file and the
8 rest, would you agree with me that the first thing
9 you want to do is to make sure that you do not
10 increase the risk of the public by reporting --
11 doing all you can and reporting all you can to the
12 proper authorities to prevent him from acquiring
13 weapons?

14 A Yes.

15 Q Would you agree with me the policies and
16 procedures in the Air Force, at least in respect to
17 Devin Kelley, and the staff and the Air Force failed
18 to properly inform the NCIC FBI to prevent an
19 incident like this with respect to Kelley?

20 MR. FURMAN: Objection to form.

21 THE WITNESS: I mean, in hindsight, yes.

22 BY MR. WEBSTER:

23 Q If we go back to 13991 that we were talking
24 about with the weapons and body armor, and you go

1 down, Greyhound security and police were notified of
2 the possible suspect heading downtown and advised
3 that he may be dangerous as per his recent death by
4 cop statements.

5 A Just a minute. The top of it?

6 Q Right in the middle. Let me -- strike that
7 question. Let me start over.

8 We finished there, it says, computer
9 results showed that DK had been searching weapons,
10 body armor, transport to San Antonio and lodging.
11 SMS reported to staff that DK had been working
12 diligently in PT to accomplish a twelve-mile run.

13 A Yes.

14 Q That means that Kelley has been working trying
15 to get a twelve-mile run together, get himself in
16 shape to make a twelve-mile run?

17 A That's that it says.

18 Q A distance check to the nearest Greyhound
19 station was conducted via Siri iPhone, and
20 determined the distance was eleven and a half miles.
21 So he was trying to make it to the Greyhound bus
22 station while he's committed to Peak Behavioral
23 Services, according to this?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: That is what is implied
2 there.

3 BY MR. WEBSTER:

4 Q It says, this is when Director Cuellar advised
5 Director Alvarez to the findings and called off the
6 enough the desert search and reassigned to downtown
7 El Paso, Texas. I guess it implies that Director
8 Cuellar figured he ran to the Greyhound station in
9 downtown El Paso?

10 A That's what it seems to say.

11 Q Greyhound security and police were notified of
12 the possible suspect heading downtown and advised
13 that he may be a danger as per his current death by
14 cops statement.

15 A Yes.

16 Q What is a death by cops statement?

17 A That's a statement where you are -- suicide by
18 cop. You are going to conduct an action that causes
19 a cop to have to kill you, use deadly force against
20 you.

21 Q It's like put a police officer in fear of
22 imminent danger of their life in order for them to
23 shoot you. Either you take shots at them or point a
24 gun at them or come at them with a knife, anything

1 that would put their life in danger where they could
2 take their life?

3 A That's an example, yes.

4 Q Is that another way you could commit a mass
5 shooting?

6 A For a death by cop? Yes.

7 Q If we go down to -- let's keep going through.
8 Throughout this process, Msgt Wolfe and Major Norton
9 were in constant communication with Director
10 Alvarez. What is Msgt?

11 A Master sergeant.

12 Q That's part of the Air Force, right?

13 A Yes.

14 Q And Major Norton were in constant
15 communication with Director Alvarez. At 12:10 a.m.
16 a taxicab approached the Greyhound station at slow
17 rate of speed and after a minute DK exited the
18 vehicle.

19 A Yes.

20 Q So at 12:00 a.m. they are so concerned with
21 Devin Kelley that at midnight they were out looking
22 for him, right?

23 A Yes.

24 Q They are worried -- it's probably safe to say

1 in your responsibilities that Master Sergeant Wolfe
2 and Major Norton and Director Alvarez were scared
3 that he was going to go conduct some mass shooting
4 or death by cop, right?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: It looks like that they were
7 worried about.

8 BY MR. WEBSTER:

9 Q It says at this point, Director Alvarez made
10 his way to Kelley via the dark side of the building
11 and ducking behind the taxi cab. So Director
12 Alvarez is sneaking around trying to hide to catch
13 up with him to try to catch him?

14 A Yes.

15 Q As the taxi cab drove away, DK was in direct
16 line of sight of Director Alvarez and moved in to
17 restrain DK without incident. Director Alvarez came
18 up and caught him about 12:15 in the morning, right?

19 A That's what is written there.

20 Q Moments later, Greyhound security and El Paso
21 police responded and handcuffed DK for his safety.
22 That means he was in custody?

23 A It would imply he's a danger in custody.

24 Q Once all legal matters were resolved, a

1 transfer of jurisdiction was conducted and
2 transferred to Peak Behavioral and placed in a
3 seclusion room for his safety.

4 A Yes.

5 Q That's involuntary -- committing someone
6 involuntarily into a behavioral services because of
7 their mental incapacity, correct?

8 MR. FURMAN: Objection to form.

9 THE WITNESS: I would say he did not have
10 a choice, yes.

11 BY MR. WEBSTER:

12 Q And then would you agree with me sitting here
13 today based upon your knowledge of the rules and
14 your training by the Air Force in January of 2020
15 that this was a reportable offense to the NCIC
16 database?

17 MR. FURMAN: Objection to form.

18 BY MR. WEBSTER:

19 Q A reportable event?

20 MR. FURMAN: Same objection.

21 THE WITNESS: I think this would qualify
22 as a reportable event.

23 MR. WEBSTER: Take a break for a minute,
24 please.

1 (Pause in Proceedings.)

2 BY MR. WEBSTER:

3 Q We took a break. Are you ready to continue?

4 A Yes.

5 Q I'm not. Hang on.

6 --O--

7 (Deposition Exhibit 7 marked.)

8 --O--

9 BY MR. WEBSTER:

10 Q I'm showing you what we will mark as Exhibit 7
11 to your deposition. You can put -- I'm finished, I
12 believe, with Exhibit 2. You can put it aside and
13 put it over to this nice lady to pick up. All
14 right.

15 I'll show you, this is a -- sorry --
16 a report from the director of oversight and --
17 Department of Air Force from July 5, 2018. Do you
18 see that?

19 A Yes.

20 Q Have you read that document?

21 A I don't think so.

22 Q You have never seen it?

23 A No, I don't think I have.

24 Q Okay. Where I want you to go is on the

1 summary of investigation page, Bates 15528. Now, it
2 starts off with, this is an investigation that was
3 initiated on November 6, 2017 to investigate the
4 facts and circumstances surrounding AFOSI's failure
5 to criminally index S-C-I-V, Kelley, subject AFOSI's
6 investigation, 225, dash, number, conducted at
7 Holloman Air Force Base. It says on November 7,
8 2012 D. Kelley was convicted to assaulting his
9 toddler, Article 128, UCMJ, and sentenced to one
10 year confinement. A December 2017 review of D.
11 Kelley's National Crime Information Center record
12 reflected no record of any USFA conviction.

13 A Yes.

14 Q That was your understanding of the National
15 Crime Information Center, NCIC, we talked about
16 earlier?

17 A Yes. I think this is the report that I just
18 saw my interview from if I'm not mistaken. The
19 entire report, I haven't.

20 Q I want to ask you some questions about it.
21 If you drop down it says, AFOSI's
22 records reveal the case was final closed on
23 December 14, 2012 by special agent in charge SA
24 Randall Taylor, Lancaster, California, sent to

1 archive on April 10, 2013, by the superintendent SA
2 Bankhead.

3 A Yes.

4 Q What they are talking about there is what I'll
5 mark in your deposition as Exhibit No. 8.

6 --O--

7 (Deposition Exhibit 8 marked.)

8 --O--

9 BY MR. WEBSTER:

10 Q Which is what they call the AFOSI checklist,
11 right? Are you familiar with that document?

12 A Which document?

13 Q AFOSI closed investigation file checklist.

14 A Yes.

15 Q This is a -- you worked with this closed file
16 checklist?

17 A It's changed over the years. I have worked
18 with it.

19 Q I will represent to you this is the checklist
20 that was in effect -- this is the one for Kelley's
21 case, and it's Bates labeled 13395 and 6. Do you
22 see that?

23 A Yes.

24 Q And when you look at this on like the second

1 page, it's my understanding that under the
2 regulations of AFOSI Man Regulation 71-21 before you
3 sign off or close this under number 32, that there
4 is multiple forms that have to be done, including
5 R84 and FD-249, submitting fingerprints to the FBI,
6 correct?

7 A Yes.

8 Q We see at least in Kelley's case here that
9 under 18 -- 17 and 18 on the second page, both of
10 which were -- as we talked about, were never
11 generated or given to the FBI, correct?

12 A Correct.

13 Q Do you know why, during the time that you
14 reviewed this file, those things were never done?

15 A I don't know why they were never done. I know
16 I reviewed the file. I probably saw a fingerprint
17 card in the file and asked the case agent to follow
18 up on it.

19 Q Okay.

20 A And I would have asked him to follow up on it
21 and probably sent a note saying make sure this gets
22 done. But it didn't get done.

23 Q Where would you find that note?

24 A I might have sent them an e-mail.

1 Q Do they save the emails up there, or do you
2 know what the document preservation system is?

3 A I don't know how long it is. I imagine --
4 that was a pretty long time ago.

5 Q I'm wondering if you have seen any e-mails
6 that you may have looked for.

7 A Emails back then, no.

8 Q If you go back to exhibit -- set this aside.
9 I'm going to refer to Exhibit 8. If you go back to
10 7 and turn to page -- I don't want to jump around --
11 page 15532. If you look down at 2, dash, 7 at the
12 bottom. Do you see that?

13 A Yes.

14 Q On February 21, 2018, Special Agent Gibson
15 reviewed the reviewer notes associated with the D.
16 Kelley investigation located in the I2MS database.
17 And just so it's clear to the judge and jury, that
18 the reviewer notes associated with that and the I2MS
19 database is where each special agent that works and
20 reviews that file puts notes in there when they look
21 at it?

22 A Yes.

23 Q That's part of the procedures outlined by the
24 DOD and Air Force?

1 A Yes.

2 Q It says, the case file was reviewed 20 times
3 between June 29, 2011 and October 31, 2012, with at
4 least one review occurring each month the case was
5 open except November of 2011, correct?

6 A Yes.

7 Q So is that under the rules and regulations by
8 the DOD and Air Force? Does that number of review
9 times according to the I2MS database comply with
10 those?

11 MR. FURMAN: Objection to form.

12 THE WITNESS: I'm not sure what you are
13 asking exactly.

14 BY MR. WEBSTER:

15 Q I thought you were supposed to review the file
16 every week?

17 A Every month.

18 Q So with at least one review occurring when the
19 case was open except in November of 2011. Reviews
20 were conducted by Taylor, ten of them, Bankhead, one
21 of them, right?

22 A Yes.

23 Q Hoy, four times. That's you.

24 A Uh-huh.

1 Q Ventri. Who is that?

2 A He would have worked at our next level
3 headquarters at Langley, Virginia.

4 Q And Meusburger, three times?

5 A Yes.

6 Q Hill, one time, correct?

7 A Yes.

8 Q And each of those times, each one of those
9 reviews, at least according to the I2MS database,
10 would have been an opportunity for each of you as
11 special agents to submit those fingerprint cards to
12 the NCIC, correct?

13 MR. FURMAN: Objection to form.

14 THE WITNESS: Each one of those would have
15 been an opportunity to follow up to make sure
16 that they were submitted.

17 BY MR. WEBSTER:

18 Q Right. Each time you looked at the case file,
19 you would see the fingerprints cards in there,
20 right? Can you see them in the I2MS database?

21 A Not in the database, the hard copy file.

22 Q Did you pull and review the hard copy file?

23 A No.

24 Q You sit down and you are sitting in front of

1 your computer, is that right?

2 A Yes.

3 Q At your desk. Describe that area for me.

4 What does it look like?

5 A Keyboard, computer, desk with a file on top of
6 it.

7 Q So where did you go and pull the file from?

8 A It's with the case agent. Normally if it's an
9 open investigation, the case agent has it and is
10 working on it. Or it's in a central file location
11 in the office.

12 Q When you would do the review, your four
13 reviews, would you go get that from a central
14 location?

15 A Yes.

16 Q You would get the actual hard file and sit
17 down at your desk?

18 A Yes.

19 Q And this would be the same for Taylor,
20 Bankhead, Hoy, yourself, Mr. Veltri, Meusburger and
21 Hill?

22 A So Veltri wouldn't have had access to the hard
23 file; Hill would not have either.

24 Q We can take Hill and Veltri off as not having

1 access to the fingerprint cards, correct?

2 A Yes.

3 Q And they wouldn't have access to the envelope
4 that was in the file also, correct?

5 A Yes.

6 Q Because at least according to the I2MS
7 database that we looked at earlier, the FBI envelope
8 was in there?

9 A Yes.

10 Q So when Mr. Taylor, Bankhead and yourself and
11 Mr. Meusburger, which would make it 18 different
12 views of those files, each time y'all sat down
13 Mr. Hoy, they -- you would have seen when you looked
14 at the hard case and you are looking at the
15 database, you would have known there is an envelope
16 in the file and fingerprint cards and nobody sent
17 them to the NCIC database?

18 MR. FURMAN: Objection to form.

19 BY MR. WEBSTER:

20 Q Mailed them to the FBI?

21 MR. FURMAN: Same objection.

22 THE WITNESS: I would have gone through
23 the documents and might have made that
24 observation, might have seen that card and

1 might have thought it was extra card, erroneous
2 card. I mean, if I would have known that it
3 never got submitted, I would make sure it got
4 submitted.

5 BY MR. WEBSTER:

6 Q They didn't train you how important it was at
7 that point in time when you were doing these file
8 reviews to make sure the cards were submitted?

9 MR. FURMAN: Objection to form.

10 BY MR. WEBSTER:

11 Q "They" being the Air Force.

12 MR. FURMAN: Same objection.

13 THE WITNESS: We didn't have a process in
14 place to ensure that it was not missed.

15 BY MR. WEBSTER:

16 Q Wouldn't you have gone back to check number --
17 go back to Exhibit 8. Wouldn't you have the
18 checklist?

19 A This is the closed case file checklist, right?

20 Q Yes.

21 A This is done before the file is sent to
22 archive.

23 Q Even when all of these people -- I think
24 Mr. Bankhead is the one that closed the file

1 pursuant to what we just read, right?

2 MR. FURMAN: Objection to form.

3 BY MR. WEBSTER:

4 Q Go back a couple of pages from the first page.
5 It's actually composed by -- the case was closed on
6 December 14, 2012 by Special Agent in charge Randall
7 Taylor and sent to archive on April 10, 2013 by Lyle
8 Bankhead. Do you see that?

9 A Yes.

10 Q So those would have been two occasions they
11 would have had the opportunity to see under the
12 closed investigation file checklist that the
13 fingerprint cards had not been sent into the FBI?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. WEBSTER:

17 Q That would have kept him from purchasing -- if
18 they would have done that, assuming the FBI would
19 have indexed the fingerprints and knew he was
20 convicted of a felony, because you would have given
21 them the fact that he got a year in prison and was
22 convicted of a felony, would have been sent to the
23 FBI also? It would be on his permanent record?

24 A Yes.

1 Q When they did a background check on him in
2 2014, 2015 and 2016, he would have been denied at
3 least trying to purchase those legally from a
4 firearms dealer?

5 A Yes.

6 Q Which at least would have prevented Kelley
7 from committing those murders in the church in
8 November of 2017 with the AR-15 that he used that we
9 saw in the picture?

10 MR. FURMAN: Objection to form.
11 Speculation.

12 THE WITNESS: Assuming it would have
13 prevented him from conducting those killings
14 with a legally purchased gun?

15 BY MR. WEBSTER:

16 Q With that legally purchased AR-15. He
17 couldn't have gotten that one if the NCIC database
18 would have been updated properly by the Air Force,
19 correct?

20 A Yes.

21 Q Each time these folks reviewed this file and
22 had it sitting in front on them was an opportunity
23 for that to happen, correct?

24 MR. FURMAN: Objection to form.

1 THE WITNESS: It was an opportunity to
2 catch the discrepancy.

3 BY MR. WEBSTER:

4 Q Taylor and Bankhead, being the last people --
5 Taylor touching the file ten times -- he's the one
6 that came in in June of 2018 as the superintendent,
7 right?

8 A Taylor? No. He came in as the special agent
9 in charge, the overall commander.

10 Q He's the big dog; is that right?

11 A He's the boss.

12 Q Right. So the boss reviewed this file ten
13 different times and never once made sure those
14 fingerprint cards were put in there, correct?

15 A I mean, that's --

16 Q That's after he had all of that knowledge,
17 after reviewing the file of this man with the body
18 armor, with the sexual assaults, with the hair
19 pulling, with the punching his wife, with the threat
20 to kill everyone on the base. All these red flags,
21 he knew about that. But he still didn't make sure
22 that the man, when he walked off that base and got
23 out of prison and was dishonorably -- bad conduct
24 discharged, still did not make sure that that man

1 couldn't walk into an Academy and buy an AR15 by not
2 processing those fingerprints, correct?

3 MR. FURMAN: Objection to form.

4 THE WITNESS: At the end of the day before
5 the case was final closed, he did not notice
6 that they were not submitted.

7 BY MR. WEBSTER:

8 Q With all this information, all of the stuff
9 that happened on how bad this man was, the nasty
10 things he did, the times he escaped, the wanting to
11 have the mass shootings, the beating of the wife,
12 all these nasty things, with that knowledge, don't
13 you think that makes the Air Force culpable and
14 responsible for the deaths of those folks in that
15 church?

16 MR. FURMAN: Objection to form.

17 THE WITNESS: You are asking for my
18 opinion?

19 BY MR. WEBSTER:

20 Q Yes, sir, what you think. You worked on this
21 file.

22 A I think that we had a responsibility to report
23 it and we failed to.

24 Q And you are at least partially responsible for

1 this, correct?

2 MR. FURMAN: Objection to form.

3 THE WITNESS: For what?

4 BY MR. WEBSTER:

5 Q The killings that occurred in this church by
6 Devin Kelley.

7 MR. FURMAN: Objection to form.

8 THE WITNESS: We didn't make him pull the
9 trigger, tell him -- I mean --

10 BY MR. WEBSTER:

11 Q But you put the gun in his hands.

12 A I wouldn't say that.

13 MR. FURMAN: Objection to form.

14 BY MR. WEBSTER:

15 Q If we go back to the page on the summary of
16 investigations, Mr. Hoy, it says that USAF special
17 investigations academy lesson plans and practical
18 exercises reflected agents interviewed during the
19 CEI were provided a minimum of two hours of
20 instruction on how and when to submit fingerprints
21 to the FBI.

22 A Yes.

23 Q That never occurred, did it?

24 MR. FURMAN: Objection to form.

1 BY MR. WEBSTER:

2 Q At least for you?

3 A If -- you are talking OGT or at the academy?

4 Q Any time. I don't think -- you told me
5 everything you got was on-the-job training, right?

6 A So to clarify, that statement is saying that
7 the special investigations academy lesson plans
8 showed two hours of instruction on fingerprinting.

9 Q How and when to submit. That's different
10 than -- you told me earlier you learned how to do
11 fingerprints?

12 A Right.

13 Q And that you had no idea how to submit
14 fingerprints to the FBI. They never trained you on
15 that.

16 MR. FURMAN: Object to form.

17 THE WITNESS: I don't recall specific
18 training. Probably accurate. A training block
19 is generally an hour.

20 BY MR. WEBSTER:

21 Q Specifically, you told the investigators here,
22 quote, I believe that subjects were indexed when
23 their names were entered into I2MS and their case
24 was opened. You also believed the I2MS

1 automatically performed these actions in 2011. You
2 stated that the fingerprint cards supplemented I2MS
3 data and served as an update to the federal system
4 and NCIC. Is that true?

5 A That was a misunderstanding at that time.

6 Q How is it a misunderstanding?

7 A I mean, it goes back to not having thorough
8 training on the submission.

9 Q Not a misunderstanding of what you told the
10 investigators, a misunderstanding by you of the
11 process?

12 A Yes.

13 Q Of -- you're thinking that the whole database
14 of I2MS was giving information to the federal FBI
15 and the NCIC database, correct?

16 A There was initial indexing happened through
17 there.

18 Q You don't recall as we sit here today even
19 with this special investigations academy lesson plan
20 if you got any specific training on how to submit
21 fingerprints to the FBI?

22 A That's correct.

23 Q Okay. At the bottom of the same page, final
24 closed investigations at Detachment 225 from

1 January 2011 to February 2012 reflected that of the
2 95 subjects qualified to be indexed in the NCIC, 22
3 of them were not indexed.

4 A Yes.

5 Q The 22 that were not indexed, are you aware of
6 whether or not the Air Force ever went back to index
7 them correctly?

8 A I believe so. As of -- as of a few months
9 ago, maybe. Finally finished the entire review of
10 all of the cases.

11 Q And as a result of that as we sit here today
12 in 2020, have they gone back and found out how many
13 of those 22 in this category had been purchasing
14 firearms?

15 A I don't know.

16 Q You have not heard one way or the other?

17 A If it's been reported, I don't remember what
18 the numbers were.

19 Q Had they asked you guys to check -- special
20 agents to go back and check on whether those
21 individuals who were not properly indexed had been
22 purchasing firearms in the public?

23 A They put together a task force that reviewed
24 all these cases. What they looked at, I don't know.

1 Q From January 11, February 12, 27 of 32
2 subjects of Detachment 225 cases who were tried by
3 court marshal and NCIC records accurately reflect
4 their results of trial. You had a 16 percent
5 failure rate, is that correct?

6 A That's what it says.

7 Q That reflects the administrative failures by
8 Detachment 225 to properly close files, correct?

9 MR. FURMAN: Objection to form.

10 THE WITNESS: It reflects we were not
11 accurately submitting indexing subjects.

12 BY MR. WEBSTER:

13 Q Would you agree with me in the closed file --
14 closed investigation file checklist in -- when this
15 was signed, or for Kelley in April of 2013 or when
16 Randall Taylor closed the file that he should have
17 made sure all of these different things were checked
18 off?

19 A Yes.

20 Q The case should not have been administratively
21 closed, correct?

22 A It shouldn't been final closed without all
23 these things being verified.

24 Q Did you ever close cases without verifying

1 those things?

2 A I went through each one of those and verified
3 them. Could I have overlooked something? Yes.

4 Q If I looked at the case reviews you did for
5 Detachment 225, yours would have yes marked in the
6 column before they were signed off and closed?

7 A If they were not applicable, NA, if not
8 required, no. I made every effort to do this
9 correctly. But I'm human. You could find that I
10 made a mistake somewhere.

11 Q If you go to page 15532, which is the last
12 page of this -- that portion of it, it says at the
13 very top, it says -- starts with -- the part I'm
14 talking about is on June 8, 2012. Kelley was
15 interviewed a second time by Harper and Special
16 Agent Mills. The interview record indicated D.
17 Kelley's fingerprints were taken at the conclusion
18 of the interview, which by was signed by SA Mills.
19 Investigators were unable to locate hard copy or
20 digital fingerprints associated with this interview.

21 A Yes.

22 Q Based upon you working there for several years
23 prior to this, how would they lose the fingerprints
24 if they were taken that day?

1 MR. FURMAN: Objection to form.

2 THE WITNESS: I don't know. I have an
3 opinion on if there were fingerprint cards in
4 the file that they might have overlooked and
5 thought they had them. Speculation.

6 BY MR. WEBSTER:

7 Q Was it required -- if you did another
8 interview, did you do another set of prints?

9 THE WITNESS: I'm trying to remember how
10 we did it then. Usually you would always do
11 another one. It probably didn't happen if the
12 offense was the same or similar to the one they
13 were indexed for, because you have another form
14 called the R84, which is a medium to update
15 charges in their indexing process.

16 MR. WEBSTER: I need to correct something
17 on the record. I referred to the DOD directive
18 wrong. It's 6490.1 on Exhibit 5.

19 MS. SANDERS: It's point 4.

20 MR. WEBSTER: It's 6490.4 in Exhibit 5.

21 Sorry.

22 BY MR. WEBSTER:

23 Q Were you reprimanded as a result of this
24 incident?

1 A I was not.

2 Q Do you know of any other special agents that
3 were?

4 A I do not.

5 Q Okay. Do you know whether Randall Taylor was
6 reprimanded?

7 A I do not.

8 MR. WEBSTER: I believe I will pass the
9 witness.

10 MR. LeGRAND: Do you want to take a break?

11 THE WITNESS: I'm okay.

12 MR. FURMAN: I want to make an objection
13 on the record. Objection to two attorneys for
14 plaintiff's asking questions at the deposition.
15 This case has been consolidated by the judge
16 for purposes of discovery; therefore, a
17 deposition should proceed as if at trial. I
18 wanted to raise that for the record.

19 MR. WEBSTER: I would like to mark as
20 Exhibit No. 9 the text messages with Yon
21 Holz -- Exhibit 9, and the emails with -- from
22 James Hoy to Vince Bustillo as Exhibit No. 10.

23 --O--

24 (Deposition Exhibit 10 marked.)

1 --=O=-

2

3 BY MR. LeGRAND:

4 Q In that regard -- and I'm going to try to be
5 quick. I know you have been here a long time. And
6 I appreciate you giving us your time. I mean that
7 from the bottom of my heart.

8 This is important, don't you think?

9 A Yes.

10 Q Exhibit 10 that Mr. Webster referred to, your
11 e-mail exchange -- is that an e-mail exchange with
12 Mr. Bustillo?

13 A Yes.

14 Q That occurred last Friday?

15 A No. I forwarded this from my personal account
16 to a computer where I could print it.

17 Q That was back in '17?

18 A Yes. November 6 of '17 was the last
19 transmission.

20 Q Going to Exhibit 9, which is -- is this a
21 Facebook --

22 A This is Facebook Messenger.

23 Q Between you and Yon?

24 A Agent Holz.

1 Q And do you know if he was reprimanded?

2 A I do not know.

3 Q Have you talked to him about that?

4 A I never asked him if he was.

5 Q When you talked to him in November of 2017 on
6 this Facebook Messenger was he in the Air Force?

7 A Yes, I think he was assigned in Turkey at that
8 time.

9 Q Have you ever heard of someone being
10 reprimanded after they left the Air Force? In other
11 words, being reprimanded by the Air Force after they
12 left?

13 A I have not heard of that.

14 Q Is November of 2017 the last time you talked
15 to Mr. Holz?

16 A No. I probably sent him Merry Christmas and
17 how are you doing, messages as recent as six months
18 ago.

19 Q Did he mention anything about a reprimand or
20 censure?

21 A Not that I remember. I try not to talk about
22 this.

23 Q I understand. Going to the second page of
24 Exhibit 9, is your -- are your words in blue?

1 A Yes.

2 Q And his -- Mr. Holz' are in gray?

3 A Yes. With the little dog to the left of them.

4 Q And on page 2, am I reading correctly, my
5 superintendent is talking to the chief right now.

6 Yeah, hanging in there. I learned that OSI
7 identified this. Is this referring to the problem
8 that went on with Devin Kelley's case?

9 A I believe that's what he's talking about.

10 Q OSI identified this as a systemic problem
11 across the command.

12 A Yes.

13 Q Did you correct him and say that you didn't
14 disagree or didn't agree?

15 A I didn't want to engage.

16 Q Do you disagree?

17 A That it was systemic problem? I didn't
18 participate in the overall investigation of -- into
19 the issue of the overall prints not making it to
20 NCIC. I don't feel like I have an educated opinion
21 on whether it's a systemic issue or not.

22 Q Coming down further on his words: So they are
23 telling me they are not looking to burn someone at
24 the stake. They are just looking to identify the

1 issue and fix it. Do you believe they have
2 identified the issue and fixed it?

3 A I believe they have put a lot of things in
4 place to prevent something like this from happening
5 again.

6 Q What was the issue, not reporting to the FBI
7 what should be reported to the FBI? Is that the
8 issue you are talking about here?

9 A I think that's the overall issue.

10 Q Fix it. What, in your opinion, has been done
11 to fix it? Have you explained that to Mr. Webster
12 earlier? I don't want to be repetitious.

13 A They put a lot of three-tier review, so they
14 put basically three very big opportunities before a
15 case is closed to catch and verify that indexing has
16 been done correctly. And they have done more
17 training, more annual training, more emphasis on the
18 processes. They purchased digital fingerprint
19 machines for all of the units.

20 Q Do they work?

21 A They are like anything. Sometimes they don't
22 work. But I think most of the time they work.

23 Q Do you believe there is cases not being
24 reported properly?

1 A I hope not.

2 Q You said, it's still a shitty situation. What
3 were you talking about?

4 A Can I finish what I was saying before?

5 Q I'm sorry. I did not mean to interrupt you.

6 A There was other things that were done too.
7 They hired a person at units whose job is to focus
8 on the administrative processes of criminal booking,
9 where -- to kind alleviate that from the special
10 agents that are doing the activities of the cases.
11 They hired another person at the units, additional
12 manpower, to prevent something like this from
13 happening again.

14 Q You are telling us under oath that now, as we
15 sit here today, there is now a person in each unit
16 that has the specific task of making sure the FBI is
17 told when the FBI is supposed to be told?

18 A Not sitting in each unit. I believe they
19 identified certain units that probably have a higher
20 obstacle and they are in the process of hiring
21 people to make sure cases from beginning to end are
22 documented correctly. So additional manpower to
23 focus on the issue.

24 Q All of the 225 offices, do they have an extra

1 person?

2 A I don't know.

3 Q I want to get into briefly the distinction
4 between the 49th and 225th at Holloman. Do you know
5 the distinction?

6 A Yes.

7 Q What was the 49th?

8 A 49th was the wing that was the host wing, Air
9 Force wing, of the Holloman Air Force base. The
10 225th was the OSI detachment that we were a tenant
11 unit at that wing.

12 Q So the 49th, did it have a group that
13 investigated within its own ranks when a member of
14 its ranks committed a crime?

15 A It would have had security forces like
16 military police. They would have handled
17 misdemeanor crimes and investigations.

18 Q Before I go away from it, I want to finish
19 with Exhibit 9. I want to go back to where you say,
20 it's still a shitty situation. Can you tell me what
21 you were every referring to when you said "it?" The
22 reporting to the FBI?

23 A I was referring to his being pulled out of his
24 location in Turkey, sent to Germany and being

1 interviewed as a witness in connection to a mass
2 murder.

3 Q And then he tells you having been a part of
4 this DEF -- what is that referring to?

5 A I think it's definitely.

6 Q Definitely makes me feel terrible. Does it
7 make you feel terrible as well?

8 A To be associated with this? Yes, I feel very
9 terrible.

10 Q All of the answers that you gave to Mr.
11 Webster, did a lot of those make you feel terrible?

12 A They don't make me feel good.

13 Q Next he says, I was told that the random audit
14 they did -- is "they" the Air Force?

15 A I assume he's talking about the Air Force or
16 OSI.

17 Q Could it be the inspector general?

18 A Could be.

19 Q It revealed over 30 percent failure on
20 reporting. Did I read that correctly?

21 A Yes.

22 Q Do you have any reason to dispute that?

23 A I have no reason.

24 Q Do you have any reason to believe that

1 Mr. Holz would inaccurately relate something to you
2 in that regard?

3 A No.

4 Q Then your words immediately after that, that
5 that could have happened to any agent?

6 A Yes.

7 Q Is that because of the training that existed
8 at the time?

9 MR. FURMAN: Objection to form.

10 THE WITNESS: I wanted to make him feel
11 better. I felt at the time he might have been
12 feeling responsible for the loss of lives of
13 other people.

14 BY MR. LeGRAND:

15 Q Do you, in fact, feel that 30 percent has gone
16 down?

17 A There no longer a 30 percent failure in
18 reporting? I think it has. I don't have access to
19 the numbers. I think it's significantly gone down
20 or eliminated.

21 Q You would hope so?

22 A I would hope so.

23 --O--

24 (Deposition Exhibit 11 marked.)

1 --O--

2 BY MR. LeGRAND:

3 Q I'm handing you what is Bates stamped numbered
4 USA 7575, 7613 and 7614. Have you seen those
5 before?

6 MR. FURMAN: Do you have an extra copy of
7 that one?

8 MR. LeGRAND: No, I don't.

9 THE WITNESS: I may have seen this before.
10 I don't recall.

11 BY MR. LeGRAND:

12 Q The reason I bring it up, you made reference
13 to the high risk for violence team. If you look on
14 Bates stamped page 7613, does it, in fact, describe
15 there what the high risk for violence response team
16 is?

17 A Looking at 2.2.8, it does.

18 Q Am I reading correctly on 2.2.8 it says high
19 risk for violence response team, HRVRT, correct?

20 A Yes.

21 Q And forgive me, I have a problem with all of
22 these letters. 2.2.8.1, the HRVR2 will be activated
23 when there is a threat of immediate and serious harm
24 to family members, unmarried intimate partners or

1 FAP staff. What does that stand for?

2 A Family Advocacy Program.

3 Q Did I read that correctly?

4 A Yes.

5 Q It says 2.2.8.1, HRVR2 is activated at the
6 discretion of the FAO. Who is the FAO?

7 A That's Family Advocacy Officers maybe.

8 Q Members are appointed in writing by their CC.

9 A Commander.

10 Q And approved by the FAC. Membership includes
11 the FAO, FAC coalition, working with the family
12 members, SQ, CC -- what do those letters mean?

13 A Squadron command.

14 Q And then judge advocate?

15 A Yes.

16 Q What is SFS?

17 A Security Forces Squadron.

18 Q That would be the 49, correct?

19 A Yes.

20 Q MH provider, the mental health provider?

21 A I believe so.

22 Q So then AFOSI, that's where you were? You
23 were the superintendent at AFOSI for a period of
24 time?

1 A Noncommissioned officer in charge of
2 operations.

3 Q You left in June of 2012?

4 A Yes.

5 Q And while you were superintendent and while
6 were you working on the Devin Kelley file, you said
7 there was not an HRVRT done on Devin Kelley; is that
8 correct?

9 A I don't recall if there was or was not one.

10 Q If one had been done, would the supervisor of
11 AFOSI have been the one that would have been on the
12 team?

13 A Not necessarily. It could have been the
14 special agent in charge or the case agent.

15 Q You don't recall having done it?

16 A I don't recall doing one.

17 Q Do you recall ever having served on a high
18 risk for violence response team?

19 A Yes.

20 Q How many?

21 A Maybe half dozen.

22 Q Were they always very serious cases?

23 A It varied from very serious to someone just
24 having a strong concern and not knowing what to do.

1 Q But this instruction that is Exhibit 11 states
2 that the HRVR2 will be activated when there is a
3 threat of immediate and serious harm to family
4 members, unmarried intimate partners and the FAP
5 staff, correct?

6 A That's what it says.

7 Q That's when you do it?

8 A Sometimes I guess threats are inferred or not
9 clear. It's a caution that somebody might activate
10 this group.

11 Q 2.2.8.1.5, developed a coordinated plan for
12 immediate implementation to manage risk to the
13 individual presenting the potential threat, the
14 suspected or intended victims and the community at
15 large, correct?

16 A Yes.

17 Q So part of the reason for establishing the
18 HRVRT team is to protect the public at large from an
19 individual?

20 A Yes.

21 --O--

22 (Deposition Exhibit 12 marked.)

23 --O--

24

1 BY MR. LeGRAND:

2 Q I'm handing you Bates stamp 53 -- A USA 5399,
3 5400, 5401 through 5405.

4 A I have 5399 through 5405.

5 Q Have you seen this letter before?

6 A Just give me one second to look at it, please.
7 I have not seen this before.

8 Q Does this appear to be a letter responding to
9 Sean Simonton with the office of the inspector
10 general by Barry Orlow, associate chief counsel for
11 the Bureau of Alcohol, Tobacco and Firearms?

12 A That's what it looks like.

13 Q And it doesn't seem to have a date on it, does
14 it?

15 A Not that I see.

16 Q In the first sentence, it's responding to Sean
17 Simonton's correspondence of April 24, 2018,
18 correct?

19 A Yes.

20 Q Can we assume it's after that date?

21 A Yes.

22 Q I want you to refer over to page 5401. Do you
23 see where it say Kelley's mental health treatment?

24 A Yes.

1 Q Pursuant to the documents provided -- and I
2 guess that's the documents provided to the ATF
3 person that wrote the letter -- does that appear to
4 be accurate to you?

5 A I believe so.

6 Q Do you know what documents it's talking about?

7 A No. Doesn't say it in here?

8 Q I want you to come down -- Okay. I'm
9 referring to Devin Kelley's mental health treatment
10 in bold print on the middle of page 5401.

11 A Yes.

12 Q Coming down to the last paragraph, May 14, 15,
13 2012, you would have been the superintendent of
14 AFOSI, correct?

15 A I would have been in the position at
16 Detachment 225.

17 Q Tell me -- Holloman Air Force Base high risk
18 for violence response team, HRVRT convened to
19 discuss Kelley's mental health concerns. Kelley's
20 squadron leadership and his mental health providers
21 feel that he is a major threat to commit an act of
22 violence and is currently institutionalized for
23 mental and emotional instability.

24 See family advocacy, HRVRT, stating

1 that -- going to the next page -- quoting -- it was
2 agreed that mental health will keep the member in
3 the Peak Hospital if at all possible until such time
4 as he can be placed in pretrial confinement for
5 charges of child and spouse abuse. It was agreed
6 that the service member is to be considered a high
7 risk for SI and HI -- what is that, do you know?

8 A I'm not sure.

9 Q Should be -- should he be released from the
10 hospital. Does that appear to be consistent with
11 your testimony to Mr. Webster earlier that the file
12 looked to you like he was confined to Peak and not
13 there voluntarily?

14 MR. FURMAN: Objection to form.

15 THE WITNESS: This tells me a HRVRT did
16 happen and that the consensus of that HRVRT was
17 to have him, I guess, admitted to -- directed
18 to a mental health evaluation at the Peak.

19 BY MR. WEBSTER:

20 Q You agreed with Mr. Webster earlier that you
21 believed this mental health status should have been
22 reported to the FBI. Do you recall that?

23 A Yes.

24 Q Is this consistent with that, that this HRVRT

1 was done on Mr. Kelley?

2 A Consistent with --

3 Q With the concept that his mental health status
4 should have been reported to the FBI.

5 A Yes.

6 Q The very next day -- so the HRVRT was on
7 June 7, 2012, and I believe Mr. Webster walked you
8 through some of this. But this is a different
9 document?

10 A Yes.

11 Q This is the ATF referring to this. And the
12 reason I'm going through this, none of the documents
13 that Mr. Webster went through -- and I don't believe
14 Mr. Kelley's case file makes reference to the HRVRT?

15 A I don't know.

16 Q You have never seen the HRVRT?

17 A I don't remember participating in it.

18 Q This HRVRT took place, correct?

19 A According to this it did.

20 Q Could it have been over at the 49th that all
21 of this was going on?

22 A Well, this HRVRT would not take place in our
23 office. It would normally happen I think in the
24 hospital on base. Either the hospital -- I'm not

1 sure where the meeting would take place.

2 Q Did sometimes the 49th conduct operations that
3 the 225 didn't know about and vice versa on a given
4 case?

5 A That's possible.

6 Q Okay. And for example, this HRVRT took place
7 while you were still superintendent and you didn't
8 know about it, correct?

9 A That's correct.

10 Q Okay. So could it have been going on in
11 conjunction with the 49th investigation of
12 Mr. Kelley?

13 A The 49th investigation? I'm not sure. I
14 don't remember if the 49th had an open
15 investigation.

16 Q Okay. As we sit here today, you don't know
17 whether the 49th had an open investigation on
18 Mr. Kelley?

19 A I don't know for sure.

20 Q Should there be coordination between the 49th
21 and the 225th?

22 A As far as --

23 Q On a given individual like Mr. Kelley.

24 A So OSI should have had primacy for any

1 investigations. No other unit should be conducting
2 investigation without coordinating with OSI. Now,
3 if there was an incident where security forces
4 responded and maybe apprehended Devin Kelley, they
5 would have had an incident report for that, and then
6 that should have been coordinated with us and added
7 to our investigation.

8 Q Page 5402, June 7, Kelley escaped. The word
9 "escaped" doesn't make you believe he was there
10 voluntarily?

11 MR. FURMAN: Objection to form.

12 THE WITNESS: Yes.

13 BY MR. LeGRAND:

14 Q He escaped from Peak Behavioral Health
15 services?

16 A Yes.

17 Q And he may have learned that the Air Force
18 preferred charges against him. Kelley is found at a
19 Greyhound bus station. He is initially restrained
20 by Peak director, then Greyhound security and El
21 Paso police handcuffed him. There was a transfer of
22 jurisdiction to Sunland Police Department, and
23 Kelley was transferred back to Peak.

24 You knew in your case file those

1 things happened, correct, because Mr. Webster went
2 through it?

3 A Yes.

4 Q You didn't know it was part of a HRVRT?

5 A At this period of time, I'm transitioning out
6 of the position. I don't have the full awareness of
7 everything that is going on at the detachment.

8 Q The next day, June 8, 2012, you were around?

9 A I don't know if I was or not.

10 Q You left in June, so --

11 A In the middle -- I was on leave status packing
12 up my house, moving out. I may have been in the
13 unit then part-time.

14 Q Would you agree that when all of this was
15 going down with the escaping from Peak and the HRVRT
16 and all that with reference to Mr. Kelley, there was
17 a transition in leadership going on as AFOSI?

18 A There was at Detachment 225.

19 Q Next paragraph. June 8, the next day, right,
20 after the bus station incident, Kelley's
21 commander -- that would have been in the 49th,
22 correct?

23 A I believe so.

24 Q Kelley's commander ordered him go into

1 pretrial confinement at the 49th SFS, Building 35?

2 A Yes.

3 Q What is the 49th SFS, Building 35?

4 A Forty-ninth security forces squadron building,
5 their building number 35.

6 Q Did you have any idea that he was put in
7 pretrial confinement at the security forces,
8 building 35?

9 A I may have been notified about it.

10 Q Pursuant to Air Force regulations, when he's
11 put in pretrial confinement in Building 34, is the
12 49th supposed to take his fingerprints and forward
13 those to the FBI?

14 A I don't know the answer to that.

15 Q Confinement was deemed necessary because it
16 was foreseeable he would flee again and engage in
17 serious criminal misconduct evidenced by his
18 research on body armor and his attempt to purchase
19 weapon while at the Peak, and numerous threatening
20 statements made to his wife and others. There is
21 evidence in the record that Kelley attempted to
22 purchase a handgun before being placed in pretrial
23 confinement June 7, 2012.

24 That's in addition, correct, that

1 June 7, 2012 is a gun in addition to the two guns he
2 actually bought at Holloman?

3 MR. FURMAN: Objection to form.

4 THE WITNESS: Based on what it says here.

5 BY MR. LeGRAND:

6 Q The pretrial confinement review officer did
7 not recommend release. Have I read that correctly?

8 A Yes.

9 Q Does it make sense to you under Air Force
10 regulations? In fact, are you familiar with
11 Department of Defense instruction 5505.11?

12 A I need to refresh my memory on it.

13 Q Based on your knowledge as we sit here today
14 as a special agent, do you know whether or not
15 confinement facilities in the Air Force had the
16 responsibility for taking fingerprints and
17 submitting them to the FBI when they confine
18 somebody?

19 A In the Air Force? I'm not familiar with their
20 operating procedures.

21 Q As we sit here today, do you know if the
22 security forces had the responsibility under Air
23 Force regulations to take Kelley's fingerprints when
24 he was put in pretrial confinement and forward those

1 to the FBI?

2 A I don't know if he did or didn't.

3 Q When he was put in pretrial confinement the
4 month that you left, at that point in time,
5 June 2012, there was probable cause to believe he
6 had committed a crime?

7 A Yes.

8 Q There is no excuse for not submitting
9 fingerprints to the FBI, is there?

10 MR. FURMAN: Objection to form.

11 THE WITNESS: There is no reason not to.

12 BY MR. LeGRAND:

13 Q Once he is tried and in post-trial
14 confinement, are they supposed to take his
15 fingerprints? Was that at the 49th?

16 A I don't know if that was their policy or
17 procedure.

18 Q Do you know if they take his fingerprints if
19 they are supposed to forward them to the FBI?

20 A I don't know for certain either way.

21 --O--

22 (Deposition Exhibit 13 marked.)

23 --O--

24

1 BY MR. LeGRAND:

2 Q Have you read instruction 55055.11 that is
3 Exhibit 13?

4 A I may have read this before.

5 Q Is it a mandatory instruction?

6 A I'm assuming. I would assume it is.

7 Q If you look at page 2 under policy, is the
8 49th Security Forces, is that a DOD law enforcement
9 organization?

10 A I don't know if it is or isn't.

11 Q Do I need to ask someone other than you what
12 applies to the 49th as far as taking fingerprints
13 and submitting them to the FBI?

14 A Yes.

15 Q Very good.

16 ==O==

17 (Deposition Exhibit 14 marked.)

18 ==O==

19 BY MR. LeGRAND:

20 Q Handing you what is marked as Bates stamped
21 page 13374, it appears to be at Department of Air
22 Force memorandum for the 49th. Does it say AFOSI on
23 there anywhere?

24 A I don't see it on this first page.

1 Q So this memorandum was not sent to AFOSI,
2 based on what you see on the cover?

3 A It's not on the list of memorandum.

4 Q Is it signed by Nathan Hughes, Major USAF
5 commander of the 49th logistical readiness squadron?

6 A It appears to be.

7 Q Did you know him?

8 A Who?

9 Q Major Hughes.

10 A I don't recall him.

11 Q Would he have been Devin Kelley's commanding
12 officer?

13 A He may have been; I don't remember.

14 Q Was Kelley in the 49th?

15 A I think he was in the 49th logistics squadron.

16 Q If Nathan Hughes was the commander of that
17 squadron, would not Devin Kelley been commanded by
18 this gentleman?

19 A As long as the time frames add up.

20 Q The memo is about Devin Kelley, correct?
21 Doesn't that appear that the time frames match up?

22 A If you are asking me is this his commander, I
23 believe it is.

24 Q When this was written, would the man who wrote

1 the memo have been Devin Kelley's commander?

2 A It's what it looks like.

3 Q And is the subject of the memo pretrial
4 confinement of A1C Devin Kelley?

5 A Yes.

6 Q The 49th Logistical Squadron?

7 A Yes.

8 Q It has personal data about Mr. Kelley?

9 A Yes.

10 Q Number 3 says, I -- that would be Devin
11 Kelley's commander -- I conclude that requirements
12 for pretrial confinement in R.C.M. 305(h) are met.
13 I have reasonable grounds to believe the following
14 offenses triable by court marshal were committed and
15 the confinee committed them. Absence without leave.
16 Do you know what that was for?

17 A I'm assuming based on the Peak document that
18 you showed me, that was when he left Peak.

19 Q Apparently, his commander in this memo felt
20 that Kelley was triable for the offense -- by court
21 marshal for the offense committed in -- the confinee
22 committed the offense, and the first one is absence
23 without leave for leaving Peak, correct?

24 A Yes.

1 Q And the next one is assault on a child,
2 Article 128?

3 A Yes.

4 Q That's a felony, correct?

5 A I believe so.

6 Q And he was convicted of that later?

7 A I think he was.

8 Q And then communicating a threat. You have
9 seen all kinds of evidence of that?

10 A I have seen evidence of that, yes.

11 Q Assault, you have seen lots of evidence of
12 that?

13 A Yes.

14 Q And he was convicted of that?

15 A That's my understanding.

16 Q And all of which, if there was probable cause
17 to believe they existed, doesn't this memo in and of
18 itself indicate that there was probable cause in the
19 49th, at least, to believe that Devin Kelley
20 committed these crimes?

21 A Yes.

22 Q Do you know whether or not knowing that and
23 believing that they had a responsibility in the 49th
24 to report this to the FBI?

1 A I'm not sure what they were required or not
2 required to do.

3 Q You have never been in the 49th?

4 A I never worked for the 49th.

5 Q I need to ask someone else whether they had
6 the responsibility to report --

7 A That's fair.

8 Q -- to the FBI.

9 A Speculating if I speak for them. I'm not
10 familiar with their policies and procedures.

11 Q And then, second, I have reasonable grounds to
12 believe continued pretrial confinement is necessary
13 because it's foreseeable that the confinee will not
14 appear at trial and/or will engage in serious
15 criminal misconduct if confinement is not continued.
16 I have reasonable grounds to believe less severe
17 forms of restraint are inadequate. Have I read that
18 correctly?

19 A Yes.

20 Q So does that appear to you that the beliefs in
21 the 49th were consistent with your beliefs that you
22 told Mr. Webster about today?

23 MR. FURMAN: Objection to form.

24 THE WITNESS: I believe their beliefs were

1 consistent that he was a flight risk and a
2 danger to the public.

3 BY MR. LeGRAND:

4 Q Should have been reported to the FBI?

5 A Yes.

6 Q Number 34, specific reasons supporting my
7 conclusions that the requirement for continued
8 pretrial confinement, R.C.M. 305 H2(b) are met
9 include the following: In June 2011 the member's
10 11-month-old stepchild was taken, and then this goes
11 on for a whole page here, correct, about all of the
12 various things that Devin Kelley did. You have gone
13 through those with Mr. Webster. I'm not trying to
14 be repetitive.

15 Does this appear to restate all of
16 the things that Mr. Webster went through with you
17 that were extremely bad contact by this service
18 member?

19 MR. FURMAN: Objection; form.

20 THE WITNESS: It highlights the same facts
21 in the case we talked about.

22 BY MR. LeGRAND:

23 Q About ten lines down from the top of the page,
24 you see on 23 April, 2012 while driving to El Paso,

1 Texas to pick up a family member from the airport,
2 AlC Kelley took his gun out of his holster and held
3 it again her temple stating, do you want to die?
4 Tessa Kelley pushed the gun away and then he placed
5 it in his mouth. Is that consistent with what
6 Mr. Webster read you from the case file?

7 A Yes.

8 Q In fact, he had purchased one weapon from the
9 base exchange two months before that date and
10 purchased another one 11 days before that event,
11 correct?

12 A If that's what was shown to me in the other
13 report, it sounds right.

14 Q You have agreed, in fact, if he had been
15 reported to the FBI as he should have been, he
16 should not have been allowed to purchase either of
17 those weapons?

18 A Yes.

19 Q Going to page 13376, the last page, is it
20 signed by Major Hughes?

21 A Yes.

22 Q At the top of the page does it say, I'm
23 convinced that he's dangerous and likely to harm
24 someone if released?

1 A Yes.

2 Q Do you agree with that?

3 A That he was likely to hurt someone if he was
4 released? At that time, I believe that his decision
5 to put him in pretrial confinement was warranted.

6 Q You have no reason to disagree with the
7 concept that Devin Kelley's commander at the time
8 placed him in pretrial confinement based upon the
9 same conduct that was described in Devin Kelley's
10 case file?

11 A Yes.

12 --O--

13 (Deposition Exhibit 15 marked.)

14 --O--

15 BY MR. LeGRAND:

16 Q This is -- Exhibit 15 is Bates stamped USA
17 13324. Do you see that?

18 A Yes.

19 Q Have you seen this letter before, or
20 memorandum?

21 A I don't recall seeing this.

22 Q Okay. Is this now from Robert C. Beardon,
23 Lieutenant Colonel USAF? Does he appear to be at
24 the time of this letter, March 22, 2013? Have I

1 read that correctly?

2 A Yes.

3 Q Does this appear now the commander of the 49th
4 Logistics Readiness Squadron is Robert C. Beardon?

5 A Based on this memo.

6 Q Would he -- when a airman is sentenced to
7 confinement -- do you agree this memorandum dated
8 March 22, 2013, is in anticipation of Kelley
9 returning to the base at Holloman from where he's
10 been serving in confinement at Miramar Naval Air
11 Station?

12 A Can I read this?

13 Q Sure, take your time.

14 A This looks like a memorandum in anticipation
15 of his release from Miramar. Looks like an attempt
16 to control his access to the base once he was
17 released.

18 Q And I want to walk through this with you if I
19 can. I'll try to be as quick as I can.

20 The subject is conditional barrment
21 request for AB Devin Kelley with his social security
22 number, correct? What is AB?

23 A Airman basic.

24 Q Was he demoted to that rank?

1 A That's the lowest ranking.

2 Q And then does this show that this memorandum
3 went to AFOSI?

4 A It does not show it on this memorandum.

5 Q Number one, I'm requesting a conditional
6 barment on AB Devin Kelley. The conditional aspect
7 will only allow him on Holloman Air Force Base under
8 escort during out-processing from 31 March through 5
9 April of 2013. On April 6, 2013 the conditional
10 will be become permanent. This airman was convicted
11 in a general court marshal and received a bad
12 conduct discharge. He's being returned to Holloman
13 Air Force Base from confinement at Miramar air
14 station, California, for out-processing purposes
15 only. After processing, he will be placed in excess
16 leave status for his appellate review.

17 A Yes.

18 Q Did you have any knowledge of any of this?

19 A No.

20 Q Do you have any reason to disagree he should
21 have been barred from Hollman Air Force Base upon
22 return based on his conduct?

23 A No.

24 Q What happens? Is he then released into the

1 population of the United States?

2 A At some point.

3 Q Without telling the FBI all of the things he
4 has done?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: Under these circumstances,
7 he returned to civilian life without an
8 accurate criminal history record.

9 BY MR. LeGRAND:

10 Q Number two, AB Kelley has repeatedly
11 threatened to kill his leadership. Have I read that
12 correctly?

13 A Yes.

14 Q He was openly carrying a firearm on Holloman
15 Air Force Base and placed the weapon to the head of
16 his wife, Tessa.

17 A Yes.

18 Q Later in 2012 he was hospitalized at the Peak
19 in Santa Teresa, New Mexico. While assigned to the
20 military ward, he created a diversion and jumped
21 outside of the recreational fence.

22 Have I read that correctly?

23 A Yes.

24 Q And. The first sergeant was immediately

1 notified and he instituted a BOLO for AB Kelley.

2 What is a BOLO?

3 A Be on the lookout.

4 Q Does that appear that Kelley left Peak
5 voluntarily?

6 A No.

7 Q Does it indicate that he escaped, as we saw
8 earlier in the document?

9 A As written, yes.

10 Q Is it consistent with his previous commander
11 saying he was AWOL?

12 A Yes.

13 Q Do you agree that he was AWOL when he left
14 Peak?

15 MR. FURMAN: Objection to form.

16 THE WITNESS: Based on what I have seen
17 today, that's where was supposed to be. And he
18 left there absent without leave.

19 BY MR. LeGRAND:

20 Q Today you saw this HRVRT. Would that have
21 been an additional reason he should not have left
22 Peak?

23 A The HRVRT is what put him into the Peak.

24 Q Involuntarily?

1 A Yes.

2 MR. FURMAN: Objection.

3 BY MR. LeGRAND:

4 Q After the event, the staff viewed the computer
5 searches from AB Kelley there at Peak and what they
6 found was alarming. He was searching the Internet
7 for body armor and guerilla tactics. It was
8 documented that he had been training his
9 cardiovascular system by extending his workout runs
10 from 20 to 60 minutes. Is that consistent with what
11 you have seen earlier today?

12 A I saw something like that in the Peak memo you
13 showed me.

14 Q Do you agree with that language, that this was
15 alarming?

16 A Yes.

17 Q Of all of the people that you -- in your
18 career, how many people have you reported to the
19 FBI? Can you even guess?

20 A It's been --

21 Q Hundreds?

22 A Maybe.

23 Q Would this man, Devin Kelley, should he have
24 been at the top of your list as people who should

1 have been reported to the FBI --

2 MR. FURMAN: Objection to form.

3 BY MR. LeGRAND:

4 Q -- looking back at it?

5 A Looking back at it, absolutely.

6 Q Looking if the rearview mirror, would you
7 agree that we have gone through all these records
8 with you today about, that committed all these bad
9 acts, mental issues, do you agree he should be at
10 the top of your list of people that got reported to
11 the FBI?

12 A I do.

13 MR. LeGRAND: No further questions.

14 MR. FURMAN: Let's take fifteen.

15 (Pause in Proceedings.)

16 EXAMINATION

17 BY MR. FURMAN:

18 Q Again, Special Agent Hoy, I realize it's been
19 a long day, and I appreciate your stamina throughout
20 the process.

21 I'm going to ask you a few questions
22 and go over some of the topics and exhibits we
23 discussed earlier. I'd like to start -- you
24 communicated you wanted to join the Air Force after

1 9/11, and I thank you for your service. When you
2 joined the Air Force, where did you start?

3 A To join the Air Force?

4 Q Correct.

5 A I enlisted at San Diego military processing
6 center.

7 Q Where did you work when you started with the
8 Air Force?

9 A I worked for security forces.

10 Q How long did you work there?

11 A About six years.

12 Q And did there come a time you switched to
13 working for AFOSI?

14 A I switched in 2008.

15 Q And why did you switch?

16 A I wanted to work with an organization of a
17 bigger investigative scope and work with more
18 professionals. And I was interested in law
19 enforcement counterterrorism, counterintelligence
20 mission that OSI had.

21 Q Throughout your service with the Air Force,
22 have you served abroad?

23 A Yes.

24 Q Have you served in combat zones?

1 A I have.

2 Q Have you received any accolades or awards
3 during the time in the Air Force?

4 A A bronze star in Iraq and a bronze star in
5 Afghanistan.

6 Q Those were the major awards that you received?

7 A I have received other awards in the years in
8 my service.

9 Q I want to talk about your training. Were you
10 trained in what is known as FLETC?

11 A Federal Law Enforcement Training Center? Yes.

12 Q And how long was that training?

13 A It was less than six months, probably closer
14 to five months.

15 Q What types of things were you trained on
16 there?

17 A Everything that had to do with conducting
18 criminal investigations: Interviews, processing
19 crime scenes, processing evidence, managing cases,
20 training on the fourth amendment, fifth amendment
21 rights.

22 Q Were you trained on how to properly determine
23 probable cause?

24 A Yes.

1 Q Earlier you talked with Mr. Webster about some
2 of your concerns about the administrative training
3 you received on the job. Did you have any concerns
4 about the training you received regarding the law
5 enforcement aspect of your job?

6 A I don't believe so.

7 Q You believe the training at FLETC was
8 sufficient in that regard?

9 A It was sufficient to teach you how to conduct
10 investigations, how to conduct operations.

11 Q During your time when you were a case agent
12 for Detachment 225, about how many cases were in
13 your caseload at any given time?

14 A As a case agent, anywhere between two to eight
15 cases at the same time.

16 Q Was that a lot?

17 A Yes.

18 Q Why is that?

19 A We had many major investigations going on.
20 One investigation could consume most of your week,
21 and you balance several other investigations. Most
22 of the investigations were homicide cases, death
23 cases, suicides, child death, sexual assault, drug
24 cases. Created a high ops environment and a lot to

1 balance and manage.

2 Q During your time as a case agent, how many
3 hours a day were you working on average?

4 A At least ten hours a day. Sometimes I would
5 go in in the morning and stay until eight at night.

6 Q And did that change at all when you became the
7 NCOIC?

8 A It probably increased. Round-the-clock hours.
9 There was no set schedule. Normal workdays could
10 be, you know, come in around eight, work until
11 eight. And then some days I went in and didn't go
12 home until three days later, because we were on a
13 manhunt.

14 Q During your time with Detachment 225, was
15 there a focus on operational aspects of the job
16 versus administrative?

17 A There was no focus on operational aspects.

18 Q Due to all of the responsibilities and all of
19 the other cases, was it hard to prioritize all of
20 the parts of your job?

21 A It was.

22 Q Did you have to delay or put off tasks that
23 needed to be done, just because pressing matters
24 came up?

1 A It was unrealistic to stay on top of every
2 task.

3 Q And the administrative parts of the job, were
4 those higher or lower in priority?

5 A It was discretion of the unit commander at the
6 time and the next headquarters of commander. They
7 prioritized operations as a focus over admin as we
8 did.

9 Q Was that the focus during your time there?

10 A It was more operational than administrative,
11 yes.

12 Q I would like to talk about the procedures at
13 Detachment 225.

14 Now, you talked earlier about the
15 subject interview. And am I remembering correctly
16 during a subject interview the subject is read their
17 Article 31 rights?

18 A Yes.

19 Q Do you recall correctly during any -- after
20 any subject interview that fingerprints of the
21 subject are taken?

22 A Yes.

23 Q But is it true that the fact that fingerprints
24 were taken at the subject interview does not mean

1 they were required to be submitted to the FBI?

2 A Yes. They were taken as a matter of procedure
3 every time, even if we didn't have a probable cause
4 determination yet.

5 Q That was something determined at a later time?

6 A Yes.

7 Q If -- what was the practice if you
8 determined -- you or another case agent at
9 Detachment 225 determined there was probable cause
10 that a specific individual had committed a crime?
11 What would you do next?

12 A If there was probable cause that they
13 committed a crime? It would initiate an
14 investigation that would involve at some point
15 confronting that individual, reading them their
16 rights. And at a certain point, an apprehension
17 would be made and criminal booking would be done.

18 Q Would the staff judge advocate office be
19 contacted?

20 A Yes.

21 Q For what purpose?

22 A For initial coordination before the interview
23 of a subject and weekly throughout the lifecycle of
24 the case.

1 Q Weekly, what do you mean by that?

2 A There was a weekly staff meeting they would
3 attend, the chief of judge advocate, chief of
4 military justice. And we would discuss all open
5 cases at that time.

6 Q Is it fair to say that if the Devin Kelley was
7 included in that, it would be a topic of discussion
8 at the weekly staff meeting?

9 A Yes.

10 Q Do you have a recollection of whether -- of
11 any discussion of the Devin Kelley investigation
12 during your time at Holloman?

13 A With the staff judge advocate? I don't recall
14 a specific conversation.

15 Q I would suspect you were generally discussing
16 many cases during those meetings, right?

17 A That's correct.

18 Q Events that occurred?

19 A Yes.

20 Q You would agree that the mere fact that you
21 are bringing in someone for a subject interview,
22 that fact alone does not mean there is probable
23 cause they committed a crime?

24 A Correct.

1 Q At Detachment 225 at the time were you there,
2 who was primarily responsible for submission of
3 fingerprint cards and filed disposition reports to
4 the FBI?

5 A It was the responsibility of the case agent,
6 the lead case agent.

7 Q Were you the lead case agent on the Devin
8 Kelley investigation?

9 A I was not.

10 Q During the time of the Devin Kelley
11 investigation, so beginning in June of 2011 through
12 2012 when you left the detachment, during the period
13 were you serving as the MCOIC?

14 A From the time the Kelley case started? I
15 would be serving in that capacity, yes.

16 Q And as MCOIC did you have primary cases
17 assigned to you?

18 A I was not the lead agent on any one case.

19 Q In what capacity would you get involved?
20 Obviously, you would review cases at a supervisory
21 level. Did you get involved in any other capacity?

22 A I would be involved in the daily operations,
23 the steps taken in the investigations. I would help
24 with the interviews and the crime scene searches and

1 evidence processing.

2 Q Was that at the request of the case agent?

3 A It was a small team and a lot of work.
4 Everybody helped out.

5 Q At Detachment 225, who would have primary
6 responsibility or take the fingerprints after a
7 subject interview?

8 A Typically, the people conducting the interview
9 were the same ones -- on a routine basis would be
10 the same ones that would take the fingerprints.

11 Q Did that help with respect to the Devin Kelley
12 fingerprints?

13 A I don't believe it happened on this one. I
14 believe on this one, myself and Vince Bustillo
15 conducted the interview of Devin Kelley. Around
16 that same time or before the Tessa Kelley interview
17 was going on. And there are coordinations made to
18 the affidavit to search their rings. So there is a
19 lot going on. I believe Agent Holz and maybe
20 another agent -- because he was going to be the lead
21 case agent -- was given the task to conduct the
22 fingerprints -- collect the fingerprints.

23 Q Do you know who collected the fingerprints of
24 Tessa Kelley during the June 9, 2011 interview?

1 A I don't know for sure. I think it may have
2 been Denise Madison.

3 Q Who is she?

4 A She was another special agent assigned to
5 Detachment 225.

6 Q What were her primary responsibilities?

7 A Counterintelligence agent. The nature of the
8 operations, she was helping out.

9 Q You said all hands on deck?

10 A Yes.

11 Q What you mean by that?

12 A Everyone, regardless of your job, is going to
13 help out. We can conduct all the steps that need to
14 be taken and people could eventually go home at
15 night.

16 Q I think Mr. Webster asked this earlier: I
17 they you indicated you have never been reprimanded,
18 disciplined with respect to your involvement with
19 the submission of fingerprints with respect to Devin
20 Kelley?

21 A That's correct.

22 Q Are you aware, was there an investigation by
23 Colonel Stabler of AFOSI with respect to the
24 submission of fingerprints?

1 A Yes.

2 Q And is it your understanding that Colonel
3 Stabler and/or his assistants reviewed various facts
4 like the ones we have discussed here today?

5 A Yes.

6 Q And Did Colonel Stabler advise you or correct
7 you on any actions that you took with respect to
8 this investigation?

9 A He never counseled me on my actions. I did
10 meet him in passing traveling from Afghanistan, and
11 he said he was taking in all of the information and
12 having to determine a decision on the case. And he
13 did tell me he didn't know what his decision was
14 going to be, but I think he could tell I was still
15 very emotional about the whole situation. He told
16 me I shouldn't lose sleep over it.

17 Q Is that the last you heard of the matter?

18 A Yes.

19 Q I would like to focus in on July 2011
20 interviews of Tessa and Devin. And looking at the
21 lens, what was known at that time, is it fair to say
22 that Devin and Tessa Kelley were suspects in the
23 abuse of the minor child?

24 A Yes.

1 Q I would like to return to exhibits. I believe
2 this is the file here. Exhibit 2. I would like to
3 direct your attention to 13641. Do you recognize
4 this document from earlier today?

5 A Yes.

6 Q I believe you indicated you were the secondary
7 interviewer to Denise Madison in the interview of
8 Tessa Kelley?

9 A Based on the way the notes were filled out, it
10 appears I was the primarily interviewer and she was
11 assistant.

12 Q Is it consistent to your recollection?

13 A I don't remember.

14 Q Is this note your handwriting?

15 A No. I was probably the main interviewer and
16 she was the note taker.

17 Q Do you have any specific recollection of this
18 interview with Tessa Kelley?

19 A I don't remember the details of what was
20 discussed, other than her being very emotional
21 during the interview. The specifics of what she
22 said without reading through this, it's hard to
23 remember. I remember her denying that she or Devin
24 Kelley had injured the child.

1 Q Did you find that denial plausible?

2 A Her denial plausible? At that time, I was --
3 didn't have enough information to believe that she
4 was or was not part of the injury sustained by the
5 child.

6 Q Did she say anything during the interview that
7 led you to believe that she might have been the one
8 that injured the child?

9 A I don't recall.

10 Q Do you recall any information specific that
11 would have led you to believe that she was not the
12 one who injured the child?

13 A No.

14 Q Look at the second page. Going to be at the
15 middle, USA 13642. Looking at the middle of the
16 page, starts with I think, and then there is a J
17 blacked out. Do you see that?

18 A Yes.

19 Q I think J was in crib and fell over and hit
20 his face. Do you have any recollection of that
21 statement, her making that statement?

22 A I remember one of the explanations that was
23 provided as a plausible reason for injury was that
24 the child fell in the crib.

1 Q Was that something you felt you needed to
2 investigate further?

3 A Yes.

4 Q After that interview with Tessa, do you have
5 an impression of her?

6 A She was very small and timid. And I remember
7 her being very emotional, given the circumstances.

8 Q Did you feel like she was being forthcoming?

9 A No.

10 Q Would a suspect not being forthcoming give you
11 reason to believe that they were -- possibly
12 committed a crime?

13 MR. WEBSTER: Objection; form.

14 THE WITNESS: I believed that she could
15 have committed a crime or had knowledge of
16 somebody else committing the crime that she was
17 withholding.

18 BY MR. FURMAN:

19 Q Turning to the interview record of Devin
20 Kelley, that is 13664, do you recall this document
21 from earlier?

22 A Yes.

23 Q Earlier we said that before any subject
24 interview, the subject is read their Article 31

1 rights?

2 A Yes.

3 Q Is it fair to say that in reading someone
4 their Article 31 rights, it means that they are
5 suspected of a crime?

6 A Yes.

7 Q Would being suspected of a crime give reason
8 to make a person nervous?

9 A Yes.

10 Q Earlier Mr. Webster pointed out some of the
11 conduct -- notes here that reflect that Devin Kelley
12 may have felt sick, vomited. Do you recall that?

13 A Yes.

14 Q Is vomiting or being sick consistent with a
15 person who is nervous?

16 A I think so.

17 Q So is it fair to say that by itself, suspect
18 being sick or vomiting is not indicative of whether
19 or not the person is guilty of what they are being
20 interviewed for?

21 A Yes.

22 Q Part of this case at this time talking about
23 medical records and coordination with the hospital
24 at the time of the interview, did you have a

1 complete medical record regarding the child and his
2 injuries?

3 A I don't know. Maybe an initial record, but I
4 don't recall what we had exactly at that time.

5 Q That's fair. And subsequent to this interview
6 did someone at Detachment 225 request -- submit an
7 affidavit for a search warrant of the Kelley's
8 residence?

9 A Yes.

10 Q What was the purpose of requesting the search
11 warrant?

12 A The reason was to corroborate the explanation
13 again as to why the child would have been injured
14 and to search the crib area of the house.

15 Q So is it fair to say that there was a
16 legitimate question about the crib area and the
17 nature of injury of the child at this time?

18 A Yes.

19 Q If his request for a search warrant via
20 affidavit, I'm assuming the agent would believe
21 there is probable cause to search a residence?

22 A Agent should have belief there is probable
23 cause that the evidence you are looking for is in
24 the place they are searching.

1 Q Is probable cause to search a residence the
2 same as probable cause that a specific individual
3 committed a crime?

4 A I don't believe so.

5 Q Is it possible to have probable cause to
6 search a particular residence or property or object
7 but not have probable cause that the specific
8 individual committed a crime?

9 A It's possible.

10 Q I'd like to turn to your search affidavit,
11 13789. You recall this from earlier?

12 A Yes.

13 Q I would like to turn to the top of the second
14 page. I don't know -- is that your signature on the
15 document?

16 A Yes.

17 Q And the first full sentence on the page, does
18 Dr. Harwood opine the injury could have been caused
19 by a fall or a severe blow to the child's head?

20 A Yes.

21 Q Returning to the previous page it shows as a
22 result of the CT scan. Do you see that?

23 A Yes.

24 Q Last sentence in that -- it was ordered on

1 June 9, 2011, do you see that?

2 A Yes.

3 Q That was the day of the interview?

4 A Yes.

5 Q Is it fair to say at the time there was a
6 legitimate question as to whether or not the injury
7 to the child, J, was caused by a fall?

8 A Yes.

9 Q And then if you move down the page a little
10 bit, and I'm looking -- middle of -- subject one and
11 subject two denied striking.

12 A Yes.

13 Q Victim could not provide a viable explanation
14 for victim's injuries. Subject one and subject two,
15 that's Devin and Tessa Kelley?

16 A Yes.

17 Q Neither Devin nor Tessa could provide a viable
18 explanation?

19 A Yes.

20 Q Moving down a little bit, discussed -- just
21 back up. This is a request to seize the wedding
22 rings of both Devin and Tessa Kelley?

23 A Yes.

24 Q That was to investigate the injury to the

1 minor child?

2 A To compare the hand and ring impressions to
3 the injuries to child.

4 Q Is it fair to say at that point that you were
5 considering that either Devin or Tessa Kelley could
6 have been the one that injured the child?

7 A We had not definitively ruled out either one
8 of them as a suspect -- either one or both, I should
9 say.

10 Q After your involvement with the interviews
11 June 9, 2011, what other involvement did you have
12 with respect to the Devin Kelley investigation as
13 you can recall?

14 A I recall participating in the search of the
15 residence and collecting images, collecting the
16 rings and images of their hands. I think we might
17 have tried to do an impression of their hands, like
18 a plaster, but I don't think it worked. Just trying
19 to capture the measurements of the hands. Outside
20 of that, I think I reviewed medical records for the
21 child at some point, and may have been involved in
22 others. I don't recall specific people in the case.

23 And then outside of that, I would
24 have been focused on reviewing the written report of

1 investigation as was being produced by the agent and
2 making sure that they were on track, conducting all
3 necessary steps in the case.

4 Q The primary responsibility for investigating
5 the case, moving the case along, was the case agent?

6 A Yes, and leadership and management
7 responsibility is to make sure they are doing that.

8 Q I would like to take a look at the timeline of
9 events. It's been marked Exhibit 3. I want to
10 focus on a portion of this document. I want to
11 direct your attention to page 35, lower right-hand
12 corner.

13 A Okay.

14 Q So we are looking at the very top, June 9,
15 2011.

16 A Yes.

17 Q That's the date of the interviews, is that
18 right?

19 A Yes.

20 Q Those are the interviews that you were
21 involved in?

22 MR. WEBSTER: Objection; form. You can
23 answer.

24 THE WITNESS: What was the question?

1 BY MR. FURMAN:

2 Q Were you involved in those interviews?

3 MR. WEBSTER: Objection; form.

4 THE WITNESS: I was involved in the
5 interview of Tessa and Devin Kelley.

6 BY MR. FURMAN:

7 Q That was on June 9, 2011?

8 A Yes.

9 Q I would like you to turn to page 41. Looking
10 at the entry for August 2, 2012, do you see that?

11 A Yes.

12 Q It says an Article 32 hearing was held.

13 A Yes.

14 Q That was after you had left Holloman, correct?

15 A Yes.

16 Q First interview on June 2011, and Article 32
17 in -- not until over a year later, do you see that?

18 A Yes.

19 Q Do you feel like this was a significant period
20 of time to pass between the two events?

21 MR. WEBSTER: Objection; form.

22 THE WITNESS: Knowing that the case
23 continued to have -- new things kept coming up
24 and required more and more investigative steps,

1 it doesn't seem out of the ordinary for it to
2 go on that long.

3 BY MR. FURMAN:

4 Q Would you agree that if the evidence against
5 Devin Kelley were stronger in the beginning, the
6 case would have been completed at your end,
7 detachment end, sooner?

8 MR. WEBSTER: Objection; form. Objection;
9 leading.

10 THE WITNESS: Yes. I would believe if had
11 all the facts we needed to prove or disprove
12 the allegation in the early moments of the
13 case, it would have been closed sooner.

14 BY MR. FURMAN:

15 Q Turn to page 40. Go to the June 8, 2012 date
16 on the page.

17 A Yes.

18 Q That refers to preparation of the pretrial
19 confinement package?

20 A Yes.

21 Q So am I correct that the pretrial confinement
22 package was not completed until a year after that
23 first interview?

24 A Yes.

1 Q If prior to that time you had felt that
2 pretrial confinement was appropriate, would you have
3 made a recommendation to Devin Kelley's commander?

4 A Prior to this time, yes.

5 Q Turn to page 39. Looking at the April 30,
6 2012 entry --

7 A Yes.

8 Q Kelley has voluntarily readmitted to the PBHS,
9 Peak Behavioral Health Services?

10 A Yes.

11 Q The entry below that is May 3, 2012. Tessa
12 Kelley was reinterviewed by AFOSI agent?

13 A Yes.

14 Q Do you recall discussing that May 3, 2012
15 interview with Mr. Webster?

16 A Yes.

17 Q Turn to Exhibit 2, USA 13438. Do you recall
18 discussing this earlier recall with Mr. Webster?

19 A I do.

20 Q He discussed some of the threats that Tessa
21 Kelley reported that her husband had made. Do you
22 recall that?

23 A Yes.

24 Q And during this time, May 3, 2012 -- I would

1 like you to look back, if you could, page 39.

2 A Okay.

3 Q We just discussed the April 30, 2012 entry
4 where Kelley was voluntarily readmitted to Peak. Do
5 you see that?

6 A Yes.

7 Q Based off the timeline, does it appear at the
8 time Devin Kelley was inpatient at the Peak
9 Behavioral Health Center?

10 A It appears so.

11 Q If at this time -- if Devin Kelley were
12 inpatient at the Peak Behavioral Health Center,
13 would he have access to weapons?

14 A I wouldn't think he would.

15 Q Would it be a problem if he did?

16 A Yes.

17 MR. WEBSTER: Objection; form.

18 BY MR. FURMAN:

19 Q Do you see the April 29, 2012 entry discusses
20 the digital video recording confession?

21 A Yes.

22 Q You indicated earlier you didn't review that
23 confession at the time, right?

24 A Yes.

1 Q And I think you said at the time of the
2 confession you were preparing to PCS, is that right?

3 A At that time, I had gone to school and taken
4 leave and was turning over aspects of my job to Lyle
5 Bankhead and preparing for PCS.

6 Q Your statements with respect to Devin Kelley
7 were not based off your knowledge and experience at
8 the time, but rather reading for the first time
9 today?

10 MR. WEBSTER: Objection, leading.

11 THE WITNESS: Yes.

12 BY MR. FURMAN:

13 Q I want to turn to page 41 again of the
14 timeline.

15 A Yes.

16 Q At the very top, June 8, 2012, AFOSI conducts
17 its second subject interview of Kelley?

18 A Yes.

19 Q Were you involved in that?

20 A No.

21 Q Earlier you discussed with Mr. Webster about
22 fingerprints, whether they were taken and/or
23 submitted, and you said that it's possible that the
24 case agents took the prints but did not take them

1 because they might have believed that the prints
2 were already in the case file?

3 MR. WEBSTER: Objection; leading.

4 THE WITNESS: I recall telling him that it
5 was probable that they didn't take them because
6 there was already fingerprints cards in the
7 case file that was open.

8 BY MR. FURMAN:

9 Q But you don't know that firsthand, right?

10 A Yes.

11 Q So that was speculation?

12 A Yes.

13 Q Were you involved the closing of the Devin
14 Kelley case file?

15 A I was not.

16 Q As best you can recall, when did you cease
17 being involved in any capacity in that
18 investigation?

19 A I believe that sometime in the spring of 2012
20 I was not actively involved in this investigation
21 due to the pending PCS and other temporary duty
22 assignments and training that I was doing there.

23 Q Is it fair to say you are not the best person
24 to ask questions about events that occurred during

1 the time after what you just discussed?

2 A Yes.

3 Q Would you agree that -- overall, that you were
4 not intimately involved in the Devin Kelley
5 investigation?

6 MR. WEBSTER: Objection; form.

7 THE WITNESS: I was involved initially in
8 the investigation, but outside of that, more of
9 an administrative capacity for the remainder of
10 my time at Detachment 225, administrative and
11 support role.

12 BY MR. FURMAN:

13 Q I'm going to turn your attention back to
14 Exhibit 1. This is the Facebook message between you
15 and Matt Taylor?

16 A Yes.

17 Q Would you call Matt Taylor to be a personal
18 friend?

19 A Yes.

20 Q And did -- this Facebook account, that's your
21 personal account?

22 A Yes.

23 Q So this was a private message to a friend
24 using your own personal Facebook account?

1 A Yes.

2 MR. LeGRAND: Objection.

3 BY MR. FURMAN:

4 Q And this messaging was the same day as the
5 shooting?

6 A According to the message, I received it on
7 November 6, 2017. If that's true, with the time
8 change in Afghanistan, I don't know if it accurately
9 reflects it or not.

10 Q It was on or about that date?

11 A Yes.

12 Q And is it fair to say you were feeling pretty
13 low at the time?

14 A It's fair to say that learning of my
15 association to this case and the mass murder that
16 just occurred, I was very upset.

17 Q And was your being upset reflected as some of
18 the comments you may have made in this -- these
19 messages?

20 A My comments once I learned who he was were
21 emotionally charged in initial reaction learning of
22 what happened.

23 Q This was sent to Matt in a personal context,
24 right?

1 A Yes.

2 Q And as a AFOSI special agent on the job
3 conducting investigations, you have always handled
4 yourself in a professional manner, correct?

5 A Yes.

6 Q No one has had any reason to question your
7 professionalism as an agent?

8 A I don't believe so.

9 Q Is it fair to say the comments made here were
10 not made in your professional capacity?

11 A That's correct.

12 Q Do you recall testimony where you indicated
13 here, made a statement that Devin Kelley was crazy
14 or something to that effect?

15 A I recall that statement.

16 Q You are not a professional psychologist or
17 psychiatrist, are you?

18 A I'm not.

19 Q You are not offering any opinion there on
20 whether Mr. Kelley was diagnosed at any time with
21 any kind of mental disturbance?

22 MR. WEBSTER: Objection; form.

23 A I have no opinion I could provide on his
24 mental capacity.

1 BY MR. FURMAN:

2 Q Throughout your career with AFOSI as an
3 investigator, you must have dealt with many
4 criminals?

5 A Yes.

6 Q And do many of these criminals exhibit
7 disturbing behavior?

8 A Yes.

9 Q Are many of these individuals controlling in
10 nature?

11 A Yes.

12 Q Do some or many of these individuals exhibit
13 antisocial tendencies?

14 A My recollection is that is something I have
15 seen.

16 Q Would you agree that some of the individuals
17 that you have dealt with, in addition to Devin
18 Kelley, have seemed off, as you put it earlier?

19 A Yes.

20 MR. WEBSTER: Objection; leading.

21 BY MR. FURMAN:

22 Q And you are not familiar with the terms of
23 involuntary versus some voluntarily committed as
24 those testified terms are used by mental health

1 professionals naturals?

2 MR. WEBSTER: Objection; form.

3 THE WITNESS: I wouldn't consider myself
4 to be we knowledgeable and versed on the policy
5 and guidance that determines the difference
6 between voluntary and involuntary mental health
7 evaluation.

8 BY MR. FURMAN:

9 Q Is it possible that the way those terms are
10 used by mental health professionals is different
11 than an everyday understanding of voluntary and
12 involuntary?

13 MR. WEBSTER: Objection; form. Objection;
14 leading.

15 BY MR. FURMAN:

16 Q So sitting here today are you in a position to
17 provide opinions on whether or not Devin Kelley's
18 inpatient stay at Peak Behavioral Health Center was
19 involuntary or not?

20 MR. WEBSTER: Objection; form.

21 THE WITNESS: I cannot provide
22 professional opinion on it. Based on the
23 documents and stuff that I was presented,
24 that's where I am providing my opinion from.

1 BY MR. FURMAN:

2 Q Being in the military, if your commander
3 orders you to be somewhere, are you required to be
4 there?

5 A Yes.

6 Q If you are ordered by a commander to be in a
7 specific place, is your being in that place
8 voluntary?

9 A It's involuntary.

10 Q If the way -- your understanding of
11 involuntary, if any military personnel is ordered to
12 be in a mental health institution, therefore that
13 individual is there involuntarily?

14 A Yes.

15 Q That's your personal understanding, is that
16 right.

17 A Yes.

18 Q You don't know whether your personal
19 understanding is consistent with the understanding
20 reflected on the Exhibit 4 AFT form you were shown
21 earlier?

22 MR. WEBSTER: Objection; form. Objection;
23 leading.

24

1 THE WITNESS: Can you --

2 BY MR. FURMAN:

3 Q Do you know whether or not your understanding
4 of involuntarily committed is the same as it's used
5 on Exhibit 4, the AFT form?

6 MR. WEBSTER: Objection. The form does
7 not say that.

8 THE WITNESS: I'm sorry. I'm not sure how
9 to answer that question.

10 BY MR. FURMAN:

11 Q Okay. On the form, Exhibit 4, it indicates
12 whether you have been committed to a mental
13 institution, do you see that?

14 A Yes.

15 Q Am I correct your understanding of this as
16 written here with respect to Devin Kelley or anyone
17 in the military is that if that person is ordered to
18 be at a mental institution, that therefore that
19 person is committed there?

20 MR. WEBSTER: Objection; form.

21 THE WITNESS: If they are ordered to be
22 there, they are there involuntarily, then yes.

23 BY MR. FURMAN:

24 Q We talked about some of the interviews that

1 AFOSI did with some of Devin Kelley's girlfriends
2 and some of the allegations that they made and other
3 conduct of Kelley. With respect to indexing a
4 person's fingerprints, am I correct that the
5 requirement for indexing is whether the offense
6 committed is indexible under the regulations?

7 A Yes.

8 MR. WEBSTER: Objection; form.

9 BY MR. FURMAN:

10 Q Does any other information, whether it be bad
11 acts or anything else that you would know about have
12 any bearing on whether that person's information is
13 require to be entered into the index?

14 MR. WEBSTER: Objection; form. Calls for
15 speculation.

16 THE WITNESS: At the time, my
17 understanding of what acts needed to be
18 reported and put in someone's record was not
19 clear. I know now that certain behaviors or
20 instances or things that people -- offenses
21 people -- offenses people committed make them
22 ineligible to purchase firearms and have to be
23 reported to NCIC.

24

1 BY MR. FURMAN:

2 Q Whether the offense would be reportable, that
3 was something as based off Air Force regulations,
4 DOD regulations?

5 A Yes.

6 Q Now, when you and the other -- you said
7 earlier that your role as an investigator was to
8 find the truth?

9 A Yes.

10 Q Did you do that with respect to the Devin
11 Kelley investigation?

12 A I believe so.

13 Q And talked about some of the other allegations
14 that were made about Devin Kelley by former
15 girlfriends, as -- would -- assuming that there was
16 evidence that would substantiate those allegations,
17 as an AFOSI agent, was it under your jurisdiction to
18 prosecute sexual assaults that occurred when
19 Mr. Kelley was a civilian?

20 A No. It was our responsibility to report these
21 incidents to the proper investigative agencies so
22 the agency that would have jurisdiction over Kelley
23 at that time.

24 Q Once Detachment 2/25 provided the ROI and

1 provided the case to the commander, was there
2 anything additional AFOSI could do to protect Devin
3 Kelley regarding charges against him?

4 MR. WEBSTER: Objection; leading.

5 THE WITNESS: AFOSI does not function in a
6 capacity where you punish anyone. The job is
7 just to produce a report for legal and the
8 decision makers, judges or commanders, action
9 authorities to take that. And they decide what
10 punitive actions should occur.

11 BY MR. FURMAN:

12 Q Was the practice of -- I think you said the
13 emphasis of Detachment 225 was on the operational
14 side.

15 A It was on identifying the crimes that were
16 happened.

17 Q And was it the practice of the detachment to
18 provide to the commander or JAG of the
19 recommendations for charges for all of the crimes
20 that there was sufficient evidence for?

21 A Yes.

22 Q So with respect to Devin Kelley, all of the
23 crimes there was evidence, the crimes had been
24 committed, those would have been transmitted to

1 commander or the JAG?

2 MR. WEBSTER: Objection; form, leading.

3 BY MR. FURMAN:

4 Q Other than the indexing or the fingerprints or
5 referring the case to the commander or the JAG, is a
6 there anything else that you or anyone at Detachment
7 225 could have done to punish Devin Kelley from
8 obtaining firearms?

9 MR. WEBSTER: Objection; form, leading.

10 THE WITNESS: Other than referring the
11 case to them? Accurately reporting his
12 fingerprints to FBI would have potentially
13 prevented him from purchasing firearms.

14 BY MR. FURMAN:

15 Q Anything else that you could have done?

16 A Not in my power.

17 Q Earlier you talked about the purchase of the
18 weapon from the on-base exchange?

19 A Yes.

20 Q And do you know whether the Air Force for the
21 exchange at Holloman was under the control of the
22 Air Force?

23 A I don't know the specifics of how they were
24 under the control of the Air Force. They operated

1 on Air Force base. I don't know the contracts that
2 they operated on.

3 Q You believe it was under contract?

4 A He assume.

5 Q So employees at the base, those are not Air
6 Force employees?

7 A That work were the BX? I don't think so. I
8 think they were either AP employees or they were
9 employees of a vendor that was contracted to operate
10 inside of the BX.

11 Q Is it fair to say that the BX was not
12 necessarily part of the Air Force?

13 A The BX is not part of the Air Force? I don't
14 know if that's true or not.

15 Q You don't know?

16 A I don't know how it's --

17 Q Quickly turn your attention to USA 13991. Do
18 you recall discussion this earlier?

19 A Yes.

20 Q There was testimony pointed out that the fact
21 this was after midnight, this call of 10:00 a.m. to
22 the taxi cab. I think you said earlier that you
23 believe that Mr. Kelley was AWOL at this time?

24 A I believe I did.

1 Q And if a military person is AWOL, is that a
2 concern?

3 A Yes.

4 Q Why is that a concern?

5 A It's a concern because they are not where they
6 are supposed to be. They are absent without
7 permission.

8 Q And if someone were absent without permission,
9 would that person's commander take interest,
10 regardless of the time of day?

11 A Yes.

12 Q So regardless of whether Devin Kelley was
13 threatening violence at that time, would the Air
14 Force have been interested and take action at 12:20
15 a.m. in the morning?

16 A Yes.

17 MR. FURMAN: I'm going to pass the
18 witness.

19 MR. WEBSTER: No further question.

20 MR. FURMAN: Read and sign, please.

21 (Signature not waived.)

22 - - -

23 And, thereupon, the deposition
24 was concluded at approximately

1 5:50 p.m.

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1 State of Ohio :
2 County of Franklin: SS:

3

4 I, James Hoy do hereby certify
5 that I have read the foregoing transcript of my
6 deposition given on January 7,
7 2020; that together with the correction page
8 attached hereto noting changes in form or substance,
9 if any, it is true and correct.

10

11

James Hoy

12

13 I do hereby certify that the foregoing
14 transcript of the Videotaped Deposition of James Hoy
15 was submitted to the witness for reading and
16 signing; that after he had stated to the
17 undersigned Notary Public that he had read and
18 examined his deposition, he
19 signed the same in my presence.

20

21

Notary Public

22

My commission expires _____

23

24

CERTIFICATE

1
2 State of Ohio :
3 County of Franklin: SS:
4

5 I, Laura S. Benton, Notary Public in and
6 for the State of Ohio, duly commissioned and qualified,
7 certify that the within named James Hoy was by me
8 duly sworn to testify to the whole truth in the cause
9 aforesaid; that the testimony was taken down by me in
10 stenotype in the presence of said witness, afterwards
11 transcribed upon a computer; that the foregoing is
12 a true and correct transcript of the testimony given
13 by said witness taken at the time and place in the
14 foregoing caption specified.

15 I certify that I am not a relative, employee,
16 or attorney of any of the parties hereto, or of any
17 attorney or counsel employed by the parties, or
18 financially interested in the action.

19 IN WITNESS WHEREOF, I have set my hand and
20 affixed my seal of office at Columbus, Ohio, on this
21 20th day of January , 2020.

22 *Laura S. Benton*

23 _____
24 LAURA S. BENTON, Notary Public
in and for the State of Ohio

My Commission expires December 12, 2023

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Reference No.: 4848767

Case: JOE HOLCOMBE vs UNITED STATES OF AMERICA

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

James Hoy

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of _____, 20____ before me,

(Notary Sign) _____

(Print Name) _____ Notary Public,

in and for the State of _____

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Reference No.: 4848767
Case: JOE HOLCOMBE vs UNITED STATES OF AMERICA
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James Hoy

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